

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No. 15439 of 2011
Date of decision:-11.05.2016**

Vanita Vashisht

...Petitioner

versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.K. Arora, Advocate,
for the petitioner.

Mr. Hitesh Pandit, Addl.A.G Haryana

Mr. Shakti Mehta, Advocate
for respondent Nos. 4 and 5

1. Whether Reporters of Local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ? Yes

RITU BAHRI , J.

Petitioner has approached this Court praying for issuance of writ in the nature of certiorari quashing the order dated 16.06.2008 conveyed vide memo dated 21.08.2008 (P-6) whereby claim of the petitioner for fixing her seniority from the date when her other batch-mates were given appointment, has been declined and further prayer is for issuance of directions to the respondents to grant her benefit of seniority and notional pay fixation from the date when her other

batch-mates were given appointments and were allowed to join the duties w.e.f 01.01.2007.

Pursuant to advertisement issued by the Manohar Memorial College (for short 'respondent-college'), petitioner was selected and appointed as lecturer in Economics on the basis of her merit on contract basis/temporary against the vacancy. She joined her duties on 27.07.1999 and since then she is continuously working in the said college. Thereafter, after lifting of the ban on appointment on regular basis in the year 2006, the respondent-College issued an advertisement dated 07.06.2006 for filling up various posts of Lecturers including one post of Lecturer in Economics. Petitioner applied for the post of Lecturer in Economics on regular basis. However, the Government of Haryana vide advertisement dated 16.10.2006 took a decision that upper age limit will be 40 years and thus, the candidature of the petitioner was rejected as she had crossed the age of 40 years on the last date of submission of applications.

Subsequently, petitioner filed CWP No. 17182 of 2006 challenging the action of the respondents in declaring her ineligible for appointment to the post of Lecturer in Economics and sought directions to consider her eligible in age for the post of Lecturer. This Court vide order dated 09.11.2006 permitted the petitioner to participate in the selection process provisionally but the result of the

petitioner was ordered to be kept in sealed cover and the same was directed to be produced before the Court.

Thereafter, petitioner was interviewed on 24.11.2006 and ***was placed at Sr. No. 1 in the panel of selected candidates but she*** was not allowed to join her duty as the matter was pending before this Court.

Thereafter, this Court vide judgment dated 26.11.2007 (P-1) allowed the writ petition in terms of CWP No. 3081 of 2005, decided on 25.09.2006 (Umesh Kumar and others v. Kurukshetra University, Kurukshetra and others) (P-2).

Pursuant to the above judgment dated 26.11.2007, petitioner was issued appointment letter dated 19.03.2008 (P-3) and she joined her duty on the same day. Her appointment was further approved by the Kurukshetra University, Kurukshetra vide letter dated 23.08.2008 (P-4).

Petitioner made a representation dated 29.04.2008 for granting her seniority from the date on which other batch-mates have been appointed (P-5), which was rejected vide memo dated 16.06.2008, conveyed to the petitioner on 23.08.2008 (P-6 and P-7).

On notice, a short written statement was filed on behalf of respondent Nos. 1 to 3 and reference has been made to Rule 9 of Haryana Affiliated Colleges (Security and Services) Rules, 2006 (for

brevity 'Rules 2006'), which were notified on 13.06.2006. Rule 9 of Rules 2006 reads as under:-

(i) The seniority of the employees shall be determined by length of continuous service on a post in the college and if there are different cadres in the service, the seniority shall be determined separately for each cadre.

Provided that in case an employee appointed directly the order of merit determined by the Selection Committee shall not be disturbed in fixing their seniority. However, if person appointed in different subjects/categories join on the same date seniority will be determined according to their seniority in age; and the elder employee shall be senior to the younger employee

Provided further that in the case of two employees appointed on the same date, their seniority shall be determined as follows :-

(a) an employee appointed by direct recruitment shall be senior to an employee appointed otherwise;

(b) in the case of employees who are appointed by promotion their inter se seniority shall not be disturbed.

(2) The seniority lists of the employees shall be prepared by the Managing Committee in the form prescribed in Appendix-D to these rules and circulated to the employees. This list will be finalized after inviting objections from the employees and considering the same. In the case of any dispute regarding fixation of seniority, the matter shall be decided by the Director."

In the written statement filed by respondent Nos. 4 to 5, it has been stated that no discrimination was made with the petitioner. Reference has been made to lecturers who have joined, which reads as under:-

<i>Sr. No.</i>	<i>Name</i>	<i>Teaching subject</i>	<i>Date of joining</i>
1	Sh. Robin Anand	Commerce	02/01/07
2	Mrs. Tripta mehta	English	02/01/07
3	Ms. Daljeet Kaur	English	10/01/07
4	Dr. Surender Pal Singh	History	27.10.2009

It has been stated that Dr. Surinder Pal Singh joined on 27.10.2009 and accordingly, his seniority has also been fixed keeping in view his date of joining and he has accepted his seniority from the date of his joining.

Petitioner has filed replication to the written statement filed by respondent Nos. 4 to 5 clarifying that the case of Dr. Surinder Pal Singh is totally different from the petitioner, as petitioner was selected at Sr. No. 1 and Dr. Surinder Pal Singh was at Sr. No. 2 in list of History Lecturer against a solitary post and due to non-joining of candidate at Sr. No. 1 in the subject of History, Dr. Surinder Pal Singh was offered appointment as Lecturer in October, 2009 and he joined on 27.10.2009. The petitioner is claiming seniority with three other lecturers namely Robin Anand, Mrs. Tripta Mehta and Ms. Daljeet Kaur who were given seniority and pay fixation from the year January, 2007.

After going through the contents of the writ petition,

GAURAV AGRA,
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integrity of this document

written statements filed by the respondents and the replication filed by the petitioner, the petition deserves to be allowed.

At the very outset, reference at this stage can be made to ***Umesh Kumar's case (supra)*** whereby this Court has observed as under:-

We further hold that if sanctioned posts are lying vacant, the respondents shall take immediate steps for filling up those posts by a regular process of selection in accordance with the rules and law. In case the petitioners fulfil all other qualifications of the rules, they should also be permitted to compete, waiving the age restriction imposed for the recruitment and grant him some weightage in lieu of number of years of service rendered by him.”

Thus, once the petitioner was given appointment, vide appointment letter dated 19.03.2008 (P-3) by the respondent-department by accepting the above mentioned judgment, for all intents and purposes, the petitioner who was placed at Sr. No. 1 in the panel of selected candidates, had a right to be appointed along with her batch mates who joined on 02.01.2007. Further as per above said Rules, the order of merit determined by the Selection Committee shall not be disturbed in re-fixing their seniority. Further if person appointed in different subject/categories join the same date, seniority will be

determined according to their seniority in age and the employee shall be senior to the younger employee.

Thus, on both accounts, the petitioner is entitled to be appointed along with her batch mates who joined on 02.01.2007, as she must be the senior as per her age and she was placed at Sr. No. 1 by the Selection committee.

Once the respondents have not disputed in the written statement that the petitioner was placed at Sr. No. 1 by the Selection Committee, she should be given seniority along with her batch mates, as per Rule 9 of Rules 2006. The writ petition filed by the petitioner earlier for relaxation of age was allowed by this Court vide judgment dated 26.11.2007 (P-1) and hence for all intents and purposes, she is entitled for all consequential benefits, as it was the department who rejected the candidature of the petitioner as she had crossed the age of 40 years and once the department had accepted the judgment dated 26.11.2007, she be given seniority along with her batch mates.

Reference at this stage can now be made to a judgment passed by this Court in a case of ***Charan Dass Sharma vs. State of Punjab and others, passed in CWP no. 19832 of 2003, decided on 09.07.2004*** (P-8) wherein the writ petition was allowed and it has been held that the seniority in case of direct recruitment will be determined as per order of merit in which the candidates were recommended by

the Commission or by the Selection Committee.

SLP filed against the above said judgment was dismissed by Hon'ble the Supreme Court on 21.07.2006 (P-9).

In view of the above discussion, this writ petition is allowed and order dated 16.06.2008 conveyed vide memo dated 23.08.2008 (P-6) is hereby quashed. Respondents are directed to fix the seniority of the petitioner as per her merit determined by the Selection Committee taking her date of appointment as 02.01.2007. Petitioner is entitled to all consequential benefits.

(RITU BAHRI)
JUDGE

11.05.2016

G Arora