

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 12075 of 2013 (O&M)

Date of Decision: 18.10.2016

Ramesh Kumar

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.R.K.Malik, Sr.Advocate with
Ms.Rimple Kadyan, Advocate for the petitioner

Ms.Shruti Jain Goyal, AAG, Haryana

RAJIV NARAIN RAINA, J. (Oral)

1. In order to distinguish Khajjan Singh and others vs. State of Haryana and others, 2014 (1) SCT 605, Umrao Singh and another vs. State of Haryana and another (CWP No.18246 of 2012 decided on 23rd February, 2015) and Kamlesh Kumari vs. the State of Haryana and others (CWP No.16944 of 2012 decided on 24th April, 2015), Ms.Shruti Jain Goyal, learned law officer appearing for the respondent State of Haryana argues that seniority of school teachers is maintained district-wise and it is a disputed fact whether any teacher junior to the petitioner was granted benefit similar to the one claimed by the petitioner in his district, and therefore, it is urged that the plea of unfair discrimination in Article 14 of our Constitution cannot be applied to this case since no person in the district to which the petitioner belongs and was junior to him and has been given such a benefit for both to be treated at par. Even assuming that the argument of the petitioner is correct, even then Article 14 of the Constitution of India still encompasses safeguards against unreasonableness and where the action is unreasonable and covered by precedent, it becomes inversely discriminatory, not in the sense that some

person similarly-situated and junior to the claimant has been granted benefit by ignoring a senior, but by virtue of the over-arching scheme in Article 14 of the Constitution which expects reasonableness and fairness-in-action which are twin facets of the rule of law. The measurement of equality or inequality is decided not district-wise but as against the State because the principle remains the same whether it is applied in one district or the other. A view to the contrary would be unrealistic and viewing the issue from the wrong angle.

2. Mr.R. K. Malik, learned Sr. Counsel for the petitioner argues that this case is squarely covered by the decision of a coordinate Bench of this Court in *Umrao Singh's* case rendered in the same department on the same cause, even if the decision in *Khajjan Singh* is not pressed and may not come to the rescue of the petitioner being a labour matter. The fact of the matter remains that the petitioner had approached this Court earlier in CWP No.16845 of 2004 which petition was disposed of by the Division Bench of this Court on 29th October, 2004 by passing the following order:-

“Learned counsel for the petitioner states that he is claiming the same benefit which has been granted to the persons similarly situated as the petitioner by orders dated 22.10.2003, 30.10.2003 and 31.12.2003, copies of which have been appended as Annexure P7, P6 and P8 respectively with the instant writ petition. In order to seek the aforesaid benefit, the petitioner is stated to have issued legal notice dated 2.7.2004. It is, however, contended that no decision has been taken thereon till date. Learned counsel for the petitioner states that the petitioner would be satisfied if the instant writ petition is disposed of with a direction to respondent no.3 i.e. District Education Officer, Hisar to take a final decision on the legal notice dated 2.7.2004.

In view of the above, without going into the merit of the claim by the petitioner, we consider it just and appropriate to dispose of the instant writ petition with a direction to respondent no.3, District Education Officer, Hisar to take a final decision on the legal notice dated 2.7.2004 (Annexure P/3) by passing a well reasoned speaking order within three months from the date of receipt of a certified copy of this order along with copies of Annexures P6 to P8.

Disposed of accordingly.

Order dasti on payment of usual charges.”

3. While passing the above said order, the Division Bench noticed that similarly-situated persons have been granted the benefit, but the Division Bench did not enter into the dispute because it disposed of the case without going into the merits of the claims raised by the petitioner with a direction to the District Education Officer, Hisar to take a final decision on the legal notice dated 2nd July, 2004 by passing a well reasoned speaking order within three months from the date of receipt of the order. The competent authority passed the order denying back-wages to the petitioner, but giving him the benefit of continuity of service i.e. from 16th April, 1997 to 25th September, 1997 and 7th May, 1998 to 13th January, 2004. The order was passed not on Court directions, but by the Officers of the Government who granted the benefit. Therefore, the order is *non litigious* as explained in Secretary, State of Karnataka and others vs. Umadevi and others, (2006) 4 SCC 1. It may be mentioned that while the services of the petitioner were terminated, his juniors were retained in service. The order granting continuity of service to the petitioner (Annex. P-1) passed by the authority refers to both CWP No.16845 of 2004 and CWP No.13535 of 2005 filed by the petitioner. CWP No.13535 of 2005 was, on the statement of the learned counsel for the

petitioner, dismissed as infructuous. In the said writ petition, the prayer of

the petitioner was for issuance of a writ in the nature of certiorari for quashing the impugned order dated 14th July, 2005 which denied benefit of continuity of service for the period the petitioner remained out of service i.e. from 6th May, 1998 to 14th January, 2004. Obviously, when the order was passed in favour of the petitioner during the pendency of the petition, the benefit of continuity of service had already been granted to him. The date of the order is 31st July, 2006 and that is how later the order dated 7th September, 2006 was passed by this Court dismissing the writ petition as infructuous.

4. In the written statement put in by the respondents, reliance is placed on the Supreme Court judgments in *Umadevi* and Official Liquidator v. Dayanand (2008) 10 SCC 1 cases which would not be of any help to the respondents when they have by themselves granted the benefits of continuity of service to the petitioner which order will bring with it the fruit of this litigation to him as a natural consequence.

5. For the foregoing reasons, this petition is allowed. The impugned order dated 8th April/2013/8th May, 2013 (Annex.P-4) is quashed. The case of the petitioner will be considered specifically in the light of the judgment rendered in *Umrao Singh* which involves teachers in the same Education Department and in the same boat as the petitioner. Let the consideration take place within six weeks from the date of receipt of a certified copy of this order.

(RAJIV NARAIN RAINA)
JUDGE

18.10.2016
MFK

Whether speaking/reasoned

Yes

Whether Reportable

No