

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15358 of 2013
Decided on : 30.05.2016

Rajwinder Kaur

... Petitioner

Versus

State of Punjab & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

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

Mr.Avinit Avasthi, AAG, Punjab.

G.S. Sandhawalia , J. (Oral)

Petitioner challenges the order dated 31.08.2010 (Annexure P14), conveyed to her vide letter dated 13.02.2013 (Annexure P15) whereby the petitioner's order of termination of service dated 23.10.2009 (Annexure P9) passed by the District Education Officer (Elementary Education) Gurdaspur was upheld after reconsidering the issue in pursuance to the orders dated 27.05.2010 (Annexure P11), passed by this Court.

It is an unfortunate case where a handicapped (blind) employee has been made to run in the corridors of this Court for redressal of her grievances, for the last 7 years.

It is the case of the petitioner that in pursuance of an advertisement dated 02.09.2007 (Annexure P1), she had applied for the post of ETT Teacher in District Gurdaspur, in the handicapped quota. Her experience certificate was of two schools, namely, Janta Modern Senior Secondary School, Wadala Granthian (Gurdaspur), from 13.09.1997 to 12.11.1999 and Guru Har Rai Intelligent Treasure School, Panj Graian, Batala, District Gurdaspur from 01.05.2002 to 06.09.2007. It is her categorical case that no marks were given of experience for the

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Janta Modern Senior Secondary School for the period from 13.09.1997 to 12.11.1999 and specific averment has been made in para 5 of the writ petition, to that effect. It is further her case that her merit was 54.531, after excluding the said experience certificate. In pursuance of the same, she was given appointment order dated 17.11.2008 (Annexure P7).

On account of bogus experience certificates having been issued to secure employment against the said advertisement, public notice had been issued by the State, for confirming the experience certificate and resultantly, her appointment was cancelled on 23.10.2009 (Annexure P9) on the ground that the certificate from Janta Modern Senior Secondary School could not be verified and was bogus. She had approached this Court in CWP-7368-2010, with the specific plea that even if the said experience certificate was taken out, the petitioner would still make it to the select list. Resultantly, a direction was issued on 27.05.2010 (Annexure P11) to the State to reconsider the issue, in view of the judgment of this Court in CWP-11111-2009 titled *Parminder Kaur Vs. State of Punjab & others*, decided on 18.03.2010. The said order reads as under:

“The petitioner seeks quashing of the order dated 23.10.2009 (Annexure P-9) whereby his appointment as Teaching Fellow in the Government Elementary School, Nangal, Block Pathankot-3, District Gurdaspur, has been cancelled and her services were dispensed with on the ground that experience certificate produced by her is found to be bogus.

On the other hand, the petitioner's grievance is two-folds. Firstly she submits that the experience certificate is genuine and secondly, it is urged that even if the marks for the 'experience' are excluded or not awarded to her, still the petitioner makes to the selection list.

During the course of hearing, learned counsel for the parties are *ad-idem* that the controversy involved in this case has already been settled by this Court in Civil Writ Petition No.11111 of 2009 (Parminder Kaur versus State of Punjab and others), decided on 18.3.2010.

Having heard learned counsel for the petitioner and considering the assertions made on her behalf, I deem it appropriate to dispose of this writ petition with a direction that let the petitioner represent to the authorities alongwith the material in support of her plea that the 'experience certificate' relied upon by her is genuine and/or she is otherwise entitled to be given appointment. The said representation(s), if any, shall be considered by respondent No.2 in the light of the above cited decision of this Court in Parminder Kaur's case (*supra*), within a period of three months from the date of receiving a certified copy of this order.

Ordered accordingly.

Dasti.”

Resultantly, the impugned order was passed.

It is not disputed that in pursuance of the said order, which has also been reproduced in the impugned order, respondent No.4 called for the Managing Director of the said school who made the statement that though the petitioner had worked in the said school but the record having been stolen, the same could not be produced. Resultantly, the certificate not having verified, the order of termination of service dated 23.10.2009 was again upheld. However, the said order failed to take into consideration the specific case of the petitioner that leaving apart the said certificate, even then, the petitioner was entitled for consideration on merits, which was the categorical case of the petitioner.

As noticed above, the plea in para 5 of the writ petition has not

been denied in the written statement also. The only issue highlighted has been that if there is fraud, then the whole recruitment process was not liable to be given effect to. Before respondent No.4, the petitioner had also produced a group photograph of session 1997-1998, photocopy of the police complaint, regarding the theft in the school, cutting from 'Ajit' and 'Jagbani' newspapers regarding the theft etc. Unfortunately, the impugned order was passed only placing reliance upon the fact that the record having been stolen, therefore, the Committee's decision was right that the certificate was bogus. In view of lack of denial, even if the certificate is not taken into consideration, the petitioner still makes it to the select list. Unfortunately, this aspect has not even been adverted to and in view of the specific pleadings to that effect and no denial, petitioner has to be granted the benefit.

Reliance has rightly been placed upon similar orders passed in CWP-2350-2014 titled *Ranju Bala Vs. The State of Punjab & others*, decided on 19.02.2016 wherein also, similar issue had arisen. Relevant portion of the judgment read as under:

“All that can be said is that there is broken period in between. In case had the broken period been directly an issue on the question of appointment, it could have been another matter. Had marks for this period been added to the total marks secured by the petitioner to gain appointment, and when marks were reduced for the period, then the petitioner would fall out of the zone of consideration and lose his job, but this is not his case since there is a categorical admission in paragraph 6 on merits in the written statement that the marks of bogus experience certificate were not included while preparing the merit list. Action has been taken against the petitioner by dispensing with her services for production of

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bogus certificate which shows mala fide intention of the Selection Committee. The reasoning adopted by the appointment authority is totally vague, erroneous and irrelevant. Insofar as the nature and character of the appointment is concerned, the same cannot be flawed with in the manner as suggested by the State in its written statement. In view of the above, it is not necessary for this Court to dilute on the intervening litigation that the petitioner has to resort to bring the case for hearing today.

3. In view of the above discussion, the writ petition is allowed. Writ of Certiorari is issued quashing the impugned orders (Annex. P-18 and P-10) and a Writ of Mandamus is issued to the appointing authority to reinstate the petitioner to service with all consequential benefits flowing therefrom.”

It is further pointed out that the State has given effect to the said order also by issuing appointment letter dated 18.05.2016.

Accordingly, keeping in view the above discussion, the order dated 23.10.2009 (Annexure P9) and 31.08.2010 (Annexure P14) are quashed. The petitioner will be entitled for all the consequential benefits. She will also be entitled for costs of Rs.25,000/- on account of the callous attitude which has been depicted by the said respondent while passing the impugned orders and unnecessarily burdening the State for paying the petitioner's salary for the period she had never worked, apart from burdening this Court with unnecessary litigation. Needful be done within a period of 2 months from today.

Writ petition stands allowed, in the above-said terms.

MAY 30, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE