

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

**CWP No.14618 of 2014
Date of decision: 13.06.2016**

Rajesh Kumar and another

...Petitioners

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Raj Kapoor Malik, Advocate,
for the petitioners.

Mr. Hitesh Pandit, Addl. A.G., Haryana,
for respondent No.1-State

Mr. Anurag Goel, Advocate,
for respondent No.2-University.

Mr. Naveen Kumar, Advocate,
for respondent No.3.

RITU BAHRI, J.

The petitioners are seeking direction to respondent No.3 to offer them appointment on the post of Assistant Professor in the subject of Inorganic Chemistry on regular basis under self financing scheme.

Vide advertisement dated 22.07.2013 (Annexure P-1), respondent No.3 had invited applications for filling up of four posts of Assistant Professors (2 in inorganic & 2 in organic chemistry) on regular basis under self financing scheme. The petitioners were issued interview letters dated 04.12.2013 asking them to attend the interview on 14.12.2013 (Annexure P-2, collectively) at 9.00 A.M. Thereafter, the petitioners

participated in the interview before a duly constituted Selection Committee

for two posts, which were advertised for In Organic Chemistry and their names were placed at serial Nos.3 and 4 in the merit list, as per the proceedings of Selection Committee dated 14.12.2013 (Annexure P-3). As per the information supplied vide letter dated 02.07.2014 (Annexure P-4) under the Right to Information Act, 2005, after the result was declared, the candidates selected at serial Nos.1 and 2 did not join. At the same time, with regard to other categories of Assistant Professors, for which the selection was approved by the University, the candidates were offered appointment by the Management of respondent college. Reference has been made to appointment of Anshu Jakhar and Sachin Kumari, who joined as Assistant Professors (Organic Chemistry) on 20.01.2014.

Grievance of the petitioners is that their selection has been duly approved by the University and despite the fact that the posts were lying vacant, they have not been issued any appointment letters. Later on, petitioner No.2 was issued appointment by respondent No.3 vide appointment letter dated 06.02.2014 (Annexure P-8) on contract basis, but she left the service in the month of May, 2014. Petitioners have made representation (Annexure P-6, collectively) for issuance of appointment letters after the selection had been approved by the University, but to no avail.

Learned counsel for the petitioners has argued that pursuant to the advertisement (Annexure P-1), two candidates have already joined as Assistant Professors. As per information dated 02.07.2014 (Annexure P-4) received under the RTI Act, candidates figured at serial Nos.1 and 2 namely, Sonika and Seetal have refused to join as Assistant Professors in Inorganic Chemistry. As per proceedings of the Selection Committee (Annexure P-3),

selection to the above posts had been made on 14.12.2013. Hence, the merit list was valid up to one year i.e. 14.12.2014 and the respondents should have sent appointment letters to the petitioners on regular basis. After making representation (Annexure P-6), petitioner No.2 was given appointment on contract basis vide appointment letter dated 06.02.2014 (Annexure P-8), however, she left the service in the month of May, 2014. Thus, the action of the respondents not to issue appointment letters to the petitioners as Assistant Professors in the subject of Inorganic Chemistry on regular basis is illegal, unjust, unconstitutional, arbitrary and the same is liable to be set aside, as similarly situated candidates have been issued appointment letters, whereas the petitioners have not been appointed so far. No satisfactory explanation has been given by the respondents in the written statement and the posts are still lying vacant.

Learned counsel for the State does not dispute the factual position of the case and states that the petitioners were seeking appointment to the post of Assistant Professors under the self financing scheme of respondent No.3. The appointments were against unsanctioned posts and no relief is being sought against the official respondents.

Learned counsel for respondent No.3 has taken a preliminary objection that the petitioners were seeking appointment on the posts under the self financing scheme and their proper remedy would be to approach the Education Tribunal, which has been constituted in the State of Haryana. The powers of adjudication of disputes involving private aided and unaided educational institutions have been vested in the District and Sessions Judges and Additional District and Sessions Judges. He further submits that the petitioners were placed at serial Nos.3 and 4 in the selection list against two

vacancies. The candidates at serial Nos. 1 and 2 neither joined their services nor indicated their refusal to join. The petitioners were offered appointment on contract basis, as they could not have been offered the posts on regular basis till the candidates at serial Nos. 1 and 2 would have refused to join. Petitioner No.1 did not join on contract basis, whereas petitioner No.2 joined on 06.02.2014 and she worked till May, 2014 and thereafter, left the job as per her own wish. After conclusion of academic session, no fresh recruitment was made on those posts. In the next academic session, there was no need to fill up the posts due to paucity of funds and time table was adjusted amongst the existing staff.

Learned counsel for the petitioners has placed on record the advertisement issued on 20.06.2015, whereby three posts of Assistant Professors in Inorganic Chemistry have been advertised for the academic session 2015-16 . This advertisement belies the stand taken by respondent No.3 that on account of paucity of funds and lack of students, the posts of Assistant Professors in Inorganic Chemistry were not required to be filled in the session commencing in July. On 28.08.2015, learned counsel for the respondent-college had taken time to get instructions with regard to the advertisement issued on 20.06.2015.

Learned counsel for respondent No.3 had not been able to dispute the aforesaid advertisement when the case was taken up for final arguments on 23.05.2016. The obvious conclusion would be that respondent No.3 was in the process on filling up three vacant posts of Assistant Professors afresh. The advertisement had been issued despite the fact that the petitioners had been selected by a duly constituted Selection Committee vide proceedings (Annexure P-3) and their selection had been

approved by the University vide Annexure P-9. The petitioners were eligible and being in the waiting list, they had a right to be appointed on regular basis, which has not been done by respondent No.3. In similar circumstances, a Co-ordinate Bench of this Court in **Ms. Pratibha Vs. State of Haryana and others**, CWP No.26396 of 2013 (decided on 10.02.2014) has allowed a petition, where the petitioner(s) had been selected to the posts of Assistant Professors in Economics and after approval, appointment letters had not been issued to them. On the other hand, the college had issued appointment letters to other similarly situated candidates. In that case, reference was made to a decision given by this Court in **Mohd. Rafeeq Ahmed Vs. State of Haryana and others**, CWP No.15415 of 2009 (decided on 30.11.2009), wherein the petitioner was selected, but was not issued any appointment letter. His appointment was denied on the ground that he was having degree, but not the diploma. During the pendency of the petition, he was appointed and thereafter, was granted benefit of length of service/seniority on the basis of merit prepared by the Committee. However, the said candidate was not ordered to be entitled for any monetary benefit for that period.

The case of the petitioner cannot be referred to the Tribunal constituted by the Haryana Government vide notification dated 02.03.2015 as the Tribunal is competent to hear the appeals of the employees of aided/unaided educational institutions against decision of the Management. In the preset case, the petitioners are seeking appointment and hence, there is no relationship of employer and employees at this stage.

In view of the above discussion, this petition is allowed and respondent No.3 is directed to give appointment letters to the petitioners.

The petitioners shall be entitled for the benefit of length of service/seniority on the basis of merit prepared by the Selection Committee, but they shall not be entitled to any monetary benefit for that period.

13.06.2016
ajp

(RITU BAHRI)
JUDGE