

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

CM No.9454 of 2015 in/and
CWP No.3760 of 2010
Date of decision: 18.03.2016

Manjula Bindlish

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rajinder Goyal, Advocate,
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

RITU BAHRI, J.

With the consensus of learned counsel for the parties, the main petition i.e. CWP No.3760 of 2010 is taken up today itself for final disposal.

The petitioner is seeking direction to the respondents to adjust her against the post of Science Mistress/Teacher in Government Aided School or a school run by the respondents with all consequential service benefits by counting the service rendered by her with J.R.D. Girls Senior Secondary School, Kaithal.

The petitioner was appointed as Science Mistress in J.R.D. Girls Senior Secondary School, Kaithal vide appointment letter dated 31.05.1996 (Annexure P-1). The said school was a Government Aided recognized school of the Government of Haryana. Later on, her services were confirmed by the respondents and she was given the pay scale of Rs.5500-9000 along with other admissible allowances. 75% of the total emoluments is to be paid by

the Government and the remaining 25% is payable by the local management of the school. The said school was taken over by the State Government and an Administrator was appointed. A number of employees of the school filed various petitions before this Court i.e. CWP Nos.1292 of 2004, 7422 of 2008, 2774 of 2007, 17430 of 2008, which were disposed of vide order dated 17.02.2009 (Annexure P-2) in the following terms:-

“A board consensus has emerged between the parties that in the present precarious condition it would be in the best interest of all if the school is closed down after this academic session, so that at least the year of the students is not wasted. In the circumstances, the D.E.O. is directed to retain control of the school till the end of this academic session and give adequate notice to the guardians of the students to transfer their children to another school from the next academic session. He will also ensure that such students who are not admitted in any other school would be accommodated in some nearby Govt. School. After completion of this academic session, the school will be closed down so that at least future liabilities can be stopped. Thereafter, a period of two months will be granted to the management to devise ways and means of utilizing the building and the premises and raising money to pay all the admitted debts. However, if after this period of two months, no constructive suggestion eminent from the management, thereafter, the Deputy Commissioner will take steps to auction the premises by way of public auction and the funds so generated would be used to discharge the statutory and other liabilities of the institution. The remaining amount, if any, would be deposited in a permanent fixed deposit favouring respondent No.2 with the stipulation that the said amount can never be withdrawn by anybody but only interest thereon can be used for the benefit of the community by its representatives.”

The petitioner's grievance is that she has not been paid her salary and no student in any class, has been admitted for the academic session 2009-2010. She is seeking direction to the respondents to adjust her in other school in the same district or outside the district in other Government private school as per Rule 59 of the Haryana School Education (Amendment) Rules, 2007 (for short '2007 Rules'). In this regard, she sent a legal notice dated

04.05.2009 (Annexure P-3) to the respondents to release her salary and adjust her in other Government aided school.

Upon notice, written statement has been filed on behalf of respondent Nos. 1 to 4, wherein it has been stated that J.R.D. Aggarwal Girls Senior Secondary School, Kaithal was closed down w.e.f. 01.04.2009 and the students have been transferred/admitted to the nearby Government Schools in Kaithal. All the teachers working therein have been discharged from their duties and admissible retiral benefits have to be extended by the Department under Haryana Aided Schol (Special Pension and Contributory Provident Fund) Rules, 2001. It has been further stated that 75% salary of Government share has been paid to the petitioner up to 31.03.2009 by the District Education Officer, Kaithal. A similar issue was pending consideration before this Court in Vijay Seth & others Vs. State of Haryana & others, CWP No.5607 of 2009.

In an affidavit dated 19.08.2011 filed by the Director, Secondary Education, Haryana, it was stated that Rule 59 (3) of 2007 Rules is not applicable in the case of the petitioner because J.R.D. Aggarwal Girls Senior Secondary School, Kaithal was de-aided w.e.f. 01.04.2009. Case of the petitioner is covered by Rule 62 (1) of Haryana School Education Rules, 2003 and Rule 62 (3) of 2007 Rules. The petitioner cannot get the benefit of Rule 59 (3) of 2007 Rules because this rule is available only to the staff, which has been declared surplus and can be adjusted in any other school. However, in the case of the petitioner, the school has been de-aided and all the employees have been discharged.

In a separate affidavit dated 27.12.2011 filed by the Chief Secretary to Government of Haryana, it is reiterated that the case of the

petitioner was not covered under Rule 59 (3) of 2007 Rules and she cannot be adjusted in any other school along with other teachers. However, they will be entitled to retiral benefits admissible to them under the Rules.

Learned counsel for the petitioner by way of CM No.9454 of 2015 has placed on record copy of judgment dated 21.04.2015 (Annexure A-1) passed by the Hon'ble Supreme Court in **State of Haryana & others Vs. Vijay Seth & others**, Civil Appeal No.3808 of 2015 (arising out of SLP (C) No.21752 of 2012). In that case, respondent-Vijay Seth had been discharged along with the petitioner. The respondents, in their written statement, have referred to the pendency of CWP No.5607 of 2009, titled as **Vijay Seth & others Vs. State of Haryana & others**. Hence, the decision given by the Hon'ble Supreme Court in Civil Appeal No.3808 of 2015 shall be relevant to dispose of the present petition.

In the aforesaid case, while interpreting Rule 59 of 2007 Rules, the Hon'ble Supreme Court held that the essence of this rule lies in a teacher becoming surplus. The provisions of the rule being beneficial in nature, the petitioner has to be given a liberal construction. There was no real rationale behind making a distinction between a teacher, who is rendered surplus on account of falling student-teacher ratio and another, who became surplus because of the closure of the institution. The liberal interpretation given to Rule 59 (3) by the High Court was upheld. The respondents were to adjust the petitioner(s) in other schools, which were similarly aided, within or outside the district anywhere in the State of Haryana. The Hon'ble Supreme Court has given a direction for adjustment of respondent Nos.2, 3 and 4 (in that case) in another institution within a time-frame to meet the ends of justice. A further direction was given to refund the amount received by them

towards retiral benefit before they were actually adjusted.

Since the present petitioner (Manjula Bindlish) was discharged from the school along with Vijay Seth, her case is squarely covered by the judgment passed by the Hon'ble Supreme Court in **State of Haryana & others Vs. Vijay Seth & others**, (Annexure A-1).

Resultantly, the present petition is disposed of in the same terms as in **Vijay Seth's** case (supra) (Annexure A-1) and the respondents are directed to adjust the petitioner in another similarly aided school, within or outside the district anywhere in the State of Haryana. This exercise be completed within a period of three months from the date of receipt of certified copy of this order.

18.03.2016
ajp

(RITU BAHRI)
JUDGE