

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

**CWP No. 18972 of 2013
Date of decision : 13.06.2016**

Amita Rani

...Petitioner

versus

**DeenBandhu Chhotu Ram University of
Science and Technology and others**

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sachit Punia, Advocate
for the petitioner.

Mr. Satyawan Ahlawat, Advocate
for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI , J.

Petitioner has approached this Court by way of instant writ petition filed under Articles 226/227 of the Constitution of India, seeking a writ in the nature of mandamus for issuance of direction to the respondents to grant the benefit of pay protection, as she was drawing at the Kurukshetra University prior to joining the respondent-University to the post of Assistant Professor in the department of Computer Science and Engineering with all consequential benefits by setting aside the impugned order dated 08.11.2011 (P-13).

Petitioner initially joined as Lecturer in Computer Science and Engineering w.e.f 04.08.2000 in the Hindu College of Engineering at Sonapat affiliated to MDU Rohtak and worked in the College upto 08.08.2007 as an Assistant Professor in the pay scale of Rs.12000-18300 and relieved w.e.f 08.08.2007 to join her next appointment at the University Institute of Engineering and Technology at K.U (P-1). Kurukshetra University advertised the posts of Assistant Professor in the grade of Rs.12420-18300 and one post was meant for Computer Science Engineering under the Self Financing Scheme of the University (P-2). Petitioner applied for the said post of Assistant Professor since she was already working in the said grade and also got selected and was appointed by the Kurukshetra University, vide appointment letter dated 27.07.2007 (P-3). The appointment of the petitioner was also confirmed by the Kurukshetra University (P-5). Pursuant to the advertisement No. 6/2010, petitioner gave application through proper channel for the post of Assistant Professor in the department of Computer Science and Engineering in the pay scale of Rs.15600-3900+8000 G.P (P-6) and was got selected in the department of Computer Science and with the approval of the Executive Council, she was appointed by the respondent University (P-7 and P-8). The said post was joined by the petitioner after seeking relieving certificate and last pay certificate from

the Kurukshetra University (P-9 and P-10 colly). Petitioner thereafter gave her representation for pay protection as she was already working in the revised pay scale of Rs.37400-67000+9000GP as on 09.08.2010 (P-11).

The grievance of the petitioner before this Court is that despite the resolution adopted by the 7th Executive Council meeting of the respondent-University dated 02.07.2009, vide item No. 9, the claim of the petitioner for pay protection has been rejected, vide order dated 08.11.2011 (P-13) and the similar benefit has been granted to two other employees of the respondent-University namely Dr. Sujata Rana and Dr. Satish Khasa, vide agenda of 12th & 13th Executive Council meeting held on 29.03.2011 and 09.08.2011 (P-14) on the ground that she had been working under the Kurukshetra University under the Self Finance Scheme run by Kurukshetra University.

On notice, a written statement has been filed taking a stand that the petitioner was working under the Self Finance Scheme and the terms of engagement of petitioner in University Institute of Engineering and Technology Kurukshetra under the self financing scheme was co-terminus with the specific course/programe for which she was appointed (R-1). Further petitioner was not appointed against regularly sanctioned post, as such her request was declined, vide impugned letter

dated 08.11.2011. Further, Director Technical Education Haryana vide memo dated 22.05.2013 has clarified that the cases of such faculty members who have served in the institution under the self financing scheme or privately managed self financing colleges/Institutes are not covered for grant of pay protection, pension and counting of past service for promotion under the CAS.

Further, the respondents had stated that Dr. Satish Khasha and Dr. Sujata Rana, Associate Professors were serving in Government College of Rohtak and C.R.M Jat College, Hissar (an institute aided from haryana Government and also affiliated with Kurukshetra University) against regular sanctioned posts respectively prior to join the respondent-University. Thus their cases were covered under the Rules approved by the Executive Council of this University.

In replication filed by the petitioner to the written statement, reference has been made to Annexure P-15 whereby as per order of the Technical Education, Department, Government of Haryana dated 17.06.2010, University Institute of Engineering and Technology (UIET) has been listed among the Government/Government Aided Institutions/University considering for participation in the 2nd phase of World Bank Project (TEQIP) as per approval of the Government of Haryana.

Learned counsel for the petitioner has referred to Kurukshetra University Self-Financing Scheme Rules and these rules shall apply for engagement of all the employees, teaching and non-teaching in connection with the affairs of running of self-financed courses and programmes, established and introduced under these Rules by the University. Rule 12 and 13 of the aforesaid Rules reads as under:-

12. *Creation of posts under self-financing scheme:-* All teaching and non-teaching posts under the scheme shall be created by the Executive council on the basis of justified work-load and got approved from the Government.

13. *Qualifications:-* The essential qualification for various teaching and non-teaching posts under Self financing scheme shall not be in any manner, inferior to those prescribed by the University or various academic bodies such as UGC, AICTE etc.”

As per the above said Rules, after getting the approval from the Government, the scheme is to continue.

Further in the appointment letter of the petitioner, it is nowhere written that she cannot apply for pay protection. Petitioner was employee of Kurukshetra Univeristy and was appointed in UIET. The post was regular and under self-financing scheme, which was created by the Executive Council on the basis of justified work load and

after the approval from the Government. As per interpretation of Rule 12, the appointment of the petitioner seems to be against regular sanctioned post. The petitioner was working in UIET, which is among the Govt/Government Aided Institutes as per Annexure P-15. Further petitioner was also issued the confirmation letter (P-5) and was granted the pay fixation as per HCS (Revised Pay) Rules, 2008 as well as earned leave benefits.

Reference at this stage can be made to the resolution adopted by the 7th Executive Council meeting of the respondent-University dated 02.07.2009, vide item No. 9 wherein following terms and conditions were laid down:-

- “1. They must have applied through proper channel or should produce N.O.C*
- 2. His/Her selection in previous institution was made in a running scale by the properly constituted selection committee and the post has been advertised in running scale by their previous employer.*
- 3. He/She has come this university from a University government Institution/Government Aided private institution/college. In case of private institution, it must be affiliated to University. The salary of such employees who have*

come for non-affiliated institutes may not be protected.

4. *For factual verification of the salary drawn by the employee, an authentic proof in this regard i.e L.P.C and income tax return/form 16 last filed by the employee be produced by him/her.”*

Learned counsel for the petitioner has now referred to letter dated 21.07.2011 of Financial Commissioner and Principal Secretary to Government of Haryana, Higher Education Department sent to Registrar, Kuruksehra University, M.D.U,Rohtak, Devi Lal University, Sirsa, Bhagat Phool Singh Mahilka Vishwavidyala, Khanpur Kalan (Sonapat) and all the Principals of Government and Government Aided Private Colleges. Reference has been made to Rule 19 which reads as under:-

19.0 Counting Of Past Services For Direct Recruitment and Promotion Under CAS

19.1. Previous regular service, whether national or international, as Assistant Professor, Associate Professor or Professor or equivalent in a University, College, National Laboratories or other scientific/professional Organizations such as the CSIR, ICAR, DRDO, UGC, ICSSR, ICHR, ICMR, DBT, etc. funded by State/Central Government, should be counted for direct 55

recruitment and promotion under CAS of a teacher as Assistant Professor, Associate Professor, Professor or any other nomenclature these posts are described as per Appendix IV – Table No. II provided that:

a. The essential qualifications of the post held were not lower than the qualifications prescribed by the UGC for Assistant Professor, Associate Professor and Professor as the case may be.

b. The post is/was in an equivalent grade or of the pre-revised scale of pay as the post of Assistant Professor (Lecturer) Associate Professor (Reader) and Professor.

c. The candidate for direct recruitment has applied through proper channel only.

d. The concerned Assistant Professor, Associate Professor and Professor should possess the same minimum qualifications as prescribed by the UGC for appointment to the post of Assistant Professor, Associate Professor and Professor, as the case may be.

e. The post was filled in accordance with the prescribed selection procedure as laid down in the Regulations of University/State Government/Central Government/ Concerned Institutions, for such appointments.

f. The previous appointment was not as guest lecturer for any

duration, or an ad hoc or in a leave vacancy of less than one year duration. Ad hoc or temporary service of more than one year duration can be counted provided that:

- i. the period of service was of more than one year duration;*
- ii. the incumbent was appointed on the recommendation of duly constituted Selection Committee; and 56*
- (iii) the incumbent was selected to the permanent post in continuation to the ad hoc or temporary service, without any break.*

(g) No distinction should be made with reference to the nature of management of the institution where previous service was rendered (private/local body/Government), was considered for counting past services under this clause.”

Thus as per Rule 19(g), the previous service rendered in private/local body/Government shall be considered for counting past service and no distinction is to be made with reference to the nature of management of the institution where previous service was rendered.

In the present case, the petitioner was appointed under the self finance scheme by the Kurukshetra University and hence no distinction can be made with regard to her past service. She was having

the essential qualification as per prescribed norms and was already working in the revised pay scale of R.s37400-67000+9000GP as on 09.08.2010 and applied through proper channel. The respondents cannot deny her pay protection, in view of memo dated 22.05.2013, which has been issued with regard to pay fixation of one Dr. Avinash Chandra Upadhaya.

In view of the above factual position, the writ petition is allowed and order dated 08.11.2011 (P-13) is set aside and the respondents are directed to count the entire service rendered by the petitioner in the Kurukshetra University for protection of her pay.

(RITU BAHRI)
JUDGE

13.06.2016
G Arora