

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

Date of decision:17.2.2016

CWP No.21619 of 2013

Jaspreet Kaur & ors.		... Petitioners
	Versus	
State of Punjab & ors.		... Respondents

CWP No.22086 of 2013

Rakhi Gupta & ors.		... Petitioners
	Versus	
State of Punjab & ors.		... Respondents

CWP No.7065 of 2014

Manjula Sood		... Petitioner
	Versus	
The State of Punjab & ors.		... Respondents

CWP No.23373 of 2014

Jasvir Kaur		... Petitioner
	Versus	
The State of Punjab & ors.		... Respondents

CWP No.25025 of 2014

Sharanjit Kaur & ors.		... Petitioners
	Versus	
State of Punjab & ors.		... Respondents

CWP No.26130 of 2014

Jyotishana		... Petitioner
	Versus	
State of Punjab & ors.		... Respondents

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

Present: Mr. Kapil Kakkar, Advocate (in CWP No.21619 of 2013)
Mr. Jasdeep Singh Gill, Advocate and
Mr. Sunil Garg, Advocate (in CWP No.22086 of 2013)
Mr. Ramesh Sharma, Advocate (in CWP No.7065 of 2014)
Mr. KS Sodhi, Advocate(in CWP No.23373 of 2014)

Mr. Shiv Chauhan, Advocate for
Mr. RS Manhas, Advocate, (in CWPs No.25025 & 26130 of 2014)
for the petitioners.

Mr. Harkesh Manuja, Addl.A.G., Punjab.

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

RAJIV NARAIN RAINA, J.(Oral)

This order will dispose of the above cases bearing CWPs No. 21619, 22086 of 2013, 7065, 23373, 25025 & 26130 of 2014 as common questions of law and fact are involved in them which can conveniently be decided by a common order.

CWP No. 21619 of 2013

The stand of the State to justify its action in terminating the services of the petitioners after having appointed them as teachers hinges on the Full Bench decision of this Court delivered in **Abhishek Rishi v. State of Punjab & ors.**, 2013(3) RSJ 464, that it would have retrospective effect adversely impacting the appointment made in 2012 and therefore the department was within the law in disengaging them; and secondly it is urged that ultimate action taken was proper since there was an interim stay order in *Abhishek Rishi's case* when it was before the division bench prior to reference to a larger bench to settle the issues involved and for that reason alone the petitioners were retained in service and their services were validly terminated after the decision in the aforesaid case. After the decision was pronounced in *Abhishek Rishi*, the State of Punjab issued notification nullifying the counselling process conducted on December 12, 2011 [sports category] and December 13,

2011 [other categories] to facilitate posting orders at candidate chosen stations in Punjab. The petitioners had appeared in the counselling held on December 13, 2011 and were issued appointment orders on September 20, 2012 and their services were terminated on September 23, 2013. It is against the orders of termination that the petitioners have approached this Court in the present petition seeking relief of reinstatement to service with consequential benefits. While issuing summons to the respondent State notice regarding stay was also issued.

The only question presently involved in this case for determination is whether the Full Bench decision in *Abhishek Rishi* is prospective or retrospective in application. *Abhishek Rishi* is silent on the point. However, the division bench of this Court in **State of Punjab & ors. v. Mamta Thakur (LPA No.560 of 2015)**, decided on 19.5.2015, has held that the decision of *Abhishek Rishi* can have only prospective effect and is not to be read as upsetting concluded past transactions and to disturb rights which have accrued and vested in the appointees directly recruited to service before the pronouncement. It may be noted the SLP filed by the State of Punjab against orders in *Mamta Thakur (supra)* has been rejected by the Supreme Court on November 27, 2015.

As a corollary to the above settled position and further in the light of the case law cited, the court is of the considered view that this petition eminently merits acceptance and is therefore allowed. The impugned order of termination dated September 23, 2013 [Annex P-13] is quashed and thus so are the other similar orders passed in each of the connected cases where the appointments were made before the law was

declared by the Full Bench which it was called upon to opine on to test the correctness of the decision of the division bench in *Sudesh Rani v. State of Punjab*, 2010 (5) SLR 768 upholding grant of bonus marks to candidates from rural areas which decision was declared not a good law.

Resultantly, a writ of mandamus is issued to the respondents to reappoint the petitioners immediately when this order is made available in certified copy since all the formalities prior to appointment stood completed when the petitioners accepted offers of appointment and joined service in the year 2012. On joining by virtue of this order the petitioners would be entitled to full salary for the intervening period between termination and reinstatement. Their seniority will relate back to their direct recruit batch as per their individual merit determined by the recruiting agency. They will get notional increments and all other consequential benefits flowing from this order to bring their pay at par with those who might have been retained in service while they were wrongly thrown out. The petitioners are also held entitled to costs of litigation assessed at Rs.20,000/-.

CWP No.22086 of 2013, 7065, 23373, 25025 & 26130 of 2014

These petitions are allowed on the same reasoning as recorded in the above order. However, with the difference that the petitioners [who failed to secure appointments] would be offered appointment as Teaching Fellows since they were selected for appointment in the same recruitment process but were left out and not made to join service because of the fallacious and erroneous stand of the State on the Full Bench decision of this Court in *Abhishek Rishi* that it

was law declared retrospectively. Since there is ample authority that the decision in *Abhishek Rishi* is prospective in operation, then rights which had accrued prior to the decision pronounced on April 3, 2013 are reactivated and revived and these petitions are accordingly allowed. However, in these batch of cases, the monetary benefits will accrue from the date of appointment by virtue of the instant order. Needless to say, their seniority will relate back to their batch mates inter se as per merit, but they would be granted increments notionally to bring their pay and allowances at par with juniors. Let the needful on this score be done within three weeks from the date of receipt of a certified copy of this order after completion of formalities including character verification, medical clearance etc. The impugned orders wherever they are placed in the petitions will stand quashed. The petitioners are also held entitled to costs of litigation assessed at Rs.20,000/- in each of the petitions. No orders are required to be passed in the pending applications, if any.

(RAJIV NARAIN RAINA)
JUDGE

17.2.2016
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