

CWP No.26733 of 2016

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

CWP No.26733 of 2016
Date of decision: 22.12.2016

Anurag Pathak

..... Petitioner

Versus

Union of India and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Raj Kumar Gupta, Advocate, for the petitioner.

RAMENDRA JAIN, J.

Put pithily, according to the petitioner, she having the qualification of M.A. Music (Instrument), M. Phil and Bachelor of Education, was initially appointed as Lecturer on contract basis for 89 days in the Government College, Sector 46, Chandigarh w.e.f. 01.11.1995 and worked as such upto 28.01.1996. Thereafter, vide appointment letter dated 14.03.1997 she was engaged again on contract basis against the post of Lecturer and continued to work as such upto 14.03.2006 without any complaint of any kind from any quarter. Petitioner was also working as Lecturer in Music and taking class at GCG, Sector 11, in addition to her duties at Government College, Sector 46. Because of good work and conduct of the petitioner, she was allowed to continue for a period of 9-10 years, whereas the persons whose work and conduct was not found

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satisfactory were relieved by the concerned College Principals/Administration. However, to adjust some other Lecturer, who joined Chandigarh Administration on deputation, the petitioner was ordered to be relieved from the post of Lecturer (Music), Government College, Sector 46, Chandigarh vide order dated 14.03.2006 despite her good work and conduct. Her claim for continuation in service by adjustment/shifting against the available vacancies in GCG, Sector 11, where she had worked in addition to her duties in Government College, Sector 46, Chandigarh, was not considered on the ground that she had not applied against the said post. Against the above action of the authorities, petitioner submitted a representation dated 16.03.2006, but to no avail. Hence, the petitioner filed Original Application before the Central Administrative Tribunal (in short 'the Tribunal') for setting aside the order dated 14.03.2006 and challenging the fresh advertisement for the same post in addition to quashing of selection of Miss Rimpi, Lecturer Music (Instrument), who was appointed as guest faculty, claiming that she cannot be replaced by the adhoc/contractual employee. The said OA was dismissed by the Tribunal vide order dated 22.05.2008. In the meantime, respondents again issued advertisement dated 07.06.2009 for filling up the post of Lecturer Music (Instrument) in Government College, Sector 46, Chandigarh on contract basis prescribing the maximum age limit of 35 years as on 01.01.2009, ignoring the fact that by virtue of this prescription of age, the candidates like petitioner, having the service of 9 years to their credit, were rendered ineligible. Even no relaxation was provided to the candidates working with the respondents. Accordingly, petitioner filed Original Application before

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the Tribunal. Vide interim order dated 18.06.2009, the Tribunal directed the respondents to provisionally consider the candidature of the petitioner against the said post and consequently, she was allowed to participate in the selection process. However, on filing of reply by the respondents stating that the selection process for the said post was over and the petitioner could not achieve the merit, the Original Application was disposed of vide order dated 24.11.2009 with liberty to the petitioner to challenge the selection process in accordance with law. Accordingly, petitioner approached the Tribunal by way of various applications, however, she failed to get any relief. Thereafter, petitioner filed CWP No.27598 of 2013 before this Court. During the pendency of the said petition, petitioner was allowed to join her duties as Lecturer Music (Instrumental) at Post Graduate Government College for Girls, Sector 46, Chandigarh. Vide order dated 17.02.2016 (Annexure P-14) passed by this Court, matter was remanded to the Tribunal. In pursuance to the remand order, matter was considered afresh by the Tribunal on merits. Vide impugned order dated 04.05.2016 (Annexure P-16), claim of the petitioner was rejected by the Tribunal.

2. Hence, by way of present writ petition filed under Articles 226/227 of the Constitution of India, petitioner has sought issuance of writ in the nature of *certiorari* for quashing the order dated 04.05.2016 (Annexure P-16) passed by the Tribunal, whereby the Original Application filed by the petitioner has been dismissed and for quashing the order dated 22.05.2008 (Annexure P-10) whereby the earlier Original Application filed by the petitioner was dismissed upholding her termination.

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orders passed by the Tribunal are illegal, arbitrary, against the principles of natural justice, hence not sustainable in the eyes of law. Despite the fact that petitioner rendered long service having good work and conduct, respondents wrongly terminated the services of the petitioner. Learned counsel for the petitioner further contended that contractual employee cannot be replaced by appointing another person on contract basis unless the post is filled up on regular basis. Lastly, learned counsel for the petitioner tried to convince this Court by submitting that the petitioner could be adjusted as the posts are still lying vacant with the respondents.

4. We have heard learned counsel for the petitioner.

5. Petitioner has failed to show that respondent No.6, who replaced the petitioner, was a contractual employee. Petitioner was given opportunity to participate in the selection process by relaxing the age condition by the Tribunal. Accordingly, she participated in the selection process and stood at Sr. No.4 and respondent No.6 was at Sr. No.1 in the final merit list against a single advertised post. Therefore, respondent No.6 was selected against the single vacant post. According to the contention of learned counsel for the petitioner, even if some posts are lying vacant with the respondents, it is for them to fill up the same by open competition, but petitioner has no right to be adjusted against the same. However, if eligible, petitioner can always apply for the advertised posts.

6. In view of the discussion above, petitioner is not entitled to any discretionary relief under the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India. The petition has no merit.

Accordingly, it is dismissed.

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7. Registry is directed to bring this order to the notice of the respondents.

(RAMENDRA JAIN)
JUDGE

December 22, 2016
R.S.

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No