

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

Date of decision: 27.10.2016

CWP No.2964 of 2015

Dr. (Mrs.) Manju Ahluwalia

...Petitioner

Vs.

State of Haryana & others

...Respondents

CWP No.1701 of 2015

Ms. Shalini Tuli

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Aman Chaudhary, Advocate, for the petitioner(s).

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

This order disposes of the aforementioned two writ petitions, as they involve the same subject matter and both can conveniently be decided by a common order.

CWP No.2964 of 2015

The petitioner was offered appointment as Lecturer (Political Science) in the Government College, Adampur on 06.12.1993. It is not a disputed fact that the offer of appointment was not conveyed to the

petitioner and when the same came to her notice, she quickly made a request to the authorities that she may be permitted to join the post. Accordingly, the petitioner joined services on 04.03.1994 in pursuance of a fresh offer letter dated 18.02.1994, which was received on 03.03.1994.

The petitioner was amongst several Lecturers in different subjects who were directly recruited on purely ad hoc basis. While the petitioner and others continued to work, the Haryana Government issued policy circular dated 07.03.1996 (Annex P-4) on regularisation. This circular allowed concession of regularisation of services to those ad hoc employees who had put in two years of service as on 31.01.1996, the cutoff date. To repeat, the petitioner's letter of appointment dated 06.12.1993, is well before the relevant cut-off date. As such, the petitioner had completed two years of service as on 31.01.1996 as required under policy circular dated 07.03.1996. No gainsaying that many of the colleagues of the petitioner received the benefit of regularisation of their services while the case of the petitioner was lingered on and finally rejected for the reason that she had not completed two years of service as on 31.01.1996. For redressing this grievance, the petitioner had approached the authorities by a representation, but without success. Hence was filed the present writ petition.

CWP No.1701 of 2015

In this petition, the petitioner was also selected as Lecturer (Political Science) on ad hoc basis in Government College, Adampur vide appointment letter dated 18.01.1994 along with many other candidates selected for the said subject as well as other subjects, which the petitioner received on 24.01.1994. However, she could not join immediately due to adverse family circumstances, having lost her father to cancer of the bone-

marrow and she being the eldest of the three siblings, with no earning hand in the family, made a personal request to the department for posting near Panchkula. The said request was acceded to vide order dated 02.02.1994 whereby she was transferred to Government College, Barwala where she joined on the same day. The grievance of the petitioner in this case is that she has been discriminated against viz-a-viz her juniors who have been regularized pursuant to policy of 1996, and the names of whom have also been mentioned in para.3 of the writ petition, which material pleading remains without refutation by the respondents.

The narration of a few more facts would be in order and which are essential to be noticed as pointed out by Mr. Aman Chaudhary, and that is that while teaching, the petitioner in CWP No.2964 of 2015 was relieved on 16.03.1994 with the start of the summer vacations. Feeling aggrieved, she had to approach this Court by way of CWP No.6712 of 1994 pleading a case for reinstatement to service. The said writ petition was allowed and a direction was issued to the respondents to reinstate her into service vide order dated 08.08.1994. Continuity of service was granted to her, but without back salary. This amounts to another forced break from service for which the petitioner cannot be faulted.

Mr. Aman Chaudhary argues that since continuity of service has been given then by the deeming fiction of law, the period will be counted towards length of service required under the policy letter dated 07.03.1996. There is another facet which requires to be noticed and that is that the services of the petitioner - Manju Ahluwalia were admittedly regularized w.e.f. 27.01.2012 vide letter dated 25.01.2012 under notification dated 29.07.2011 (Annex P-6), which was a fresh policy on regularisation prevailing at the relevant time. The petitioner is not apparently satisfied

with her regularisation in the year 2012 and claims antecedent rights to be declared to be in service on regular basis in terms of the policy circular dated 07.03.1996, which was revived on 16.06.2014 (Annex P-8).

Similarly, petitioner in CWP No.1701 of 2015 was protected by this Court in CWP No.3183 of 1994, wherein this Court on 09.03.1994 ordered that her services shall not be terminated till regularly selected incumbent is available to be adjusted.

As such, it is contended by Mr. Aman Chaudhary that the petitioner did not have any break in service and had completed two years of service as on 31.01.1996 considering the date of her appointment as 12.01.1994. She joined service on 02.02.1994 and if her date of joining is considered for purposes of regularisation of her service as per Instructions dated 07.03.1996 instead of letter of appointment, she would then miss the date of completion of two years as on 31.01.1996 by two days, which result would be harsh and oppressive, especially keeping in view the fact that persons lower in merit in her subject as per the original select list have been regularized w.e.f. 01.02.1996 as averred in para.3 of the writ petition. Her non-joining before 02.02.1994 was for reasons beyond her control and at that time the department also sympathetically considered her request for transfer to a workplace near Panchkula, Haryana whereupon she immediately joined the service.

Mr. Chaudhary bases his claim for relief on the ground of unfair discrimination which is a potent medicine. There are sufficient administrative precedents in the Department whereby persons similarly situated as the petitioner have been regularized in service under the 1996 policy. They were not only similarly placed as the petitioner, but were in lower in merit in the selection process – 1993. These facts are pleaded in

para.4 of the petition, which are not refuted in the written statement and are, therefore, accepted as correct. If similarly situated persons have got the benefit under the policy dated 07.03.1996, then it would amount to a travesty of justice to deprive the petitioner of her right of consideration. The first letter of appointment was issued on 06.12.1993 and in the curative process, the petitioner's claim was accepted and a fresh letter of appointment was issued to her on 18.02.1994.

It is pointed out by Ms. Shruti Jain Goyal appearing for the State that in the initial letter of appointment dated 06.12.1993, the joining time was permitted up till 18.12.1993 and when the request of the petitioner was accepted for the reason that the first letter had not been conveyed to her, and thus she was allowed to join service on 18.02.1994, which was within the joining time mentioned in the offer of appointment. However, if the appointment letter dated 06.12.1993 had been conveyed timely, and then there is no doubt that she would have joined service when other successful candidates joined on the respective posts. Therefore, the claim of the petitioner will have to be antedated to a date two years before the cut-off date i.e. 31.01.1996 to bring the benefit of regularisation to her door on principles of parity and equal treatment to fulfill the philosophy of Article 14 of our Constitution.

It is pointed out that in cases of other similar situated persons, the intervening period has been treated as extra ordinary leave i.e. from 16.03.1994 till 31.08.1994. The petitioner would accordingly take all her non-pecuniary benefits including seniority etc. for the said period and regularization from the date when the admitted juniors were regularized; seniority be counted from the merit position determined by the selecting

agency. This would also mean re-determination of dates of senior scale and selection scale and fixation of pay to bring salary at par with the juniors or candidates securing inferior merit position. However, before parting, it may be noticed that since the petitioner's services have been regularized w.e.f. 31.01.1996 in terms of the policy dated 07.03.1996 (Annex P-4), as revived vide policy dated 16.06.2014, the orders of regularisation to be passed in the light of this order would remain subject to the interim order dated 02.09.2016 passed in CWP No.17206 of 2014 and connected cases under main case titled as 'Yogesh Tyagi & another Vs. State of Haryana & others' by the Division Bench of this Court. The interim order dated 02.09.2016 is reproduced below to remove any doubts of the reader of this order:

“Having heard learned counsel for the parties, prima facie we are satisfied that the impugned policy runs contrary to the mandate of the Constitutional Bench judgment in the “Secretary, State of Karnataka & others Vs. Umadevi & others, (2006) 4 SCC 1”. Hence further regularisation of services under the said policy shall remain stayed till the final decision. The regularisation orders, if any, passed earlier shall be subject to final outcome of the writ petition.

List on 24.10.2016.

A photocopy of this order be placed on the files of all aforesaid connected cases.”

Article 14 of our Constitution prescribes the law against hostile and invidious discrimination amongst a homogenous class of persons who are grouped together for equal treatment and in the light of these principles, I would allow both the petitions and direct the respondents to consider

Accordingly, the both the writ petitions are accepted in the above terms. However, there will be no costs awarded either way which will be borne in equal measure by the parties as was incurred by them.

27.10.2016
Vimal

Whether Reportable: Yes