

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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**CWP No. 6369 of 2014**

Date of decision : January 12, 2016

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Surinder Gumber

.....Petitioner

Versus

Kurukshetra University, Kurukshetra and others

.....Respondents

\* \* \* \* \*

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

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Present: Mr. Dinesh Kumar, Advocate for the petitioner.

Mr. R.S Rana, Advocate for the respondents.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

**RITU BAHRI, J**

Challenge in this writ petition is to the order dated 23.1.2014 and the minutes/proceedings of Executive Council dated 20.1.2014 qua the petitioner (Annexure P/27 ) collectively rejecting the claim of the petitioner and upholding the order passed by the Vice Chancellor, Kurukshetra University, Kurukshetra.

The petitioner was appointed as a Junior Clerk in the Kuruskshetra University, Kurukshetra (hereinafter referred to as `the respondent-University) vide appointment letter dated 26.7.1974 (Annexure P-1). She joined the service on 1.8.1974. She applied for extra ordinary leave w.e.f 5.5.1984 to 4.5.1985 i.e for a period of

one year vide application dated 18.4.1984 (Annexure P-2). Due to certain compelling circumstances, the petitioner had to submit her resignation during the period of extra ordinary leave w.e.f 4.5.1985 and the same was accepted by the then Pro Vice Chancellor vide memo dated 6.3.1985 (Annexure P-3). Thereafter, petitioner submitted a mercy appeal for taking her back in service as has been done in the various cases by the respondent-University and in the representation dated 4.7.1987 (Annexure P-4), the petitioner referred to the cases of Yashpal, J.K Salwan both Assistants and Man Singh Clerk. The petitioner also filed an appeal on 4.4.1988. Petitioner was appointed as a Clerk afresh in the pay scale of 950-1500 vide appointment letter dated 20.5.1988 (Annexure P-5). She was posted in the Registration Branch against a vacant post vide a separate order dated 20.5.1988. She was confirmed in service as a Clerk w.e.f 20.5.1989 vide order dated 28.10.1989 (Annexure P-6). The petitioner thereafter, submitted a representation on 8.8.1988 (Annexure P-7) for regularizing the intervening period of absence from duty as Extra Ordinary leave without pay and treat the petitioner as an employee of the respondent-University from the date of her initial appointment to remove the hardship being faced by the petitioner. The request of the petitioner was rejected vide order dated 29.12.1988 (Anenxure P-8) passed by the Registrar of the respondent-University. The pay of the petitioner was protected from the date of her initial appointment and her salary was fixed @ R.5300/- as on 18.9.2004 but she was not given the benefit of

second ACP though she completed more than 25 years of service after deducting the period of EOL (without pay). The petitioner submitted representation of grant of second ACP on 5.11.2004 (Annexure P-9) and a subsequent representation dated 22.12.2005 (Annexure P-10). The petitioner made a representation/appeal dated 13.10.2008 (Annexure P-11) to the Vice Chancellor for regularizing the intervening period and to treat the same as on extra ordinary leave (without pay) followed by another representation dated 28.8.2009 (Annexure P-12).

The respondent-University constituted a Grievances Committee for redressal of the grievances of the employees. The said Committee was constituted by the Vice Chancellor of the University and the representation dated 13.10.2008 was placed before the meeting of the grievances Committee held on 28.5.2009. The respondent-University rejected the claim of the petitioner vide order dated 26.4.2012 (Annexure P-13). Finally a representation dated 18.12.2012 (Annexure P-15) was made to the Chairman, Executive Council of the University which was rejected by the Vice Chancellor vide order dated 8.5.2013 (**Annexure P-16**). Another representation dated 10.5.2013 (**Annexure P-17**) was made to the Chairman of Executive Council. The vice Chancellor in the capacity of the Chairman himself rejected the case vide order dated 19.6.2013 (**Annexure P-18**). The petitioner referred to the case of Man Singh the then Junior Clerk who failed to resume duty despite several notices and remained absent for considerable long time. The

University vide order dated 26.01.1981 (Annexure P-19) terminated his services. Man Singh submitted mercy appeal for reconsideration of the matter and praying therein to allow him to join duty and treat the period of absence as extra ordinary leave. Finally after various representations, University accepted his request and appointed him as Junior Clerk afresh vide letter dated 28.8.1982 (Annexure P-20). Reference was also given to the cases of Devi Ram, D.L Puri, Vijay Kumar Sharma, Yash Pal Narang and Mrs. Chander Kala where benefit of seniority has been allowed even to such employees whose office was declared as vacant on account of embezzlement.

The petitioner being aggrieved by the order dated 8.5.2013 (Annexure P-16) and the order dated 19.6.2013 (Annexure P-18) filed a Civil Writ Petition No. 22617 of 2013 which came up for hearing on 10.10.2013 and the same was disposed of by this Court with a direction to the Executive Council of the University to consider and decide the representation of the petitioner by passing a speaking order and the petitioner may be given a fair opportunity to explain her case. In compliance of the directions issued by this Court, the matter was taken up by the Executive Council on 20.1.2014 and the petitioner was also given personal hearing. The Executive Council rejected the case of the petitioner vide order dated 23.1.2014 (Annexure P-27) collectively. The petitioner is seeking quashing of the impugned order dated 23.1.2014 and the minutes /proceedings of the Executive Council dated 20.1.2014 qua the petitioner (Annexure P-27) on the ground that the order passed by the Vice Chancellor

(respondent no.3) has been upheld by the Executive Council and the meeting of the Executive Council was presided over by the Vice Chancellor himself. It was incumbent upon the Vice Chancellor to recuse from the meeting of the Executive Council at least when his orders were being considered by the Executive Council. The petitioner has referred to a judgment passed by a Co-ordinate Bench of this Court in the case of **Sh. Ghansham Dass Taneja vs. Kurukshetra University, Kurukshetra and others** bearing CWP No. 11969 of 2007 decided on 6.10.2010. *In this case petitioner was working as Assistant and was served a charge sheet and after conducting an enquiry, he was dismissed from service vide order dated 21.4.1999. Petitioner preferred an appeal before the appellate authority. During the pendency of the appeal, petitioner filed Civil Writ Peition which came to be disposed of vide order dated 14.12.1999 directing the appellate authority to decide the appeal within three months from the date of receipt of the copy of order. The Executive Council, the appellate authority constituted a committee of three officers of the University to give personal hearing to the petitioner. The Committee submitted its report holding the petitioner guilty of the misconduct and rejected the appeal vide order dated 5.4.2000. Petitioner's request for review also came to be declined vide communication dated 9.1.2006. One of the ground for challenging the impugned order was that the Vice Chancellor in his capacity as a disciplinary authority dismissed the appeal and the vice chancellor was also part of the Executive Council when the appeal*

*of the petitioner was considered by the Executive Council of the University. The order passed by the Executive Council was set aside and the matter was remitted back to the appellate authority to reconsider the appeal on merits. It was further made clear that the Vice Chancellor of the respondent-University will not be a part of the appellate Authority when the case of the petitioner was to be taken up for consideration.*

The petitioner has also furnished an affidavit dated 24.7.2004 (Annexure P-29) that she will not claim the benefit of seniority and back arrears for her previous service rendered in respondent-University in case her pay is protected.

The respondents in the written statement have not disputed the facts with regard to her joining the University initially on 1.8.1974 and submission of her resignation after working about 9 years due to family circumstances on 4.5.1985. It has not been denied that while passing the impugned order (Annexure P-27) Vice Chancellor was presiding over the meeting of Executive Council at the time of consideration of the case of the petitioner.

In the facts and circumstances of the present case, the Vice Chancellor should have recused himself from the appellate body when the case of the petitioner was being considered. Following the ratio laid down by a co-ordinate Bench of this Court in **CWP No. 11969 of 2007** decided on 6.10.2010 titled, '**Ghansham Dass Taneja vs. Kurukshetra University, Kurukshetra and others**', present writ petition is allowed.

Impugned order (Annexure P-27) is hereby set aside and the matter is remitted back to the appellate authority to reconsider the appeal on merits. It is further made clear that the Vice Chancellor of the respondent-University will not be part of the appellate authority when the case of the petitioner is taken up for consideration. It is also directed that the petitioner shall be granted personal hearing by the appellate body before passing the final order.

January 12, 2016  
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**( RITU BAHRI )**  
**JUDGE**