

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

***CWP No.7567 of 2013 (O&M)
Date of decision : 25.07.2016.***

Namita

....Petitioner

Vs.

State of Haryana and others

....Respondents

CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. R.N. Sharma, Advocate for the petitioner.

Mr. Hitesh Pandit, Additional Advocate General, Haryana.

...

TEJINDER SINGH DHINDSA, J.

The petitioner is serving as Assistant Professor, Commerce in Kanya Mahavidyalya, Kharkhoda, Sonapat i.e. a private aided institution.

Challenge in the instant petition is to an order dated 06.02.2013 at Annexure P-7 issued by the Director General of Higher Education, Haryana in terms of which the benefit of pay protection sought by the petitioner on account of her previous service rendered as a Lecturer (School Cadre) in a government institution has been declined.

Facts in brief may be noticed.

Petitioner was initially appointed as Lecturer in Commerce (School Cadre) under the Haryana Education Department in pursuance to a regular selection process and recommendation having been made by the Subordinate Services Selection Board. She joined on such post on 24.12.1997. Petitioner's services were confirmed by the State Education Department in the cadre of Lecturer (Schools). There is no dispute with regard to the factual position that on account of the regular and satisfactory service rendered by the petitioner, she was allowed increments as also

benefit of Ist ACP scale under the prevalent ACP Rules/Policy.

Subsequently, the Kanya Mahavidyalya, Kharkhoda, Sonapat i.e. a private aided institution invited applications for appointment to the post of Assistant Professor/Lecturer (Commerce), petitioner being eligible for such post submitted her application through proper channel.

On the recommendations of College Level Selection Committee which also included a nominee of the Higher Education Department, State of Haryana, petitioner was selected and appointment letter on the post of Assistant Professor/Lecturer in Commerce (College Cadre) was issued and she joined on such post on 21.05.2010.

Upon having joined on her post as Lecturer (College Cadre) in a privately managed aided institution, petitioner raised a claim for protection of pay. It is such claim that had been declined in the light of impugned order dated 06.02.2013 at Annexure P-7.

Notice of motion having been issued, a written statement of the Secretary, Higher Education, Haryana on behalf of respondent Nos.1 to 3 has been duly filed and placed on record.

Counsel for the parties have been heard at length.

Even though, the impugned order at Annexure P-7 does not disclose the precise basis in declining the benefit of pay protection to the petitioner apart from saying that it is as per advice issued by Finance Department, the document placed on record at Annexure P-6 is self-explanatory. The communication dated 17.12.2012 at Annexure P-6 contains the advice rendered by the Finance Department and to the effect that an aided college is not a department of the Government nor is it a public sector undertaking of the Government and as such pay of the

petitioner while serving as an Assistant Professor, Commerce (College Cadre) in a private aided institution cannot be protected.

In the written statement filed on behalf of the State, stand has been taken that the service conditions of the employees of the Government aided private institution situated in the State of Haryana are governed by Haryana Affiliated Colleges (Security of Service) Rule, 2006 (hereinafter referred to as 'the 2006 Rule').

Counsel appearing for the petitioner does not join issue and concedes with regard to applicability of the 2006 Rule. However, during the course of arguments and in spite of specific query having been put, no provision has been pointed out under the 2006 Rule on the strength of which the prayer of the petitioner for grant of pay protection of her previous service rendered as a Lecturer (School Cadre) in a government institution can be granted on her subsequent selection and appointment as a Lecturer (College Cadre) in a privately aided institution.

Counsel appearing for the petitioner has made a feeble attempt by adverting to a Government of Haryana Finance Department Office memorandum dated 07.01.2002 and appended as Annexure P-9 along with the replication in support of the claim made in the petition. Such office memorandum dated 07.01.2002 is on the subject of counting of service for purpose of pension of the employees of the State Government on their appointment in an autonomous body (statutory body) under Haryana Government or on seeking absorption in a State autonomous body or vice-versa i.e. on appointment from one autonomous body to another, both under the Government of Haryana. The claim in the instant petition is not for the purposes of counting of previous service as Lecturer (School Cadre)

towards qualifying service for grant of pensionary benefits. The claim here is for pay protection. The office memorandum dated 07.01.2002 at Annexure P-9 would have no relevance at all.

Learned State counsel has further submitted that Government instructions issued for government employees cannot automatically extend to the employees of the privately managed aided institutions. He contends that provisions in the nature of Rule 4.4 (a) read with Rule 4.4 (c) of the CSR of Punjab Civil Service Rules as applicable to the State of Haryana cannot be extended automatically to the employees of the private aided colleges. In response, counsel appearing for the petitioner has not been able to advert to any document/material or any judicial precedent for this Court to take a view that government instructions as also provisions of the CSR would have applicability even to the petitioner while serving in a private aided institution and thereby to extend to her the benefit of pay protection.

In view of the reasons recorded above, no infirmity is found in the impugned order dated 06.02.2013 at Annexure P-7.

Petition is, accordingly, dismissed.

25.07.2016

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**(TEJINDER SINGH DHINDSA)
JUDGE**

Whether speaking/reasoned?

Yes

Whether reportable?

Yes