

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

**CWP No.5225 of 2016
Date of decision: 18.3.2016**

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

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

Present: Mr. Arun Nehra, Advocate, and
Mr. Sant Kashyap, Advocate,
for the petitioner.

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

RAJIV NARAIN RAINA, J.(Oral)

1. The petitioner was appointed as Anganwari Worker on March 3, 1981 in the Department of Social Security of Women and Child Development, Punjab and served as such till she superannuated on July 31, 2015 on attaining the age of 60 years. She has approached this Court after retirement seeking a declaration to the respondents to grant her benefit of pension by declaring her case is not covered by the Contributory Pension Scheme, 2004. While she was in service, the department issued an advertisement to fill vacancies of Supervisors out of which two posts were reserved for sons/daughters and grand-daughters of Freedom Fighters. The petitioner was a daughter of Freedom Fighter. She applied under the category reserved for non-graduate Anganwari workers. There was prescribed a written test and interview where she secured 80 marks in the recruitment process conducted in July 1996. The petitioner was not selected and on the other hand, two graduate teachers

of Freedom Fighter category were selected in February 1997. Appointment was offered to Inderjit Kaur and she joined on the following day. However, Gurvinder Kaur did not join. The petitioner approached this Court by filing CWP No.15543 of 2008 claiming a preferential right of appointment in terms of the Punjab Government instructions dated 22.5.1989 and 19.6.1991 asserting that being the daughter of a Freedom Fighter she had a preferential right over Inderjit Kaur and Gurvinder Kaur to be appointed as Supervisor. The following order was passed on April 29, 2010 in the said writ petition:-

“The petitioner is daughter of a freedom fighter. She seeks quashing of appointment of respondent Nos.3 & 4 to the posts of Supervisors in the Department of Social Security and Development of Women and Child, Government of Punjab, on the ground that she has a preferential right to seek such appointment over and above respondent Nos.3 & 4 who are the grand-children of freedom fighters. On a re-consideration of the petitioner's claim, it is informed by learned State counsel that the State Government is willing to appoint the petitioner also. Since one Sarabjit Kaur d/o Sohan Singh, w/o Tarlochan Singh, resident of Village Jhande, P.O. Baddowal, District Ludhiana, is also a daughter of freedom fighter and above the petitioner in order of merit, the official respondents agree to offer appointment to her as well.

In this view of the matter, the writ petition is disposed of with a direction to respondent Nos.1 & 2 to issue appointment letter to the

petitioner within a period of *one month* from the date of receiving a certified copy of this order and also to offer appointment to Sarabjit Kaur, as mentioned above, if she is willing to join the post. It is directed that Sarabjit Kaur (if she joins) and the petitioner shall be treated senior to respondent Nos.3 & 4 in the cadre of Supervisors for seniority and future promotions. However, they shall not be entitled to any arrears of pay etc. but their pay shall be notionally fixed w.e.f. the date of appointment of respondent No.4.

Dasti.”

2. Counsel argues that the petitioner was appointed under the directions of the Court and has to be treated senior to respondent No.3 & 4 in that petition in the cadre of Supervisors. The petitioner was granted seniority and future promotions by treating her as senior to the two persons arrayed as respondents. However, the petitioner was held not entitled to any arrears of pay etc., but her pay was directed to be notionally fixed w.e.f. the date of appointment of respondent No.4. Respondents No.3 & 4 were Inderjit Kaur and Gurvinder Kaur. In implementation of the order dated April 29, 2010, the petitioner was appointed as Supervisor on November 29, 2010. There was a condition in the appointment letter dated November 29, 2010 that the petitioner would not get pensionary benefits and her case would be covered vide notification dated January 12, 2004 and shall be governed by the New Defined Contributory Pension Scheme (NDCP) which was introduced for new entries to Punjab Government services. The other instructions on the subject are dated December 12, 2006 [Annex P-5]. In short, the petitioner

has not been made a member of GPF Scheme and she has been put in the CPF scheme. The pay of the petitioner was fixed notionally at par with Gurvinder Kaur w.e.f. January 1, 1997. It is argued by learned counsel for the petitioner that the condition placed in the letter of appointment dated November 29, 2010 is illegal, arbitrary, discriminatory and violative of Articles 14 & 16 of the Constitution of India and the same deserves to be quashed.

3. The Court direction granting seniority from the date when Inderjit Kaur was appointed as Supervisor deems the appointment from February 3, 1997 the day on which the grand-daughter of Freedom Fighter was appointed by ignoring the preferential rights of the petitioner being a daughter of Freedom Fighter. The other significant facts which deserve to be noticed are that when the vacancies of Supervisors were filled one Usha Rani and others complained that the merit of selected candidates had not been properly drawn in accordance with rules and a number of persons who were ineligible and lower in merit had been selected and appointed. The selection was challenged through CWP No.1926 of 1997 titled as 'Usha Rani & ors. v. State of Punjab & ors.' and connected cases. The petitioner was not a party to those petitions. This Court vide order dated April 2, 1998 directed the second respondent therein to inquire into the matter and submit its report. The report was submitted on August 4, 1998. The writ petitions were finally disposed of by issuing a direction to the Government to terminate the services of Supervisors who have been illegally appointed and to do so within 6 months. These directions invited review applications in the disposed of

writ petitions. In the review applications, a direction was issued to the State Government to get the issue re-examined after hearing all those candidates, who are likely to be effected either itself or through some Committee, after giving them opportunity of filing objections against the report and to take a final decision thereon. Directions in the review applications dated May 19, 2005 led to constitution of a committee headed by an IAS Officer, who prepared and submitted a report on February 27, 2007. The Committee in its report qua the two posts which fell in the quota of Freedom Fighters recommended the names of Inderjit Kaur and Gurvinder Kaur for the post of Supervisors. The petitioner complains in this petition filed in the year 2016 that the recommendations of the committee in its report dated February 27, 2007 were totally contrary to the instructions dated May 22, 1989 and June 19, 1991 (Annex P-2 colly]. Aggrieved by the report, the petitioner approached this Court in CWP No.15543 of 2008, which has led to the passing of order reproduced above. The petitioner came to be appointed for the first time on November 29, 2010 pursuant to the High Court order.

4. Learned counsel for the petitioner cites for his advantage an interim order passed on February 17, 2016 in CWP No.3163 of 2016 titled as Rajiv Kumar & ors. v. State of Punjab & ors. to claim relief of pension.

5. Why I would not grant relief to the petitioner of reverting her from CPF to GPF pension scheme i.e. prior to January 1, 2004 is for the reason that the petitioner was for the first time aggrieved when the appointment was being offered to Inderjit Kaur and Gurvinder Kaur while

Inderjit Kaur joined on February 4, 1997 and Gurvinder Kaur chose not to join. She made no complaint against that action nor staked her claim in a court of law against the vacancy left behind by non-joining of Gurvinder Kaur. She was not a party in CWP No. 1926 of 1997 (Usha Rani & ors. v. State of Punjab & ors.) and connected writ petitions, where specific challenge was led to the selection of Supervisors on the ground that persons ineligible or lower in merit were selected as Supervisors. The petitioner was also not before the Court in review applications when they were decided on May 19, 2005 by which time the laxman rekha of January 1, 2004 had been drawn making new entries to service of the Government governed by the NDCP scheme. I asked the learned counsel for the petitioner to show me from any of the petitions which have been referred to in para 2 (d) of the petition whether the petitioner had challenged the selection. The answer was in the negative. The recommendations to reappoint Inderjit Kaur and Gurvinder Kaur in the report submitted by Mr. Satish Chandra, IAS, dated February 27, 2007 would relate back to 1997 and cannot be seen as a fresh cause of action creating a full-fledged right to relief as a continuing or recurring cause of action. If the 1st respondent expired in 1997 and was not agitated up to 2008 then I fail to see how she can cross the hurdle of delay, laches and limitation. However, with due deference to the order passed by this Court on April 29, 2010 in the petitioner's case in CWP No.15543 of 2008 the same to my mind has to be read accordingly. The petitioner has been treated senior to respondents No.3 & 4 in the cadre of Supervisors for seniority and future promotions. No arrears of salary have been paid to

the petitioner. Her pay has been notionally fixed with effect from the date of appointment of Inderjit Kaur i.e. February 3, 1997. This is by deeming fiction and moreover in the petition filed in 2008 claiming appointment the petitioner did not seek directions that on appointment she be held entitled to the GPF scheme of pension which had by then come into force in 2004. Neither was such issue pressed, debated or made present in the mind of the Court when the order dated April 29, 2004 was passed. Seniority, promotion and notional pay fixation is only to put the petitioner at par with Inderjit Kaur for future entitlements which may not necessarily include pension. Seniority has nothing to do with pension. Even promotions she may earn if due but that also would not change the prayer for pension which also appears to be barred on the principles of Order 2 Rule 2 CPC. Besides, as I have said earlier, the petitioner did not approach Court in 1997 and remained satisfied with the position till 2008. The issues between the petitioner, Inderjit Kaur and Gurvinder Kaur was one of preference. It was not that Inderjit Kaur or Gurvinder Kaur were ineligible being grand-daughters of Freedom Fighters though she sought quashing of appointments of respondents No.3 & 4 by reason of priority and preference. In any case, the order dated November 29, 2010 is not an order passed on merits but by concession given by the State on reconsideration of the petitioner's claim. The State Government expressed its willingness to appoint the petitioner and the order followed. It is not disputed that the petitioner was lower in merit than both Inderjit Kaur and Gurvinder Kaur. Accordingly, in the considered view of this Court, the State Government's consent and willingness was only to appoint the

petitioner on reconsideration of the claim, but the writ Court cannot issue a mandamus in favour of the petitioner thereby burdening the State with pension since it is a financial matter. It is the petitioner's case that from August 3, 1981 till she joined under the letter of appointment dated November 29, 2010 she worked as an Anganwari Worker, and it has not been shown that the post of Anganwari Worker is a pensionable post or that period of such service has to be clubbed with period of service as Supervisor. I would therefore, not deem it fit to interfere in the matter and would rather dismiss the petition being devoid of merit besides being hit with delay and laches.

(RAJIV NARAIN RAINA)
JUDGE

18.3.2016
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