

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

CWP No.11176 of 1993

Date of Decision:20.01.2017

Dr. (Mrs.) Urmil Rani

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Dheeraj, Advocate for the petitioner.

Mr. Harish Rathee, Sr. D.A.G. Haryana.

Mr. R.K. Malik, Sr. Advocate with
Mr. Ramandeep Singh, Advocate for respondent No.3.

Mr. Ramesh Hooda, Advocate for respondent No.4.

P.B. BAJANTHRI J. (Oral)

In the instant petition, the petitioner has prayed as follows:

“(a) a writ in the nature of certiorari may kindly be issued in favour of the petitioner and against the respondents quashing Annexure P/9.

(b) a writ in the nature of Prohibition may kindly be issued in favour of the petitioner and against the respondents directing the respondents not to hold interviews on 20.9.1993 or any other date for the post of Lecturer in Hindi against which the petitioner has already been appointed on regular basis vide order Annexure P-7.

(c) a writ in the nature of Mandamus may kindly be issued in favour of the petitioner and against the respondents directing the respondents to allow the petitioner to continue as Lecturer in Hindi as a confirmed incumbent against the post advertised vide Advertisement Annexure P/6.”

The petitioner has questioned the validity of the notice of
interview dated 4.9.1993 issued to the petitioner to appear for interview at

10:00 a.m. on 20.9.1993.

The petitioner was appointed as a Lecturer in Hindi on ad-hoc basis in the year 1990 by the respondent-management. The management proceeded to fill up the post of Lecturer in Hindi on regular basis by issuing advertisement in the year 1992. However, for no reason, the same was not concluded. Once again on 19.6.1993, one more advertisement was issued vide Annexure P-6. Pursuant to the same, the petitioner was selected and appointed on 13.8.1993 vide Annexure P-7.

In this background, the respondent-University noticed that certain irregularities in the process of selection and appointment of the petitioner with reference to advertisement dated 19.6.1993. They proceeded to issue one more advertisement. The petitioner participated by making necessary application for the post. As and when interview notice received by the petitioner vide Annexure P-9 dated 4.9.1993 asking her to appear for interview on 20.9.1993 at 10:00 a.m., she is aggrieved by the process of selection and appointment to the post of Lecturer in Hindi by the management. Thus, the petitioner has questioned the validity of further advertisement and issuance of interview notice dated 4.9.1993 on the score that the petitioner is already selected and appointed on 13.8.1993 pursuant to the advertisement dated 19.6.1993.

The petitioner has obtained an interim order not to terminate her service. Thus, the petitioner is continuing in the post of Lecturer in Hindi by virtue of interim order.

Learned counsel for the petitioner submitted that her selection and appointment dated 13.8.1993 vide Annexure P-7 is in accordance with law. Therefore, there is no infirmity and further submitted that the college-

management and University in collusion proceeded to issue fresh advertisement by changing governing council etc. In order to select and accommodate their own person, once again the post of Lecturer in Hindi was advertised in order to deny appointment to the petitioner. Since petitioner's appointment was not approved by the University and Government and Process of selection and appointment of the petitioner is incomplete, petitioner is claiming equity. In support of equity, learned counsel for the petitioner relied on decision of this Court passed in CWP No.2173 of 2009; Iqbal Singh v. Chandigarh Administration, Chandigarh and others; decided on 20.2.2010 based on the decision of the Hon'ble Supreme Court in the case of M.A. Hameed v. State of A.P. and another; (2001) 9 SCC 261 to contend that the petitioner has three more years of service and she be allowed to complete service.

On the other hand, learned counsel for the University specifically pointed out that when the petitioner was selected and appointed pursuant to the advertisement dated 19.6.1993, the respondent-management did not follow the statutory provisions i.e. Clause 7(1) (c) (iii) and Clause 7 (2) (c) (i) & (iii). In reply statement it was contended as follows:

“That as per clause 7(2) (c) of the ordinance for selection of Lecturer by the Selection Committee, it is a condition precedent that the presence of the Vice Chancellor's nominee and the representatives of the D.H.E. Haryana is essential. Any appointment recommended by the Selection committee where the authorised representative of the D.H.E. Haryana as well as the nominee of the Vice-Chancellor is not present, the appointment shall not be approved, as per Clause 7(1) (c) (iii).

The relevant provision of clause 7(2) (c) (i) & (iii) are reproduced below for ready reference:-

“i) The quorum of the Selection Committee for the selection of Lecturers and Librarians shall be four members out of five members. But the presence of the Vice-Chancellor nominee and representative of the Director of Higher Education, Haryana will be essential. In case of non-existence of Governing Body, the presence of the Administrator will be necessary.

iii) Any appointment recommended by the Selection Committee where the authorised representative of the Director of Higher Education, Haryana as well as the nominee of the Vice Chancellor is not present appointment shall not be approved.”

Thus, the selection and appointment of the petitioner is not in conformity with the above mentioned statutory provision. Hence, management proceeded to advertise the post of Lecturer in Hindi on the direction of the University. It was further contended that the selection and appointment of the petitioner is yet to be completed for the reasons that the same has not been approved by the University and Government. Thus, there is a serious lacuna in the petitioner's selection and appointment.

Heard learned counsel for the parties.

Admittedly, the petitioner was selected and appointed to the post of Lecturer in Hindi pursuant to the advertisement dated 19.6.1993 on 13.8.1993. Her selection and appointment is not in terms of the statutory provisions cited (supra) that in the process of selection and appointment to the post of Lecturer, the presence of the Vice Chancellor's nominee and the representatives of the Director Higher Education, Haryana are essential and mandatory. The said statutory provision has not been complied at the time of selection and appointment of the petitioner pursuant to the advertisement

dated 19.6.1993. Further, the selection and appointment of the petitioner is required to be approved by the University as well as Government. Till date, the same has not been done. Therefore, the petitioner has not made out a case so as to interfere with the impugned notice of interview asking her to appear for interview on 20.9.1993 and to seek direction to uphold order of appointment issued on 13.8.1993.

Insofar as equity issue is concerned, the petitioner was selected and appointed on 13.8.1993. Thereafter immediately the management in the month of September 1993 re-advertised the post that means that within few days when the petitioner was selected and appointed in the year 1993 itself the post was re-advertised by the management pursuant to the direction of the University. Therefore, question of equity do not arise. Further the petitioner has obtained an interim order at the time of filing of the petition and the matter is pending consideration till date. During pendency of the petition, petitioner has not requested for approval her appointment. Therefore, she is not entitled for equity or regularization of irregularities committed in the process of selection and appointment.

Question of equity and regularization of certain procedural irregularities may be condoned but not violation of statutory provisions and rules. In the present case, the selection and appointment is in violation of statutory provision and there is a serious lacuna that the management proceeded to select and appoint petition on their own without their being participation of the University and Government proceeded.

Having regard to the cited decision in the case of Iqbal Singh (supra), perusal of the dates and events, it is evident that Iqbal Singh was promoted to a particular post on 14.4.1987 and the order of reversion was

passed on 28.6.2004. The action of the concerned authority was highly belated. Therefore, extending the principle of equity in the case of Iqbal Singh (supra), is not applicable to the present case. Since the management with the consultation of University proceeded to re-advertise the post of Lecturer in Hindi in the month of September 1993 whereas petitioner was appointed in August 1993. Further obtaining interim order to not to terminate her service will not enure any equity in favour of petitioner. In the case of State of Karnataka v. Uma Devi; (2006) 4 SCC 1, Supreme Court held that persons who are working under interim orders are not entitled to any benefits. Extract of Uma Devi's judgment reads as under:

“47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

49. It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have

indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

*52. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in *Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College [(1962) Supp. 2 SCR 144]*. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees*

directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

Hon'ble the Supreme Court in the case of **Dr. M.S. Patil** v.

Gulbarga University and others; (2010) 10 SCC 63 held that selection and

appointment can be set aside even after decade if there are serious lacuna in

the process of selection and appointment. Extract of the judgment reads as

under:

“15. Once the facts of the case are narrated, there remains hardly anything to adjudicate upon. The facts of the case lead to only one conclusion that the appellant was wrongly appointed to a post that was reserved for 'Group B' category. The High Court has also found that the appellant's selection for appointment to the post was tainted by the participation of the Head of the Department of Kannada, who was related to him, in the selection process. In those facts and circumstances, all that is needed is to dismiss the appeal without further ado.

16. But at this stage once again a strong appeal is made to let the appellant continue on the post where he has already worked for over 17 years. Mr. Patil, learned senior counsel, appearing for the appellant, submitted that throwing him out after more than 17 years would be very hard and unfair to him since now he cannot even go back to the college where he worked as lecturer and from where he had resigned to join to this post.

17. In service law there is no place for the concepts of adverse possession or holding over. Helped by some University authorities and the gratuitous circumstances of the interim orders passed by the Court and the delay in final disposal of the matter, the appellant has been occupying the post, for all these years that lawfully belonged to someone else. The equitable considerations are, thus, actually against him rather than in his favour.

18. The matter can also be looked at from a slightly different angle. It is noted above how the appellant was able to secure the appointment and how he managed to continue on the post. By notification dated August 13, 2004, the appellant was discharged from the service of the University on the post of Reader in Kannada but was asked to continue on ad-hoc basis until the appointment of the new incumbent to the post. His position is, thus, only ad- hoc till the appointment of the new incumbent and in that position he is continuing on the basis of

the direction of this court to maintain status quo. We see no reason to continue this ad-hoc arrangement any further and we do not wish to stand any longer in the way of the post being filled up on a regular basis.

19. Since the matter has become very old, it would not be reasonable for the University to fill up the post on the basis of the notification issued in the year 1993. The University may, therefore, issue a fresh notification to fill up the post. The process of selection and appointment on the basis of the fresh notification should be completed within six months from today.

20. In the result, the appeal is dismissed with costs, quantified at Rs. 50.000.00 (rupees fifty thousand only)."

Thus, the petitioner has not made out a case so as to interfere with the notice of interview dated 4.9.1993 (Annexure P-9). As she had participated in the process of recruitment by submitting application. Supreme Court in the case of **Ranjan Kumar v. State of Bihar**; (2014) 16 SCC 187 held that challenge to selection procedure post participation amounts to estoppel. Further Supreme Court in the case of **D.M. Premkumari v. The Divisional Commissioner, Mysore Division and others**; 2009 (12) SCC 267 held as follows:

"The law is merciless", is a most frequently quoted saying. It has led people to mistakenly think that it is separated from feelings of righteousness. We have become used to the understanding that such emotions as indignation, sorrow and compassion should not exist in legal cases, especially not in judiciary. This, in our view, is a misunderstanding. Judiciary has a very strong sense of justice and it works to maintain social justice and fairness. We hasten to add, judiciary does not believe in misplaced sympathy."

Accordingly, the present petition is dismissed.

20.01.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No