

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

CWP No.18475 of 2013

Date of Decision:14.03.2017

Kunti Devi

... Petitioner

Vs.

State of Haryana and others

... Respondents

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

Present : Mr. Rakesh Bakshi, Advocate for the petitioner.

Mr. Hitesh Pandit, Addl. A.G. Haryana.

P.B. BAJANTHRI J. (Oral)

In the instant petition, the petitioner has sought for quashing of order dated 17.9.2010 and order dated 18.6.2012 (Annexures P-4 and P-6 respectively) and further sought for writ of mandamus to treat that the petitioner is deemed to have promoted to the post of JBT Teacher w.e.f. 9.11.1995.

Learned counsel for the petitioner submitted that the petitioner was promoted to the post of JBT Teacher on 9.11.1995 and she was posted at Karnal. When she reported at Karnal, District Education Officer, Karnal stated that there is no vacancy for Home Science Teacher in the District. The said communication is made to the Director Secondary Education Haryana vide Annexure P-2. The Director Secondary Education, Haryana, has not taken further steps to issue alternative posting to the petitioner in the promotional post. Consequently, the petitioner was compelled to discharge the duties of the post of source cadre to the post of JBT Teacher during the period from November 1995 to 16.9.1996. Petitioner was once again promoted on 16.9.1996. The petitioner has attained the age of

superannuation and retired from service on 28.2.2011. In this background, claim of the petitioner is that the petitioner is entitled for one increment between 1995-1996 and consequently refixation of pay and pension on the post of JBT Teacher.

Per contra, learned counsel for the respondents vehemently opposed the grievance sought by the petitioner on the ground of delay and laches on the part of the petitioner. Since the present petition has been presented in the year 2013 and the cause of action accrued to the petitioner in the year 1995-96. Therefore, petition is liable to be rejected.

Heard learned counsel for the parties.

Crux of the matter in the present petition is whether the petitioner is entitled for deemed to be promoted to the post of JBT Teacher w.e.f. 9.11.1995 instead of 16.9.1996 or not? Further petitioner is entitled for increment during the period from 1995-96 and consequential refixation of pay and pension or not?

Pursuant to the promotion order dated 9.11.1995, the petitioner has reported at Karnal where she has been posted. The District Education Officer, Karnal on 27.11.1995 informed the Director Secondary Education, Haryana that there is no vacancy for Home Science Teacher. It is bounden duty of the Director Secondary Education to issue an alternative posting to the petitioner instead of that he has permitted the petitioner to discharge the feeder cadre post for the period from 1995-96 and thereafter on 16.9.1996, promotion order has been passed instead of issuing posting order. Thus, there is lapse on the part of respondent-Director Secondary Education, Haryana to the extent of non-application of mind in posting petitioner to a non-existing post and in not giving posting against promotional post in the

year 1995. In this background, the petitioner is entitled for deemed date of promotion to the post of JBT Teacher w.e.f. 9.11.1995. Question of delay do not arise since it is recurring cause of action. Thus, the petitioner is entitled for grant of increment and re-fixation of pay and pension as held by the Supreme Court in M.R. Gupta v. Union of India and others; 1995 SCC (5) 628. Therefore, the respondents are directed to grant increment due to the petitioner during the period from 1995-96 and re-fix the pay of the petitioner and pension on notional basis. However, the petitioner is entitled for arrears prior to 36 months of filing of this petition, arrears of pay and pension shall be calculated and disburse within a period of three months from today.

The petition stands allowed in the above terms.

14.03.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**