

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

CWP No.23532 of 2015 (O&M)

Date of Decision:21.08.2017

Ravinder Kaur

--Petitioner

Versus

State of Punjab & others

--Respondents

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

Present:- Mr. Kapil Kakkar, Advocate for the petitioner.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

TEJINDER SINGH DHINDSA, J.

Placed on record at Annexure P-4 is letter of appointment dated 23.07.2015 issued by the Director, Public Instructions (Secondary Education), Punjab and whereby the petitioner has been appointed as Math Mistress (General Category) under the Punjab State Education Department subject to terms and conditions contained therein.

Challenge in the instant petition is to Clause 8 of the terms and conditions of appointment letter dated 23.07.2015 and which reads as under:

“This appointment will be purely on contract basis. He/she will draw Rs.9400-pm (Nine thousand four hundred per month). He/She will not be paid nothing except this. This contractual appointment can be extended for the period of one year more if his/her work and conduct found to be satisfactory by the competent authority. He/she will be considered for regularization of services after the period of three and half year.”

Counsel would submit that an advertisement dated 23.09.2009

had been issued to fill up 7654 posts in the teaching/non-teaching cadre in the Department of Education on contractual basis and out of which, 1275 posts were of Math Master/Mistress. Petitioner, who belongs to the general category claiming herself to be eligible had applied for the post of Math Mistress and had participated in a process of selection. Petitioner filed CWP No.13421 of 2011 along with other candidates raising a grievance that candidates lower in merit have been issued appointment letters. CWP No.13421 of 2011 came to be decided by a Coordinate Bench of this Court in the light of judgment dated 17.02.2014 and the operative part of the judgment was in the following terms:

“In view of my above discussions, present writ petitions are allowed. A direction is issued to the respondents to consider the claim of the petitioners for appointment to the post of Math Mistress within a period of two months from the date of receipt of certified copy of the order and take appropriate steps in accordance with law. It is made clear that the petitioners shall be entitled to the benefits from the date of their appointment, and they will not be entitled to claim seniority, notional pay fixation etc. from any previous date.

17.02.2014

*(Rajesh Bindal)
Judge”*

Learned Counsel representing the petitioner would vehemently argue that the impugned Clause 8 in the appointment letter dated 23.07.2015 (Annexure P-4) cannot sustain for the reason that in the case of other selectees, who had also participated in the same very recruitment process, their appointment letters, even though, issued on contractual basis initially had subsequently been amended and they had been treated to have been appointed on regular basis. Counsel submits that in the case of other

appointees, such amendment in the appointment letter has been carried out w.e.f. 06.04.2014. It is argued that the petitioner is vested with a right to be accorded parity in treatment.

Counsel for the parties have been heard at length.

Petitioner had applied for the post of Math Mistress in pursuance to advertisement dated 23.09.2009 issued by the Department of School Education appended as Annexure R-1/1 along with written statement. Clause 3 of the general conditions contained in the advertisement was categorical and to the following effect:

“(3) These appointments for all the categories are to be initially made for a period of one year on contract basis and consolidated pay. The offer of appointment can be extended for next year, keeping in view the work and conduct of the candidate. After a period of 3 ½ year, on the condition of work and conduct of the candidate being satisfactory, he will be considered for regular appointment. This recruitment is being made on priority basis to fill up the vacant posts in border, bet, kandi and rural areas.”

It goes without saying that the petitioner having applied in response to an advertisement and which contained Clause 3 as reproduced herein above, she would be bound by such conditions.

The impugned Clause 8 contained in the appointment letter dated 23.07.2015 is as per terms and conditions of the advertisement and by virtue of which the recruitment process had been initiated. The period of 3½ years from the date of appointment is still to lapse. It is at that stage that her case for confirmation/regularization would be considered subject to her work and conduct being satisfactory.

Under such circumstances, petitioner cannot raise a claim for

striking down the impugned Clause and thereby to claim a regular appointment from the date of issuance of the appointment letter itself i.e. 23.07.2015.

There is yet another aspect of the matter.

The appointment letter dated 23.07.2015 at Annexure P-4 has been issued in purported compliance of the directions issued by the writ Court dated 17.02.2014 while allowing CWP No.13421 of 2011 and which had been preferred by the petitioner along with eight others. The directions issued by this Court were to consider the claim of the petitioners therein for appointment to the post of Math Mistress within a period of two months. It was further clarified that the petitioners would be entitled to the benefits from the date of their appointments and they would not be entitled to claim seniority, notional pay fixation etc. from any previous date.

Mr. Kapil Kakkar, learned counsel representing the petitioner concedes that the order dated 17.02.2014 passed by this Court in CWP No.13421 of 2011 has attained finality. The rights of the petitioners, as such, would be crystallized in the light of judgment dated 17.02.2014 passed in CWP No. 13421 of 2011.

It may also be taken note of that the judgment of this Court in CWP No.13421 of 2011 being not complied with, the present petitioner along with another filed COCP No.270 of 2015. Such contempt petition was withdrawn on 31.07.2015 qua the present petitioner in view of the fact that she had been given the appointment letter. Liberty, however, was reserved by counsel to challenge the order of rejection of appointment as regards petitioner No.2 therein.

In other words, at the stage of withdrawing the contempt petition, counsel, who was none other than Mr. Kakkar himself had not raised any objection with regard to appointment letter issued in favour of the present petitioner being not in order.

In the considered view of this Court, the judgment dated 17.02.2014 passed by this Court in CWP No.13421 of 2011 and issuance of appointment letter in pursuance to the directions contained therein would have to be seen against the backdrop of the advertisement as also Clause 3 of the general terms and conditions contained therein.

Impugned Clause 8 in the appointment letter dated 23.07.2015 (Annexure P-4) is in consonance with the general terms and conditions contained in the advertisement. No exception can be taken to the same.

As such, while declining to interfere in the present petition and dismissing the same, it is observed that upon completion of 3½ years of the contractual engagement, the petitioner would have a right to be considered for regularization subject to her work and conduct being satisfactory and in terms of the directions contained in the judgment dated 17.02.2014 passed in CWP No.13241 of 2011.

Petition is dismissed.

21.08.2017

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |