

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

CWP No.3846 of 2013

Date of Decision:01.03.2017

Ramesh Kumar

... Petitioner

Vs.

State of Haryana and others

... Respondents

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

Present : Mr. N.C. Kinra, Advocate for the petitioner.

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

P.B. BAJANTHRI J. (Oral)

The petitioner has questioned the validity of order dated 21.7.2012 by which the petitioner's grievance relating to pay protection which was granted has been withdrawn on the score that the petitioner failed to submit his application for the post of Math Teacher through proper channel.

Learned counsel for the petitioner specifically pointed out from Annexure P-3 which shows that the petitioner had submitted his application for his regular appointment through proper channel. Therefore, while passing order dated 21.7.2012 (Annexure P-7), the authority has not taken into consideration the contents of Annexure P-3 dated 5.10.2012 which shows that the petitioner's application was dispatched vide No.861/99 dated 27.11.1999 to the Sub Divisional Education Officer, Safidon (Jind). Thus, there is non application of mind by the author of Annexure P-7. Hence, it is liable to be set aside.

On the other hand, learned State counsel submitted that even though vide endorsement/order dated 21.7.2012 grievance of the petitioner has been rejected on the ground that the petitioner failed to submit his

application through proper channel by taking necessary permission from the department. Even then the petitioner is not entitled for pay protection as he was appointed on contract basis during the intervening period. Hence, he is not entitled for the pay protection. Pay protection would be available to an regular employee who switch over to another regular post.

Having regard to the above facts and circumstances and the fact that before passing order dated 21.7.2012 (Annexure P-7), petitioner's application for regular appointment dated 27.11.1999 has not been taken into consideration. Hence, order dated 21.7.2012 (Annexure P-7) is set aside and the matter is remanded to the concerned authority to reconsider the matter afresh. The respondent-competent authority has to pass a speaking order while taking note that the petitioner's application for regular appointment was through proper channel and with necessary permission. Further to examine whether the contract employees are entitled for pay protection or not in view of any statutory rules/instructions. The concerned respondent-authority is directed to proceed in the matter after hearing the petitioner i.e. issuance of detailed show cause notice and consideration petitioner's explanation to show cause notice. The above exercise shall be completed by the competent authority within a period of four months from today.

Petition stands disposed of.

01.03.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No