

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

CWP No.6434 of 2016 (O&M)
Date of Decision: January 16, 2017

Surjit Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. R.K. Arora, Advocate
for the petitioner.

Mr. Rupam Aggarwal, DAG Punjab
for the respondents-State.

JAISHREE THAKUR, J. (Oral)

The instant civil writ petition has been filed under Article 226/227 of the Constitution of India for issuance of writ, order or directions for quashing the impugned order dated 20.11.2015, whereby, the petitioner has been debarred from promotion for the next two years and order dated 23.06.2015, whereby, the posting order of the petitioner has been cancelled with all consequential benefits.

In brief, the facts are that the petitioner joined the Department of Education on 09.08.1994 as a Science Master and his services were regularized w.e.f. 15.12.1997. He was then promoted as Lecturer Biology

vide order dated 24.05.2012. On promotion, he was posted at Government Senior Secondary School, Sidhwan Kalan, Ludhiana and he was given 15 days time to submit his joining report. The petitioner requested vide representation dated 01.06.2012 for a posting at a nearer place, while bringing it to the notice of the respondents that a post was lying vacant in District Ajitgarh. An order dated 02.06.2012 was issued in partial amendment of the order dated 24.05.2012 vide which one Smt. Alka Rani, from Government Senior Secondary School Tahil Sahib, Ludhiana, was ordered to be posted at Government Senior Secondary School Sidhwan Kalan, Ludhiana, the place where the petitioner had been ordered to be posted vide order dated 24.05.2012, without giving fresh posting station to the petitioner. The petitioner vide representation dated 06.06.2012 requested that he may be given fresh posting orders, since the post of Lecturer Biology at Government Senior Secondary School, Sidhwan Kalan, Ludhiana, had been filled up by granting posting to Smt. Alka Rani. Since the petitioner had been given 15 days time to submit his joining report, pursuant to the promotion order dated 24.05.2012, he submitted his notional joining as Lecturer Biology on 07.06.2012 at the place of his current posting i.e. Government High School, Mote Majra, Complex Government High School, Gigge Majra, District SAS Nagar . the petitioner was allowed to join on 07.06.2012. Thereafter, another representation dated 19.07.2012 was made to the respondents for granting him a posting station as a Lecturer. The said representation was subsequently followed by various reminders dated 14.08.2012, 28.12.2012, 01.01.2013 and 04.04.2013. Despite various representation addressed, the petitioner was not allowed any posting station

for the post of Lecturer, as per promotion /posting order dated 24.05.2012. Thereafter, a committee consistent of four members was constituted by the Government under order dated 21.02.2014 to reconsider all the promotions made vide order dated 24.05.2012, in which, the promotion of the petitioner was found to be in accordance with the rules. The petitioner again approached the department concerned for allotment of station, but to no effect. Eventually, respondent No.1 passed an order dated 09.06.2015, vide which it was ordered that the petitioner be posted at Government Senior Secondary School, Bakarpur, District SAS Nagar, as Lecturer Biology. On receipt of the said letter, the petitioner submitted his joining report to respondent No.3 on 03.07.2015 and that despite joining, the petitioner was not relieved from his previous posting at Government High School, Mote Majra, Complex Govt. High School, Gigge Majra, District SAS Nagar, and consequently was not able to work as Lecturer at the place of his posting at Government Senior Secondary School, Bakarpur, District SAS Nagar. Vide order dated 10.07.2015, one Smt. Kamaljit Kaur w/o Preet Mohinder Singh, was posted at Government Senior Secondary School, Bakarpur, District SAS Nagar, despite the fact that the petitioner had been posted there and had submitted his joining report. The posting order of the petitioner also came to be cancelled. The petitioner herein challenged order dated 10.07.2015 i.e. order vide which Smt. Kamaljit Kaur was allowed posting at Government Senior Secondary School, Bakarpur, District SAS Nagar and also the action of the respondents in not implementing the order dated 09.06.2015 vide which order he has been posted at Senior Secondary School, Bakarpur, District SAS Nagar, by filing Writ Petition No.14016 of

2015. During the pendency of the aforesaid writ petition, respondent No.1 passed another order dated 20.11.2015, whereby, the petitioner has been ordered to be debarred from promotion for next two years on account of his allegedly not joining on the post of Lecturer. The said order dated 20.11.2015 is under challenge in the instant writ petition as well as order dated 23.06.2015, whereby, his posting orders were cancelled.

Mr. R.K. Arora, learned counsel appearing on behalf of the petitioner contends that the impugned orders dated 23.06.2015 (Annexure P20) vide which the posting orders of the petitioner as Lecturer at Government Senior Secondary School Bakarpur, District SAS Nagar, stands cancelled and order dated 20.11.2015 (Annexure P21) vide which the petitioner has been debarred from promotion for next two years on account of the fact that he had did not join as a Lecturer, are wholly illegal and arbitrary and without jurisdiction. It is argued that the respondents-State did not allow the petitioner to join on the post of Lecturer for a period of almost three and a half years after his promotion, despite the number of representations having been made in this regard. It is contended that after the promotion order dated 24.05.2012, 15 days time was given to the petitioner to submit his joining report, but before expiry of 15 days i.e. on 02.06.2012, one Smt. Alka Rani had been posted as Lecturer Biology on the same station, as where the petitioner had been posted. Thereafter, the petitioner received through registered post on 02.07.2015, an order issued on 09/12.06.2015, vide which he was ordered to join at Government Senior Secondary School, Bakarpur, District SAS Nagar. On receipt of the said order, he submitted his joining report immediately on the next very date on

03.07.2015, however, despite joining, he was not relieved from his previous posting station and therefore, could not work as Lecturer at the place of his new posting. Meanwhile, Smt. Kamaljit Kaur came to be posted vide order dated 10.07.2015 at the same place where the petitioner was posted i.e. Government Senior Secondary School, Bakarpur, District SAS Nagar. It is argued that the petitioner cannot be penalized by debarring from promotion on the ground that he did not join at the place of posting, when all posting orders that had been issued to the petitioner were in fact *non est*, since the same were either cancelled or someone else had joined at the place of posting. It is also argued that several representations were also addressed to the respondents to give him posting orders as Lecturer after his promotion to the post of Lecturer Biology on 24.05.2012. Learned counsel for the petitioner also points out that the petitioner had submitted his notional joining as Lecturer Biology on 07.06.2012 at the place at the current place of posting at SAS Nagar when he found out that Smt. Alka Rani had already joined at the posting station allocated to him at Government Senior Secondary School, Sidhwan Kalan, Ludhiana. Therefore, as he had submitted his joining, the impugned order debarring him from promotion could not have been passed.

Per contra, Mr. Rupam Aggarwal, DAG Punjab, appearing on behalf of the respondents-State submits that there is nothing on record to substantiate the fact that the petitioner had ever submitted his joining report or that he had complied with the orders that came to be passed ordering him to join either at Sidhwan Kalan, Ludhiana or elsewhere and therefore, since the promotion order of the petitioner contained a clause therein stipulating

that officials who will not submit their joining report upto the stipulated date, will be debarred from promotion as Lecturer for two years in accordance with the notification issued by the Personnel Department vide letter No.GSR/33 Constitution Act-309-94 dated 04.05.1994, the impugned order does not suffer from any infirmity.

I have heard learned counsel for the parties and with their assistance perused the record of the case.

There is no doubt that the petitioner was promoted on the post of Lecturer Biology vide order dated 24.05.2012. The said order directed the officials to submit their joining report before 08.06.2012 at their new place of posting. The petitioner herein, whose name was reflected at Serial No.149 was currently posted as Science Master in Government High School, Mote Majra, Complex Govt. High School, Gigge Majra, District SAS Nagar, was posted as Lecturer at Government Senior Secondary School, Sidhwan Kalan, Ludhiana. However, one Smt. Alka Rani, who was a Science Mistress at Government Senior Secondary School Tahil Sahib and given place of posting at Government Senior Secondary School Raunke Kalan, Moga, was adjusted at Government Senior Secondary School Sidhwan Kalan, Ludhiana, vide order dated 02.06.2012 i.e. at the same place of posting that had been given to the petitioner. The petitioner had made a request in the meantime to the Education Department for allotment of new station but had not been allotted one and since the station allocated to him was not vacant, he submitted his joining report before expiry of 15 days period on 07.06.2012 (F.N.) as Lecturer Biology at Government High School, Mote Majra, Complex Govt. High School, Gigge Majra, on notional

basis. The Head Mistress of the said school allowed the petitioner to join as Lecturer Biology on notional basis. The petitioner addressed several representations to the Department concerned requesting for adjustment against a vacant post, but nothing forth came on those representations. Vide order dated 20th September, 2013, in a meeting held by the Department reviewing the promotion to be given to Science Teachers to the post of Lecturer, it was noted that Surjit Singh, petitioner herein already stood promoted and station had been allocated. Eventually, vide order dated 09.06.2015 endorsed on 12.06.2015, the petitioner was given posting order at Government Senior Secondary School, Bakarpur, District SAS Nagar, against a vacant post and a joining report was submitted on 03.07.2015. This order came to be cancelled vide impugned order dated 23.06.2015 followed by an order dated 20.11.2015 debarring the petitioner herein from promotion for a period of two years from the date of issuance of the order on account of non-joining at the new posting stations on his promotion.

The order dated 20.11.2015 is totally against the principle of natural justice, issued without taking into account that the petitioner herein, who stood promoted on the post of Lecturer vide order dated 24.05.2012, could not join on the place of posting given to him on account of the fact that before the expiry of his period of joining, one Smt. Alka Rani had been adjusted there. Similarly, after the petitioner had been posted at Government Senior Secondary School, Bakarpur, District SAS Nagar and after having submitted his joining report, another person by the name of Smt. Kamaljit Kaur was posted and she submitted her joining report, which was accepted. The petitioner, who had submitted his joining report on 03.07.2015, was not

allowed to discharge his duties on account of the fact that he was not relieved from Govt. High School, Mote Majra, Complex Govt. High School, Gigge Majra, District SAS Nagar and therefore, it can hardly be said that the petitioner had not joined his place of posting. The arguments raised that the petitioner had not joined as Lecturer after his promotion orders had been issued, is clearly unsustainable from the record. The respondents-State is supposed to act fairly in all circumstances and there is no explanation forthcoming as to why Smt. Alka Rani was adjusted and allowed to join against the post of the petitioner, that too, before the expiry of the joining period as given to the petitioner. It is also not forthcoming as to why the order dated 09.06.2015 has been cancelled. Therefore, the impugned order dated 20.11.2015, which suffers from the vice of non consideration of facts, debarring the petitioner from promotion for next two years, is wholly unsustainable. The petitioner can not be allowed to suffer on account of the action of the State itself which did not allow the petitioner to work at the station allocated to him by posting other persons there as well.

In the instant writ petition, besides seeking declaration of impugned orders as wholly illegal and arbitrary, the petitioner has requested that he may be allowed fresh posting orders, as per his promotion orders dated 24.05.2012 somewhere near Chandigarh on humanitarian ground as his wife is getting regular treatment of cancer at PGI, Chandigarh and in support of his contention, the petitioner has also produced on record medical record of his wife which depicts that his wife Mandir Kaur is having a tumor and she is getting regular treatment from PGI, Chandigarh in this regard.

In view of the above discussion, the impugned order dated 20.11.2015 is hereby set aside with the directions to the respondents-State to offer fresh posting to the petitioner on vacant post of Lecturer Biology within a period of three weeks, from the date of receipt of certified copy of this order. The respondents-State is also directed to consider the request of the petitioner to allow him fresh posting somewhere near Chandigarh on humanitarian ground as his wife is getting regular treatment of cancer from PGI Chandigarh, as per rules.

The writ petition stands allowed accordingly.

January 16, 2017

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No