

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-17706-2014 (O&M)
Date of Decision: 18.12.2018

Ashok Kumar Garg

..... Petitioner

Vs.

State of Haryana and others

..... Respondents

2.

CWP-25769-2015 (O&M)

Dr. Vikas Gupta

..... Petitioner

Vs.

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present : Mr. Namit Kumar, Advocate and
Mr. Alankrit Bhardwaj, Advocate
for the petitioner in CWP-17706-2014.

Mr. Venu Gopal, Advocate for
Mr. Rakesh Nagpal, Advocate
for the petitioner in CWP-25769 of 2015.

Mr. Rajesh Gaur, Addl. A.G. Haryana.

Mr. Siddarth, Advocate
for respondent No.4.

RAJIV NARAIN RAINA, J.

1. This order will dispose of the above mentioned two writ petitions by a common order. The facts are being taken from CWP No.17706 of 2014. Facts are taken from the first case, the decision in which will apply mutatis mutandis to the connected case.

2. The petitioner is an Assistant Professor (Mechanical

Engineering) teaching in Chaudhary Devi Lal Memorial Government Engineering College Panniwala Mota, Sirsa working in the 3rd respondent's College. Before joining this College, he had served as a Lecturer in 4th respondent-College from 28.08.1998 to 02.02.2006. The petitioner came by direct recruitment to serve in the Government College. Respondent No.3 is a private College affiliated to the same University. The pay scales of Lecturer in the previous College and Lecturer (re-designated Assistant Professor) in the new College were equivalent. He made a representation dated 27.09.2006 that the period of the first tenure of service should be counted for the purpose of grant of senior and selection grade and for protection of pay. When this relief was not granted, he approached this Court in CWP No.3893 of 2014 which was disposed of on 03.03.2014 directing the respondents to consider and decide the representation. Pursuant to those directions, the impugned order has been passed on 16.06.2014 (Annexure P-32) declining the claim of the petitioner. Aggrieved by that order, the petitioner has approached this Court in this petition filed under Article 226 of the Constitution of India seeking directions to set aside the order with consequential benefits.

3. It is argued by Mr. Namit Kumar for the petitioner that the claim is covered by the decision of this Court in **Dr. Romila Jain vs. State of Haryana, 1995 (3) SCT, 53**. The right to senior scale was based on the guidelines of the University Grants Commission which mature on completion of specified period of service. G.S.Singhvi, J. held:

“8. Letter dated 27.11.1990 (Annexure R-6) issued by the University Grants Commission contains an explanation to the requirement of

service incorporated in the earlier guidelines. This letter also reads as under :-

"Kindly refer to para 3 of this office letter of even number dated 29th January, 1990 containing the decision of the Commission regarding counting the experience of a person, before appointment as a lecturer in the university/College, rendered in equivalent grade in other Universities/Colleges and the national laboratories or R & D organisations (CSIR/ICAR, DRDO, UGC etc.) and "UGC Research Scientist, as qualifying service for placement in the senior scale/selection grade.

The Commission in consultation with Ministry of Human Resources and Development (Department of Education) reconsidered the matter at its meeting held on 11th October, 1990, and resolved revised guidelines as follows for counting of previous service for purpose of senior scale/selection grade under the career advancement scheme for lecturers : 1.Previous service without any break as a Lecturer or equivalent in a University, College, national laboratory or other scientific organisations (CSIR, ICAR, DRDO, UGC etc.) and as a UGC Research Scientist should be counted for placement of Lecturers in Senior Scale/Selection Grade provided that :-

- (a) the post was in an equivalent grade/scale of pay as the post of lecturer;*
- (b) the qualifications for the post were not lower than the qualifications prescribed by UGC for the post of lecturer;*
- (c) the lecturers concerned possessed the minimum qualification*

prescribed by UGC for appointment as lecturers;

(d) the post was filled in accordance with the prescribed selection procedure as laid down by the University/State Government;

(e) the appointment was not ad hoc or in a leave vacancy of less than one year duration.

2. No distinction should be made with reference to the nature of management of the institution where previous "service was rendered (private/local body/Government) if the above criteria are satisfied. You are requested to bring the above decision to the notice of the colleges under your jurisdiction also."

9. By Annexure R-8, the University Grants Commission had relaxed the condition to participate in Refresher Courses/Summer Institute in respect of the lecturers, who were appointed before 1.1.1986. Later on this date was extended to 31.12.1993.

10. There is no dispute between the parties that if the total period of service rendered by the petitioner at D.N. College for Women, Faridabad and Geeta Vidya Mandir Girls College, Sonapat, is taken into consideration, the petitioner will be deemed to have completed the requisite period of service so as to be entitled to the grant of senior scale in the cadre of Lecturers. However, controversy between the parties is on the issue of treating the service rendered by the petitioner at D.N. College for Women, Faridabad, together with the service rendered by her in Geeta Vidya Mandir Girls College, Sonapat.

11. Language used in para 11 of Appendix-I to the letter dated 22.7.1988 uses the expression "completed 8 years of service after regular appointment". The word 'continuous' has not been used

between the word 'of' and the word 'service'. The expression used in para 11 is not so couched as to indicate that the University Grants Commission intended continuous service of 8 years after regular appointment as a condition precedent to the grant of senior scale. The ambiguity, if any, in the earlier guidelines stands clarified by the letter dated 27.11.1990. That letter clearly shows that according to the University Grants Commission itself previous service rendered by an employee before appointment as a lecturer in the university/College can be counted for the purpose of grant of senior scale/selection grade under the Career Advancement Scheme for lecturers on fulfilment of various conditions enumerated in that letter. First and the foremost requirement is that the previous service must be without break and must be in the cadre of lecturer or equivalent in a university, college, national laboratory or other scientific organisations or as a UGC scientist. Further conditions are that the previous post must be in an equivalent grade/scale of pay as compared to the post of lecturer. The qualifications must be the same. The incumbent must possess the qualifications prescribed by the University Grants Commission for appointment as a lecturer and the selection must be a regular selection. An ad hoc appointment or an appointment in a leave vacancy has been excluded. In so far as the petitioner is concerned, she fulfils all these conditions, inasmuch as her appointment at D.N. College for Women, Faridabad, was on the post of lecturer. Her appointment was preceded by a regular selection. She fulfilled the minimum qualifications prescribed by the University Grants Commission. The qualifications of two posts of lecturer held by her were similar and

the pay scale was identical. In view of this, there is little justification for not counting the service rendered by the petitioner as lecturer in Commerce in D.N. College for Women, Faridabad, as a part of her total service for the purpose of grant of senior scale. In my opinion, there is no justification to read the word 'continuous' in para 11 of Appendix-I to the letter dated 22.7.1988 issued by the Government of India, particularly when the University Grant Commission has clarified the whole matter vide letter dated 27.11.1990. The mere fact that the petitioner had resigned from the service of the College at Faridabad before joining the Geeta Vidya Mandir Girls College, Sonapat, is of no consequence in view of the fact that the University Grants Commission has itself made it clear that previous service rendered by a lecturer is countable for the purpose of grant of senior scale on fulfillment of certain conditions. It would have been a different case if the guidelines issued by the University Grants Commission had contained a requirement of 8 years continuous service after regular appointment.”

4. The logic in the judgment has been followed in numerous decisions thereafter including in CWP No.20283 of 2005 decided on 28.04.2008 in “Anil Kumar Dahiya vs. Union of India and others” and CWP No.6959 of 2009 decided on 04.12.2009 in case titled “Dr. V. Saraswati, Retd. Zoology Lecturer, GVM Girls College, Sonapat vs. The State of Haryana & others”.

5. Learned counsel has also cited administrative precedents in the department granting relief claimed by the petitioner to other similarly situated employees. These orders/letters are at Annexures P-24 to P-27 with

the petition. There remains no doubt that in view of the administrative precedents and the judgments of this Court, the impugned order is not sustainable in law and accordingly deserves to be quashed by reasons of arbitrariness and unfair discrimination.

6. The impugned order under challenge proceeds on the basis of a notification dated 21.07.2011 of the Haryana Government which lays down that previous service must be in an institution which is funded by the State or Central Government. The notification curtails the benefits passed down from the judgment and orders in Dr. Romila Jain case. The previous service which the petitioner seeks the benefit of was not spent in an institution funded by the State or Central Government. This notification dated 21.07.2011 is obviously prospective in nature and does not take away the pre existing rights coming from judicial orders and administrative precedents prior to the coming into force of the notification. The notification itself records in paragraph 9 that the New Career Advancement Scheme shall be effective prospectively i.e. from the date of the notification.

7. Mr. Rajesh Gaur, learned Additional Advocate General, Haryana is unable to distinguish Dr. Romila Jain's case (Supra). Mr. Gaur in addition argues that there is great delay on the part of the petitioner in making a representation after six years when the notification had come into existence.

8. To counter this argument Mr. Namit Kumar submits that the representation was kept pending and was under process by the department and thus it does not lie in the mouth of the State to object to the petition by reason of delay and laches. The representation has been made without delay

on 27.09.2006 and has remained undecided until it was decided after directions were issued by this Court in the petitioner's earlier writ petition. This representation was followed in quick succession by reminder representations dated 04.02.2013, 11.03.2013, 28.03.2013, 15.04.2013, 08.08.2013. Therefore, the objection of the State does not deserve to be accepted and deserve to be overruled. There is merit in the contention of the petitioner that the petition is not hit by delay and even otherwise, the cause of action is a recurring one causing financial loss to the petitioner everyday.

9. In view of the above reasons recorded, both the petitions are allowed and a writ of certiorari is issued quashing the impugned order dated 16.06.2014 (P-32) as it is made on an palpably erroneous view of the notification dated 21.07.2011 that it operates retrospectively when the ground is covered by judicial and administrative precedents giving rise to unfair discrimination and violation of article 14 of the Constitution. A direction by way of mandamus is issued to the respondents to determine and pay the monetary benefits to the petitioners by counting their previous service for protection of pay and for grant of senior & selection grade keeping in view past service and to do so within a period of three months from the date of receipt of a certified copy of the order.

(RAJIV NARAIN RAINA)
JUDGE

18.12.2018
anju

Whether Speaking/Reasoned: Yes
Whether Reportable: No