

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19451 of 2014 (O&M)
Date of Decision: 19.09.2018

Devender Kumar and another

... Petitioners

Versus

State of Haryana and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. B.S. Rana, Sr. Advocate,
with Ms. Divya Bajaj, Advocate,
for the petitioners.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J.

The petitioners have approached this Court by way of this petition
claiming the following prayers:-

- “(i) to Issue a Writ of Mandamus, directing the respondents to grant deemed date of appointment to the petitioners and benefit of seniority and notional pay fixation at par with the candidates/employees who have joined their services prior to the petitioners as per the merit list prepared at the time of selection pertaining to the advertisement dated 22.1.1988.*
- ii) further issue a Writ in the nature of Certiorari for quashing the impugned action of the respondents in opening of Permanent Retirement Account Number (PRAN) instead of GPF account as applicable at the time of selection.*
- iii) to issue a writ of Mandamus directing the respondents to open the GPF account of the petitioners and apply the old pension rule applicable at the time of selection as the petitioners were given appointment against their merit number and compliance of various judgment passed by this Hon'ble Court against the advertisement no. 22.1.1988 as the*

petitioners were permitted to join in May 2011, in compliance of the judgment passed by this Hon'ble Court against their merit number.”

The factual background of the case

The Haryana Subordinate Services Selection Board advertised 25 posts of Lineman Instructor in Vocational Education/ITI in January 1988. The petitioners were selected by the Board and their names were recommended to the Government department and they were informed about it by letters dated May 26, 1989. Their names were at Sr. No.5 & 7 of the select list in general category on the basis of merit determined by the Board. However, they could not be issued appointment letters on account of stay orders obtained by the ad hoc/stop gap appointees who were holding the posts against which the petitioners were selected. But four candidates who were placed at Sr. No.1 to 4 in the select list were issued appointment letters and they were allowed to join service.

After waiting for a sufficiently long time without any success, the petitioners approached this Court by filing CWP No.1249 of 1993 which was allowed on May 14, 2010. Directions were issued to the State of Haryana to consider the petitioners for appointment. The State of Haryana filed Letters Patent Appeal No.1517 of 2010 against the orders of the learned Single Bench which was dismissed on February 10, 2011. In implementation of the order, the petitioners were offered appointment letters and they joined service on May 30, 2011. They were treated as fresh appointees governed by the New Pension Scheme - 2006 of the Haryana Government which was notified in the meanwhile. As per terms and conditions it was stipulated in para (xii) of the appointment letter their

seniority was to be fixed in accordance with rules and instructions on the subject. There was no stipulation in the appointment letter that their services would be governed by the New Pension Scheme - 2006. The department opened Permanent Retirement Account No. (PRAN) for them, according to the new pension scheme which became applicable w.e.f. January 01, 2006. Feeling aggrieved, they represented on September 04, 2011 to respondent No.2 for opening GPF account as per the prevailing pension scheme at the time they were selected in the selection process 1988.

They urged to the authorities in their demand for justice -representation that they could not be denied the benefit of either of pay and pension and other service benefits as similarly situated candidates as per the merit in the selection are already availing the benefit of GPF accounts as per rules prevailing at that point of time i.e.at the time of selection. It was not their fault that their appointments were delayed by several years. They urged that the imposition of the condition pertaining to applicability of new pension scheme is unjust, unfair, illegal, arbitrary and discriminatory even when they were permitted to join against their merit position in the same selection list. It may be that the principle of “No Work No Pay” will be applicable to the case of the petitioners but in none of the circumstances, the petitioners can be denied notional pay fixation on par with similarly situated employees who were permitted to join pursuant to declaration of result of selection and acceptance of the recommendation by the department. They can thus neither be denied benefits of seniority, notional pay fixation and other consequential benefits as similar benefits have been granted to similarly situated employees who were appointed on the basis of the same

merit list/selection list. The only difference being that they could not be offered appointment because of stay order obtained by ad hoc employees working on the posts to which the direct recruits were regularly appointed. There was, after all, a categorical direction in the judgment and order dated February 10, 2011 (Annex P-4) in the Intra Court Appeal filed by the State of Haryana against the judgment and orders of the learned Single Judge relying in turn on the directions of the Supreme Court dated September 03, 1992 while adjudicating similar issue in similar cases in SLP No.18354 of 1991 holding that the seniority of those persons who were recommended by the SSS Board shall be reckoned in the order in which they have been assigned ranks by the Board.

In the written statement filed by the State, it is admitted that appointment letters could not be issued to the petitioners due to stay orders obtained by ad hoc/stop gap appointees who were holding the posts against which the petitioners were selected. Their earlier writ petition i.e. CWP No.1249 of 1993 was allowed by this Court on May 14, 2010. The petitioners were selected for the post of Lineman Instructor in Vocational Education Scheme and this vocational scheme was shut down by the ITI Department in the year 2008 and the staff working in the scheme was adjusted either in the Department of Technical Education, Haryana or the Department of Education, Haryana and some of the employees were retained in the respondent Department. The State pleads that as a result of closure of Vocational Education Scheme there was no post available on which the petitioners could not be appointed. This contention is of no substance since the order of the learned Single Judge was upheld in appeal

on February 10, 2011. This contention was not acceptable to the Letters Patent Bench as witnessed by the observations of the Court reproduced below:-

“Once the aforesaid directions have been issued to the appellant State of Haryana then there is no escape from the conclusion that the persons like the writ petitioners respondents have to be given appointment. It is pertinent to notice here that on the last date of hearing, we have asked the learned State counsel to explore the possibility of adjusting the writ petitioners – respondent. However, an affidavit has been filed stating that no post is available. The aforesaid stand will not be acceptable in view of the directions issued by Hon'ble the Supreme Court which goes to the extent of observing that in case the post are not available then supernumerary posts have to be created. The directions issued by the learned Single Judge do not suffer from any illegal infirmity and the appeal does not merit admission. Accordingly, the appeal fails and the same is dismissed.”

It is only after these directions that the petitioners were appointed in implementation of the orders, joining service on May 30, 2011. However, their seniority has been fixed from the date of actual joining. The State has shifted blame to pending litigation in which, they say, the department had no role to play and, therefore, the petitioners are not entitled to any relief as claimed by them in the petition. The mere fact that during the pendency of the litigation, the State of Haryana issued the new pension scheme on August 18, 2008, which is mandatory for all Government servants joining Government on or after January 01, 2006 was sufficient to disallow the claim for coverage in the old GPF scheme.

I have heard learned Senior counsel, Mr. B.S. Rana, for the petitioners and Mr. Harish Rathee, Sr. DAG, Haryana for the State and have perused the record and the relevant judgment and order passed in the case of

the petitioners and other relevant material on file.

Mr. Rana submits that the petitioners were selected in a regular process of recruitment and the only impediment that set them apart from the first four appointed to service at the appropriate time was the interim stay orders granted in favour of ad hoc appointees who served till regular recruits were available. The petitioners have litigated from 1993 till 2011 that is for 18 years to vindicate their right to appointment as per the merit determined by the Board. It is argued that the select list cannot be broken into two parts giving advantage to four candidates and putting the petitioners to unfair disadvantage for reasons beyond the control of anyone. Their rights would have to be determined from the date of filing CWP No.1249 of 1993 and the order dated May 14, 2010 passed by the learned Single Judge only declares their rights emanating from the select list – May 1989 in selection process-1988.

The learned Single Judge held that the petitioners cannot be denied appointment. They have been duly selected and recommended for appointment and their appointments have not been withheld on account of any fault of theirs or by reason of any infirmity in their selection. Ad hoc appointees cannot have a better deal or preferential right than the selectees, who have undergone the process of selection in accordance with the mandate of Articles 14 & 16 of the Constitution of India. The learned Single Judge followed the directions of the Division Bench issued on December 18, 1981. The Division Bench relied on an earlier order passed in CWP No.9949 of 1991 titled *Mahavir Singh Malik and others v. State of Haryana and others*, decided on November 19, 1991. In this case, a direction was

issued to appoint the petitioners and similarly situated persons selected in the order of merit as per selection lists submitted by the Board in respect of 205 vacancies of Pharmacists which were originally advertised as and when the vacancies occur in the cadre or as and when interim orders of ad hoc employees are vacated. The facts of that case apply to the present case.

In view of the above, the petitioners have made out a clear case for award of relief claimed. Their appointments deserve to relate back notionally to the date when the four candidates at Sr. No.1 to 4 in the merit list were appointed and the petitioners were left behind without legal justification except for the interims orders of stay obtained by the ad hoc employees. It follows that the petitioners' seniority and pay should be fixed notionally on par with the candidates who joined service prior to the petitioners but belong to the same merit list. Similarly, they would have a right to be treated as beneficiaries under the old pension scheme otherwise it would result in hostile and invidious discrimination within a homogeneous class without their being any reasonable classification differentiating the two artificially divided. The mere fact that ad hoc appointees had obtained stay orders from this Court preventing the appointment of the petitioners is only a fortuitous circumstance on which nothing will depend as far as grant of notional service benefits are concerned following their appointments after prolonged litigation.

As a result of the above discussion, the petition is allowed and the prayers reproduced above are granted by the deeming fiction of the law. It is declared that the petitioners' seniority will be fixed notionally from the date when persons at merit positions 1 to 4 of the select list of May 1989 were

appointed to service. The pay of the petitioners will be fixed notionally to bring it on par with the first four with actual pecuniary benefits flowing from the date of appointment in 2011. The previous period sent in litigation will be governed by notional fixation of pay and allowances. The action of the respondents in treating the petitioner as fresh appointees and applying to them PRAN is declared illegal and arbitrary and is accordingly quashed. The petitioners have a right to pension under the old GPF account rules prevailing at the time of selection and from the date of joining of the first four candidates from a composite select list and *inter se* merit positions determined by the Board while making recommendations. The intervening period shall be treated notionally as qualifying period of service for pension and pensionary benefits.

19.09.2018

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**(RAJIV NARAIN RAINA)
JUDGE***Whether speaking/reasoned**Yes**Whether reportable**No*