

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4741 of 2015

Date of Decision: 14.02.2018

Chander Kanta Verma

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present: Ms. Alka Chatrath, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.

1. The petitioner served the Education Department, Haryana as a Lecturer in English (School Cadre) from November 1985 till her retirement on July 31, 2014. Her initial appointment was on ad hoc basis but she was recruited through Selection Committee from amongst names sponsored by the Employment Exchange. She was retired in the same status after she was unsuccessful in her struggle to get her services regularized. Her service in the department was to the satisfaction to her superiors as her work was not adversely commented upon. She retired from service without any blemish regarding her work and conduct.

2. The Government of Haryana issued various notifications from time to time for regularization of services of ad hoc employees etc. who completed a minimum of two years service as on the day specified under the policies. These notifications are dated January 28, 1970, February 28, 1991,

June 01, 1993, May 11, 1994, March 07, 1996 copies of which are attached as Annex P-3 to P-6.

3. The next important milestone in the career of the petitioner came on August 26, 1997 when the Governor of Haryana was pleased to regularize the services of all such ad hoc Clause III employees who have completed two years of service on September 30, 1988. The petitioner had put in two years of service prior to the cut off date but her case was kept pending. She made a representation in 1992 to the Director, Secondary Education, Haryana requesting that her services be regularized as per the notification issued by the Government. Her service book was sent by the school authorities to the District Education Officer, Sirsa in April 1991 for onward submission to the Director, Secondary Education, Haryana but no action was taken thereon, though other similarly situated employees were regularized. Thereafter, the matter kept shuttling between different authorities, the case remaining unresolved inspite of repeated requests made by the District Education Officer to the higher authorities.

4. A refurbished regularization policy was notified by the Haryana Government on November 05, 1999 agreeing as a one-time policy measure to regularize the services of all such Group-C employees who had been holding the post for a minimum period of 15 years from the date of publication of the notification and who were in service on that date and whose services could not be regularized earlier under the regularization policy due to lack of minimum educational qualification.

5. The hitch which kept the petitioner from her goal of being declared regular Government servant is that in her M.A. in English she

secured 48% marks while 50% marks were required and for this reason, the claim for regularization has not been positively considered.

6. In the written statement filed to contest the petition it is admitted that the petitioner was selected as a PGT in English. The departmental instructions dated April 23, 1985 were in force at the time of appointment and as per Clause 12 of these guidelines issued by the Director Secondary Education, Haryana, the minimum qualification for the post of Lecturer was as follows:-

“A lecturer teaching any subject of general education spectrum at plus 2 stage should possess post-graduate qualification (M.A./M.Sc./M.Com) with at least 50% marks in the subject concerned.

The condition of 50% marks in M.A./M.Sc./M.Com will not apply to the lecturers who are already teaching '11' class and are regularly employed. The lecturers in the following subjects could also have the qualifications mentioned against each”

7. The rule was not made completely inflexible. Relaxation was granted to those Lecturers already teaching 11th class and who were regularly employed. “Regularly employed” obviously would mean prior to the instructions dated April 23, 1985. State admits that the petitioner was appointed on the basis of recommendations by the Departmental Selection Committee. The State blames the District Education Department not to have verified documents of the petitioner regarding her educational qualification accusing the DDO concerned not to have bothered to check the qualifications/marks of the petitioner and allowed her to join duty. The State submits that the case was considered time and again but could not be processed due to lack of requisite qualification to her credit, her marks

being short by 2% of the prescribed 50%, as prescribed not in the statutory rules but in the executive instructions issued by the Director Secondary Education, Haryana. The department says that in the year 1999 the case of the petitioner was sent to the Chief Secretary Haryana for relaxation of rules in view of the special circumstances of the case, on the basis of policy instructions dated November 05, 1999 but the Chief Secretary found that the case of the petitioner is not fit as she had not completed 15 years of service on ad hoc basis on November 05, 1999. The petitioner joined on November 26, 1985 under appointment letter dated October 07, 1985. She was short by one year. Thus the claim was rejected as not tenable.

8. In paragraph 5 of the written statement filed by Sh. A.S. Mann, Special Secretary to Government of Haryana School Education Department, Panchkula it has been stated that the matter was not in the notice of the department, that the petitioner had been appointed as Lecturer in violation of the Government instructions.

9. There is a dichotomy here in the written statement. In paragraph 2 they refer to Clause 12 of the departmental instructions issued by the Director Secondary Education, Haryana on April 23, 1985 while in paragraph 5 it is alleged that the appointment was in violation of Government instructions. There is a difference between local departmental instructions and Government instructions. Government instructions are usually issued in service matters in the Department of Personnel and Administrative Reforms. The departmental instructions dated April 23, 1985 cannot be elevated to the status of instructions issued by the Government under Article 162 of the Constitution and in the background that there were

no rules framed under the proviso to Article 309 of the Constitution specifying the requirement of minimum marks at Post Graduate level to be eligible for appointment. Therefore, it is argued that 50% marks prescribed by the Director Secondary Education, Haryana in his instructions dated April 23, 1985 are not sanctified by the Government of Haryana and, therefore, the Government can take no advantage of its own failings.

10. The essential qualifications prescribed for the post of Post Graduate Teachers in school cadre is with reference to the rules of Haryana State School Education Lecturer School Cadre (Group-C) Service Rules, 1998 and Haryana State School Education Cadre (Group-B) Service Rules, 2012. Both these rules are well after the appointment of the petitioner in 1985. For the rest, the State relies on State of Karnataka and others v. M.L. Kesari and others, 2010 (3) SCT 678 regarding regularization of casual labour/daily wages/ ad hoc employees with special reference to paragraph 53 of the judgment of the Supreme Court in Secretary, State of Karnataka vs. Uma Devi (3), (2006) 4 SCC 1, drawing a distinction between irregular and illegal appointments.

11. The State pleads that the petitioner is an unqualified person and the very appointment is, therefore, illegal. To think that the illegality committed as per the State Government when spread over three decades of valuable service as a teacher is of no moment is a sadistic view which does not redound to the credit of the State. In the matter of qualifications, the petitioner asserts in her petition that her services were not regularized though she was appointed in the year 1985 in pursuance to the recommendations made by the Selection Committee by stating that she has

passed her MA English Examination with 48% marks and not with 50% marks, as such she is not technically fulfilling the qualification, though in similar circumstances, the Department of Technical Education, Haryana passed order No.317/Estt.-II dated August 09, 2006 whereby the services of the six Workshop Instructors/Lab Technicians working on contract basis were regularized w.e.f. October 01, 2003 on the basis of Instructions dated October 01, 2003 and February 10, 2004 by giving relaxation in qualifications granted by the State Government vide Memo NO.51/105/2004-5 T.E. Dated July 17, 2006. A copy of the order dated August 09, 2006 is annexed as P-16.

12. Similarly, the Director of Technical Education, Haryana vide order No.335/Estt.-II dated August 14, 2006 regularised the services of two persons w.e.f. October 01, 2003 on the post of Junior Programmer who were working on contract basis on the post of Technical-cum-Mechanic-cum-Computer Operator. A copy of the order dated August 14, 2006 is at Annex P-17. Similarly, the Director of Technical Education vide order No.319-Estt. Dated July 20, 2005 regularised the services of Lab Technicians working on contract basis w.e.f. October 01, 2003 against the post of Workshop Instructors and re-designated them as Workshop Instructors. A copy of this order is placed at Annex P-18. The perusal of these orders shows that services of these persons have been regularized though they were not fulfilling the qualifications prescribed for the post or for the reason there were no vacant posts but they still were re-designated and were regularized w.e.f. October 01, 2003 though they were appointed in the year 1998 on contract basis much after the petitioner who was appointed in 1985.

13. The petitioner refers to Rule 17 of the Rules, 2012 contending that there is power of relaxation with the Government, which power could have been exercised in favour of the petitioner as a special case given that she served for long years. She made no misrepresentation nor practiced any deceit in obtaining her appointment through the Departmental Selection Committee as per the criteria adopted. De hors the rest of it, the case of the petitioner could have been considered for relaxation as per notification dated February 10, 2004 whereby Government of Haryana made certain amendments in the notification dated October 01, 2003 notifying those employees for regularization who did not possess the prescribed qualification at the time of appointment of ad hoc/contract basis but they acquired the requisite qualification on September 30, 2003. It may be pointed out that the instructions dated June 17, 1997, November 05, 1999 and October 01, 2003 were rescinded by the notification dated April 13, 2007 following the decision in *Uma Devi (3)* which would later be revived by Haryana Government policy notification for regularization of services of Group-C and Group-D employees by the policy instructions dated June 18, 2014. These instructions are under challenge in this Court in pending lead case CWP No.17206 of 2014, *Yogesh Tyagi and another v. State of Haryana and others* and the policy has been stayed.

14. Returning to the narration of facts it may be noticed that when the petitioner was unable to get a positive response from the Government she served a legal notice dated July 05, 2005 requesting that her services be regularized as per instructions since she had been working for the last 21 years by then. As her grievance was not addressed she filed CWP No.16636

of 2005 claiming regularization. The petition was disposed of with a direction to decide the legal notice within a period of four months. The claim was rejected by the Chief Secretary on July 24, 2006 on the ground, as said before, that she had not completed 15 years of service on ad hoc basis on November 05, 1999. The order was passed by the Director General School Education, Haryana Chandigarh a copy of which was placed at Annex P-15 at p. 98 of the writ paper-book. This order was challenged by the petitioner in her second writ petition bearing CWP No.5055 of 2007. The matter was admitted. When the petitioner was close to retirement she approached the Court by filing CM No.13410 of 2013 to fix an actual date of hearing. Notice was issued on the application on September 19, 2013 and the State counsel was under directions to take instructions as to whether the petitioner can be granted benefit of regularization as she was working on ad hoc basis since 1985. On April 09, 2014 the State counsel was asked to seek instructions as to the administrative relief which can be granted to the petitioner having regard to the fact that she has been on ad hoc service since 1985. The only impediment as canvassed by Ms. Chatrath is that the petitioner had secured 48% in M.A. English while the rule required 50%. The Administrator may consider the decisions of the Supreme Court which lay down that in some cases experience itself is a good substitute for qualification.

15. When the matter came up on July 01, 2014 and no orders were passed by the authorities, the Financial Commissioner & Principal Secretary, Department of Education, Haryana was directed to remain present in Court and it is in this background that the order dated July 23, 2014 was

passed rejecting the claim of the petitioner for regularization against which this petition has been filed.

16. The department had rejected the case of the petitioner for want of requisite percentage in MA degree but the Chief Secretary was in fact called upon to examine the case by relaxation of rules and he found it not a fit case since she had not completed 15 years ad hoc on November 05, 1999. Therefore, the instructions dated January 05, 1989 could not be relaxed. But the officer paid no attention to the core request of considering relaxation of the difference of 2% marks.

17. If the Chief Secretary considered and rejected the case for want of completion of 15 years of service on ad hoc basis on November 05, 1999 it would follow that the issue of 2% less marks in MA had receded into the background and was no longer the major obstacle or the premise of rejection of the case of the petitioner. It is this order which is impugned in this petition. The relaxation issue should have been pointedly noticed and dealt with by the Chief Secretary on the issue of marks in the MA examination in the backdrop of decades of service put in without recompense leading to deprivation of pension.

18. In support of her contentions re: relaxation, the learned counsel for the petitioner relies on the decision of this Court in Shimla Devi v. State of Punjab, 2006 (2) RSJ 656 which is a case of denial of regularization on the ground of non-fulfilling the qualification prescribed for the post. The Bench relied on the decision of the Supreme Court in Bhagwati Prasad v. Delhi State Mineral Development Corporation, AIR 1990 SC 371 and Gujarat Agricultural University v. Rathod Labhu Bechar, 2001 (1) SLR 519.

19. In Dr. M.S. Mudhol v. S.D. Halegkar, JT 1993 Vol. 4 SC 143 the Supreme Court considered the case of a Principal of a private aided school who was appointed due to fault of the Selection Committee in the year 1981 although the candidate did not have the requisite qualification but there was nothing on record to show that he projected the qualification other than what he possessed. The Supreme Court held that it would be iniquitous to make him suffer for non fault of his after a period of 12 years. The Supreme Court observed:-

“Since we find that it was the default on the part of the 2nd respondent, Director of Education in illegally approving the appointment of the first respondent in 1981 although he did not have the requisite academic qualifications as a result of which the 1st respondent has continued to hold the said post for the last 12 years, now, it would be inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. There is nothing on record to show that he had at that time projected his qualifications other than what he possessed. If, therefore, inspite of placing all his cards before the selection committee, the selection committee for some reason or the other had thought it fit to choose him for the post and the 2nd respondent had chosen to acquiesce in the appointment, it would be inequities to make him suffer for the same now. Illegality, if any, was committed by the selection committee and the 2nd respondent. They are alone to be blamed for the same.”

20. Other than case law, the petitioner pleads a case of discrimination where similarly situated persons have been granted benefit in the Technical Education Department. Moreover Rule 17 confers powers on the Government to relax the requirement of any rules. The object and purpose of this power on the Government is to mitigate undue hardship in any particular case, and to deal with a case in a just and equitable manner. The

Government may in certain circumstances relax the requirement of the rules/instructions to meet a particular situation. There are cases where the experience required was not possessed but rule was relaxed so as not to render the appointment void. Much would depend on case to case and the problem encountered which may require relaxing a minor and inconsequential technical flaw as in the present case there being shortage of 2% in MA qualifications and balancing shortage of 2% against 29 years teaching English in schools in Haryana which itself is a major qualification. Such a situation is about the same as in *Bhagwati Prasad* case (Supra). The issue in that case was regarding confirmation of a person appointed though not having minimum prescribed educational qualification. The Supreme Court held that confirmation cannot be refused on the ground that person lacked prescribed qualification after having worked for a considerable length of time. Practical experience would always aid the person to effectively discharge the duties. In my view a pragmatic construction deserves to be put on the minor shortfall in the marks obtained in the MA examination. In the matter of concessions and relaxations a beneficial construction should be applied to the criteria. See Sandeep Kumar Sharma v. State of Punjab and others, (1997) 10 SCC 298 where a candidate for the post of Deputy Superintendent of Police Jail/District Probation Officer was found short of height by 1.20 cms. On the day when the candidate was measured short, State Government had formulated policy to show special consideration towards “relatives of those who have either suffered due to terrorism or have faced terrorism boldly and have contributed towards overcoming it”. The appellant was the brother of an IPS Officer “who

rendered usual service in tackling terrorism and bringing normalcy” in the State of Punjab. The State Government relaxed the rule in favour of the candidate and on challenge by another candidate, the attack was blunted and the relaxation upheld. The Supreme Court found nothing improper in giving special consideration to the kith and kin of policeman who suffered on account of terrorist activity.

21. In *Gujarat Agricultural University (Supra)*, the Supreme Court held that workers in Class-IV post serving for more than ten years deserve to be absorbed and regularized even by relaxing qualifications on the basis of their long experience. Long continuation of work carries presumption in its favour.

22. In U.P. State Electricity Board v. Pooran Chandra Pandey & others, (2007) 11 SCC 92 the Supreme Court dealt with a claim of regularization of service of daily wage employees who had put in 22 years of service and the Supreme Court held denial of benefit of regularization after long years of service as violative of Article 14 of the Constitution. The action in denial would be arbitrary and unreasonable. The Supreme Court observed that *Uma Devi's* case (Supra) cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make inapplicable the facts of that case as it may alter the precedential value of a decision. Government must act in a reasonable and non arbitrary manner otherwise Article 14 of the Constitution would be stultified and thereby violated.

23. In Sarabjeet Kaur Dhaliwal v. Punjab Agricultural University, Ludhiana, 2003 (4) SCT 132 a Division Bench of this Court dealt with the

case of an appointment of a candidate who did not have the requisite qualification of Second class B.Sc. (Agriculture)/B.Sc. (Home Science) and B.A. with Economics as per qualifications advertised. The petitioner was a Graduate but not in Second class as was required. She secured 49% marks in her BA. The further facts need not detain us as what the Court ultimately held was that when there is no misrepresentation on the part of the candidate in seeking appointment to the post and candidate is appointed despite his not having requisite qualification, his services cannot be dispensed with for want of requisite qualification. Furthermore, their services cannot be terminated after long experience of the post. Sufficient experience is a good substitute to the lack of qualification. If the service of the candidate is not to be terminated and she continues on this principle, then her case for regularization would be a far dream.

24. Learned counsel for the petitioner draws attention of this Court to the MA degree awarded to the petitioner by the Rajasthan University at Jaipur. The certificate issued on August 04, 1979 shows that she had been declared pass in the 2nd Division in English Literature under study course of 2-Years (Semester system). In the B.Ed. Degree earned from the Punjab University, the petitioner had aggregated in Part-I, II and III, with 552 marks out of 1000 as per result-cum-detail marks card dated September 15, 1989. There is no doubt that the petitioner passed her MA in the 2nd Division as attested by the University itself. She belongs to the Kumar caste which declared as a Backward Class by the Government of Haryana. After passing her MA examination, the petitioner taught in Shishu Vihar School, Bikaner as Assistant Teacher from December 01, 1978 to March 13, 1981.

Thereafter, she was appointed as a Lecturer in English in Seth G.B. Podar College, Nawalgarh (Raj.) where she taught for about two and half months leaving only to be appointed as Lecturer in English in Shri Krishan Satsang Balika College, Sikar (Raj.) from September 21, 1981 to November 18, 1981 on the post of Lecturer in English to teach Graduate classes. She served as Lecturer in English in Gramathan Vidyapeeth Kanya Mahavidyalaya, Sangria where she worked from January 05, 1983 to March 01, 1985 on temporary basis. After marriage at Sirsa she was appointed as T.G.T. in Maharaja Aggarsen Kanya High School at Sirsa and from there she applied and was appointed as Lecturer in English (School Cadre) to serve in Government Senior Secondary Schools in Haryana. Her first posting was in Government High School, Risalia Khera (Sirsa) and joined service on November 26, 1985.

25. Thereafter, the petitioner spent 29 years teaching English in schools of Haryana. She did not conceal any fact at the time of appointment with regard to her educational qualification. She was a qualified B.Ed. She may have been short of 2% marks in the MA examination but that shortfall can only be seen in hindsight as a mere technical flaw as against work accomplished over many decades. Her lack of 2% marks in the MA is offset by 29 years of valuable service to the State and her long experience was by itself an asset. In these circumstances, the minor discrepancy in the educational qualification could have been relaxed as a special case.

26. The respondent-State cannot take advantage of its own wrong in appointing the petitioner in 1985 through due process of law on her name being sponsored by the Employment Exchange. The respondent-State

cannot be seen as employing a person for 29 years leaving her in the status of an ad hoc employee without right to pension and pensionary benefits. Long and dependable service rendered to the State and students is the prerequisite of earning service pension. The petitioner has been left high and dry at the end of the day and in the evening of her life. The sympathetic consideration indicated by the interim orders of this Court has not translated to a sympathetic consideration at the time of making of the impugned order, which is hard hearted and mechanical without due application of mind. The stand of the State could have been vindicated if timely action was taken at the time of initial appointment but with the passage of time and by the act of the State utilizing the services of the petitioner for three decades it would appear to me to be wholly inequitable, unreasonable, oppressive and arbitrary to deny relief to the petitioner either at the hands of the authorities or by this Court.

27. I find sufficient justification in the special facts of this case to bring relief to the petitioner on just and equitable grounds by setting aside the impugned orders dated July 24, 2006 (P-15) and July 23, 2014 (P-21), the latter passed during the pendency of petition on the directions of this Court to pass an order in CWP No.5055 of 2007 previously filed by her.

28. As a result of the above discussion, the writ petition is allowed with consequential benefits. The petitioner is held entitled to declaration of regularization. The respondents are directed to pass a fresh order in the light of the present judgment. The regularization would be from the due date by according relaxation and ignoring the shortfall in the percentage of 2% in the MA degree. The statutes of the University of Rajasthan at Jaipur at the

relevant time from where the petitioner read for, treat 48% marks in Master of Arts degree as qualifying the examination in the second division.

(RAJIV NARAIN RAINA)
JUDGE

14.02.2018
manju

Whether speaking/reasoned	Yes
Whether reportable	Yes