

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 4738 of 2016 (O&M)

Date of Decision: 16.03.2018

Mrs. Robi Malik and another

...Petitioners

Vs.

State of Haryana and another

...Respondents

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

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Kuldeep Sheoran, Advocate
for the petitioners.

Mr. Harish Rathee, Senior DAG Haryana.

RAJIV NARAIN RAINA, J. (Oral)

1. When this matter came up on 08.03.2017, a detailed order was passed by Brother Ajay Tewari, J. which reads as follows:

By this petition the petitioners have claimed that they have to be allowed to continue till regular selections are made. This petition was originally filed on 10.03.2016 and on 14.03.2016 following interim order was passed in favour of the petitioners :-

“Senior counsel submits that the services of the petitioners are liable to be dispensed with before commencing of summer vacation.

Notice of motion for 21.3.2016.

Notice regarding stay also.

Mr. Saurabh Girdhar, Assistant Advocate General, Haryana, accepts notice on behalf of respondents and prays for time to file reply.

Let the needful be done before the next date.

Requisite copies of the writ petition be supplied to the counsel for the State during course of the day.”

Thereafter the matter was adjourned from time to time and the following order was passed on 27.07.2016 :-

“Notice of the application to the nonapplicant/respondents. Ms. Shruti Jain Goyal, AAG, Haryana, accepts notice on behalf of the non-applicants. She prays for and is granted time to file reply.

In the meantime, the petitioners will be recalled to teach the subjects for which they are appointed on contract basis and will not be replaced by fresh hands under the advertisement so far as their subjects are concerned till further orders.”

Against that respondents filed a Letters Patent Appeal bearing No.1721 of 2016 against the interim order (CM attached). The ground which was taken, was that three Masters who were earlier sent on deputation have been repatriated and thus there was no requirement of engaging fresh hands for the post of Master Hindi Junior Wing. On that ground the following order was passed on 06.09.2016 in CM No.3514- LPA-2016 :-

“In view of the averments made in para-6(i) and (ii) of the Grounds of Appeal, learned State counsel appears to be right in contending that the persons who have been repatriated by the State Government have a preferential right for adjustment as they are regular incumbents.

She further contends that the interim order has, in a way, allowed the writ petition.

Notice of motion.

Notice re: condonation of delay as well.

Mr. Bhupinder Singh, Advocate, who is present in Court, accepts notice on behalf of the respondents.

As prayed for by him, adjourned to 16.11.2016.

Meanwhile, operation of the interim directions issued by learned Single Judge vide order dated 27.07.2016 shall remain stayed.”

The petitioners immediately filed an application bearing CM No.4261-LPA-2016 for vacation of this interim order and they mentioned therein that against 39 sanctioned posts of Masters in the senior wing 34 Masters were working on regular basis and therefore, even after the repatriation of three Masters of the senior wing there was still a shortage of the posts of two Masters in the senior wing. It may be also mentioned here that the petitioners had also placed on record a document (Anneuxre P-11) which was an advertisement dated 24.06.2016 as per which six posts of Masters in the senior wing and three posts of Masters in the junior wing had been advertised to be filled up on contractual basis. Coincidentally two of the posts of Masters in the junior wing happened to be for Hindi teachers which was the job of the petitioners. In CM No.4261-LPA-2016 the petitioners also annexed copy of a corrigendum issued by the respondent No.2-School in which it was mentioned that owing to the repatriation of three teachers there may be some reduction in the number of posts. On these facts having been brought before the Division Bench the appeal was disposed of with a direction to the single Bench to decide the question of stay afresh and that is how the matter is before me.

The contention of learned senior counsel for the petitioners is that the respondent No.2-school is trying to

use all means, fair and foul, to ensure that the petitioners are not able to return to the school. As per him the only ground which was taken to justify the removal of the petitioners was the fact that three Masters had been repatriated back but in view of the corrigendum to the advertisement it is clear that even after the repatriation of those three Masters the respondents were interested in filling-up the remaining posts and once this was so the sole justification for keeping the petitioners out would be eroded completely.

Learned Senior DAG has argued that even till date the respondents have not acted on the advertisement or on the corrigendum and this clearly shows that there is no requirement for the posts for the petitioners.

In my opinion, the matter can not be taken so simply. The respondents admittedly advertised 10 posts on contractual basis in June 2016. Three persons were repatriated and thereafter a specific corrigendum was issued in which public was advised that owing to the repatriation of three Masters the number of vacancies would likely to be decreased. If what the learned Senior Deputy Advocate General is saying is correct, nothing stopped the respondents from cancelling the advertisement.

The contention of learned senior counsel for the petitioners is that what has brought the wrath of the authorities down upon the petitioners is the fact that they filed a contempt petition and that is why now just to throw out the petitioners the further action on the advertisement (Annexure P-11) has been stalled but it can not mean that the requirement is not there. In view of these facts I deem it appropriate to revive the interim order dated 27.07.2016.

Adjourned to 30.08.2017.

2. As a result and in the aftermath of the above order, the petitioners were reinstated to service and were signatories to a service agreement executed between the Government of Haryana in the name of the Governor and the petitioners.

3. In this petition, four prayers are made: firstly, for issuance of a writ of mandamus to the respondents to allow the petitioners to continue in service without any interruption till regular appointments are made in accordance with law.

4. Second; to grant them the minimum of the pay scale for the post in view of the law declared by the Supreme Court in State of Punjab Vs. Jagjit Singh and others, (2017) 1 SCC 148 guaranteeing to even contract employees the minimum of the pay-scale.

5. Third prayer is for grant of maternity leave for the period which 1st petitioner availed i.e. from 20.12.2015 to 14.02.2016. This right is protected not only by the provisions of the Maternity Benefit Act, 1961 but also by the Haryana Government instructions dated 22.06.2009 (Annex. R-3) and subsequent instructions dated 04.08.2014 (Annex. P-7) on the point.

6. The fourth prayer is for salary for the vacation period which benefit is covered in favour of the 1st petitioner by the judgment of the Supreme Court in Rattan Lal & Others Vs. State of Haryana and Others, AIR 1987 SC 478.

7. Moreover, the vacancy position in the cadre of Masters has been explained in the interim order dated 08.03.2017, which leaves no doubt in mind that the continuance of the petitioner would not affect the rights and chances of third parties or regular teachers of the Haryana Government to man posts belonging to them.

8. I have considered the argument of Mr. Harish Rathee, learned Senior DAG Haryana but am far from impressed by the same, that the status of the petitioners is only contractual and they can be dealt with abruptly by the terms of the service agreement. On going through the terms and conditions of the agreement, I find no inhibiting conditions which can overawe or undermine the rights of the petitioners based on the conclusive judgments of the Supreme Court referred to above. The right to continue till regular counterparts are not available is also a right well recognized by the Supreme Court in Hargurpratap Singh Vs. State of Punjab and others, (2007) 13 SCC 292.

9. On the other hand, I am impressed with the arguments addressed by Mr. Malik that on all four counts his petition must succeed on matters settled and which are no longer *res integra*.

10. As a result, the petition is allowed and directions are issued to the respondents on all the four points in favour of the petitioners (as are applicable to each of them), including salary for the period of maternity leave would have to be handed over to petitioner No.1 within two months from the date of receiving of certified copy of the order.

The arrears of minimum pay scale and salary for the vacation period will be notionally due but actual payments from the respective dates shall remain restricted to three years from the date of filing the petitions. However, if the 1st stay order of this Court was not implemented, then the petitioners would have a right of salary for that period i.e. from the date of stay till its vacation by the Letters Patent Bench in appeal against my order and thereafter till restoration of the stay order on remand to the single bench.

11. With the above observations and directions, petition is allowed.

(RAJIV NARAIN RAINA)
JUDGE

16.03.2018

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Whether speaking/reasoned : *Yes*
Whether reportable : *No*