

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

CWP No.8309 of 2016

Date of Decision: 30.07.2018

Mukesh

.....Petitioner

Vs.

B.P.S Mahila Vishwavidyalaya and others Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Y.P.Malik, Advocate, for the petitioner.

Mr.Tribhuvan Dahiya, Advocate, for the respondents.

RITU BAHRI, J. (ORAL)

Petitioner is seeking quashing of impugned order dated 04.02.2016 (Annexure P-11) to a limited extent i.e. up to the date only and further seeking directions to the respondents to modify the aforesaid promotion order vide which the petitioner has been promoted to the post of Head Clerk and further to promote her w.e.f. 26.02.2014 along with consequential benefits.

Petitioner had also approached this Court by way of filing of writ petition i.e. CWP No.4069 of 2014 and the same was dismissed as having been rendered infructuous as she had already been promoted as Head Clerk vide order dated 04.02.2016. However, she was granted liberty to challenge the aforesaid order. Petitioner was appointed vide appointment letter dated 30.04.1990 as Clerk with the respondent/BPS Mahila Vishwavidyalaya and thereafter, the State legislation of Haryana passed University Act on 18.08.2006 i.e Bhagat Phool Singh Mahila

Vihwavidyalaya, Khanpur Kalan Act, 2006, herein after referred as the University Act, establishing the respondent University. By virtue of Section 36 of the University Act, all the aforesaid became the Constituent Institution of the respondent-University and all the posts created or filled vested in it. The name of the MSM Mahila Ayurvedic Degree College, Khanpur Kalan (Sonepat), was also renamed as MSM Institute of Ayurveda, B.P.S.Mahila Vishwavidayala (respondent No.5). The formal order of absorbing the employees of the aforesaid constituent institution, were issued, after harmonizing the posts. Likewise, the respondent University issued office letter dated 24.08.2009 on Govt. approval dated 27.02.2009, formally absorbing/regularizing the petitioner in the respondent/University by protecting her pay. Vide letter dated 21.09.2006 (Annexure P-3) it was decided that till the Rules are framed by B.P.S.Mahila Vishwavidyalaya, rules framed by M.D.University, Rohtak should be followed.

The petitioner thereafter gave a representations (Annexure P-4 and P-5) claiming that there was vacant post of Head Clerk in M.S.M.Institute of Ayurvedic College as he was senior most in the Clerical staff. Her case was forwarded to DPC of the respondent/University but declined on the ground she has been regularized w.e.f. 27.02.2009 i.e. on the date of absorption and did not have requisite experience of 5 years on the immediate lower post and as per resolution dated 17.06.2010 (Annexure P-7). Learned counsel for the petitioner has placed on record the reply (Annexure P-10) filed on behalf

has been mentioned that the petitioner was regularized/rationalized in service on the post of Store Keeper-cum-Clerk w.e.f. 20.07.2009 vide (Annexure P-2). She therefore, attained the requisite five years experience on the post by 26.02.2014, which entitled her to be considered for promotion to the post of the Head Clerk. The grievance of the petitioner is that she has attained the five years experience on the lower post on 26.02.2014, but she was promoted to the post of Head Clerk on 04.02.2016.

Reply has been filed on behalf of respondents in the present case stating therein that that petitioner, who was regularized/rationalization as Store keeper-cum-Clerk w.e.f. 27.02.2009, vide (P/2) became eligible to be considered for promotion on the post of Head Clerk only on 26.02.2014. Thereafter, the Departmental Promotion Committee (DPC) was constituted to consider the case of eligible employees falling in the zone of consideration, for promotion on the basis of merit-cum-seniority. The DPC recommended the petitioner for promotion as Head Clerk. The DPC recommended the petitioner for promotion by the competent authority, the petitioner was promoted to the post w.e.f. 04.02.2016 vide impugned order (Annexure P11) which is legal valid. The petitioner was duly considered for promotion in accordance with Rules, and was promoted on the basis of recommendation of DPC after due approval of the competent authority w.e.f. 04.02.2016. She did not acquired any right to be promoted from any dated prior thereto. The petition is therefore liable to be dismissed.

basis vide appointment letter dated 30.04.1990 (Annexure P-1) and joined as Clerk on 07.05.1990. She was also formally absorbed in the University w.e.f. 27.02.2009. Thus, she had gained the service experience of about 23 years on 05.03.2013 the date of consideration of her case of promotion to the post of clerk but M.S.M.Institute of Ayurveda, have calculated the period for counting experience from the date of initial appointment i.e. 27.02.2014. It is evident from Annexure P-8 in which date of initial joining before inception of the respondent/University as well as dates of promotion of the employees of the respondent No.3 institute, have been mentioned. As per information supplied on 13.11.2013 (Annexure P-9) under RTI Act it has been cleared that while absorbing in the respondent-University, the pay of the petitioner other non-teaching/Teaching Employees, have been protected and their length of service and experience has been counted and considered from the date of initial appointment i.e. before the inception of the respondent University.

Keeping in view the above facts, present writ petition deserves to be allowed as petitioner has completed his five years from the date of her absorption i.e. 27.02.2009 in the MSM Institution and also keeping in view the stand taken in the written statement (Annexure P-10) by the respondent, petitioner would be entitled to be considered for promotion on 27.02.2014 after completion of 5 years of experience. Since, the respondent/Institution has taken the initial date of appointment on 27.02.2009 for the purpose of counting the experience and post was available at that time and the petitioner is senior most in the clerical cadre

27.02.2014.

In view of the above, the present writ petition is allowed and order dated 04.02.2016 (Annexure P-11) is being modified to the extent that the date of promotion of the petitioner be taken as 26.02.2014 with all consequential benefits along with interest @ 6% per annum.

(RITU BAHRI)
JUDGE

30.07.2018
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No