

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

**CWP No.5624 of 2019 (O&M)  
Date of decision:29.10.2019**

Suman Jain

... Petitioner

Vs.

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. Atul Lakhanpal, Senior Advocate with  
Mr. Jasbir Mor, Advocate and  
Mr. Arvind Pal Singh, Advocate  
for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

Mr. Harsh Aggarwal, Advocate  
for respondent no.3.

**AMIT RAWAL J.**

Written statement filed on behalf of respondents No.1 and 2 is  
taken on record, subject to all just exceptions.

Grievance of petitioner in present writ petition is for quashing  
of order dated 02.09.2019 (Annexure P-26) whereby respondent no.3 was  
granted three months extension to perform the duties of Drawing and  
Disbursing Officer at National Council of Educational Research and  
Training (hereinafter referred to as 'NCERT'), Gurugram, writ in the nature  
of mandamus seeking payment of salary being partly paid with effect from  
October 2018, and for handing over the power of Drawing and Disbursing  
Officer in the office of State Council of Educational Research and Training

(hereinafter referred to as 'SCERT'), Gurugram.

Succinctly, facts which emanate from the pleadings are that with effect from 05.01.1989, petitioner after having undergone selection procedure was appointed as Lecturer in Political Science (School Cadre) on regular basis in Education Department, Haryana. Since then she had been working with full sincerity and honesty and in the year 2004, was promoted as Deputy District Education Officer and further promoted to the post of Principal, District Institute for Education and Training (DIET), Biswan Meel, District Sonapat. In October 2007, she was promoted to the post of District Education Officer and thereafter, Deputy Director. The posts of Deputy Director and District Education Officer are equivalent and interchangeable. In 2014, she was promoted and posted as Deputy Director in the office of Director of Secondary Education, Haryana, Panchkula but three months thereafter, transferred to SCERT, Gurugram. By giving reference of various transfers, it is averred that vide order dated 20.09.2018, effective from 28.12.2017, petitioner was promoted as Joint Director. As per order dated 18.10.2018, petitioner after two days of promotion to the post of Joint Director, was transferred and posted at Headquarter, Panchkula which was represented vide representation dated 25.10.2018 (Annexure P-5). Since there was no adherence to the representation, petitioner was constrained to file writ petition bearing No.27604 of 2018 in this Court by challenging the order dated 18.10.2018 and vide order dated 29.10.2018 (Annexure P-6), aforementioned transfer order was stayed.

Mr. Atul Lakhanpal, learned senior counsel assisted by Mr. Jasbir Mor, Advocate and Mr. Arvind Pal Singh, Advocate appearing on behalf of the petitioner submitted that post of Director, SCERT, Gurugram was lying vacant but Jyoti Chaudhary, Joint Director was holding the charge of aforementioned post. Vide guidelines dated 28.09.2018, (Annexure P-7), competent authority directed all the District Education Officers in the State to adhere strictly regarding handing over the charge of Drawing and Disbursing Officer (hereinafter referred to as “DDO”) to the senior most officer. Since the petitioner is senior most than that of respondent no.3-Jyoti Chaudhary, she continued to hold the charge of DDO, both working in the office of Director, SCERT, Gurugram on the post of Joint Director. Promotion order dated 20.09.2018 reveals that petitioner is senior to Jyoti Chaudhary but in violation of rules and instructions, respondent no.3 continued to hold the charge compelling petitioner to submit a detailed representation dated 18.10.2018 (Annexure P-8). Even partial salary of the petitioner was also stopped, nor provided any official conveyance for official work. On creation of the circumstances of not making to sit the petitioner in the office and abused in public, petitioner was constrained to submit another representation dated 27.11.2018 (Annexure P-9) and also representation dated 13.12.2018 (Annexure P-11).

It is further averred that respondent no.3 overacted to the harassment and humiliation by not releasing due allowance like Leave Travel Concession and 2<sup>nd</sup> and 3<sup>rd</sup> Assured Career Progression admissible to the petitioner, nor official accommodation. There are two sanctioned posts

of Joint Director in SCERT, Gurugram manned by petitioner and respondent no.3 but post of Director was not filled up, therefore, senior most Joint Director as per guidelines is required to look after the work. Despite the petitioner having been posted, respondent no.3 could not perform the official duties of Director and powers of Drawing Officer.

The salary of the petitioner i.e. from 01.03.2019 to 30.06.2019 has also been withheld. The respondents castigated the alleged absence of the petitioner from duty w.e.f. 19.10.2018 to 29.10.2018 which has been attempted to be explained by way of explanation with proof of biometric attendance vide Annexures P-15 and 16. The gradation list (Annexure P-17) also reflects the seniority of petitioner vis-a-vis respondent no.3. Respondent no.3 retired on 31.07.2019 whereas petitioner is due for retirement on 30.11.2019. The respondents even indulged into serving the notice of compulsory retirement from service on the allegations of purchasing of sub-standard quality of kitchen items and equipment which was assailed before this Court in CWP No.6315 of 2012 and vide order 02.08.2013, order of compulsory retirement was set aside. Even the department had preferred LPA No.1937 of 2013, the same has also been dismissed vide order dated 26.04.2014 (Annexure P-21). Special Leave Petition preferred in Hon'ble Supreme Court has been withdrawn. The respondents did not take the petitioner into job resulting into institution of COCP No.2912 of 2012. Even vide order dated 18.07.2014, a fine of Rs.50,000/- was imposed by this Court. On retirement of respondent no.3, petitioner was given additional charge of Joint Director and vide order dated

22.08.2019, also authorized to exercise the power of Drawing and Disbursing Officer but to utter shock of petitioner, respondent no.3, vide impugned order dated 02.09.2019 (Annexure P-26), has been granted three months extension in service, thus, the aforementioned order has been challenged on the following grounds:-

- i) Extension is glaring attempt to deny the petitioner role of Drawing and Disbursing Officer being senior most to respondent no.3.
- ii) There was no reason for the respondents to give extension when the post of Director of which the petitioner is holding additional charge, only with aim to extend the benefits to respondent no.3.
- iii) Extension order is totally politically motivated.
- iv) There is no such provision to give power of Drawing and Disbursing Officer to junior/retired person.
- v) The Government instructions dated 26.04.2011 (Annexure P-28) envisage grant of extension to Principals, Headmasters, Masters, Teachers and JBT Teachers etc. but not to Class I Officers.
- vi) Respondent no.3 does not possess any educational qualification or experience as per National Council for Teacher Education norms.
- vii) Prior to passing of order granting extension to respondent no.3, Hon'ble Chief Minister Haryana granted extension to one Ms.Kiranmayyee but later on, said order was recalled when respondent no.3

was proposed and granted extension.

viii) As per Rule 143 of Haryana Civil Services Rules of 2016, it is only Council of Ministers, Govt. of Haryana, who is competent for giving extension in service and not the Chief Minister, therefore, impugned order is fully without jurisdiction.

On the other hand, Mr. Kiran Pal Singh, learned State counsel appearing on behalf of respondents no.1 and 2 justified the extension granted to respondent no.3 on superannuation was in consonance with Rules 18 and 19 of Rules of Business of the Government of Haryana 1977 framed under Article 166 of the Constitution of India and being an administrative power and on account of exceptional circumstances. Rule 143 envisages extension of service except in public interest and in exceptional circumstances without the approval of Council of Ministers. The expression “approval” may or may not be ex post facto approval.

As regards the claim of petitioner having not paid the salary for the period from 19<sup>th</sup> October 2018 to 29<sup>th</sup> October 2018, it has been treated as leave of kind due vide order dated 11.09.2019 and payment of Rs.42,709/- has been paid to the petitioner, vide Annexure R-4. The petitioner was to hold the charge of Director as additional and not full charge.

Mr. Harsh Aggarwal, learned counsel appearing on behalf of respondent no.3 denied the factum of petitioner being only senior most person than that of respondent no.3 or entitlement of power of Drawing and Disbursing Officer as one Kiran Mayyee, who had been working as

Additional Director was concededly senior and she would have the first right to be appointed as Director, SCERT. By referring to such incident, locus standi of the petitioner to claim post has seriously been disputed. The standing orders of Haryana Government School Education Department provides a complete procedure for appointment of Director. Special appointed Committee is empowered to select the list of 25 senior most Class I educationist/officers and thereafter, short list the names of three top meritorious officers. After undergoing the aforementioned process, recommendation of them was to be made to the Chief Minister who was empowered to finalize the officer to be appointed as Director.

Petitioner has been issued charge sheet dated 23.03.2009 on account of having purchased the defective kitchen equipments. Accordingly, a show cause notice dated 30.09.2011 was issued and compulsory retirement notice was also issued, vide order dated 16.03.2012. The aforementioned order has been set aside by this Court with a direction to re-examine the matter and pass a fresh order. The matter was enquired into after holding the enquiry and punishment of stoppage of one increment with cumulative effect was awarded to her. The petitioner again challenged order by filing CWP No.5482 of 2016 but the same was set aside being bereft of reasons. Enquiry had again restarted and opportunity of personal hearing was afforded to the petitioner on 09.09.2019, vide Annexure R-3/2 but the petitioner did not attend the hearing. In fact, she did not cooperate in enquiry proceedings. Recommendation of respondent no.3 was on account of her performance and appreciation of commendable work. Order

Annexure P-26 is subject to the ex post approval. In such circumstances, petitioner cannot stake the claim of Drawing and Disbursing Officer on account of holding additional charge and thus, urged this Court for dismissal of the writ petition.

I have heard learned counsel for the parties, appraised the paper book and of view that writ petition is liable to be dismissed not only on one ground but many.

The factum of having served with charge sheet and not appeared before the enquiry officer specifically averred in written statement of respondent no.3, has not been disputed. The petitioner is about to retire on 30.11.2019. Rule 143 of Haryana Civil Service Rules empowers the Administrator department to retain Government employee in public interest in special circumstances after the age of superannuation upto the period of two years with the approval of Council of Ministers. Ex post facto approval is awaited. However, extension of respondent no.3 was only for three months and not for two years. It would be apt to reproduce Note 2 of Rule 143 which reads thus:-

Chapter - XI Retirement from service - kinds and circumstances

143. (1) x x x x x x x x x

*Note 2.— When a Government employee is due to retire on superannuation from service an office order shall be issued on 7th of the Month in which he is going to be retired and a copy of every such order shall be forwarded immediately to the*

*Principal Accountant General, Haryana. (2) No Engineer-in-Chief in the PWD (B & R), Irrigation Department and Public Health Engineering Department shall, without re-appointment, hold the post for more than five years, but re-appointment to the post may be made as often and in each case for such period not exceeding five years, as the competent authority may decide: Provided the term of re-appointment shall not extend beyond the date of attaining the age of superannuation. Note.— The following authorities are competent to retain a Government employee after the age of superannuation:- Powers to retain a Government employee in public interest and in exceptional circumstances after the age of superannuation. Administrative Department Full powers subject to a maximum of two years with the approval of Council of Ministers.”*

Rules 18 and 19 of Rules of Business framed under Article 166 of Constitution of India empower the Principal Secretary to Government of Haryana, School Education Department to dispose of the cases indicated in Annexure A2 to AE in respect of the work within the School Education Department. Applicability thereof has also not been disputed either in arguments or in rejoinder. Neither factum of Kiran Mayyee being senior most has been disputed.

In view of such circumstances, extension of respondent no.3 is in accordance with the rules. Her charge is till December, 2019 whereas petitioner is due to retire on 30.11.2019 and therefore, cannot seek

indulgence of this Court for issuance of appropriate directions granting her the power of Drawing and Disbursing Officer while exercising power under Article 226 of Constitution of India.

As regards other claim of pay, respondents no.1 and 2 have placed on record Annexure R-4 regarding payment of balance amount which has also not been disputed.

Dismissed.

October 29, 2019  
savita

Whether Speaking/Reasoned  
Whether Reportable

(AMIT RAWAL)  
JUDGE

Yes/No  
Yes/No