

217 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.5678 of 2019 (O&M)

Date of Decision: 19.10.2019

Shelly Prasher

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Gurminder Singh, Sr. Advocate with
Mr. R.P.S. Bara, Advocate for the petitioner

Mr. P.S.Bajwa, Additional A.G., Punjab.

ARUN MONGA, J.(ORAL)

1. The petitioner was selected as School Teacher pursuant to an advertisement dated 11.06.2006. She joined service and served as such until the passing of impugned order dated 24.01.2019. Her services were dispensed with on the ground that there was some error in calculating the merit of the petitioner at the time of making her recommendations to the appointing authority.

2. Equity is heavily loaded in favour of the petitioner. That apart, her case is squarely covered by ratio in judgment rendered by the Apex Court in case titled as ***Vikas Pratap Singh and others Vs. State of Chhattisgarh and others*** reported as ***(2013) 14 Supreme Court Cases 494***.

It would be educative to reproduce relevant of the judgment:-

*“22. The pristine maxim of *fraus et jus nunquam cohabitant* (fraud and justice never dwell together) has never lost its temper over the centuries and it continues to dwell in spirit and body of service law jurisprudence. It is settled law that*

no legal right in respect of appointment to a said post vests in a candidate who has obtained the employment by fraud, mischief, misrepresentation or mala fide. (See Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi, S.P.Chengalvaraya Naidu Vs. Jagannath and Union of India Vs. M. Bhaskaran). It is also settled law that a person appointed erroneously on a post must not reap the benefits of wrongful appointment jeopardising the interests of the meritorious and worthy candidates. However, in cases where a wrongful or irregular appointment is made without any mistake on the part of the appointee and upon discovery of such error or irregularity the appointee is terminated, this Court has taken a sympathetic view in the light of various factors including bona fide of the candidate in such appointment and length of service of the candidate after such appointment (see Vinodan T. v. University of Calicut, State of U.P. v. Neeraj Awasthi).”

3. Without dwelling deep into merits of case, I am unable to persuade myself to sustain the defence of the answering respondents that since there was an error on their part in calculating the merit/marks of the petitioner and the termination order is, therefore, rightly passed even though petitioner is concededly not at fault.

4. It would be apposite to mention here that in the judgment, *ibid*, the Apex Court allowed the petitioners therein to continue in their services stating that they had since already put in three years of service. Naturally, it would have been traversity of justice to terminate their services. In the case herein it would be highly inequitable to terminate services, given that the petitioner has rendered 12 years of service. Admittedly, for no fault of hers, her services have been dispensed as is clearly reflected from the return filed by the State wherein a conceded stand has been taken by respondents

that error was on their part while ascertaining the merit of the petitioner.

5. In view of the aforesaid peculiar circumstances, the impugned order dated 24.01.2019 (Annexure P-7) is set aside with a direction to the respondents to induct the petitioner back in service as school teacher along with continuity of service from the month of February, 2019 until the date of her joining. She will not be entitled to salary for this period on the principle of '**no work no pay**'. However, as stated she shall be given benefits of continuity of service.

6. Given that petitioner has been out of job, the respondents are directed to allow her to join her service on or before 01.11.2019.

7. Disposed of in above terms.

19.10.2019

Janki

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No