

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

103**CWP No.15878 of 2017****Date of Decision : 11.07.2019**

Pawan Pratap Singh.

....Petitioner

v/s

State of Haryana and another.

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Anand Bhardwaj, Advocate for the petitioner.
Mr. Harish Rathee, Senior DAG, Haryana.

B.S. Walia, J. (Oral),

[1] Prayer in the writ petition is for the issuance of a writ of certiorari to set aside condition No.1 in appointment letter (Annexure P-6) dated 04.11.2016 to the extent it denies arrears of pay on account of notional fixation of pay w.e.f. 14.12.2013.

[2] Brief facts of the case, leading to the filing of the present writ petition are that the petitioner who fulfilled eligibility conditions for consideration for appointment to the post of Lecturer in Physics, Schools, was subjected to selection process and appointed as Lecturer Physics (Guest Faculty) on 02.01.2007 vide Order (Annexure P-1) dated 03.08.2012 in Government Senior Secondary School, Allika, Palwal. During the aforementioned period, posts of Lecturer in School Cadre in Haryana were re-designated as Post Graduate Teacher (PGT), where after advertisement dated 07.02.2012 was issued for recruitment to the post of PGT Physics by the Haryana School Teachers Selection Board, Panchkula. The petitioner also

selection conducted, result was declared on 11.03.2013 vide Annexure P-2, showing the petitioner to be selected. Persons lower in merit than the petitioner were issued appointment letters and were allowed to join service during the period December 2013 to February 2014 as evident from appointment letter of one Smt. Reena whose name figured at Serial No.427 in the merit list who was issued appointment letter (Annexure P-3) dated 14.12.2013 whereas the petitioner (whose name figured at Serial No.426 of the merit list was not issued appointment letter and his appointment was withheld on the ground that enquiry regarding genuineness of experience certificate was to be got conducted for which he was issued show cause notice (Annexure P-4) dated 21.06.2014 mentioning that experience certificate submitted by him did not appear to be genuine.

[3] The petitioner submitted reply along with documents in support of the genuineness of the experience certificate but the authorities lingered on the matter on one pretext to the other and despite verification of the claim, neither accepted nor rejected the claim for appointment. In the circumstances, the petitioner served demand notice dated 18.04.2015 on the respondents, claiming appointment and allied benefits including seniority and arrears of pay with interest etc as persons lower in merit had been given appointment but when despite lapse of a considerable period of time, no action was taken on the demand notice, the petitioner filed CWP No.12848 of 2015, which was disposed of vide order Annexure P-5 dated 02.07.2015 by directing the authorities to consider and take a final decision on the legal notice served by the petitioner. When no action was taken by the authorities, despite the aforementioned directions of the High Court, the petitioner was forced to serve

Hon'ble High Court. However, the same too proved futile. In the circumstances, left with no other alternative, the petitioner filed *COCP No.1927 of 2016* titled as '*Pawan Pratap Singh versus P.K. Dass and another*'. The High Court issued notice in the aforementioned contempt petition to the respondents for 17.08.2016. On receipt of summons in the contempt petition, the authorities issued appointment letter (Annexure P-6) dated 04.11.2016 vide endorsement dated 15.11.2016 i.e. before the next date of hearing in the contempt petition, appointing the petitioner retrospectively w.e.f. 14.12.2013 but incorporating a condition therein that actual benefits of pay would be admissible only w.e.f. date of joining duty. Relevant extract of the appointment letter is reproduced as follows:-

"Terms and Conditions":

- 1. The benefit of ante-date appointment w.e.f. 14.12.2013 will be admissible to him only for notional pay fixation and seniority and actual financial benefits will be admissible to him from the date he joins duty at PGT Physics."*

The petitioner submitted his joining report and was allowed to join on regular basis on 18.11.2016 in the Directorate itself and a report was sent to the District Education Officer, Palwal vide letter (Annexure P-7), dated 21.11.2007. The petitioner represented to the respondents that he had been put to financial loss by imposing condition of notional fixation of pay thereby depriving him of salary for the period 14.12.2013 i.e. deemed date of joining till 17.11.2016 i.e. day prior to actual date of joining on regular basis as during the aforementioned period i.e. 14.12.2013 to 17.11.2016, he was already working as PGT Physics (Guest Faculty) on full time basis and was discharging the same duties which his regular counterpart was discharging. It

is in the aforementioned background that the petitioner has invoked the jurisdiction of this Court, claiming that the respondents have ignored aforementioned service rendered by the petitioner, and that in the circumstances, the principle of 'No Work No Pay' is not applicable especially, when the petitioner was not at fault, besides the respondents could not have taken an inordinately long period of time to verify documents submitted by the petitioner, that had the petitioner been allowed to join duty at the appropriate time, when other similarly selected candidates, including those lower in merit than him were allowed to join, he would have got full salary for the work which had been taken from him during the aforementioned period from 14.12.2013 to 17.11.2016, that the petitioner was not in any way responsible for the delay caused in the issuance of appointment letter resulting in his late joining and that while working as PGT Physics (Guest Faculty) he was required to and did remain present in the school during the whole time along with the entire staff, and discharged full duties as were discharged by his regular counterparts, his duty hours were also the same and in no manner lesser than that of a regularly appointed PGT in the school. He had to do (and he actually did) all the work of teaching and taking practical classes in Physics in the Secondary and Senior Secondary classes as well as duties in examinations, Evaluations of answer-sheets/marking, election and other miscellaneous school work etc. which a regularly appointed PGT Teacher was supposed to do. The petitioner served Demand Notice (Annexure P-9) dated 28.04.2017, claiming full salary as he had been discharging the same duties as PGT Physics on the ground that principle of 'No Work, No Pay' was not applicable in his case in view of the decision of Hon'ble the Supreme Court in 'Union of India versus

[4] Short reply has been filed on behalf of respondent Nos.1 & 2 taking up the stand that the experience certificates submitted by the petitioner was got verified from the Departmental Documents Verification Committee after calling the relevant record from the school concerned as the Haryana School Teachers Selection Board, Panchkula had recommended the name of the petitioner for the post of PGT Physics with the remarks that the petitioner had not been medically examined besides no special enquiry had been got conducted into his antecedents, therefore, all documents submitted by the petitioner were got cross checked/verified from the issuing authorities before he could be allowed to join duty, therefore, after the completion of verification process, Departmental Documents Verification Committee had submitted its verification report regarding genuineness of teaching experience certificate of the petitioner where after appointment letter was issued to the petitioner and notional benefit granted to him with effect from the date his juniors were appointed as PGT Physics. Therefore, his claim for arrears as regular employee was not justifiable as he was eligible only for payment of fixed remuneration as was granted to other Guest PGT Physics which had already been paid to him and condition No.1 as mentioned in the appointment letter was rightly imposed.

[5] Learned counsel have reiterated submissions on behalf of their respective parties in the light of position noted above.

[6] I have considered the submissions of learned counsel for the parties and am of the considered view that a period of three years is by no stretch of imagination reasonable period of time to get documents submitted for appointment to a post verified. At best, a period of few weeks or at best a

verification of documents. Taking of three years' time for verification of documents can in no circumstances be said to be justifiable and reflects poorly on the functioning of the respondents. The principle of 'No Work No Pay' on the basis of which the petitioner has been deprived of salary for the period for which he has been given notional appointment retrospectively is not justifiable, particularly in view of the fact that the petitioner was working as a Guest Lecturer during the entire aforementioned period and was discharging the same duties and responsibilities as a regularly selected Post Graduate Teacher (Physics). To my mind, in the facts and circumstances, observations of Hon'ble the Supreme Court in 'K.V. Jankiraman's case (supra) would apply fully to the facts of the instant case. Relevant extract of the case is reproduced as under:-

24. *It was further contended on their behalf that the normal rule is "no work no pay". Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly.*

25. *We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is*

offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.”

[7] In the light of the position as noted above, the writ petition is ***allowed***. Condition No.1 in impugned Order (Annexure P-6) dated 04.11.2016 is set aside. Resultantly, petitioner is held entitled to payment of difference of pay i.e. the difference between the pay scale of a regularly selected PGT (Physics) Teacher and what was being paid to him as a PGT (Physics) Guest Faculty for the period 14.12.2013 i.e. deemed date of joining till 17.11.2016. Payment be made within a period of four weeks from date of submission of certified copy of order, failing which the same shall be payable along with interest @ 7.5% per annum with effect from the date, the payment has been found due till date of payment.

(B.S. Walia)
Judge

July 11, 2019
‘Rajneesh’

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