

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

CWP No.28657 of 2013.

Date of Decision: 01.04.2019

Miss Amanpreet Kaur Dhillon

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present:- Mr. Pawan Kumar, Sr. Advocate with
Ms. Rajni Gupta, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

Mr. Inderpal Singh, Advocate,
for respondent Nos. 2 & 3.

JITENDRA CHAUHAN J.

The petitioner seeks quashing of the Notice dated 12.12.2013 (Annexure P-14) vide which his services were sought to be terminated with effect from 13.01.2014.

An advertisement dated 10.11.2011 (Annexure P-1) was issued by respondent Nos.2 and 3 inviting applications for appointment to the post of Assistant Publication Officer (General Category) through direct recruitment in the pay scale of Rs.10,300-34800/-. Pursuant thereto, a number of applications were received. The petitioner also applied for the said post. Out of the total candidates who had applied, 12 candidates were short-listed and interviewed by the Establishment Committee constituted by respondent Nos.2 and 3.

The petitioner was found meritorious amongst all the candidates

interviewed and her name was finalized for selection vide proceedings dated 18.11.2011, which was duly approved by the Board. The petitioner was issued appointment letter dated 12.12.2011 (Annexure P-5) for the post of Assistant Publication Officer by way of direct recruitment. As per terms and conditions, her probation period was for one year and on successful completion thereof, her services were required to be confirmed. The petitioner joined on the post on 13.12.2011 and was given posting in the Publication Branch.

However, the appointment of the petitioner was challenged by one Onkar Singh, who was interviewed by the Establishment Committee, by way of CWP No. 5038 of 2012 and this Court vide order dated 19.03.2012 (Annexure P-8) disposed of the same by directing the respondents therein to decide the representation of Onkar Singh. The respondent Board decided the representation filed by Onkar Singh by observing that the appointment of petitioner Amanpreet Kaur was made after following due procedure purely on merits.

The work and conduct of the petitioner was recorded as “outstanding” in the ACRs for the years 2011-12 and 2012-13.

The respondents did not pay the salary to the petitioner, leading to filing of CWP No. 6538 of 2013 seeking release of her salary. This Court vide order dated 26.03.2013 (Annexure P-12) disposed of the said writ petition with a direction to the respondents to decide the demand notice of the petitioner in accordance with law and to release her salary, if the same is found due to her. The respondents

did not comply with the directions and a contempt petition bearing No. 1528 of 2013 was filed by her. During the hearing of the contempt petition, respondent Board tendered cheque of the salary by treating her as a contractual employee. It was pleaded that the State Government had refused to accord permission to the appointment of petitioner, which was necessary as per Notification dated 13.10.2009 and accordingly she was treated as a contractual employee and her salary was calculated on the basis thereof and she had been served with impugned notice dated 12.12.2013 (Annexure P-14) proposing to dispense with her services with effect from 13.01.2014.

On the other hand, the stand of respondent No.1 is that the petitioner was appointed without taking prior approval from the Committee constituted by the State Government to grant approval to the recruitments to be made in the Board/ Corporations and other self financed bodies, as required under Notification dated 13.10.2009. Since the State Government had directed the respondent Board to review its decisions which were passed against the Government policy/ instructions, the services of the petitioner were required to be terminated.

Respondent Nos. 2 & 3, i.e. Punjab School Education Board, in their written statements, have admitted that the appointment of the petitioner was made on the post of Assistant Publication Officer in the year 2011. They took the stand that prior permission was sought from the Government in pursuance to the Notification dated

13.10.2009, but the State Government vide letter dated 06.04.2013 refused to accord permission to the appointment of the petitioner. As per respondent Nos.2 and 3, the State Government exercises superintendence over the Board under Section 21 of the Punjab School Education Board Amendment Act, 2005 and the State Government had put a complete ban on recruitment in the year 2002 and hence the services of the petitioner, which were engaged without taking the prior approval from the State Government, are rightly sought to be terminated.

It is contended by the learned Senior counsel for the petitioner that the respondents have not disputed that the appointment of the petitioner was made after having advertised the same in the newspaper and it is also not the case of the respondents that the petitioner was not a meritorious candidate. In another round of litigation where the appointment of the petitioner was challenged, the respondents justified the appointment of the petitioner by passing a speaking order and observed that the appointment of the petitioner was done by following the due procedure and purely on merit basis. There is no denial that under the Rules there is provision for filling up the post of Assistant Publication Officer through direct recruitment to the extent of 25%. Now they cannot be permitted to turn around and say that there were irregularities in her appointment.

It is further contended by the learned Senior counsel that neither in the advertisement nor at the time of interview or in the

appointment letter, the petitioner was made aware of the fact that her appointment is subject to the approval of the State Government. She was given appointment on regular basis and the action of respondent Nos.2 and 3 in changing the service conditions of the petitioner to that of contractual employee was totally illegal. The Establishment Committee was consisting of Chairman and Vice-Chairman of the Board, representative of the Government i.e. Director Public Instructions (SE), Punjab, Head of Punjabi University, Patiala and Principal of the Government School but no objection of any sort was taken. Had she been made aware of the fact that her appointment is subject to the approval of the State Government, the things would have been different. But by not disclosing this fact to the petitioner and even by justifying her appointment to be valid and after following due procedure (as was held while deciding the representation of Onkar Singh), the respondent Board cannot be permitted to wriggle out of its liability to treat the appointment of the petitioner on regular basis. She successfully participated in the selection process and she cannot be made to suffer for no fault of her.

It is further contended that in the order dated 06.04.2013, no reason has been assigned for not granting approval to the selections. Generally, it was said that the decisions taken by the Boards against the Government Policy are not approved. They took about one and a half years to render decision as it has come on record in the written statement of respondents No.2 and 3 that proposal was sent to the

Government on 11.11.2011 and it was rejected on 06.04.2013 by passing a cryptic order. It has not come forth as to how the decisions of the Board were against the Government Policies and what weighs in the mind of the Government to come to the conclusion that there was violation by the Board. The State Government lost sight of the fact that the petitioner was appointed after participating in the selection process and not as a back door entrant. Cogent and convincing reasons must have been assigned while declining to grant approvals. But in a cryptic and non-speaking manner, the approvals were denied in general to all the decisions of the Board. In support of the assertions, the learned senior counsel refers to the judgments *East Coast Railway & Anr. Vs. Mahadev Appa Rao and Ors., 2010(3) SCT 505* and *LPA No. 513 of 2013, decided on 09.05.2016 (Delhi High Court)*.

Heard.

Hon'ble the apex Court in **East Coast Railway & Anr. Vs. Mahadev Appa Rao and Ors., 2010(3) SCT 505**, has held that power conferred on an authority is held by that authority in trust and the power must be exercised for legitimate purposes. It was further held that the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. Hon'ble the Delhi High Court in LPA No. 513 of 2013, decided on 09.05.2016 upheld the view taken by the Single Judge wherein the action of State Government in changing the service

conditions of employee to 'contractual' despite selected on regular basis and after completing the selection process, was condemned.

This Court is of the opinion that once a due procedure was followed to fill up the post on regular basis, the respondents cannot be permitted to change the service condition of the petitioner, who was appointed on regular basis by treating her as a contractual employee and then terminate her service as per their own whims and fancies.

Further, in ***Paramjit Kaur & Ors. Vs. State of Punjab & Ors. , CWP No. 11983 of 2001, decided on 14.12.2001***, a Division Bench of this Court has adverted on the autonomy of respondent Nos.2 and 3 and it was held as under:-

“The fact that the PSEB is an autonomous/ corporate body created by a legislative enactment, separate and distinct from the State Government has not been controverted by the learned counsel for the petitioners. It is, therefore, evident that a decision of the Government including the instructions dated 23.01.2001 cannot be binding upon the PSEB. It is not the case of the petitioners that the State Government had made any reference to the PSEB under Section 21 of the 1969 Act, nor is it the case of the petitioners that the PSEB had responded to the aforesaid reference, whereupon the State Government had issued a direction to the PSEB, under the aforesaid Section. Thus viewed, the instructions dated 23.01.2001 have certainly

no nexus with Section 21 of the 1969 Act. In any case, in our view the control of the State Government over the PSEB under Section 21 cannot extend to its administrative functioning, nor it relates to the conditions of service of the employees of the PSEB. The control vested in the State Government under Section 21 of the 1969 Act essentially relates to matters of policy confined to the activities for which the PSEB has been created. The aforesaid control would also be applicable, where, the PSEB conducts itself in violation of the provisions of the Act, under which it was created including the Regulations framed under the parent Act and nothing beyond that, and certainly not conditions of recruitment of employees in the service of the PSEB which in our view is purely within the realm of administrative functioning.”

Thus, it is evident that the control of the Government in exercise of powers under Section 21 of the Act cannot be extended to the decisions of the Board concerning the appointment and service conditions of its employees and there was no necessity to take approval from the Government, as claimed. The Board is an autonomous body and is having their own rules governing the appointment and service conditions of its employees and the condition of taking prior approval is only directory and not mandatory. The selection of the petitioner

was made on the basis of recommendations of the Establishment Committee which were approved by the Board, which was the only requirement as contained in Punjab School Education Board (Employees Service) Regulations, 1988.

It is not the case of the respondents that the post on which the petitioner had been appointed and working has come to an end.

Thus, the action of the respondents in treating the petitioner as a contractual employee and proposing to dispense her services is totally arbitrary and illegal. The plea taken by the respondents is totally misconceived and misplaced.

In view of above, the present civil writ petition is allowed. The impugned notice/order dated 12.12.2013 (Annexure P-14) passed by the respondents is quashed. It is ordered that the petitioner be treated as a regular employee from the date of her appointment. She is held entitled to all the consequential benefits treating her as a regular employee, for all intents and purposes. The arrears of salary treating her as a regular employee be released to her. The necessary exercise be done within a period of two months from the date of receipt of certified copy of the judgment.

01.04.2019.
SN

(JITENDRA CHAUHAN)
JUDGE

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