

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.8446-2017 (O&M)

Date of decision:13.02.2019

Tajinder Kaur

.....Appellant

versus

Union of India and others

.....Respondents

**CORAM: Hon'ble Mr.Justice Rajiv Sharma.
Hon'ble Mr. Justice Kuldip Singh.**

Present: Mr.Ashok Bhardwaj, Advocate for the petitioner
Ms.Surabhi Kaushik, Advocate for
Mr.Prateek Mahajan, Advocate for respondent no.2
Mr.Rupesh Kumar, Advocate for respondent no.4

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

Petitioner has invoked the writ jurisdiction of this Court under Articles 226/227 of Constitution of India for issuing the writ in the nature of certiorari for quashing the order dated 30.9.2016 (Annexure P17) and order dated 03.03.2017 (Annexure P20) passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh. Petitioner has also sought quashing of order dated 29.01.2013 (Annexure P14) passed by respondent no.2 and order dated 24.11.2014 (Annexure P15) passed by respondent no.4. Petitioner also seeks mandamus for issuing directions to respondent nos.1 to 4 to grant past service benefits to her for the purpose of applicability of Central Civil Services (Pension) Rules, 1972, like counting of past service and applicability of old pension scheme etc.

Petitioner was appointed as PGT Commerce in Kendriya

Vidalaya Sangthan (Delhi Region), New Delhi vide appointment letter dated 19.08.2003. She joined on 12.09.2003. Her services were terminated vide order dated 16.06.2005 (Annexure P2) under clause 5 of offer of appointment letter. Petitioner challenged the said order before the Principal Bench, Central Administrative Tribunal, New Delhi, which set aside the same vide order dated 20.09.2005 (Annexure P3). Operative part of the same is reproduced as under:-

“10. Having regard to the facts and circumstances of the case as discussed above, we find that respondents have terminated the services of applicant arbitrarily. As such, respondents’ orders dated 16.6.2005 are quashed and set aside with all consequential benefits. Respondents are further directed to consider granting relaxation of the prescribed qualification to applicant in terms of paragraph 39 of the Education Code as also to provide opportunity to applicant to complete her B.Ed. degree from a recognised University within a period of three years commencing from the next academic session. Her services would be liable to termination if she fails to complete B.Ed. degree as above.”

In this way, petitioner was given an opportunity to complete B.Ed. from recognized University within a period of three years. Petitioner, in fact, sought permission of Principal Kendriya Vidalaya Sangthan to go for B.Ed. vide application dated 14.11.2005 (Annexure P4), which was forwarded on 17.11.2005 to Assistant Commissioner, Kendriya Vidalaya Sangthan, Regional Office, Delhi.

In the meanwhile, the petitioner was selected as Lecturer in

Commerce by Union Public Service Commission and posted at Government College, Sector 11, Chandigarh, vide office order dated 31.3.2006 (Annexure P6), issued by Chandigarh Administration, Education Department. Petitioner submitted her resignation from the post of PGT Commerce in Kendriya Vidyalaya Sangathan on 10.04.2006 (Annexure P7), which was accepted on 21.04.2006. She was accordingly relieved on 26.04.2006 by Kendriya Vidyalaya Sangathan authorities (Annexure P9). Petitioner joined as Lecturer in Government College, Sector 11, Chandigarh on 27.04.2006. Petitioner made a representation dated 22.02.2007 to respondent no.2, namely, Director, Higher Education, Chandigarh Administration for counting her past Central Government service for pensionary benefits as she was born on the pensionable establishment prior to 01.01.2004 in Kendriya Vidyalaya Sangathan, being the Central Government Organization. Thereafter, service book of the petitioner was also sent. Petitioner sent reminders. Respondent no.2 rejected the claim of the petitioner vide order dated 29.01.2013 (Annexure P14). Petitioner challenged the said order before Central Administrative Tribunal, Chandigarh Bench, Chandigarh. During the said proceedings, in compliance with the interim order dated 17.09.2014 passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh, another order dated 24.11.2014 was passed by respondent no.4, vide which, it was held that since the petitioner did not possess the essential teaching degree of B.Ed. from recognized University and was not eligible for the post of PGT, therefore, petitioner was not allotted GPF Account number and no deduction towards GPF was made from her salary. Therefore, she is not entitled to the relief claimed by her.

Petitioner challenged both the orders dated 29.01.2013 and 24.11.2014 before Central Administrative Tribunal, Chandigarh Bench, Chandigarh, which, vide order dated 30.9.2016, dismissed the Original Applications of the petitioner. Against the said order, the petitioner approached this Court by filing CWP No.25487 of 2016. Since, the petitioner pressed that even if the petitioner is treated as temporary employee in Kendriya Vidyalaya Sangthan, her service is to be counted as qualifying service for the purpose pensionary benefits, this Court vide order dated 09.12.2016 (Annexure P18) allowed the petitioner to withdraw the said writ petition with liberty to seek recourse to the remedies available in accordance with law. Petitioner accordingly moved review application before Central Administrative Tribunal, Chandigarh Bench, Chandigarh on 06.01.2017 (Annexure P19), which has been dismissed vide order dated 03.03.2017 (Annexure P20).

Now, the petitioner claims that her service in Kendriya Vidyalaya Sangthan should be counted for the purpose of pensionary benefits, since she submitted resignation on or before 01.01.2004, when the old pension scheme was still in vogue and new pension scheme had not come into force. She claims that she is entitled to the same as per Rule 37 of Central Civil Services (Pension) Rules, 1972.

Respondent nos.2 and 3 and respondent no.4 filed separate written statements in which they denied claim of the petitioner, stating therein that the petitioner did not possess the necessary qualification at the time of appointment in Kendriya Vidyalaya Sangthan. Therefore, she is not entitled to counting of the past service. Respondent nos.2 and 3 took the plea that on 01.01.2004, new restructured defined Contributory Pension

Scheme became applicable. Earlier, the job was pensionable. Respondent nos.2 and 3 also referred the letter of the Government of Punjab, Department of Finance, which was adopted by the Chandigarh Administration, Department of Personnel vide letter No.9414-IH(7)-2201/1583 dated 23.01.2001 under which an employee who hold substantively or officiated in the same post, or a permanent or temporary post on the same time scale or a post having identical three/ four times pay scales or in which time bound placement/ grant of higher pay are provided as in the new post in a Government department or a body incorporated or not which is wholly or substantially owned by the Government shall in addition to the protection of pay actually drawn in the corresponding scale as per provisions of Rule 4.4(b) of Punjab Civil Services Rules, Volume-I, Part-1 count its previous service for the purpose of time bound promotion/ grant of higher scale in the new post. This protection will be as a measure personal to him. It was stated that the pay scale of the College Lecturer was Rs.8000-275-13500, which was much more than the pay scale of PGT Commerce which is Rs.6500-200-10500. Therefore, there was no need of protection of the pay. No GPF deduction was made from her salary, which reveals that she was not governed by old pension scheme.

We have heard learned counsel for the parties and have also carefully gone through the file.

Admittedly, the petitioner joined as PGT Commerce in Kendriya Vidyalaya Sangathan, New Delhi on 12.09.2003 and ultimately resigned on 21.04.2006. Prayer of the petitioner is for treating this period as qualifying service for the purpose of pensionary benefits.

It comes out from the file that when services of the petitioner

were initially terminated, she challenged the order before Principal Bench, Central Administrative Tribunal, New Delhi, wherein, a plea was taken that the petitioner was not holding necessary qualification of B.Ed., which is necessary for PG Teacher. Principal Bench, Central Administrative Tribunal, New Delhi observed as under:-

“8. It has not been denied on behalf of respondents that KVS circulars do state that in the absence of B.Ed. degree holders, preference can be given to candidates having Ph.D or M.Phil or qualified as Junior Research Fellowship/ NET. The teachers so appointed will have to acquire B.Ed. qualification on their own expense within five years from the date of entry in service. Paragraph 39 of the Education Code also provides for relaxation of the prescribed qualifications by prior approval of the Assistant Commissioner in this behalf. The advertisement in question is silent on the provision in the circulars as also paragraph 39 of the Education Code. When applicant had not concealed any information regarding her qualifications from the respondents and when they had subjected her to written test as also interview, it has to be inferred that respondents had accepted that she did possess equivalent qualification to B.Ed. in the form of NET from the UGC. However, before her appointment, they ought to have obtained prior approval of the Assistant Commissioner in terms of paragraph 39 of the Education Code and also given her an opportunity of completing her B.Ed. qualification from a University within five years from the date of entry in service. When respondents

did not consider applicant as ineligible for appointment and selected her on the basis of information provided by her and when they did not ask her to complete her B.Ed. from a recognised University nor did they obtain prior approval of the Assistant Commissioner regarding relaxation of the qualification, these flaws cannot be attributed to applicant and are respondents' own doings."

It was for these reasons that the termination order was set aside and the petitioner was afforded an opportunity to complete her B.Ed. degree from the recognized University, within three years, commencing from the next academic session. It was further stipulated in the said order dated 20.09.2005 (Annexure P3) that if the petitioner fails to complete B.Ed. degree within the said period, her services would be liable to terminated. Meaning thereby, B.Ed. was considered necessary qualification for PG Teacher. Petitioner was only granted relaxation to complete the said qualification. It was for this reason that no GPF contribution was deducted from her salary nor she was allotted GPF Account number in Kendriya Vidyalaya Sangthan. Admittedly, the petitioner did not complete her B.Ed. qualification and after applying for the B.Ed. course and before she could join B.Ed. course and complete the same, she was appointed as Lecturer in Government College, Sector 11, Chandigarh, where she joined on 24.04.2006. In this way, the petitioner did not fulfill the condition laid down by the Principal Bench, Central Administrative Tribunal, New Delhi in order dated 20.09.2005 (Annexure P3). Therefore, her services were otherwise liable to be terminated.

Learned counsel for the petitioner has argued that even if the

services of the petitioner are temporary, her past service under Kendriya Vidyalaya Sangathan, which is a Central Government Institute, is to be counted as a qualifying service. Reliance is also placed on Rule 37 of Central Civil Services (Pension) Rules, 1972 which is regarding absorption in or under the Corporation, Company or Body. It is not a case of absorption. Petitioner was selected by Union Public Service Commission and directly appointed as Lecturer in Government College, Sector 11, Chandigarh. Previously, she was working as PGT Commerce. Therefore, Rule 37 of Central Civil Services (Pension) Rules, 1972 is not applicable.

Learned counsel for the petitioner has further argued that petitioner was having much higher qualification than the B.Ed. and therefore, her appointment in Kendriya Vidyalaya Sangathan should be treated as legal.

We are of the opinion that this matter should have been agitated before Central Administrative Tribunal, Chandigarh Bench, Chandigarh, which considered all the aspects and then passed order dated 20.09.2005 (Annexure P3).

In any case, B.Ed. is different qualification than M.Phil or Ph.D. In the B.Ed., a different kind of training is given, which was necessary to work as PGT Commerce. In this way, appointment of petitioner as PGT Commerce was a conditional one. Therefore, it cannot be treated as either temporary or regular service. Petitioner was never allotted GPF Account Number for the same reason. She did not fulfill the condition laid down by Central Administrative Tribunal, Chandigarh Bench, Chandigarh, while setting aside her termination order dated 16.06.2005.

It being so, no fault can be found with the order dated

30.9.2016 (Annexure P17) and order dated 03.03.2017 (Annexure P20) passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh, vide which, Original Application of the petitioner and subsequent Review Application were dismissed. Consequently, the present writ petition stands dismissed.

(Rajiv Sharma)
Judge

(Kuldip Singh)
Judge

13.02.2019
gk

Whether speaking/ reasoned:	Yes
Whether Reportable:	No