

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

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Civil Writ Petition No.18038 of 2015

Date of Decision: January 10th, 2020

Jatinder Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Saurabh Arora, Advocate
for the petitioner.

Ms. Anu Pal, Deputy Advocate General, Punjab.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court praying for issuance of a mandamus directing respondents to consider and promote the petitioner as Mistress with effect from the date persons junior to her have been so promoted vide order dated 10.09.2013 (Annexure P-8) along with all consequential benefits including arrears of salary, seniority as Mistress etc.

2. It is the contention of learned counsel for the petitioner that the petitioner was appointed as a Clerk vide order dated 14.10.2004 on compassionate ground by the Director Public Instructions (Secondary Education), Punjab. She joined the service on 23.11.2004. During service, she obtained qualifications of B.Ed. after obtaining due permission from the Director Public Instructions (Secondary Education), Punjab, from Guru Nanak Dev University, Amritsar, on 30.09.2009. A decision was taken by the Education Department of Punjab Government on 26.09.2001, whereby 1% quota was fixed for promotion to the teaching cadre of Masters/Mistresses for the ministerial staff (Only Clerks). In pursuance to the said decision, a letter dated 02.12.2011 was issued by the Director Public Instructions to the District Education Officer

(Secondary Education), Jalandhar, calling for the names of such Clerks, who had cleared the qualifications of B.Ed. This letter was circulated on 09.12.2011. Petitioner being eligible applied for promotion as a Mistress, which was forwarded vide letter dated 15.12.2011. The claim of the petitioner was, however, not considered by the respondents for appointment and persons, who were lower in seniority list were considered and promoted vide order dated 10.09.2013. Petitioner being aggrieved by such omission of the consideration of her claim, approached this Court by filing the present writ petition.

3. The writ petition of the petitioner has been opposed by the State. Primary stand of the respondents is that the petitioner is not entitled to be considered for promotion in the light of the latest judgment of a coordinate Bench in *CWP No.23969 of 2013* titled as *Manjit Kaur and others Versus State of Punjab and others* decided on 31.03.2017, where in similar facts and circumstances of the case except that the petitioners in those cases were denied consideration for promotion to the post of Mistress/Masters as they had submitted their claims after cut-off date i.e. 27.05.2010. Counsel for the respondents states that in the light of the decision of the coordinate Bench, where 1% quota which has been fixed by the Instructions dated 26.09.2001 having been found to be violative and contrary to the statutory rules as a new category could not be introduced by the State through executive instructions as a source for promotion, which would amount to amending the statutory rules and so the said Instructions dated 26.09.2001 stood withdrawn by the State of Punjab itself on 06.03.2014. The claim of the petitioners in those writ petitions was that the petitioners had a right accrued on them as persons lower in seniority stood

already promoted and they also had a right to be considered for promotion, which aspect has also been rejected by this Court by relying upon the judgment of the Supreme Court in *State of Haryana and others Versus Ram Kumar Mann 1997 (3) SCC 321*. On this basis, it is asserted that the claim of the petitioner cannot sustain.

4. Learned counsel for the petitioner has submitted that the said judgment would not be applicable to the facts of the present case as the petitioner's claim was not in pursuance to the instructions/decision relatable to the cut-off date i.e. 27.05.2010, rather the circular which had been issued vide which the cases were called for was dated 09.12.2011, which is of the subsequent date and it is asserted that the instructions have been withdrawn subsequent to the promotion of the juniors, who were promoted on 10.09.2013 and, therefore, a right had accrued for consideration to the petitioner on the said post. It has further been asserted by the counsel for the petitioner that the petitioner has been deprived the right of consideration for promotion because of the fault of the department because of which the petitioner should not be penalised. Reliance in this regard has been placed on the letter/report dated 01.01.2015 (Annexure P-11), which has been addressed by the District Education Officer (Elementary Education), Jalandhar, to the Director, Education Department (Secondary Education), Punjab, pointing out therein that the case of the petitioner was sent to the District Education Officer (Secondary Education) vide despatch register No.9515 dated 27.09.2013. The Clerk on the concerned seat, who has been transferred from the office of the Government Senior Secondary School, Lasara, was placed under suspension and while giving charge of the said seat, he had not handed over the charge of the file relating to the case of the

petitioner because of which the petitioner has been deprived of her right of consideration. Assertion has also been made on the basis of the affidavit dated 12.04.2016 which has been filed by the respondents in pursuance to the order passed by this Court that a charge-sheet has been issued to Bir Meharban, Junior Assistant, regarding which it been informed in Court today by the counsel for the State, that disciplinary proceedings are still pending against him. Counsel for the petitioner asserts that the petitioner having been denied the right which has accrued to her, the judgment would not apply to the case in hand. Assertion has also been made that the policy has been withdrawn on 06.03.2014 with immediate effect and, therefore, would not have an impact of curtailing the right of the petitioner as it would be prospective in the operation and on the date when the right had accrued to the petitioner for consideration for promotion, the policy was in force. Assertion has also been made that in pursuance to withdrawal of this policy, promotion of the similarly placed employees, rather juniors to the petitioner, has also not been withdrawn. He, thus, asserts that the petitioner would be entitled to the claim, as has been projected in the writ petition.

5. I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the case but do not find myself in agreement with the counsel for the petitioner in the light of the judgment passed by the coordinate Bench in CWP No.23969 of 2013 titled as Manjit Kaur and others Versus State of Punjab and others, decided on 31.03.2017, where while dealing with a similar matter pertaining to the Clerk/Lab Attendants, who were working as non-teaching staff and had cleared/obtained qualifications of B.A./B.Ed. while in service of the Education Department, sought benefit of the policy decision of the

Government of Punjab dated 26.09.2001 vide which 1% promotion out of 10% quota meant for Craft and Vocational Teachers was reserved for non-teaching staff of the Education Department in the Master/Mistress cadre. The Court had proceeded to refer to the Punjab School Education Class III (School Cadre) Service Rules, 1978, as amended by Service Rules, 1995, wherein the academic and provisional qualifications for Master/Mistress have been mentioned. It has been observed that the statutory rules cannot be amended by way of instructions. The Court had further proceeded to rely upon decision taken in *CWP No.4274 of 2011* titled as *Nank Chand Versus State of Punjab and others*, wherein the Court considering the claim of an employee, who was seeking the benefit of Instructions dated 26.09.2001, had held that if the rules do not provide for avenue of promotion to the post of teachers from a particular post, it is not open to the Government to issue administrative instructions to create new source of recruitment and any such instructions are liable to be ignored being contrary to the statutory rules. Further Court had proceeded to hold that instructions issued on 26.09.2001, 17.04.2003 and 02.05.2003, which provide for promotional avenues to certain employees, who were not part of the feeder cadre for promotion to a post, as per the statutory notified rules, were unsustainable. It was further observed that any instructions issued for providing promotional avenues *dehors* rules by way of administrative instructions was contemptuous and it was in this background that the Instructions dated 26.09.2001, which provided for 1% quota to be filled up by non-teaching staff for promotion to the post of Master/Mistress cadre, stood withdrawn by the State of Punjab on 06.03.2014. In the light of the instructions having been found to be contrary to the statutory rules and

rather *dehors* the rules, the claim of the petitioner in the considered view of this Court cannot be accepted.

6. The learned Single Judge in the judgment of Manjit Kaur's case (*supra*) has further dealt with the plea with regard to discrimination, which has been meted out to the petitioners and where they had asserted a right of violation of Article 14 of the Constitution of India and sought similar claim and appointment on the basis of the instructions which is the subject matter of the present writ petition i.e. 26.09.2001, in para 7 and has held as follows:-

“7. Learned counsel for the petitioners would contend that the persons junior to them have already been granted that promotion and parity ought to be given to the petitioners as well. This argument is without any basis, once policy dated 26.9.2001 itself has been withdrawn after the court held it to be in direct contradiction to the judgment rendered in Gurdeep Singh’s case (supra). The petitioners cannot claim the benefit of Article 14 of the Constitution to plead discrimination. In 'State of Haryana & Ors. vs. Ram Kumar Mann', 1997 (3) SCC 321, it has been observed that:- “The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality are some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal or resignation. The High Court was wholly wrong, in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong, to perpetrate, an employee, after committing mis appropriation of money, is dismissed from service and subsequently that

order is withdrawn and he is reinstated into the service. Can a similarly circumstanced person claim equality under Section 14 for reinstatement? The answer is obviously "NO". In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right."

7. This Court is in total agreement with the reasoning and the justification given by the coordinate Bench while rejecting the claim of the petitioners therein.

8. The claim of the petitioner as has been projected with regard to the withdrawal of the instructions w.e.f 06.03.2014 being with immediate effect and, therefore, cannot have an impact of retrospectivity for denying the claim of the petitioner, cannot be accepted in the light of the judgment passed by the coordinate Bench, where this Court has concurred with. If the instructions itself have been found to be violative of the statutory rules/*dehors* of the statutory rules, no claim can be granted to the petitioner. The very basis, on which a right is sought to be established, has been found to be unsustainable, the claim itself has to go, that is the settled principle and need not be further required to be elaborated upon in the light of the judgment of the Supreme Court in Ram Kumar Mann's case (*supra*), on which reliance has been placed by the coordinate Bench.

9. Article 14 confers a positive right and cannot be enforced to perpetuate illegality on the basis of a wrong and illegal order for asserting a

claim which cannot be sustained under the statute and the law. Article 14 does not, in any manner, has an ability to confer a right which is otherwise not sustainable under law. If the plea which is being taken by the petitioner is accepted then all wrong appointments would result in flooding the Courts with the claim to assert a right under Article 14 for claiming the same benefit and all undeserving and unqualified persons will have to be appointed on that basis, which is not acceptable and can never be the spirit and purpose for which Article 14 was so framed at the first instance.

10. It may be added here that another plea which has been raised by the counsel for the petitioner is that the persons, who are lower in seniority than the petitioner and have been promoted, are still holding the post of Master/Mistress as per Instructions dated 26.09.2001, the issue with regard to their appointment is not a question before this Court and, therefore, the Court would not like to delve into the same but it is for the competent authority to take a decision in this regard in the light of what has been said in the preceding paras.

11. In view of the above, the writ petition stands dismissed.

January 10th, 2020
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes