

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

LPA-321-2021

Date of Decision:-24.3.2021

Lalit Bhardwaj

... Appellant

Versus

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. J.S. Rozera, Advocate
for the appellant.

Mr. Sandeep Moudgil, Addl. A.G., Haryana.

KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of
COVID-19 Pandemic.

Appellant-Lalit Bhardwaj has filed this letters patent appeal
against judgment dated 27.1.2021 passed by learned Single Judge of this
Court in CWP-1798-2021 whereby the aforesaid writ petition was
dismissed.

The case of the petitioner is that respondent No.2 (Anita Rani) passed Masters degree in Commerce with a score of 578 out of 1200 (48.166%). She was appointed as a Lecturer in Haryana Secondary Education Department on 2.3.1989. The appointment was challenged by Rakesh Kumar, Science Master vide CWP-2506-1994, as the minimum qualification for appointment to the said post was 50% marks in the Masters degree. Respondent No.2 being not eligible for the post, the Department issued show cause notice dated 27.10.1994 to her. Respondent No.2 challenged the same by filing CWP-16650-1994 and the Court granted interim stay by order dated 22.11.1994. Finally the said writ petition was dismissed for non-prosecution, with liberty to revive, in case, any dispute still subsists, vide order dated 18.5.2012 (Annexure P-4). Even CWP-2506 of 1994 was also dismissed vide order dated 9.5.2012 (Annexure P-2). The grievance of the petitioner is that since CWP-16650-1994 stands dismissed, respondent No.2 was having no right to continue in service as her services were already terminated by order dated 22.2.1995. So prayer was made by way of mandamus directing the respondents to implement aforesaid termination order against respondent No.2 with immediate effect and a writ of Quo Warranto directing respondent No.2 to show cause as to by which authority she is holding the office of Deputy District Education Officer.

The writ petition was contested by the respondent No.1-State and respondent No.2.

The writ petition was dismissed by learned Single Judge vide impugned order dated 27.1.2021, with following observations:-

“Learned counsel for respondent No.2 submits that the termination order issued to respondent No.2 was already withdrawn on 29.05.1995.

The present petition is liable to be dismissed, as firstly there is a delay of almost 26 years in approaching this Court and secondly, respondent No.2 is now going to retire in July, 2021. Respondent No.2 is working since 1989 and there is no complaint against her. She has put in almost 33 years of service. Even if respondent No.2 was short of 22 marks which was less than the prescribed norms, but her experience has offset that ground. On the date of termination as well, respondent No.2 had the experience of 06 years.

The writ petition is dismissed.”

Aggrieved by the aforesaid judgment, the present appeal has been filed by the appellant.

We have heard the counsel for the parties and gone through the record.

The counsel for the appellant *inter alia* contended that respondent No.2 was not eligible for the post of Lecturer in Commerce, in the Haryana Secondary Education Department as she was having less than 50% marks in M.Com. It being so, the Department terminated her services vide order dated 22.2.1995. Respondent No.2 secured stay order by filing Civil Writ Petition and continued her service in the department. The said writ petition was finally dismissed for want of prosecution in 2012. Even

thereafter the petitioner is continuing in service, without having any right to do so.

The counsel for the appellant next submitted that presently the said ineligible individual namely Anita Rani is posted as Deputy District Education Officer, Faridabad. The said office is a public office which is being held by her without any legal authority and as such the appellant has invoked writ of Quo Warranto. To strengthen his arguments the counsel for the appellant referred to **Renu and Others vs. District and Session Judge, Tis Hazari and Another, (2014)14 SCC 50**, wherein it was expounded by the Hon'ble Apex Court that *'where any such appointments are made, they can be challenged in the court of law. The quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order.'*

The counsel for the appellant also referred to **Dinesh Bagga vs. State of Punjab and Others, 2012 (58) RCR (Civil) 276**, wherein the same view was taken by the Division Bench of this Court.

On the other hand the State counsel submitted that the writ petition was dismissed by the learned Single Judge being suffering from delay and latches, as the same was filed in 2021, challenging the appointment of Anita Rani dated 2.3.1989. The learned counsel while

supporting the judgment of the learned Single Judge, further submitted that the appeal deserves to be dismissed.

We have considered rival submissions addressed by counsel for the parties.

Admittedly Anita Rani is presently working as Deputy District Education Officer, Faridabad. Initially she was appointed as a Lecturer in Haryana Secondary Education Department on 2.3.1989. As per the appellant she being ineligible for the said post, her services were terminated on 22.2.1995. Appellant is seeking issuance of direction to the Government to implement the said order of termination against Anita Rani who is presently posted as Deputy District Education Officer Faridabad (respondent No.2). The appellant has approached this Court after delay of more than 30 years, from the date of appointment of Anita Rani, seeking termination of her services. The writ petition filed by Anita Rani to seek the protection of the Court, was dismissed vide order dated 18.5.2012 (Annexure P-4). Even after the dismissal of the said writ petition, the appellant remained silent for more than 8 years, without any explanation.

It is not disputed that Anita Rani is now going to retire in July, 2021. As per the impugned judgment, she is working in the department since 1989 and she has put in almost 33 years of service without any complaint. Also as per the impugned judgment the counsel for respondent No.2 submitted that the termination order of respondent No.2 was already withdrawn on 29.5.1995 and this fact was not refuted by the learned State counsel.

During arguments in the present appeal, the appellant failed to refute the fact regarding withdrawal of termination order of Anita Rani.

There is no doubt with regard to the proposition of law laid down by the Hon'ble Supreme Court in Renu and others case (supra) and Division Bench of this Court in Dinesh Bagga's case (supra). But factual matrix of the present case is entirely different from the aforesaid referred cases.

In wake of the above, no ground is made out to interfere at this belated stage, when Anita Rani, Deputy District Education Officer is at the fag end of her career. Consequently this appeal fails and is dismissed.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

24.3.2021
Gaurav Sorot

Whether reasoned / speaking?

Yes / No

Whether reportable?

Yes / No