

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

**CWP-16580-2019(O&M)
Date of decision:13.01.2021**

Dr. Neelam Sharma

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.R.P.S.Bara, Advocate for the petitioner

Mr. Ayush Sarna, AAG, Punjab

ANIL KSHETARPAL, J.

The petitioner has invoked the extraordinary writ jurisdiction of this Court seeking quashing of impugned order dated 29.05.2019 (Annexure P-20), issued by respondent no.4 (the Managing Committee, Ramgarhia Educational Council, Satnampura, Phagwara, District Kapurthala).

On 11.6.2019, the following order was passed:-

“Advance copy has already been supplied to the State of Punjab.

Learned counsel for the petitioner has submitted that this is a case of glaring example of removal from service of a regular employee of a government-aided college under the garb of retrenchment without the prior approval of the Director; that she has been removed with a malafide intention in an illegal manner, in complete violation of the rules of natural justice; in contravention of all tenets of service jurisprudence and even without following the procedure prescribed in the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 (in short ‘the Act, 1974’).

Undisputedly, respondent No.5-college (Ramgarhia College of Education, Satnam Pura, Phagwaram, District Kapurthala) is a Government aided

college and performing public functions i.e. providing education.

The said college issued advertisement (Annexure P-3), which reads as under:-

“Ramgarhia College of Education, Phagwara, required one Assistant Prof. (Education) on regular basis. Qualification and grade & as per UGC/NCTE/Pb. Govt./GNDU norms. Reservations as per Punjab Govt. Rules. Apply with complete biodata within 10 days under registered post to President. NAA=37361B PUBLIC NOTICES”

A bare perusal of the said advertisement transpires that the applications were invited for the said post of Assistant Prof. (Education) on regular basis.

The petitioner was interviewed by the selection committee and her name was approved for selection. Ultimately, appointment letter (Annexure P-5) was issued to her on 15.09.2014 which reads as under:-

“With reference to your application dated 5-8-14, and subsequent interview held on 13-9-2014, you are hereby offered the post of Asstt. Prof. (Education) on a basic salary of Rs.15600/- only per month (15600- 39100) revised scale plus AGP 6000/- as per university regulations for regular appointment.

You will be on probation for a period of one year initially, which can be extended without assigning any reason therefor. During the probation period, your services can be terminated according to agreement. Your appointment is subject to the acceptance of the interview by University and approval of your qualification by the university authorities. If the above terms and conditions are acceptable to you, report for duty to Principal, Ramgarhia College of Education, immediately.”

Subsequently, the petitioner cleared the probation period and her services were confirmed vide order dated 20.07.2015 (Annexure P-8). The said order reads as under:-

“The undersigned is pleased to confirm the services of Dr. Mrs. Neelam Sharma, Asstt. Prof. (Edu) in Ramgarhia College of Education with effect from 1.8.2015.”

To her surprise and dismay, she was relieved from service vide impugned order dated 29.05.2019 (Annexure P-20) which reads as under:-

• Ramgarhia College of Education, Phagwara has dropped one unit of B.Ed Course (50 seats)w.e.f.

session 2019-2020.

• *Except you the college has already three more Asstt. Professors in the subject of Teaching of Social Science (under grant in aid Scheme).*

• *You are hereby relieved from your services w.e.f. 31st May, 2019 (AN).*

• *The three months salary has been transferred in your salary account in lieu of notice period.”*

A bare perusal of the said order dated 29.05.2019 (Annexure P-20) transpires that she was neither properly retrenched in accordance with the provisions of the Act, 1974 nor any other ground is visible for her removal from service.

Even there is no ground for her retrenchment on the ground of surplus faculty as the said college is guided by notification dated 28.11.2014 (Annexure P-2), issued by the National Council for Teacher Education. Its page 117 transpires

that the procedure under Clause 5.1 provides the procedure for

providing academic faculty as under:-

“For an intake of two basic units of 50 students each, that is total students strength of 200, there shall 16 full-time faculty members.

The distribution of faculty across different curricular areas shall be as under:-

- 1. Principal/HOD One*
- 2. Perspectives in Education Four*
- 3. Pedagogy subjects Eight*
(Maths, Science, Social Science, Language)
- 4. Health and Physical Education One*
- 5. Fine Arts One*
- 6. Performing Arts (Music/Dance/Theatre)*

One”

According to the petitioner, the total faculty members vide list (Annexure P-10) comes to only 15 and name of the petitioner is mentioned at Sr. No.12 as Asstt. Prof. Regular (Education) in the subject of education. However, the subjects of remaining faculty members were not mentioned therein.

Under the Act, 1974, the legal term 'employees' has been defined as a person in the employment of an affiliated college but does not include a work charge. Thus, the petitioner was an employee under the provisions of the Act, 1974.

Section 7 of the Act, 1974 is a saving clause against the retrenchment of an employee. The said Section reads as under:-

Retrenchment – (1) No employee of an affiliated college shall be retrenched on account of

reduction in work load without prior approval of the Director who shall before according approval examine each case in accordance with the norms of work load laid down by the University with which such college is affiliated.

(2) An employee who is relieved from an affiliated college is a result of retrenchment, shall have preference for appointment to future vacancies in the affiliated college in which he was serving immediately before retrenchment or in another affiliated college under the same Managing Committee.”

A bare perusal of the said provision transpires that no retrenchment can be effected without prior approval of the director and the director shall accord such approval after examination in accordance with the norms of work load laid down by the university with such affiliated colleges.

Learned counsel for the petitioner has submitted that no approval has been sought from the director under the said provision of the Act, 1974 and as such, there is a complete violation of Section 7 of the said Act.

Prima facie, it is made out that no case for the removal or retrenchment or relieving the petitioner from the post of Asstt. Professor (Education) has been made out.

Notice of motion for 01.07.2019.

Meanwhile, operation of the impugned order dated 29.05.2019 (Annexure P-20) shall remain stayed and the petitioner be allowed to join her duties with immediate effect. However, joining of her duties shall be subject to the outcome of the instant petition.”

Respondents no. 4 to 6 have filed an application i.e CM-492-CWP-2021 for preponement of the date of hearing and to grant them liberty to withdraw the order Annexure P-20, dated 29.05.2019. It has further been prayed that liberty be granted to respondent no. 5, to pass a fresh order in accordance with law.

Keeping in view the aforesaid facts, the application is allowed. Respondent no.4 to 6 are permitted to withdraw the order Annexure P-20, with liberty to pass a fresh one, in accordance with law.

In view of above, the writ petition is rendered infructuous and the same is disposed of as such.

13.01.2021

rekha

Whether speaking/reasoned

Whether Reportable

Yes /No

Yes / No

(ANIL KSHETARPAL)
JUDGE