

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

Civil Writ Petition No.1061 of 2022

Date of Decision: May 13, 2022.

Pooja Garg

..... PETITIONER (s)

Versus

State of Haryana and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Madan Pal, Advocate
for the petitioner.

Mr. Harish Nain, AAG, Haryana.

1. Whether reporters of local papers 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?

LISA GILL, J.

Petitioner seeks quashing of order dated 24.12.2020 (Annexure P16) passed by the Director General, Elementary Education, Haryana, Panchkula whereby her claim for rejoining as a Guest Teacher has been rejected.

Brief facts necessary for adjudication of the matter are that, petitioner was appointed as a Guest Teacher on 17.05.2007 and worked as such upto 26.09.2009 at Government Primary School No.2, Chhachhrauli, District Yamuna Nagar. It is pleaded that petitioner's marriage was solemnized on 29.09.2009 and she started residing at Karnal alongwith her husband thereafter.

It is stated that consequent to her marriage, she could not continue to serve as a Guest Teacher at the Government Primary School No.2, Chhachhrauli as she started living with her husband at District Karnal. It is further pleaded that matrimonial dispute arose between the petitioner and her husband due to which a petition under Section 13 of the Hindu Marriage Act was ultimately filed by petitioner's husband at Karnal (Annexure P3). Pursuant to the matrimonial dispute, she started residing with her parents at Chhachhrauli. It is stated that petitioner belongs to a poor family, having no independent source of income. Representation dated 29.01.2019 (Annexure P4) was submitted by the petitioner for permitting her to rejoin as a Guest Teacher. Various representations, it is submitted, were also moved but to no avail. Ultimately, petitioner filed CWP No.10392 of 2020, which was disposed of on 22.07.2020 with a direction to the respondents to look into petitioner's grievance and decide her representation within the stipulated period.

In compliance thereto, impugned order dated 24.12.2020 was passed by the Director General, Elementary Education, Haryana, Panchkula rejecting petitioner's claim while observing that after a delay of 13 years petitioner cannot be permitted to rejoin on the post of Guest Teacher as the family/matrimonial dispute cannot be termed to be an unavoidable circumstance due to which she was unable to join duty for such a long period. Aggrieved therefrom, petitioner, it is stated, filed a petition before the Education Minister, Haryana in terms of Rules 18 and 19 of the Rules of Business of the Government of Haryana, 1977, but no action was being taken thereon.

Accordingly, present writ petition has been filed challenging order dated

24.12.2020 (Annexure P16).

Learned counsel for the petitioner argues that petitioner is reflected to be absent from duty from 26.09.2009 till the issuance of certificate dated 15.02.2020 (Annexure P2) by the Head Master, Government Primary School No.2, Chhachhrauli, District Yamuna Nagar. It is contended that till date no action, whatsoever, has been taken by the department in this regard and petitioner continues to be on their rolls with no show cause notice ever being issued to her for her absence. Therefore, petitioner is entitled to rejoin on the post of Guest Teacher, especially in view of the General Guidelines dated 16.03.2016 in respect to joining in case of unauthorized absence by an employee. Reason for the unauthorized absence, it is submitted, is duly explained. Therefore, impugned order dated 24.12.2020 has been incorrectly passed. It is, thus, prayed that this petition be allowed.

I have heard learned counsel for the petitioner and have gone through the file.

Petitioner, as per her own stand, was appointed as a Guest Teacher on 17.05.2007 and she continued to serve till 26.09.2009. It is clear that on solemnization of her marriage, petitioner abandoned her services. Representation for rejoining on the post was submitted after long years on 29.01.2019. At this stage, it is pertinent to note that appointment of a Guest Teacher is admittedly a temporary arrangement and is not a regular appointment in any case. Learned counsel for the petitioner has sought to press into service memo dated 16.03.2019 i.e., the General Guidelines issued by the Director, Secondary Education, Haryana in respect to joining in case of unauthorized

absence of an employee. The said guidelines have been issued to take care of a situation in case of an employee/teacher reporting back for duty after long absence from duty and instead of allowing him/her to join duty, Head of the school would seek permission of higher authorities. To avoid such situations where delay may lead to loss of service days for the employee and students would be deprived of availability of a teacher, certain guidelines have been laid down, one of which has been pressed into service, which is reproduced as hereunder:-

- “i) As long as an employee is on the roll of the Government and he is not suspended or removed or dismissed from the service his request for joining duties cannot be turned down.
- ii) If an employee absents himself/herself unauthorisedly from the office then immediately thereafter his case should be referred to the Head Quarter for disciplinary action.”

This aspect has been succinctly dealt with by the Director, Elementary Education in the impugned order dated 24.12.2020. It is apparent that the petitioner herself abandoned service after getting married. After a delay of such colossal years, she claims entitlement to rejoin service on the ground that a matrimonial dispute has erupted. Clearly, the same can not be taken to be an unavoidable circumstance. At this stage, it would be useful to refer to judgment of the Hon'ble Supreme Court in **Vijay S.Sathaye v. indian Airlines Ltd. and others, 2013 (10) SCC 253** wherein it is observed that absence from duty of an employee for a very long period amounts to abandonment of service, which would not require any order to be passed by the employer with service

coming to an end. It is observed as under:-

“9. It is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long. Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntarily abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer.”

Therefore, argument that no enquiry was held and no order of termination was passed, the petitioner, in effect continued to be on the rolls of the respondents, is devoid of any merit in the given factual matrix, hence, rejected.

Similarly, argument raised by learned counsel for the petitioner that Head Master of the Government Primary School No.2, Chhachhrauli had issued a certificate dated 15.02.2020, which indicates that petitioner is being treated as absent from duty is devoid of any merit in the given factual circumstances. Said certificate cannot *per se* indicate continuance of a Guest Teacher, admittedly a temporary arrangement, on the rolls of the establishment for such long years. The petitioner cannot avail or derive any benefit from the said certificate.

Learned counsel for the petitioner submits that a sympathetic view needs to be taken in this matter. However, learned counsel for the petitioner is unable to point out any vested right which the petitioner has to rejoin on the

post of Guest Teacher in the given circumstances, which calls for a mandate to be issued to the respondents.

At this stage, learned counsel for the petitioner submits that this writ petition be disposed of with a direction for disposal of petitioner's petition submitted by her under Rules 18 and 19 of the Rules of Business of the Government of Haryana, 1977 (Annexure P18). However, in view of the facts and circumstances as above, I find no ground to accede to the prayer.

No other argument has been raised.

Writ petition is, accordingly, dismissed with no order as to cost. However, it is clarified that this order shall not be an impediment for the petitioner to seek fresh appointment in accordance with the applicable provisions.

May 13, 2022.
'om'

(LISA GILL)
JUDGE

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