

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CM-15589-CWP-2022 &
CM-15590-CWP-2022 IN/AND
CWP-11574-2020 (O&M)
Date of Decision: 07.12.2022

PANKAJ AND OTHERS ...Petitioners

VS

STATE OF HARYANA AND OTHERS ...Respondents

2. CWP-12939-2020 (O&M)

VIJAY VIR ...Petitioner

VS

STATE OF HARYANA AND OTHERS ...Respondents

3. CWP-19379-2020 (O&M)

SUNITA DEVI AND ANR. ...Petitioners

VS

STATE OF HARYANA AND ANOTHER ...Respondents

4. CWP-13264-2021 (O&M)

SARWAN KUMAR ...Petitioner

VS

STATE OF HARYANA AND OTHERS ...Respondents

5. CWP-13573-2021 (O&M)

POONAM DAHIYA ...Petitioner

VS

STATE OF HARYANA AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sajjan Singh, Advocate for the petitioner.
(in CWP-11574, 19379 of 2020 and 13264-2021).

Mr. N.R. Dahia, Advocate for the petitioner
(in CWP-13573-2021).

Mr. Dalbir Singh, Advocate for the petitioners
(in CWP-12939-2020).

Mr. Rajesh Gaur, Additional A.G., Haryana.

Mr. R.K. Girdhwal, Advocate
for applicant-respondent No.4

Mr. Balwinder Sangwan, Advocate
for respondent-HPSC.

HARSIMRAN SINGH SETHI, J. (ORAL)

CM-15589-CWP-2022

This is an application under Section 151 C.P.C. With a prayer for impleading the present applicant/respondent No.4 as a necessary party.

For the reasons mentioned in the application, the same is allowed.

CWP-11574-2020 and other connected cases

By this common order, the bunch of petition, the details of which have been given heading, are being disposed of as common question of law has been raised in all the petitions based upon similar facts.

The petitioners who are working as Guest Teacher have approached this court apprehending the termination of their services keeping in view the order passed by the respondent dated 20.01.2020 by which, upon rationalisation of the post in different subjects available in various Government Colleges, certain posts, which were

treated to be surplus, were withdrawn from a particular Government College and were allocated to another Government College where the sufficient workload for the said post was available. Further certain posts available in particular subjects have been abolished due to the non-availability of the workload or less workload than the sanctioned one.

Learned counsel for the petitioners argues that the order dated 20.01.2020 Annexure P-6 adversely affect their right to continue in service for the reasons that their services might be terminated on the abolition of post in a particular College or shifting of a particular post in a particular subject from one College to another College. Learned counsel submits that petitioners have no hesitation in serving wherever the workload exist of the subject in which the petitioners are working but only apprehension of the petitioners is that after passing of the order dated 20.01.2020, without appreciating the workload in the subjects in which the petitioners are teaching as Guest Faculty/Extension Lecturer, their services might be terminated.

Learned State counsel submits that the order dated 20.01.2020 Annexure P-6 has been passed after ascertaining facts from various authorities so as to ensure that there is a teacher to cope up with the workload where the workload is more and the teachers are less.

Learned counsel for the respondent further submits that in a College where there is no workload or the workload is less than which is sanctioned, in its wisdom, often considering the said facts,

the Department has abolished a particular post in a particular subject which action has been taken after due application of mind.

Learned counsel for the respondents further submits that the present writ petitions have been filed on apprehension for the reason that as of now, no order causing prejudice to the petitioners has been passed either terminating their services or even transferring them from one institution to another institution where the workload exists, therefore, without raising the said grievance before the Department, the petitioners have raised the grievance before this Court and that too only on the basis of apprehension hence, the prayer of the petitioners for setting aside the order dated 20.01.2020 Annexure P-6 may kindly be declined.

Learned counsels appearing on behalf of the petitioners submit that the apprehension of the petitioners that their services might be terminated arose as the respondent advertised certain post to be filled on regular basis and as the respondent had abolished certain other posts, the newly selected candidates would necessarily be accommodated at their place, therefore, the petitioners are challenging the order by which certain posts were either abolished on the ground that they are surplus or the post has been transferred to another Government College where the work exists.

Learned counsel for the petitioners submits that even the reply also depict the available workload to be discharged by the Extension Lecturer/Guest Faculty is much less than post advertised,

which will ultimately result in terminating the services of the petitioners on the joining of the regular incumbent.

I have heard learned counsel for the parties and I have gone through the record carefully.

It is clear that as of now, no order causing prejudice to the petitioners have been passed except that the respondent vide (Annexure P-6) dated 20.01.2020 have rationalised certain posts in certain subject either by declaring them surplus and abolishing the same or have transferred some of the posts to other Government Institution where the workload of the said post exists.

None of the petitioners have been relieved from the service so far.

That being so, the respondents are to be given an opportunity to assess the workload in each subject to decide as to whether, the petitioners who are working as extension lecturer/guest faculty are entitled to continue in service or not. The assessment of the workload is within the domain of the employer but the same is directed to be assessed keeping in view the various guidelines which have been issued by the department itself for the said purpose.

Any action with regard to continuance of the petitioners in service or terminating their service will only to be taken after assessing workload in each subject in all the Government Institutions available within the State of Haryana. In case according to respondents workload of the post on which petitioners are working exists in any

other institution, petitioners be posted there so that they do not suffer any prejudice.

The question which the petitioners have raised is that they have apprehension that upon joining of the regular incumbent, as number of posts have already been advertised by respondent No.8, their services will be terminated. It is a matter of fact that the petitioners are only working as guest faculty/extension lecturer till the workload exists in the absence of the regular incumbents. The petitioner are only appointed as a supplement to the regular incumbents and once the regular incumbents, through a proper agency, are recruited and appointed, the petitioners are to make way for those regular incumbents and cannot claim a right of continuance over and above the regularly selected candidates. Hence, if there is an availability of a regular selected candidate to be appointed, the petitioners have no option but to make way for the said appointment as the petitioner cannot claim right of continuance in preference to a regularly selected employee.

It has now been settled that even a regular incumbent can replace a guest faculty by way of transfer as settled by the Coordinate Bench in *Anant Kumar vs State of Haryana*, therefore, in case an already selected regular incumbent can replace a guest faculty/extension lecturer by way of transfer, it cannot be said that the regular selected candidate, once selected and appointed, cannot

replace the guest faculty/extension lecturer even if guest faculty/extension lecturer is working on the said posts.

Keeping in view the above, the present petitions are disposed of with the directions to the respondent-State to assess the workload in each subject in accordance with law and thereafter decide as to whether, the guest faculty/extension lecturer who are already employed with the respondent-State needs to continue keeping in view the said workload or any other action need to be taken by the respondent-State. Till, the said decision is taken by the State, the petitioners who are already continuing under the interim order of the Court will be allowed to continue without there being any hindrance.

In case, after the assessment of the workload, it is found that there exists sufficient workload to continue the petitioner who are working a extension lecturer, they will be allowed to continue wherever the said workload exists.

In case after the assessment of the workload, the respondents are of the opinion that there does not exist sufficient workload, the said decision will be given with reason to the petitioner, so that, in case petitioners are aggrieved against the said decision, they can avail appropriate remedy.

At this stage, learned counsel appearing in CWP No. 13573 of 2021 argues that on the one hand, keeping in view the workload which existed prior to the passing of the order dated 20.01.2020, the respondents had sent a requisition to the Public

Service Commission for the recruitment to the concerned post but after the decision Annexure P-6 dated 20.01.2020, the said requisition was not modified, hence, the newly recruited staff will create a situation where, the regular incumbent will be more than the regular sanctioned post advertised by the respondents, keeping in view the order dated 20.01.2020, which will not be in the interest of this case.

In this regard, the petitioner should not be concerned for the reason that the same is the concern of the department only. Further, it is a settled principal of law that the selection of candidates does not confer any right to claim appointment. In case work exists with the respondent-State, the respondent-State in its wisdom will decide to appoint number of candidates for whom vacancy exists as per the rationalization undertaken. This Court is not required to adjudicate on the said aspect as the same has no co-relation with the grievance of the petitioners raised in the present petition.

Keeping in view, the present petitions are disposed of.

Ordered accordingly.

CM-3903-CWP-2021, CM-7731-CWP-2020, CM-19262-CWP-2021, CM-19266-CWP-2021 and CM-15590-CWP-2022 also stands disposed of.

A photocopy of this order be placed on the files of connected cases.

(HARSIMRAN SINGH SETHI)
JUDGE

07.12.2022

pry	Whether reasoned/speaking	Yes/No
	Whether reportable	Yes /No