

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA-805-2021 (O&M)

Reserved on: 10.02.2022

Pronounced on: 22.02.2022

Dharamvir Singh Sangwan

... Appellant

VS.

Geeta Devi & Ors.

... Respondent

Coram: Hon'ble Mr. Justice M.S. Ramachandra Rao
Hon'ble Mr. Justice H.S. Madaan

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. Sanjeev Kodan, Advocate for the appellant

Mr. YP Malik, Advocate for respondent No.1

Mr. SS Pannu, DAG Haryana

M.S. Ramachandra Rao, J.

This Letter Patent Appeal is preferred by the appellant challenging the interim order dt. 28.04.2021 in CWP-15588-2021.

The appellant is the respondent no.4 in the Writ Petition

In the Writ Petition, the respondent No.1 in this appeal/Writ Petitioner had assailed the order dt. 12.08.2021 of the Directorate of Technical Education, Haryana Panchkula (respondent no.3 in the appeal) in office order No.258/Admn. dt. 12.08.2021 (P9) giving the charge of Officiating Principal along with that of the Drawing and Disbursing Officer at Government Polytechnic College, Jhajjar to the appellant on the ground that the appellant was the senior-most.

It was contended in the Writ Petition by the respondent No.1 herein that she was senior to the appellant, that the tentative gradation list dt.14.08.2020 had been objected to by her vide objections dt. 27.08.2020,

04.07.2021 and 03.08.2021, and the said order dt. 12.08.2021 passed by respondent no.3 therefore, cannot be sustained.

It was further contended that by respondent No.1 that prior to the passing of the impugned order, she was holding the post of Officiating Principal of the said Government Polytechnic College, Jhajjar, but she has now been displaced by the impugned order, and the appellant had been put in her place.

Vide impugned order passed on 24.08.2021, learned Single Judge, while issuing the notice of motion observed that the respondent No.1 had made out *prima facie* case for staying the operation of the impugned order and granted stay of the impugned order dt. 12.08.2021 during the pendency of the Writ Petition. It was *inter alia* observed by the learned Single Judge that the petitioner had objected to the rectification of the seniority and had given representations on 04.07.2021 and 03.08.2021, but without considering the same, the impugned order was passed.

Since the respondent No.1 is also holding only the post of Principal, Government Polytechnic College, Jhajjar *in an officiating capacity*, and she is challenging the appointment of the appellant as *officiating* Principal vide the order dt. 12.08.2021 passed by the respondent no.3, the crucial question to be considered is:

“whether the respondent no.1 has any vested right on account of such officiating appointment having been given to her, for her to insist that only she should be continued in the said officiating position and the appellant cannot be considered for the same?”

It is settled law that an officiating hand has no right to a post.

In **Parshotam Lal Dhingra vs. Union of India**¹, the Supreme Court held that an appointment to officiate in a permanent post is usually made when the incumbent substantively holding that post is on leave or when the permanent post is vacant and no substantive appointment has yet been made to that post; that such an officiating appointment comes to an end on the return of the incumbent substantively holding the post from leave in the former case, or on a substantive appointment being made to that permanent post in the latter case, or on the service of a notice of termination as agreed upon, or as may be reasonable under the ordinary law; and *an appointment to a permanent post in a Government service, either on probation, or on an officiating basis, is, from the very nature of such employment, itself of a transitory character* and, in the absence of any special contract or specific rule regulating the conditions of the service, the implied term of such appointment, under the ordinary law of master and servant, is that *it is terminable at any time*. It was further held that *in the case of an appointment to a permanent post in a Government service on probation or on an officiating basis, the servant so appointed does not acquire any substantive right to the post* and consequently cannot complain, any more than a private servant employed on probation or on an officiating basis can do, if his service is terminated at any time.

In **State of Bombay vs. F.A. Abraham**² it was reiterated that a person officiating in a post has no right to hold it for all time; he may have been given the officiating post because the permanent incumbent was not available, having gone on leave, or being away for some

¹ 1958 SCR 828

reasons; and an officiating appointment does not confer any right to the incumbent to continue in the said post.

Likewise in *Sreedam Chandra Ghosh vs. State of Assam & Ors.*³ the Supreme Court held that the appellant therein, who was asked to officiate as the headmaster till the assumption of the office by a regular incumbent does not have any right to hang on to the post after a regular incumbent has been transferred to the said post.

No decision to the *contra* is placed before us by the learned counsel for the respondent No1/Writ Petitioner.

The above-referred settled legal position does not appear to have been brought to the notice of the learned Single Judge.

In our considered view, since the respondent No.1 did not have any vested right to hang on to her officiating appointment as Principal of the Government Polytechnic College, Jhajjar, and continue in that position for all times to come, she cannot complain that she was being replaced by the appellant vide the impugned order dt.12.8.2021 passed by the respondent No.3 *prima facie*. She cannot *prima facie* maintain the Writ Petition as she has no such vested right and seek to continue in her officiating position.

Merely, because in the impugned order it is observed that the appellant was senior most, the respondent No.1 cannot contend that in view of her alleged seniority, she could not be displaced from the said officiating post and replaced by the appellant. This is because the aspect of seniority would be irrelevant while making an officiating appointment.

In this view of the matter, we allow the appeal and set aside the interim order dt. 24.08.2021 in CWP-15588-2021 passed by the learned Single Judge.

This order will not preclude the official respondents from making a regular appointment to the post of Principal of the Government Polytechnic College, Jhajjar in accordance with law.

No costs.

(M.S. Ramachandra Rao)
Judge

22.02.2022
Vvishal

(H.S. Madaan)
Judge

- 1. Whether speaking/reasoned?*
- 2. Whether reportable?*

Yes/No
Yes/No