

202 (2 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CWP-16555-2010 (O&M)
Baljit Kaur
..... Petitioner

Vs.
State of Punjab and others
..... Respondents

2. CWP-22247-2020 (O&M)
Baljit Kaur
..... Petitioner

Vs.
State of Punjab and others
..... Respondents

Date of Decision: 22.09.2023

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present None for the petitioner
 in *CWP-16555-2010*.

 Mr. Sunny Singla, Advocate
 for the petitioner in *CWP-22247-2020*.

 Mr. Vishnav Gandhi, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J.(Oral)

I.CWP-16555-2010

1. Counsel for the petitioner although appearing in the other connected petition has refused to argue in the present case no.*CWP-16555-2010* stating that he has not been given instructions to argue the same. However, as the petitioner is same in both the cases, the present cases are being decided together on merits.

2. Petitioner by way of this petition claims seniority from 2001 when the other persons were appointed. However, from the reply it has come up on record that the petitioner was appointed as a Trained Dai on 17.06.2005 in compliance of the orders passed by this Court in CWP-13142-2002 decided on 22.05.2004 whereby one post of Dai was revived w.e.f. 26.05.2005, and in compliance thereof, the petitioner who had preferred the said writ petition, was appointed on the said post whereafter the Court closed the proceedings stating that nothing further remains to be adjudicated.
3. Keeping in view thereto, the petitioner had joined on the said post on 04.08.2005. Her case, therefore, is different from those who were appointed in 2001 as per Rule 10 of the Punjab Ayurvedic Department (Technical Class-III) Service Rules, 1963. The seniority *inter se* of members of service has to be determined by the dates of their continuous appointments in service. Persons appointed as a result of earlier selection shall be senior to those appointed as a result of subsequent selection. Since the petitioner was selected and appointed in the year 2005 while the other persons were appointed in 2001, her claim for seniority from 2001 does not arise as there was no post available in 2001 for appointing her.
4. In view thereof, claim of the petitioner is misconceived.
5. Writ Petition fails and is accordingly ***dismissed***.
6. All pending applications also stand disposed of accordingly.

II. CWP-22247-2020

7. Petitioner has preferred this writ petition after she had retired and attained superannuation in February, 2020. The peititoner claims that

she should be considered as being appointed prior to 01.01.2004, and therefore she claims that she should be granted pension and other pensionary benefits.

8. Learned counsel also relies on judgments passed by this Court in *CWP-20501-2008 in Parveen Kumar and another vs. State of Punjab and others*, decided on 12.05.2009, and *LPA-108-2012 in State of Punjab and another vs. Rupinder Pal and others*, decided on 08.11.2012, wherein it was held that merely because the appointments have been put on hold relating to selections which were made in the year 2001, the persons appointed even after 2004 would be entitled to the benefit of the Old Pension Scheme.
9. It is stated by counsel that the petitioner was appointed vide order dated 17.06.2005 and the said appointment was with reference to selections conducted in the year 1996, wherein the result was declared on 16.08.1998.
10. It is the case of the petitioner that she preferred writ petition no.CWP-6595-2001 wherein respondents stated that the Subordinate Services Selection Board has made recommendations for appointment of the petitioner as Trained Dai whereupon the writ petition was disposed of. Interviews were conducted in the year 2002 but the appointment orders were not issued and she thereafter filed a writ petition no.CWP-13142-2002 which was disposed of on 22.05.2004 by this Court on the basis of the statement made by the respondents that the petitioner's case will be considered in one of the cabinet meetings to

be held shortly. Contempt petition was filed thereafter and she was issued appointment letter on 17.06.2005 whereafter she joined the post.

11. Thus, learned counsel submits that the appointment has to be referred back from the time when the selection process was initiated and the petitioner was finally recommended for appointment i.e. in the year 2001.
12. Learned counsel submits that accordingly the petitioner was entitled to the Old Pension Scheme, keeping in view the facts as stated by her.
13. *Per contra*, learned counsel appearing for the State has submitted that in fact the petitioner was appointed on 17.06.2005 after the post was created in her favour by the cabinet decision, and she joined the services of the department which has come on record from the connected writ petition on 04.08.2005.
14. The appointment letter dated 17.06.2005 specifically mentions that her appointment will be subject to the Government notification dated 02.03.2004 with respect to Contributory Pension Scheme. The petitioner did not challenge the said aspect before this Court. After she has retired, she cannot turn around and claim that she is entitled for the Old Pension Scheme. The Writ Petition is highly belated and suffers from gross laches.
15. I have considered the submissions.
16. This Court has noticed while deciding the aforesaid writ petition that the petitioner was given appointment against a post which was created in the year 2005 and therefore she cannot be said to be an appointee

against the post which was available prior to the coming into force of the New Pension Scheme i.e. prior to 01.01.2004.

17. In the circumstances, granting her Old Pension Scheme would be a travesty of justice, more so as she had not claimed Old Pension Scheme even after she was appointed vide order dated 17.06.2005. The said order of appointment is not a subject matter of challenge by the petitioner nor its conditions have been challenged.
18. Writ Petition has been filed after the petitioner has attained superannuation in the year 2020.
19. Considering all the aspects, this Court does not find any reasons to grant relief as claimed for.
20. Accordingly, Writ Petition stands *dismissed*.
21. All pending applications also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

September 22, 2023
Mohit goyal

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |