

2023:PHHC:074603

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

CWP No.14225 of 2013
Reserved on 08.05.2023
Pronounced on:26.05.2023

Ravita Rani
Versus
.... Petitioner

State of Haryana and others
.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Anurag Goyal, Advocate, for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Deepak Kundu, Advocate, for respondents No.2 and 3.

JAISHREE THAKUR.J

1. The instant writ petition has been filed by the petitioner seeking to challenge downgrading of the post held by her as Attendant to that of Ward Aya.
2. In brief, the facts of the case are that the petitioner was appointed as Ward Aya with Mahasabha Gurukul Vidyapeeth, Khanpur Kalan on 25.06.2002 which was a private self-financed institute, not getting any grant-in-aid from the State Government. Bhagat Phool Singh Mahila Vishwasvidyalaya Khanpur Kalan Act, 2006 (the Act of 2006 for short) was enacted, upon which, the institutions being run by the erstwhile management of Mahasabha Gurukul Vidyapeeth came under the control and management of the newly set up University. By virtue of Section 36(1) of the Act of 2006, all properties movable or immovable and all the interest of whatsoever nature

and kind therein, vested in the institutions of Mahasabha Gurukul Vidyapeeth, Khanpur Kalan and courses run thereunder and the posts created, filled before the commencement of the Act, were to vest in the University. After the establishment of the University, a policy regarding rationalization of staff of constituent colleges came wherein the government decided to create 190 posts for the University. Under serial No.26 of the said policy, 30 posts of Lab Attendant/Attendant/Hostel Attendant were created. This sanction for creation of additional posts was with the concurrence of the Finance Department. The 190 posts freshly sanctioned by the government were distributed amongst the various institutions/colleges, out of which 30 posts of Lab Attendant/Attendant/Hostel Attendant, were allocated to the College of Ayurveda. The petitioner was treated as one of the 19 employees in the category of Hostel Attendant/Lab Attendant/Attendant of Bhagat Phool Singh Mahila Vishwasvidyalaya, Khanpur Kalan, MSM Institute of Ayurveda. The petitioner was brought on the regular strength of the University on the post of Ward Aya in the pay scale of 2500-3200 w.e.f. 27.02.2009. Thereafter, the petitioner applied for promotion vide letters dated 02.09.2009, 12.03.2011 and 14.08.2011 keeping in view the fact that she had educational qualifications for promotion. In fact the pay of the petitioner would show that her designation was shown to be that of an Attendant with pay at Rs.5,000/- with grade pay Rs.1300/-. There are salary statements attached with the writ petition which would reflect that the designation of the petitioner had been reflected to be that of Attendant. In the 20th meeting of the Executive Council held on 15.06.2012, resolution No.3 was passed where a conscious decision was taken by a Committee

constituted under the Chairmanship of Dr. Vimal Joshi that 7 posts sanctioned in the category of Hostel Attendant/Lab Attendant/Attendant be downgraded to just seven employees. The petitioner herein was one of the seven persons who was downgraded. Hence, the present writ petition.

3. Learned counsel appearing on behalf of the petitioner would argue that even though the petitioner was regularized on the post of Ward Aya, her salary statements would reflect her designation as Attendant. Counsel also argued that the University itself vide letter dated 24.09.2010 (Annexure P-13) had taken note of the fact that persons at serial Nos.1 to 4 fulfilled prescribed qualification for the sanctioned post of Attendant in the pay scale of Rs.3050-75-3950-EB-80-4590. There was a recommendation for re-designating the posts held by persons at serial Nos.1 to 4 as Attendant, with the prior approval of the Executive Council. The name of the petitioner was mentioned at serial No.4 and, therefore, the University itself made a recommendation for re-designation the post of the petitioner to that of Attendant. It is argued that several persons have been given the benefit of being appointed as Attendant who do not even have the qualification. Similarly on the recommendation of the Executive Council, one Jagat Singh who was initially appointed as a Chowkidar, has been appointed in the regular strength of MSM Institute of Ayurveda on the post of Attendant. It is argued that by downgrading the post of the petitioner as Ward Aya is nothing but a creation of the post of Ward Aya, which cannot be done without the approval of the Government. As per the instructions issued by the government dated 26.10.2009 and Section 14 of the Act 2006, it has been clearly mentioned that “*Notwithstanding anything contained in this Act, the*

University shall not create any teaching and non-teaching post or revise the pay scale of the teaching and non-teaching employees without obtaining the prior approval of the government.” In fact as per the policy of rationalization, the post of Ward Aya did not exist. Once there is no power to create any post with the Executive Council, the downgrading of the post cannot be done without the approval of the government and, therefore, the impugned order is illegal and deserves to be set-aside.

4. *Per contra*, learned counsel appearing on behalf of the respondent Nos. 2 and 3-University would argue that the government agreed to create 190 posts for the staff of institutes as per the employee's actual designations. A consolidated demand of 30 class-IV posts was raised by clubbing the post of Hostel Attendant/Lab Attendant/Attendant in one category. In this category some posts of MSM institutes like that of Ward Aya held by the petitioner were also counted without naming them separately. The petitioner's services were rationalized and she was brought in the regular strength of MSM Institute as Ward Aya in the pay scale of Rs.2550-3200 w.e.f. 27.02.2009. However, no post in the nomenclature of Ward Aya was created in the rationalization process whereby an anomaly was noticed by the University and accordingly, a Committee was constituted under the chairmanship of Prof. Vimal Joshi for removal of such anomaly. The Committee recommended that there were 7 such posts in MSM Institute which were sanctioned/created under the category of Hostel Attendant/Lab Attendant/Attendant which needed to be downgraded. The Executive Council approved the decision and has requested the State Government for approval. Furthermore, the petitioner's salary during that period was being

provisionally drawn against a higher post of Attendant, that is, amongst 30 posts created by the Government for the category of post of Hostel Attendant/Lab Attendant/Attendant. The pay scale of Ward Aya is Rs.4440-7440+1300 Grade Pay and the same is being given to the petitioner. No financial loss has been occurred to her. As far as seeking parity with others, it is submitted that those employees were rationalized and brought in the regular strength on the basis of the posts created by the State Government as per the designation in the erstwhile Institutes on the basis of the designations only whereas the petitioner was rationalized in terms of the government letter dated 27.02.2009 upon the approval and recommendation of the Executive Council as per designation only which is Ward Aya. It is also argued that the Executive Council of the University is empowered to downgrade any post sanctioned or created by the State Government which does not entail any additional financial liability on the State Exchequer. Therefore, there can be no fault in the action of the Executive Council in downgrading 7 posts of Attendant to that of Ward Aya.

5. I have heard counsel for the parties and with their assistance have gone through the pleadings of the case.

6. The grievance of the petitioner herein is that there was a recommendation by the University itself to re-designate her post to that of an Attendant since they (petitioner along with others) were already being paid a scale that would have no financial liability on the State Exchequer and that the petitioner and others had the necessary qualifications. After paying salary to the petitioner as an Attendant, the Executive Council has downgraded the

post to that of Ward Aya in violation of the provisions of Section 14 of the Act of 2006 and the instructions as issued on 26.10.2009.

7. On the promulgation of the Act of 2006, Section 36 thereof provided for vesting of properties of institutions amalgamated into the University. The said Section reads as under:-

“36 . Vesting of properties. - (1) All properties, movable or immovable and all the interest of whatsoever nature and kind therein, vested in the institutions of Mahasabha Gurukul Vidyapeeth Haryana, Bhainswal Kalan and Kanya Gurukul, Khanpur Kalan and the courses run thereunder and the posts created, filled before the commencement of this Act, shall vest in the University.

(2) All debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by the Mahasabha Gurukul Vidyapeeth Haryana, Bhainswal Kalan and Kanya Gurukul, Khanpur Kalan relating to its institutions shall be deemed to have been incurred, entered into, or engaged to be done by, with or for the University.”

The petitioner was appointed as a Ward Aya in Mahasabha Gurukul Vidyapeeth, Khanpur Kalan on 25.02.2002, and was later regularized as a Ward Aya in MSM Institute of Ayurveda on 26.05.2009 with effect from 27.02.2009, a constituent institution of the University. 190 additional posts were sanctioned on the setting up of the University, out of which, 30 posts of Lab Attendant/Attendant/Hostel Attendant were clubbed together and at that

relevant time, no post of a Ward Aya was created/sanctioned. It would be relevant to note that at no point in time, the petitioner was regularised on the post of an Attendant even though there was a recommendation of the University to redesignate the post of Ward Aya to that of as Attendant, which approval was not given by the Executive Council. Merely because the petitioner was being paid the salary under the nomenclature of being an Attendant, such action would not create a vested right in her to be designated on the post of an Attendant.

8. The argument as raised that the Executive Council by virtue of Section 14 of the Act of 2006 and subsequent instructions, has no power to downgrade a post is not tenable. The provisions of the aforesaid Section that *the University shall not create any teaching and non-teaching post or revise the pay scale of the teaching and non-teaching employees without obtaining the prior approval of the government*, would not be attracted in this case, as no new post has been created causing any financial liability on the State Exchequer. The post of Ward Aya was never accounted for at the time when additional posts were sanctioned. In fact out of the sanctioned 19 posts of Attendant/Lab Attendant, 7 posts have been downgraded, so as to accommodate persons like the petitioner. The post created before the commencement of the Act of 2006 was to continue as such, and it is on account of this anomaly that out of 19 post of Attendants/Lab Attendants etc. 7 posts have been downgraded. There is no *mala fide* action on the part of the respondent University while doing so. The approval of the State Government has been sought as stated in the written statement and as on date, there is no replication controverting the written statement. In the opinion of this Court,

no fresh post has been created, putting a financial burden on the State, neither has the post been upgraded so as to be in violation of the rules and the instructions.

9. It has been held in ***Union of India and others Versus Shri Bhanwar Lal Mundan, 2013(8) SCR 559*** that "*the authorities were well within their domain to rectify the erroneous fixation of pay*". The pay scale of the petitioner as specified in the letter appointing and regularizing her services as Ward Aya was in the scale of Rs.2515- 3200 w.e.f. 27.02.2009 and now she is in the pay scale of Rs.4440-7440+1300 Grade Pay. As explained that she was drawing a pay scale for the post of an Attendant as no post of Ward Aya existed, therefore, by downgrading 7 posts of Attendants to accommodate Ward Aya and others in their own post, there is no infirmity or illegality in the order so passed.

10. Consequently, the writ petition, being devoid of merit, is dismissed.

(JAISHREE THAKUR)
JUDGE

26.05.2023

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No