

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 11920 of 2016 (O&M)
Reserved on: March 16, 2023
Pronounced on: 3.5.2023

Dr. Surender Bala

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. H.S. Dhindsa, Advocate
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. P.S. Bajwa, Advocate,
for respondent No.4.

JAISHREE THAKUR, J.

1. The petitioner herein by way of instant writ petition seeks quashing of the order dated 26.5.2014 (Annexure P/6) passed by respondent No. 2, vide which the claim of the petitioner to consider her appointment from the date her other batch mates were appointed, has been rejected; with a further prayer to direct respondent No.4 to count the services of the petitioner w.e.f. January 2007, when the petitioner, along with her other batch mates, was appointed, pursuant to the advertisement dated 19.5.2006 (Annexure P-1/B).

2. The brief facts, as averred in the writ petition, are that initially, the petitioner was appointed on a sanctioned post of Hindi Lecturer on adhoc basis in Dayal Singh College, Karnal—respondent No.4, which is a

government aided College, affiliated to Kurukshetra University, Kurukshetra—respondent No.3. In May 2006, various posts, including one post of Lecturer in Hindi in general category, were advertised by respondent No.4. In pursuance to the said advertisement, the petitioner, being eligible, applied for the aforesaid post, but her candidature was rejected on the ground that she was overage, which was challenged by the petitioner by filing CWP No. 17966 of 2006. The said writ was allowed and eventually the petitioner was selected by the Selection Committee. She was at No.1 in the order of merit. However, when the case of the petitioner for approval of her appointment was sent to the government as well as respondent No.3, the Director, Higher Education Haryana, did not approve the same, on the ground that one of the nominees of the Higher Education Commissioner had given dissenting note. This action of the respondents compelled her to file another CWP No. 4751 of 2008 with a prayer to approve the appointment of the petitioner from the date it was declined and also challenged Rules 7 (1) (iv) of the Haryana Affiliated College (Security of Service) Rules, 2006 (hereinafter referred to as “**the Act**”). Vide order dated 21.12.2010 (Annexure P/1), the CWP No. 4751 of 2008 was allowed by this Court and while holding Clause (iv) of sub rule 1 of Rule 7 of the Act as arbitrary and ultra vires of Articles 14 and 16 (1) of the Constitution, the respondents were directed to grant approval to the proceedings of the Selection Committee by ignoring the dissenting note recorded by one of the nominees of Commissioner of Higher Education. Consequently, the petitioner was issued appointment letter on 18.5.2011 (Annexure P/2), but she was not considered an appointee from the back date. Hence the petitioner was once

again compelled to approach this Court by filing CWP No. 14682 of 2013, seeking quashment of the action of the respondents not considering the appointment of the petitioner from the date her other batch mates had been appointed. In support of her claim, the petitioner had relied upon the judgment rendered in case of **Dr. Chanchal Kumar Sharma Versus Managing Committee, Maharaja Aggarsain College, Jagadhri CWP No. 20046 of 2010 decided on 16.3.2012**. The said writ petition was disposed of by this Court on 11.4.2013 (Annexure P/4) with a direction to respondent No.4 to consider and decide the claim of the petitioner.

In pursuance to the order dated 11.4.2013 (P-4), respondent No.4 passed the proceedings dated 10.10.2013 and 25.10.2013 in the shape of Screening Committee and sent the case to the Director General, Higher Education, Haryana Siksha Sadan, Panchkula, vide letter dated 11.11.2013. The said proceedings of the Screening Committee were considered by the Vice Chancellor and the Chairman of the Dean of the Colleges and other members and they asked for the service book of the petitioner, on which the Principal, Dayal Singh College, Karnal, wrote a letter to the Director, General Higher Education, Haryana dated 14.1.2014 (Annexure P/5) mentioning therein that service book of the petitioner was not maintained as she was appointed on contractual basis with consolidated salary. Ultimately, vide impugned order dated 26.5.2014 (Annexure P/6), respondent No. 2 rejected the claim of the petitioner on the ground that the service rendered by the petitioner on contractual basis cannot be considered for counting her previous service towards seniority/selection grade, at par with adhoc service rendered by Dr. Chanchal Sharma. Against the order dated 26.5.2014 (P-6),

the petitioner made a representation dated 11.4.2015 (Annexure P/7) to the Secretary, Pay Anomaly Commission, Haryana, praying for being granted regularization with effect from the date when her other batch mates, were selected. When nothing was done, the petitioner sent a reminder dated 22.4.2015 (Annexure P/8). Since the petitioner did not receive any response from the respondents, despite reminder, hence the instant writ petition.

3. Learned counsel for the petitioner would vehemently argue that this is a glaring case of highhandedness and arbitrariness on the part of the respondents, wherein the petitioner not once but thrice earlier has to approach this court for one relief or the other because of the unjustified action of the respondents. At the first instance, the candidature of the petitioner was illegally rejected on the ground of her being overage and when this Court allowed the petitioner being eligible to apply for the post of Lecturer and she was eventually selected, then her selection was not approved on a flimsy ground that one of the nominees of the Higher Education Commissioner had given dissenting note. For each arbitrary action of the respondents, the petitioner has to approach this Court to seek the relief. It is submitted that this is a sheer case of harassment meted out to the petitioner at the hands of the respondents. It was submitted that though petitioner was appointed vide letter dated 18.5.2011 (P-2) in pursuance of the advertisement issued in May 2006, still she was entitled to the benefit of regular service with effect from the year 2007 as granted to the other batch mates of the petitioner, who were also selected under the advertisement issued in May, 2006. In fact, the delay in appointment of the petitioner has been occurred on account of the arbitrary action on the part of the

respondents and no fault is attributable to the petitioner. It is further submitted that the appointment of the petitioner has to be treated as regular appointment with effect from January 2007 when her other batch mates were appointed and she is entitled to be granted senior scale along with consequential benefits.

4. Per contra, learned counsel for the respondents would argue that the request of the petitioner for counting of her previous service towards seniority/selection grade has rightly been rejected. It is submitted that the petitioner was initially appointed as a part time Lecturer in the College of respondent No. 4 on consolidated salary of ₹3,000/-, which was paid out of the college development fund and she was never appointed against regular post. She had worked in the College for fix duration of about 9/10 months of each year on the basis of fresh interviews in every session and she would be relieved at the end of the session. Her engagement letter on contractual basis on consolidated salary are R/1 and R/2 respectively. The break-up of her tenure service on contractual basis and consolidated salary paid from September, 2002 to May 2011 has been given in the reply submitted by respondents No. 1 and 2. It was further submitted that since the petitioner was being engaged on contractual basis with breaks, therefore, service book of the petitioner as well as the personal file were not being maintained by the respondent—College and therefore, her claim was rightly rejected.

5. I have heard learned counsel for the parties and have perused the record with their assistance.

6. From the facts enumerated above, it is clear that the petitioner

herein, who had been working on contract basis, applied for a regular job pursuant to an advertisement issued in the year 2006. For one reason or the other, appointment was denied to her; firstly on the ground that she was overage and subsequently on the ground that one of the nominees of the Higher Education Commissioner did not agree to her appointment. In fact, the petitioner was at No. 1 on the select list. Each time when an objection was raised to her appointment, she has to approach this Court for redressal of her grievance and ultimately by judgment in **Dr Surender Bala Versus State of Haryana and others, Civil Writ Petition No. 4751 of 2008 decided on 21.12.2010**, the respondents were directed to grant approval to the proceedings of the Selection Committee and if found suitable, offer appointment to the petitioner. The appointment was offered by letter dated 18.5.2011 (P-2). The petitioner for no fault of hers, has been made to approach this Court time and time again just to be able to get her appointment letter, issued after she had been selected by the Selection Committee for the post of Lecturer in Hindi after having participated in the selection process that was initiated by the College itself. The interview for the regular appointment was held in 11/12.12.2006 and the petitioner was at serial No. 1 in the selection panel. The Principal of the College sought grant of approval from the Commissioner of Higher Education to offer the post of Lecturer in Hindi, vide a communication dated 26.12.2007 (Annexure P-3/A), but once again appointment was not offered only on account of the fact that there was one member in the Selection Committee who had given a dissent note. Ultimately, under the orders of this Court appointment was offered. The delay in offering the appointment letter can not, under any

circumstances, be attributed to the petitioner and, therefore, she cannot be made to suffer in that account.

7. Therefore, the prayer of the petitioner to consider her appointment from the date, the others were offered a letter of appointment under the same advertisement, is justified and the impugned order declining the relief, as sought, is set aside. This is being directed in view of the fact that this Court in **CWP No 17966 of 2006** had examined the record pertaining to the selection and had taken note of the recommendations of the Selection Committee for appointment of the petitioner on regular basis. The appointment offered after an inordinate delay 5 years has an adverse effect on the pay scale and pension of the petitioner apart from seniority.

8. Consequently, the writ petition is allowed and the petitioner, who has been agitating for her claim for regular appointment, is held to have been appointed with deemed date, when others of the same batch were appointed, that is w.e.f. January 2007 with all consequential relief thereof.

May 3, 2023
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No