

2023:PHHC:044472

**213 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-17210-2016 (O&M)

Date of decision: 24.03.2023

Paramjit Singh

....Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR JUSTICE ANIL KSHETARPAL

Present:- Mr. Jatin Salwan, Advocate for the petitioner

Mr. Navdeep Chhabra, Sr. DAG, Punjab

ANIL KSHETARPAL, J (Oral)

1. The only issue which requires determination is, “Whether the service of the petitioner is governed or would be governed by the old pension rules as applicable before 1st January, 2004 or the new pension scheme based on the contributory pension scheme, which has been made applicable with effect from 1st January, 2004.

2. This case has a chequered history. Hence, the relevant facts, in brief, are required to be noticed.

3. The petitioner applied pursuant to a recruitment notice issued on 28th December, 1994 inviting applications for filling up 300 posts of Demonstrator in the subject of Physical Education. The petitioner was not selected as he was not awarded marks for experience of working in the school affiliated to the Education Department. Certain candidates, identically situated, filed a writ petition in the High Court, which was allowed on 21st April, 2001, while issuing the following directions:-

“For the forgoing reasons we allowed this writ petition and direct the respondents to re-determine the merit of the petitioner by taking into consideration the experience of the petitioner, which she gained while teaching in a school affiliated to the Punjab School Education Board and also by awarding her marks for passing B.A. examination. If on re-determination of her merit for the post of Art & Craft Teacher, she gets more marks than the last selected candidate, who was selected pursuant to the state advertisement necessary consequences regarding giving her appointment would follow. However, she will not be entitled to any back wages but the date of appointment. When last selected candidate was earlier appointed, would be given to her for all other purposes. In the service career. These directions be carried out within one month from the date of receipt of copy of this order.

Copy of this order attested by the Special Secretary of court, be given to the counsel for the respondent for onward transmission to the concerned quarters.”

4. Pursuant to the aforesaid directions, the recruiting agency revised the merit list and the petitioner was appointed on 11th August, 2004. He was allotted a GPF number. However, the same was withdrawn vide Annexure P-8 on the ground that the merit list was revised further. It has been found that the petitioner has been wrongly awarded 4 marks for experience though, he was only entitled to 2 marks. In any case, the petitioner has been kept in service until now.

5. Learned counsel representing the petitioner contends that even if the revised merit list is to be taken into consideration for assigning the post, the petitioner secured 53.62 merit points whereas the last selected candidate in his category secured 53.13 merit points. He contends that the petitioner will be notionally deemed to have been

recruited before 1st January, 2004 as the last selected candidate, out of the original selection list, was selected prior thereto.

6. Learned State counsel does not dispute the aforesaid factual position, however, submits that since the petitioner was appointed after 1st January, 2004, as a result, he will be governed by the new pension scheme based on the contributory provident fund.

7. This Court has considered the submissions while analysing the arguments of the learned counsel representing the parties. There is no controversy with regard to the petitioner's securing 53.62 merit points even in the revised select list whereas the last selected candidate of his category in the original merit list secured only 53.13 merit points. As per the judgment passed by the Division Bench on 21st April, 2001, the petitioner was required to be granted the deemed date of appointment without granting any back wages. Hence, the petitioner shall be deemed to have been appointed before 1st April 2004. Accordingly, the communication dated 31st March, 2016 is quashed qua the petitioner only while directing the respondents to restore the GPF number allotted to the petitioner. The writ petition stands allowed

8. All the pending miscellaneous applications, if any, are also disposed of.

24.03.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE