



CWP-60-2021

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

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CWP-60-2021

Date of Decision: 25.07.2024

Rajesh Kumar

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Suresh Kumar Kaushik, Advocate for the petitioner

Mr. Dushyant Saharan, AAG, Haryana

TRIBHUVAN DAHIYA, J. (Oral)

The petition has been filed, *inter alia*, seeking a writ of *mandamus* directing the respondents to fix/reckon petitioner's seniority as JBT with effect from 13.08.2008, the date since when his juniors were given appointment, instead of 08.07.2009, in terms of judgment rendered by Division Bench of this Court dated 05.12.2012 in LPA No.1641 of 2010 along with batch of cases.

2. Learned counsel has contended that the respondents advertised posts of JBT Teacher vide advertisement no.06 of 2006 dated 20.07.2006. The petitioner applied for the same under ESM-GEN category, but was not selected for want of essential qualification. Being an ex-serviceman, he had passed "Unit Education Instructor Course" (UEI) from the Army Educational Corps Training College Centre Panchmari, but it was not considered equivalent to the requisite qualification for the post of JBT/D.Ed. The issue was decided by the Division



Bench vide judgment dated 05.12.2012, wherein the certificate was treated equivalent to the course and the candidates were declared eligible; the following directions were issued by the Division Bench:

10. ... According to us, this is the clincher and no further enquiry in this behalf is even required. Once the Director General has done the necessary exercise and has declared the aforesaid 'Unit Education Instructor Course' as equivalent to 'Primary School Teacher', it stands established therefrom that all these respondents who are holder of 'Unit Education Instructor Course', the said qualification is to be treated as equivalent to J.B.T. course.

11. As a result, all the appeals filed by the State of Haryana against the impugned judgment fails and are hereby dismissed. As a consequence, those respondents, who were given the appointments, their appointments cannot be terminated on this ground and they would be allowed to continue to work. Further, those who are awaiting appointment letters shall be issued appointment letters within a period of one month from today. It is made clear that those who have not been given appointments pursuant to the selection made in the year 2006, their seniority shall be reckoned from the date others were given appointments and that period shall be counted for all other purposes except that they will not be given any salary/wages for that period.

3. Pursuant to the decision rendered by the Division Bench, the petitioner received a letter from Secretary of the Commission dated 09.05.2013, Annexure P-2, informing that he had found place in the main selection list of ESM-GEN category for the post of JBT Teacher against Advt. No.6/2006, Category No.24. Resultantly, his name was sent to the Director, Primary Education, for taking necessary action. Later, the petitioner was issued order of appointment dated 04.07.2013, Annexure P-3, as JBT Teacher, which depicted his merit number 3709 A, and he joined as such on 09.07.2013. Since notional

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were not given to the petitioner, he submitted representation for the purpose. The same was decided by the respondents vide impugned order dated 15.07.2014, Annexure P-6, giving 08.07.2009 as the deemed date of appointment as JBT Teacher instead of 09.07.2013, as well as the benefit of seniority, pay fixation, and other service benefits except salary/wages from July 2009 to 08.07.2013, the date he actually joined the Department.

4. Learned counsel for the petitioner contends that the order is not in compliance with the directions issued by this Court on 05.12.2012. Since the petitioner becomes entitled to deemed date of appointment from the date other candidates were given appointment in terms thereof. He has referred to the letter of appointment dated 04.01.2018, Annexure P-9, issued to his junior-Rajmal, having merit position 3712 under the ESM-GEN category; he was given the benefit of deemed date of appointment from 13.08.2008 vide office order dated 12.04.2018, Annexure P-10. The petitioner being senior to Rajmal having merit number 3709 A, is also entitled to the same benefit of deemed date of promotion as well as fixation of pay on that basis.

5. Learned State counsel is not in a position to dispute the facts aforementioned. His only contention is that the petition has been filed after inordinate delay of six years which disentitles the petitioner to the claimed relief.

6. Heard.

7. Since there is no dispute on facts, the petitioner becomes entitled to the deemed date of promotion, i.e., 13.08.2008, which has been given to his junior vide office order dated 12.04.2018. He gets this right in terms of directions issued by the Division Bench as well, that seniority of the appointees is to be reckoned from the date other selected candidates were given



appointment, and the period is to be counted for all other service benefits except salary/wages for the period they have not worked. Accordingly, the petitioner is also held entitled to same benefits with effect from 13.08.2008.

8. Although the petition has been filed after delay of about six years, the petitioner cannot be non-suited only on that account since it is a recurring cause of action. Pursuant to grant of deemed date of promotion from 13.08.2008, he becomes entitled to enhanced pay and other benefits on that basis, and not getting the same is causing him loss every day. Accordingly, the petition is maintainable. However, the arrears of pay on account of the revision/refixation would be admissible only for thirty-eight months prior to filing of the petition.

9. Accordingly, the petition is allowed. The impugned order, dated 15.07.2014, is set aside directing the respondents to re-fix the petitioner’s seniority as JBT Teacher with effect from 13.08.2008, and release all consequential service benefits on that basis except salary, which is payable from 09.07.2013. He shall be entitled to arrears of revised/refixed salary etc. for thirty-eight months prior to filing of the petition, i.e., 04.01.2021, which shall be paid with interest at the rate of six per cent per annum from the due date to the date of actual payment. The directions are to be carried out within four weeks of receiving a certified copy of this order.

(TRIBHUVAN DAHIYA)
JUDGE

25.07.2024
Payal

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No