

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

210

CWP-108-1998
Date of decision: 13.03.2024

Gurmeet Kaur ..Petitioner

Versus

Punjabi University Patiala and another ..Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. B.S. Patwalia and
Mr. Abhishek Masih, Advocates for the petitioner

Ms. Shazia K. Singh, Advocate for the respondents

AMAN CHAUDHARY, J

1. The prayer in the present Civil Writ Petition filed under Articles 226/227 of the Constitution of India in the nature of certiorari, is for setting aside order dated 14.08.1997, Annexure P-10, whereby the claim of the petitioner for regularization has been rejected.
2. Learned counsel would submit that the case of the petitioner for regularization was rejected, without giving any reasons, even though it was covered by the Instructions issued by State of Punjab dated 22.04.1992 and 07.05.1993, as adopted by the respondent-University vide letter dated 18.07.1994, as she completed two years of adhoc service w.e.f. 11.02.1989 on 27.03.1992 and was also serving as such on the said date.
3. Learned counsel for the respondent submits that since petitioner was appointed in fresh selection process that took place during pendency of the matter, no cause of action survives to be adjudicated upon. She, however, while referring to the written statement, stoutly opposes the prayer on merit by submitting that the petitioner was a backdoor entrant, appointed on adhoc basis,

based on an undertaking given before this Court, in the case filed by him and as such, not entitled to regularization. She did not even participate in the advertisement that was issued in the year 1990. Subsequently, the qualifications for the post of Clerk having undergone a change in the year 1994, which she did not fulfill, as the type test that she had cleared in 1985 was different than the one now prescribed. Reference was made to para 1(i)(b) that any break in adhoc/temporary service would not be ignored in cases where such appointment was against a post/vacancy for which no regular recruitment was intended/required to be made e.g. leave arrangements or filling of other short terms vacancies.

4. Rebutting the aforesaid, learned counsel with vehemence contended that the right of the petitioner flows from the original advertisement dated 05.01.1985, pursuant to which, she having cleared the written and type test, was placed at merit No. 41, however, due to pick and chose policy adopted by the respondents, candidates only upto merit No.26 were appointed, which led her to file the first CWP 3857-1989, which was rendered infructuous, on the statement made on behalf of the University, that as and when the vacancy would be available, she will be appointed on adhoc basis, which she was in 1989. The amended qualifications would also not come in her way, on account of the fact that the policies for regularization were issued prior thereto, i.e. on 06.09.1991, 22.04.1992 and 07.05.1993, respectively, as per which, she is entitled for the same and there being no break in service, the reference to para 1(i)(b) is misconceived. The same is not even a ground taken in the impugned order or the written statement.

5. Heard learned counsel on either side.

6. It may be accentuated that the facts, which are not in dispute, are that there was an advertisement issued in the year 1985; the petitioner was at merit No.41; on a statement made by the University, she was appointed on adhoc basis in the year 1989; Policies/Instructions of regularization were issued on 06.09.1991, 22.04.1992 and based on the judgment in case of Piara Singh and another vs. State of Haryana, CWP-72-1998, dated 07.05.1993, were adopted by the University on 18.07.1994, Annexure P-7, clarifying therein to implement the aforesaid; on completion of two years service, the CWP-1373-1991 filed by the petitioner seeking regularization which when was disposed of as premature, the claim was rejected vide order dated 14.08.1997; an advertisement having thereafter been issued, in response of which the petitioner applied, competed, selected and was appointed on 11.07.2001 w.e.f. 27.01.2000.

7. It is evincible from the impugned order, that no reason has been assigned therein for declining the request for regularization, without even a reference to the Instructions in force and the same being simpliciter based on the legal advise that, "... as and when the advertisement in the newspaper will be given for filling up the posts of Clerks in the University then you can submit an application to compete with others and your case shall be considered at that time".

8. Stemming from the written statement, the assertion of the learned counsel, that the petitioner did not fulfill the requirement of type test in terms of qualifications changed in the year 1994, cannot be countenanced, as evidently, this was not stated by the Registrar in order dated 14.08.1997 and it is by far too well settled as held in **Mohinder Singh Gill vs. Chief Election Commr.** (1978)1 SCC 405, that the reasons mentioned in the impugned order cannot be supplemented by filing an affidavit or otherwise.

9. The next plank of argument, that the petitioner was a backdoor entrant, is equally fallacious, inasmuch as, she was a selectee, pursuant to an advertisement dated 05.01.1985, she having been placed at merit No.41, upon duly qualifying both, the written as well as type test and solely on the strength thereof, was the writ petition preferred by her when she was not appointed, which on a statement made to appoint her on adhoc basis, was disposed of as having been rendered infructuous.

10. Notably, in the Instructions dated 22.04.1992, the only requirement was of completion of two years as on 27.03.1993 and to be in service on the said date, which the petitioner indubitably fulfilled, having been appointed on adhoc basis on 11.02.1989 and continued uninterruptedly thereafter.

11. On a conspectus evaluation of the aforesaid, the impugned order deserves to be and is hereby set aside. As a sequel thereto and considering the life of the litigation and its history, this Court does not deem it appropriate to refer the matter to the University and orders that the services of the petitioner be regularized in terms of the Policy/ Instructions dated 22.04.1992, as adopted by the University. She is held entitled to the consequential benefits on notional basis arising therefrom, i.e. pay fixation, seniority etc.

13.03.2024

G Arora

**(AMAN CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No