

2024-PHHC-085218



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

CWP-4175-1997

Date of Decision: 09.07.2024

MEERA GUPTA (NAWAL)

...Petitioner

Vs.

THE STATE OF HARYANA & OTHERS

...Respondents

CORAM:- HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Bikramjit Singh Patwalia, Advocate with
Mr. Abhishek Masih, Advocate
for the petitioner.

Ms. Tanushree Gupta, DAG, Haryana.

Mr. Vijay Dahiya, Advocate
for respondent no.3.

TRIBHUVAN DAHIYA, J. (Oral)

The petition has been filed, *inter alia*, seeking a writ of *certiorari* quashing the orders dated 02.05.1996, and 05.02.1997, Annexures P-17 & P-19, respectively, whereby recovery of excess salary has been ordered against the petitioner with effect from March 1997; and a writ of *mandamus* directing the respondents to regularise her in service with effect from the date of her appointment, i.e., 13.08.1987, instead of 24.11.1995.

2. Facts of the case in brief are, the petitioner was initially appointed as Lecturer in Commercial Practice and Stenography (in short, 'CPS') in the Institute run by the third respondent/Management, Vaish Technical Institute, Rohtak, on a consolidated salary of ₹1,000 per month, vide letter dated 11/13.08.1987, Annexure P-1; she joined the service on 17.08.1987. Later, she



was granted regular pay scale of ₹950-20-1150-EB-25-1500 on the basic pay of ₹1050 plus allowances with effect from 01.08.1988, vide letter dated 16.06.1988, Annexure P-2. Considering her to be a temporary appointee, her services were dispensed with as no longer required, vide office order dated 05.06.1990, Annexure P-4, but was allowed to continue working as usual till any suitable alternative arrangement was made, vide office order dated 20.06.1990, Annexure P-5. Accordingly, she continuously worked as Lecturer without any break.

2.1 At that time, the course of Commercial Practice and Stenography (CPS) was an un-aided course, and there was a move to take it under grant-in-aid code by the State Government. Although the petitioner possessed Masters in Commerce (M.Com.) degree, which was the qualification for the post of Lecturer, CPS, it was with a lesser percentage or marks, i.e., forty-eight per cent, instead of the requisite fifty-five per cent. On the petitioner's request, the third respondent allowed her to improve the qualification within a period of three years, i.e., from 01.04.1990 to 31.03.1993, vide letter dated 31.03.1990, Annexure P-6. However, due to unforeseen family circumstances, the petitioner could not improve her qualification before 31.03.1993, leading to termination of her service for want of essential qualification for the post as per the criteria laid down in the Rules dated 26.09.1986, vide office order dated 12.01.1994, Annexure P-10.

2.2 The termination was challenged by the petitioner by filing a writ petition, CWP-769-1994 titled *Meera Gupta (Nawal) v. State of Haryana and others*, which was allowed vide judgment dated 19.05.1994, Annexure P-11, setting aside the order of termination and directing the respondents to permit



her to join back on the post of Lecturer CPS. It was ordered that her continuity of service for the purpose of promotion, increments and retiral benefits, etc. would not be adversely affected by the period she remained out of job on account of the impugned order. The judgment reads as under:

Factual matrix of the case is not in dispute, Petitioner was appointed as lecturer in Commercial Practice and Stenography as far back as 1987, with the respondent-college. The said college started getting aid from the State Government with effect from 1/4/1990 and the teaching and other staff of the college became subject to the eligibility conditions imposed by it. The respondents allowed the petitioner to improve her qualifications firstly upto 31.3.1993 and later extended it upto 31.12.1994. In the meanwhile the petitioner did improve her qualifications vide annexures P/16 which is not in dispute.

The only contention raised by the learned counsel for the respondents is that the petitioner could not have improved her eligibility qualifications by taking up the examination in M.Com part-I alone. We find no force in the submission made by the learned counsel for the respondents. It is for the University to lay down rules and Regulations for improving the educational qualifications of its students. There is no dispute that the Rules do not debar the petitioner from improving her qualifications by taking up M.Com part-I examination. Thus, the having rightly eligible her educational qualifications was fully eligible for the post of Lecturer. Therefore, her termination cannot be sustained.



In view of this the order annexure P/15 is quashed and the respondents are directed to permit the petitioner to join back on the post of Lecturer forthwith.

Petitioner undertakes that she will not claim any backwages. However, her continuity of service for the purpose of promotion, increments and retiral benefits etc. shall not be adversely affected for the period remained out of job on account of annexure P-15.

2.3 In the meanwhile, course of CPS was brought under grant-in-aid Code/Scheme by the State Government with effect from 01.04.1990. It meant that the government was to pay ninety-five per cent of salary to the employees in this discipline, in the form of salary grant to the Management. The Scheme was with the condition that employees should possess the requisite qualification to hold the post, or else they would not be entitled to regular scale of pay. The prescribed qualification for the post of Lecturer CPS was; (i) Master's Degree in Commerce/Business Management/Administration with fifty-five per cent marks, (ii) Knowledge of Hindi upto Matric.

2.4. The petitioner, who had M.Com. degree with forty-eight point five per cent marks, improved the qualification on 18.04.1994. Since she was in regular scale of pay, an objection to that effect was raised by the Auditors, and she was issued a show cause notice as to why the excess amount of salary paid to her be not recovered. Finding her response not satisfactory, the respondents, vide impugned office order dated 05.02.1997, ordered deduction of the excess amount from her salary with effect from February 1997. In this



background, she approached this Court by filing the instant petition; by way of an interim order, dated 20.11.1997, recovery of the amount was stayed.

3. Learned counsel for the petitioner has made two-fold submissions, *firstly*, the impugned order of recovery is bad in law. Once this Court, vide judgment dated 19.05.1994, had set aside the order of termination and held the petitioner entitled to the post of Lecturer CPS, there was no basis to consider her ineligible and not entitled to the regular scale of pay. *Secondly*, it has been contended that the petitioner is entitled to be regularised in service from the date of initial appointment, i.e., 13.08.1987, since she was fully eligible for the post, and working in the regular scale of pay after due selection and appointment. He has referred to the cases of certain other employees, who were working as Lecturer in Library Science, Accounts Clerks and Lecturer in Electronics, and were initially appointed in the Institute on *ad hoc* basis. They did not possess requisite qualifications at the time of appointment, which were acquired later while in service, but were regularised from the date of initial appointment on temporary basis. On these lines, the petitioner is also entitled to be regularised from the date of initial appointment.

4. Learned State counsel, on the contrary, contends that petitioner can only be considered in regular appointment in terms of the grant-in-aid Scheme, which requires the incumbent to possess the requisite qualifications as a pre-condition to be entitled to regular scale of pay. Since the petitioner acquired the qualification only on 18.04.1994, she was granted the regular scale of pay with effect from that date and given all due admissible benefits as well. After superannuation from service with effect from 31.12.2022, pensionary benefits have also been released to her on that basis.

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5. Heard.

6. Concededly, the course of CPS wherein the petitioner was working as Lecturer on consolidated salary with effect from 13.08.1987, was brought under grant-in-aid Scheme of the State Government with effect from 01.04.1990. One of the conditions for the incumbents to get the regular scale of pay under the Scheme was to possess essential qualification prescribed for the post. The petitioner had M.Com. degree, and improved the qualification with higher marks on 18.04.1994. She was, accordingly, treated in regular service for all intents and purposes from that date, in terms of the Scheme. The impugned order of recovery dated 05.02.1997, has been passed on the ground that she was not possessing the prescribed qualification and experience for the post of Lecturer CPS at the time the course was taken over under the grant-in-aid Scheme, and was not eligible for the pay scale prescribed for the post, i.e., ₹2000-3500 plus ₹200 special pay. This cannot be permitted, because it is a matter of record that the petitioner has already been considered eligible, and was holding the post of Lecturer CPS on the basis of qualification possessed, as has been observed by this Court vide judgment, dated 19.05.1994. Accordingly, recovery cannot be effected for want of alleged lack of prescribed qualification and experience.

7. So far as the claim for regularisation in service with effect from the date of initial appointment, i.e., 13.08.1987 is concerned, the same is not maintainable. It is because she had been temporarily appointed as Lecturer CPS on a consolidated salary, with reference to an application submitted for the purpose, as is apparent from her letter of appointment. The appointment was terminable anytime on twenty-four hours notice. Although she continued

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working as such, the appointment cannot be termed regular one, having been made by following the due procedure of law in accordance with Rules. She was brought under the grant-in-aid Scheme, and one of the essential conditions to get regular scale of pay, as prescribed therein, was to possess the qualifications prescribed under the Rules. In terms thereof, the petitioner started getting regular scale of pay. The Scheme as such, or any of its conditions, is not under challenge. Therefore, she cannot be held entitled to the regular scale of pay from any date prior to enforcement of the Scheme. At the time of initial appointment, the grant-in-aid Scheme was not in force and, accordingly, there is no basis for her claim for regularisation from that date. Besides, the benefit of regularization, if any, given to any other employee in derogation of the Scheme/Rules, cannot entitle the petitioner to claim the same.

8. For the reasons recorded above, the petition is partly allowed and the impugned orders, dated 02.05.1996 and 05.02.1997, are hereby set aside. The petitioner is, however, not entitled to regularisation from the date of initial appointment.

(TRIBHUVAN DAHIYA)
JUDGE

09.07.2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No