



CWP-4336-1998 (O&M)

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

202

CWP-4336-1998 (O&M)
Date of decision: 30.08.2024

HARJEET KAUR**....PETITIONER**

Vs.

**CHANDIGARH ADMINISTRATION THROUGH ITS SECRETARY,
EDUCATION DEPARTMENT AND OTHERS**

...RESPONDENTS**CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: Mr. Amit Jain, Senior Advocate with
Mr. Parit Aggarwal, Advocate
for the petitioner.

Ms. Madhu Dayal, Advocate
for the respondents.

JAGMOHAN BANSAL, J (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of communication dated 15.02.1996 whereby respondent has rejected claim of petitioner to approve her appointment as JBT Teacher.

2. The petitioner on 01.02.1981 joined respondent-Vedic Girls Senior Secondary School, Mani Majra, U.T., Chandigarh as a part-time Teacher. She was not holding qualification of JBT, however, she was having qualification of Prabhakar, O.T. The certificate of Prabhakar was issued to her by Panjab University on 08.01.1990 and she had cleared O.T. Examination in 1991 conducted by Gandhi Hindi Vidyapith, Prayag, U.P.



3. The respondent No. 3 vide advertisement dated 24.11.1994 (Annexure P-1) invited applications for the post of JBT Teacher. The petitioner who was already working with the said school, applied for the post and came to be selected. The School Management approved her appointment and referred her case to Chandigarh Administration through District Education Officer. The Chandigarh Administration vide order dated 06.06.1995 (Annexure R-1/4) did not accede to the request of School Management for appointment of petitioner as JBT Teacher on the ground that she does not possess qualification as prescribed in the Rules. The Management again referred her matter to District Education Officer who in his report dated 16.06.1995 noticed that Prabhakar, O.T. is a higher qualification as compared to JBT post and petitioner is having better qualification, thus, she may be adjusted against the post of JBT Teacher. The respondent reconsidered the matter and rejected the same by impugned order dated 15.02.1996.

4. The petitioner approached this Court by way of instant petition. A Division Bench of this Court vide order dated 27.03.1998 stayed her termination. By order dated 20.09.2000, the respondents were directed to release her salary. In view of orders of this Court, the petitioner worked till 2013 and retired on attaining the age of superannuation.

5. Mr. Amit Jain, Senior Advocate submits that on account of lack of approval by Chandigarh Administration, the petitioner despite serving for 32 years on a regular post, is not released pension. She was possessing qualification better than minimum prescribed qualification and her long experience needs to be considered as qualification. She during her service career was never subjected to punishment. She had an unblemished record.



6. Per contra, Ms. Madhu Dayal, counsel for the respondents submits that claim of petitioner was rejected at the first available opportunity and she at her own risk continued to work with respondent-school. She had already received full salary, thus, she cannot be released pension at this belated stage. She, though, was having higher qualification but concededly was never possessing prescribed qualification.

It is settled proposition of law that higher qualification cannot be considered where there is prescribed qualification. In support of her contention, she relies upon a Full Bench judgment of this Court in '*Som Dutt Vs. State of Haryana and another* reported as (1984) 1 ILR (Punjab) 400'.

7. I have heard counsel for the parties and with their able assistance perused the record.

8. From the perusal of record and argument of both sides, it comes out that petitioner had worked with respondent-school from 1981 to 2013 i.e. 32 years. She had worked as a School Teacher without interruption. It is not a case of the respondents that she had worked on different posts. She uninterruptedly had worked as a teacher. As per respondents, the appointment of petitioner could not be approved because she was not having requisite qualification i.e. JBT. The petitioner was possessing qualification of Prabhakar, O.T. which is higher qualification than JBT. The respondent in its communication has accepted that Prabhakar, O.T. is higher qualification than JBT because JBT Teacher can teach primarily level whereas OT can teach upto higher classes.

9. Different High Courts as well as Supreme Court prior to 2006 in many cases directed to States/Union of India to regularize part time/work charged/ad-hoc/contractual/daily wage employees. The foundation of all the judgments was length of service. In 2006, a Constitution Bench in *Secretary,*



State of Karnataka and others Vs. Umadevi (3) and others reported as **(2006) 4 SCC 1**, adverted with the question of regularization of temporary/part time/adhoc/daily wage employees. The Apex Court deprecated practice of employing temporary/part time or contractual employees though it held that in exigency, State can make appointment on contract basis. The Court held that regularization of contractual or part time employees would amount to legalization of back door entrants. The regularization of part time employees is violative of Articles 14, 16 & 309 of Constitution of India. The employees who are working on daily wage cannot claim discrimination on the ground that they have been paid lesser than regularly recruited employees. The High Court should not ordinarily issue directions for absorption, regularization or continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. High Court is not justified in issuing interim orders in such cases. There is no fundamental or vested right in those who have been employed on daily wages or temporary or contract basis to claim that they have a right to be absorbed in service.

10. From the reading of different paragraphs of judgment of the Constitution Bench in Uma Devi (supra), it can be gleaned that plea of regularization was rejected because they were not recruited in accordance with prescribed procedure as contemplated by Article 14 and 16 of the Constitution. The Court formed an opinion that executive has made appointment of these employees without following procedure prescribed for regular appointment. On account of contractual/daily/ad hoc appointment, meritorious candidates do not participate and mediocre come forward. The executive in violation of procedure ensures backdoor entry of favourite and less meritorious candidates. The regularization of these backdoor entrants would encourage executive and



jettison of rule of law as well as mandate of Articles 14 and 16 of the Constitution. Relevant extracts from the operative part of the judgment are reproduced as below:

- “i) Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee.*
- ii) The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme.*
- iii) But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment.*
- iv) It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain-not at arm's length-since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to*



be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible.

- v) *A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them.*
- vi) *The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.*
- vii) *When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature.*
- viii) *As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution.*
- ix) *It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier.”*

11. A common thread running through observations and findings of the

Apex Court, made in different paragraphs, is that State had made appointment



without following procedure prescribed for regular recruitment which amounts to violation of Article 14 and 16 of the Constitution of India. Despite said findings, the Court directed States and its agencies to make one time arrangement to regularize/absorb these employees with certain riders i.e. 10 years minimum service, sanctioned posts, minimum qualification etc.

12. The petitioner concededly was possessing higher qualification than prescribed qualification. She had continuously worked with respondent-school from 1981 to 2013. She was appointed in 1994 against a regular post. Her appointment was made against an open advertisement. All the eligible candidates participated and she came to be selected after following due procedure prescribed for regular appointment. She till the date of retirement worked against a regular post. None else had claimed said post. Meaning thereby, the petitioner had discharged duties against a regular post. There is no allegation of deficiency in her service and no disciplinary action was taken by respondents during her service tenure. It is true that Court cannot substitute prescribed qualification by any other and even by higher qualification. It is for the employer to determine qualification. If by Rules or statutory provisions, a qualification is prescribed, the Court cannot substitute said qualification, however, in the peculiar facts and circumstances of the present case, the matter needs to be examined from another angle i.e. right of the petitioner to get pension. She had concededly worked for continuous period of 32 years. It is not a stage of appointment. She, without interruption, had already worked for 32 years and retired on attaining the age of superannuation. She concededly was having higher qualification than prescribed qualification. She had worked as a Teacher and discharged duties assigned to a regular teacher. It would not be just, fair and reasonable to deny her pension at this stage.



13. In the wake of above discussion and findings, this Court is of the considered opinion that impugned order needs to be quashed and accordingly quashed. The respondents are directed to consider case of the petitioner for pension. For all intent and purposes, her date of appointment shall be 01.12.1994 i.e. date of appointment against a regular post. The arrears shall not carry interest and needful shall be done within 3 months from today.

14. Pending miscellaneous application(s), if any, shall also stand disposed of.

30.08.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

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