



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

JASLEEN RANDHAWAPetitioner
VERSUS

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Mr. Arun Gupta, DAG Punjab.

HARSIMRAN SINGH SETHI, J. (Oral)

In the present petition, challenge is to the order dated 16.10.2018/28.11.2018, copy of which has been appended as Annexure P-12 vide which the appointment of the petitioner as Lecturer-Biology (School Cadre) has been cancelled.

Learned counsel for the petitioner submits that the petitioner competed for the post of Lecturer-Biology in pursuance to the Advertisement dated 20.11.2015 wherein out of total 30 posts to be filled up, 14 posts were to be filled up from the general category candidates. The petitioner who was fully eligible to compete for the post in question keeping in view the eligibility prescribed, applied against the post to be filled from the general category.

As per the selection criteria advertised, the selection was to be made on the basis written test, which was conducted on 14.02.2016. In the result which was declared, the petitioner was placed at 7th in the merit list against the 14 posts to be filled up from the general category. Keeping in view of the selection of the petitioner, the respondents issued appointment letter dated 19.07.2016. As per the said letter dated 19.07.2016, the petitioner was appointed and posted as a Lecturer-Biology at the Government Senior Secondary School, Talera, District Moga. The petitioner went to join the said post but she was not allowed to join on the ground that there was no post of Lecturer-Biology available in the school where the petitioner is posted. Thereafter, the petitioner kept on requesting the respondents that she can be posted keeping in view her selection and she will be obliged in case, she is posted in Mohali keeping in view her family circumstances. The respondents did not pass any order, posting the petitioner to any other school and rather gave her extension to join and as per the extension given, the petitioner was supposed to join at Government Senior Secondary School, Talera, District Moga where, no post of Lecturer in Biology existed. Ultimately, the appointment of the petitioner was cancelled by the respondents vide impugned order dated 16.10.2018/28.11.2018, copy of which has been appended as Annexure P-12, which order is under challenge in the present petition.

Upon notice of motion, the respondents have filed their reply. In the reply, the respondents have conceded the fact that after final selection, the petitioner was posted at Government Senior Secondary School, Talera District Moga and there was no post of Lecturer-Biology available at the said place of posting and keeping in view of the fact that the petitioner had

requested extension and further requested to be posted in Mohali, the petitioner was granted extension for joining. As per the respondents, keeping in view of the rules governing the service, in case the selected candidate does not join the post within a period of 4 months of the appointment, the appointment was to be cancelled hence, impugned order considering the application of the petitioner was passed as she failed to join the post after her selection.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

From the facts, which have been stated hereinbefore, it is a conceded position that petitioner was selected and appointed to the post of Lecturer in Biology keeping in view her merit. After her selection, the petitioner was posted at a particular station noticed hereinbefore. It is also a conceded position that the petitioner was not allowed to join at the said place of posting on the ground that there did not exist any post of Lecturer in Biology. That being so, the respondents were under an obligation to post the petitioner to another station where the post of Lecturer in Biology existed.

Learned counsel for the respondent-State concedes the fact that no such posting order was ever issued to the petitioner posting her as Lecturer in Biology at any other station where the post was available till the appointment order of the petitioner was withdrawn by impugned order dated 16.10/2018/28.11.2018 (Annexure P/12). That being so, it is clear that where the petitioner was posted to join, there did not exist any post and the petitioner was not posted at any other station where the post was available. Hence, it cannot be said that petitioner intentionally did not join the post despite directed to join the same.

Once, no order was issued by the respondent-State posting the petitioner as a Lecturer in Biology at a station where the post was available, it cannot be said that despite selection, the petitioner failed to join within a period of 04 months. Rather, it is an inaction on the part of the respondent-State not to give posting to an employee, who was selected at a place where the post existed.

The argument of the learned counsel for the respondent-State that the petitioner was asking extension and was requesting for posting at Mohali, it may be noticed that the same was being done as on the Station where the petitioner was posted as a Lecturer in Biology i.e. Govt. Senior Secondary School, Talera District Moga, there was no post of Lecturer-Biology available and she only requested that she be posted at Mohali. Nothing stopped the respondents either to accept or reject the said prayer of the petitioner so as to post her at any other station where the post of Lecturer in Biology was available. In the absence of any such order passed by the respondents, it cannot be said that the petitioner defaulted in joining the post after selection within a period of 04 months of the issuance of the appointment order. The respondents are at fault for not posting the petitioner at a place where the post of a Lecturer in Biology was available hence, under these circumstances, the department could not have passed the impugned order so as to withdraw order of appointment of the petitioner by putting blame upon the petitioner that she failed to join within a period of four months of appointment order.

Rather the respondents have conceded in para-3 of their reply that while extending the period of joining, the petitioner should have been posted against the vacancy and disciplinary proceedings have been initiated

against the employees, who defaulted in performing their duties in this regard, which clearly shows that respondents have accepted that non-joining of the petitioner was due to inaction on the part of the respondent-Department.

Further, the petitioner has been made to litigate with the respondents for more than last five years and rather than adjusting the petitioner at any other station, the respondents though had taken adjournments more than once to allow the petitioner to join in pursuance to her selection and appointment and have come up with the plea that now once, the appointment order has been withdrawn vide order dated 16.10.2018/28.11.2018 (Annexure P-12), the said impugned order cannot be withdrawn even upon reconsideration. Once, the petitioner was not at fault and rather non-joining of the petitioner within a period of four months of selection and appointment was due to the inaction on the part of the respondent-State so as to initially by not posting her at a place where there existed any post of Lecturer in Biology and thereafter, not giving any posting order to the petitioner hence, the impugned order dated 16.10.2018/28.11.2018 (Annexure P/12) is set aside.

Further, it may be noticed that petitioner had higher merit and the candidate lower in merit, who was also selected as Lecturer in Biology, was given appointment at a station where post was available. Nothing has come on record as to why the posting orders were not issued keeping in view the merit of a candidate at a particular station where post was available. This could be a plot so as to oust the meritorious candidate for selection and appointment by posting the said candidate to a place where post did not exist and, thereafter, by not issuing any other posting order to the said candidate

so as to not allow the meritorious candidate to join in pursuance to the said selection. This action of the respondent-State needs to be deplored to the extent possible.

As the non-joining of the petitioner after her selection and appointment on the post of a Lecturer in Biology was due to the inaction on the part of the respondents and the impugned order has been set aside by this Court, the respondents are directed to allow the petitioner to join as a Lecturer in Biology at a station where the post exists and the respondents are directed to pass appropriate order of posting forthwith. The appointment of the petitioner will be as per appointed order dated 19.07.2016 and the petitioner's seniority will be fixed according to her merit and salary of the petitioner will also be fixed from the date of her appointment i.e. 19.07.2016.

It may be further noticed that petitioner is litigating since the date of her appointment order was withdrawn hence, as the petitioner was restrained initially by not posting her to a place where the post existed and, thereafter, by not issuing any other posting order so as to not allow her to discharge her duties of the post of a Lecturer in Biology and, thereafter, by passing impugned order withdrawing her appointment, hence, the petitioner needs to be compensated suitably hence, the petitioner is held entitled for full salary from the date of her appointment.

At this stage, learned counsel for the respondents submits that in the present petition, petitioner is only claiming notional benefit of appointment and hence, she cannot be given full salary for the period in question.

It may be noticed that present petition was filed in the year 2019. In case, the respondents would have accepted the claim of the petitioner immediately, she would not have lost 05 years of her service. Hence, keeping in view the facts and circumstances of the present case, arrears of the salary will be granted to the petitioner from the date of filing of the present petition i.e. 12.05.2019 and pay of the petitioner will be fixed from the date of her appointment i.e. 19.07.2016.

As the respondents have made the petitioner to litigate for more than 05 years, arrears of salary, which will be admissible to the petitioner shall also carry interest @ 6% per annum from the date the amount became due till the actual payment of the same keeping in view the judgment of the Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355***, wherein it has been held that where an amount belonging to an employee, has been retained and used by the respondents, upon the release of the said amount, on a later date, the interest has to be given. The relevant paragraph of **J.S. Cheema's case (supra)** is as under: -

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

It may be further noticed that in case, any employee, who was lower in merit than the petitioner has already been considered for promotion,

the petitioner will also be considered for promotion by treating that petitioner was in employment during the period she was restrained from discharging her duties as Lecturer in Biology as well as for the period she remained out of service after passing of the impugned order and total period starting from the date of appointment i.e. 19.07.2016 will be treated as duty period for all intents and purposes.

Let the present order be complied with within a period of 08 weeks from the date of receipt of copy of this order.

Present petition is allowed of in above terms.

Pending application, if any, also stands disposed of.

02-09-2024
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES/NO
 Whether reportable: YES/NO