

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

232

CWP-12423-2020 (O&M)
Date of Decision: 12.02.2024

Dr. Anju Aneja

...Petitioner(s)

Versus

Chaudhary Charan Singh Haryana
Agricultural University, Hisar and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Arav Gupta, Advocate for the petitioner
Mr. B.S. Walia, Advocate for respondents no.1 and 2

TRIBHUVAN DAHIYA, J. (Oral)

This petition has been filed, *inter alia*, seeking a writ of *mandamus* directing the respondents to appoint the petitioner on the post of Assistant Professor or Assistant Scientist, Human Development and Family Studies (for short ‘HDFS’), in the respondent-University with effect from 20.07.2017 with all consequential benefits.

2. Succinctly, facts of the case are, the respondents invited applications for various posts, including the post of Assistant Professor (HDFS) (for short, ‘Assistant Professor’) in the University. The petitioner being eligible applied for the same. Final result of selection was declared on 29.06.2010, leading to selection of Dr. Santosh Sangwan. It was challenged before this Court by filing Civil Writ Petition No.15950 of 2010 titled

Poonam Malik v. Chaudhary Charan Singh Haryana Agricultural University, Hisar and others. The petition was allowed vide judgment dated 17.05.2017, setting aside her selection and appointment, and directing the University to re-do the interview process within two months.

2.1. Meanwhile, on 01.07.2017, the University issued another advertisement inviting applications for the post of Assistant Scientist (HDFS) (for short, 'Assistant Scientist'). The petitioner being eligible applied for the same, and was called for interview also. Pertinently, interviews for both the posts of Assistant Professor [in terms of direction of this Court vide judgment dated 17.05.2017] and Assistant Scientist were conducted on 18.07.2017. However, selection result only for the post of Assistant Scientist was declared on 20.07.2017, in which the third respondent was declared selected being at number one in the order of merit, and joined on the post on 22.07.2017; the petitioner remained at number three. The result for the post of Assistant Professor was withheld without citing any reason.

2.2. The judgment, dated 17.05.2017, was challenged before the Division Bench in Letters Patent Appeal No.891 of 2017 wherein, vide interim order dated 20.07.2017, termination of service of Dr. Santosh Sangwan, was stayed. Finally, vide order dated 04.02.2020, the appeal was dismissed as having been rendered infructuous directing the University to finalise the recruitment process in terms of judgment dated 17.05.2017.

2.3. Thereafter, the University declared result for the post of Assistant Professor. In that selection also the third respondent was placed at number one in the order of merit, and the petitioner was at number two. Accordingly, the

former was offered the post and she joined as such on 16.03.2020, after submitting resignation from the post of Assistant Scientist. The petitioner submitted detailed representation to the second respondent against the wrong done to her. It was alleged that the third respondent was selected only to keep her out of the job. But no response was received.

2.4. Later, vide order dated 06.08.2020, Annexure P-12, the third respondent was transferred by the University against the vacant post of Assistant Scientist. In these circumstances, the instant petition has been filed claiming appointment on either of the two posts.

3. Learned counsel for the petitioner contends that the third respondent has been unduly preferred by the University in offering appointment for both the posts, firstly as Assistant Professor, and thereafter as Assistant Scientist. This has been facilitated by withholding the result of selection for the post of Assistant Professor, though interviews for both the posts were held on 18.07.2017, and there was no restrain on the University to declare result of both the selections simultaneously. Even the Division Bench in its order dated 04.02.2020 has observed that, *'it is conceded that pursuant to the directions contained in the impugned judgment dated 17.05.2017, a fresh interview was conducted on 18.07.2017, however, the result of the same was kept in a sealed cover in spite of no Court order warranting such an action.'* Therefore, there was no justification to withhold the result. Had the selection result for both the posts been declared on the same date, the third respondent would have joined as Assistant Scientist, and the petitioner could have been offered the post of Assistant Professor, being number two in the order of merit. Even now, the third respondent stands transferred and

appointed/adjusted against the post of Assistant Scientist, accordingly, the post of Assistant Professor is lying vacant which should be offered to the petitioner.

4. Learned counsel for the University, on the contrary, contends that the University had no option but to withhold the result of re-interview for Assistant Professor, since the post was not vacant and the selected candidate could not have been appointed. This is because termination of Dr. Santosh's service, vide order dated 06.07.2017, was stayed by this Court vide order dated 12.07.2017, Annexure R-3, and she continued occupying the post. Secondly, it has been contended that the post of Assistant Professor was occupied by the third respondent pursuant to her selection on 16.03.2020. Even if it fell vacant after transfer/adjustment of the third respondent as Assistant Scientist, there is no provision to offer it to candidate, like the petitioner, who was never selected.

5. Arguments advanced by the learned counsel for the parties have been considered.

6. The petitioner's claim to the post of Assistant Professor is based on twin submissions raised by learned counsel for the petitioner that, firstly, had the University declared selection result for both the posts of Assistant Professor and Assistant Scientist together (as interviews for the posts were held on the same date, i.e., 18.07.2017), the third respondent would have accepted the post of Assistant Scientist and the other post of Assistant Professor would have been offered to the petitioner being number two in the order of merit. The argument is based on assumption, a fortuitous

circumstance, which might or might not have happened. It cannot be said with certainty that had the selection result of both the posts been declared on the same date, the third respondent would have chosen to accept the post of Assistant Scientist, instead of Assistant Professor. It is not a fact established on record, and cannot bestow any legal entitlement. Hence, the claim based on such an eventuality becomes unsustainable.

7. The second argument that withholding selection result for the post of Assistant Professor was unjustified and had been done only to favour the third respondent, is also without substance. Undisputedly, at the time of selection and re-interview for Assistant Professor on 18.07.2017, the post was not vacant, and no one could have been appointed. Termination of Dr. Santosh as Assistant Professor, who was working against the post, had been stayed by this Court vide interim order passed in the pending Letters Patent Appeal on 12.07.2017. Consequently, she was holding the post at that time, and the University was justified in withholding the selection result. It cannot be termed arbitrary or illegal.

8. Further, the transfer of third respondent by the Registrar, vide office order dated 06.08.2020, against the vacant post of Assistant Scientist in the Department of HDFS cannot be termed an appointment on the said post. The procedure for appointment of teachers/equivalents has been laid down in the University Statutes. A teacher can only be appointed on the recommendations of a duly constituted selection committee by the appointing authority/Vice Chancellor, as provided by Statute 3, under Chapter IV of the University Statutes, framed under the Chaudhary Charan Singh Haryana Agricultural University Act, 1970, which reads as under:

3. All appointments of teachers of the University shall be made by the Vice-chancellor strictly on merit.

Statute 5 further prescribes that the appointment is to be made on the recommendations of a selection committee headed by the Vice-Chancellor consisting of members/experts mentioned therein. There is nothing on record to indicate that the mandatory procedure prescribed under the Statutes has been followed before issuing the office order dated 06.08.2020. Learned counsel for the University could not show any provision in the Act, Statutes or Regulations, which empowers the Registrar to appoint a Teacher by way of transfer/adjustment. Therefore, there is no basis to contend that the post of Assistant Professor had fallen vacant due to transfer/adjustment of the third respondent on the post of Assistant Scientist. Accordingly, it is held that the third respondent continues to occupy the post of Assistant Professor, on which she joined after due selection by tendering resignation from the post of Assistant Scientist.

9. Still further, though the post of Assistant Scientist fell vacant on the appointment of third respondent as Assistant Professor, it could not be offered to the petitioner since she was neither the next selected candidate (as she was at number three in the order of merit, as averred in the petition itself), nor was she a waitlisted candidate. Besides, the post stood occupied by appointment of the third respondent who worked on it from 20.07.2017 to 16.03.2020, before joining as Assistant Professor. Therefore, the petitioner cannot claim appointment against the post of Assistant Scientist which can only be filled-up after fresh advertisement in accordance with the procedure prescribed.

10. In view of the above discussions, this Court is of the considered opinion that present petition is without merit, and stands dismissed accordingly.

11. Pending miscellaneous application(s), if any, stand(s) disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

12.02.2024
Payal

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>