

CWP-24240-2012 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-24240-2012 (O&M)
Date of Decision: 01.02.2024

Krishan Lal Gosain

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vijay Kumar Jindal, Senior Advocate assisted by
Mr. R. Kartikeya, Advocate,
for the petitioner.

Mr. Gaurav Jindal, Addl. A.G., Haryana.

Mr. P.S. Bajwa, Advocate,
for respondent No.4.

Mr. R.K. Malik, Senior Advocate assisted by
Mr. Sandeep Dhull, Advocate,
for respondent No.5.

JASGURPREET SINGH PURI, J. (ORAL)

CM-13137-CWP-2015

Allowed as prayed for, subject to all just exceptions.

Main Case

1. The present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* or any other writ, order or direction setting aside the selection process of respondent No.5 and the approval vide communication dated 24.09.2012 at Annexure P-21 and communication dated 08.10.2012 at Annexure P-26 with a further prayer to issue a writ in the nature of *mandamus* directing the

respondents-Authorities to issue a letter of appointment to the petitioner, who was at No.2 in the Selection Committee proceedings (Annexure P-6).

2. The present petition has been filed in the year 2012 which is almost more than 11 years ago and pertaining to the selection process whereby respondent No.5 was appointed in the year 2012 vide Annexure P-21. The prayer of the petitioner is with regard to challenge to the aforesaid selection process and the appointment of respondent No.5 and with a further prayer for appointing the petitioner to the post of Principal because he was at serial No.2 in the selection process.

3. Mr. Vijay Kumar Jindal, learned Senior Counsel assisted by Mr. R. Kartikeya, Advocate appearing on behalf of the petitioner apprised this Court that with the efflux of time various developments have taken place. He submitted that respondent No.5 whose appointment to the post of Principal in the respondent No.4-College has been challenged, has already resigned on 02.08.2017 during the pendency of the present writ petition. Thereafter, another person, namely, Chander Shekhar Bhardwaj was appointed as Principal, who has unfortunately died on 06.01.2021. So far as the present petitioner is concerned, he was working as Associate Professor in the same college i.e. respondent No.4 but he has also attained the age of superannuation and he retired on 31.12.2020 which is more than three years ago. He further submitted that now the only short issue involved in the present case would be that as to whether when respondent No.5 had resigned because various disciplinary proceedings were pending against him pertaining to his selection then as to whether the petitioner ought to have been appointed to the post of Principal as he was at Serial No.2 in the list at

that point of time and in case that could not have been done then the petitioner is entitled to some financial benefit by fixing notional pay for the post of Principal and thereafter, the retiral benefits be computed in accordance with the same and the remaining issues are now academic in nature because the only subject matter which would survive is for fixation of notional pension and thereafter to revise the pensionary benefits of the petitioner.

4. On the other hand, Mr. R.K. Malik, learned Senior Counsel appearing on behalf of respondent No.5, Mr. P.S. Bajwa, learned counsel appearing on behalf of respondent No.4 and Mr. Gaurav Jindal, Additional Advocate General, Haryana appearing on behalf of respondent No.1/State have jointly submitted, firstly, that the lis in the present case pertains to the prayer of the petitioner for challenging the selection of respondent No.5 and for him to be appointed to the post of Principal would fall within the jurisdiction of Education Tribunal and therefore, the present petition itself is not maintainable. Secondly, after respondent No.5 was appointed in the year 2012, he has already resigned from the post of Principal in the year 2017 after a period of five years and thereafter, another person, namely, Chander Shekhar Bhardwaj was appointed and he also served as Principal for a period of about four years and he died on 06.01.2021 and in the meantime, the petitioner has also retired from service and therefore, no cause of action survives in the present case towards the petitioner and the dispute is now purely academic in nature. They further submitted that no financial benefits can be granted to the petitioner by fixing his pension notionally for the post of Principal because he was never appointed to the post of Principal nor has

he worked on the post of Principal at any point of time nor did he draw any salary for the post of Principal and now after 11 years with an efflux of time, the entire subject matter has become academic in nature and the right of the petitioner has rather extinguished. They also submitted that there was no interim order passed by this Court at any point of time in the present case during the pendency of the present petition.

5. I have heard the learned counsel for the parties.

6. So far as the jurisdictional issue is concerned, the present is a petition of the year 2012 which was filed almost more than 11 years ago and since then various developments as pointed out by the learned counsel for the parties have taken place. During the course of arguments, the learned Senior Counsel for the petitioner has referred to Annexure A-2 which is a letter dated 28.11.2017, which was written by the General Secretary Governing Body of Dyal Singh College, Karnal-respondent No.4 to the Government, recommending approval on the basis of the representation of the petitioner for appointing him as Principal of the college. However, in the reply which was filed by the State, it has been so stated that no such approval can be granted because the petitioner was never appointed to the post of Principal and the mere fact that even at that point of time, he was kept in the waiting list would not mean that he automatically attains the right for being appointed to the post of Principal after passing of large number of years because even otherwise also the waiting list, if any, has to be kept only for a period of six months and after the resignation of the person, who was appointed i.e. respondent No.5, the vacancy gets consumed immediately after his appointment and fresh advertisement has to be issued because it

affects the right of many other persons. Therefore, the State has not granted approval to the College for appointing the petitioner as Principal and factually as well, the petitioner was never appointed to the post of Principal. Therefore, it appears that the petitioner does not have any dispute with the college because the college itself has recommended to the State whereas the State has not granted approval and therefore, this Court is of the view that the Tribunal may not have jurisdiction to entertain the present petition since dispute does not appear to be with college but it is with the State. Moreover, now the present petition is pending for more than 11 years and therefore, it will not be appropriate to relegate the petitioner to the Education Tribunal considering the aforesaid developments which have taken place during the pendency of the present petition.

7. Learned Senior Counsel appearing on behalf of the petitioner has confined the prayer in the present case only to the extent of granting the financial benefits by fixation of notional pension and thereafter for grant of consequential pensionary benefits on the ground that the petitioner ought to have been selected and appointed in the year 2012 and was wrongly ignored and respondent No.5 was appointed, against whom there were various complaints and thereafter, inquiry was conducted and thereafter, he resigned from service after a period of five years while serving as Principal of the college and the learned Senior Counsel submitted that had he been appointed at that point of time, he would have been granted all the financial benefits. Learned Senior Counsel also submitted that since the petitioner was second in number in the merit list, he deserves to be appointed as Principal at least after the resignation of respondent No.5 but nothing was done because the

State Government did not give approval. Apart from the above, there was no interim order passed by this Court at any point of time as per the learned counsel for the parties.

8. This Court is of the view that the prayer made by the learned Senior Counsel for the petitioner cannot be accepted and is unsustainable. At no point of time, the petitioner was ever given any appointment to the post of Principal nor did he work at the post of Principal and at the time of retirement. He retired as an Associate Professor and he has already been granted all the benefits on the basis of his last pay drawn as Associate Professor. With the efflux of time, the right of petitioner has now extinguished. The appointment of respondent No.5 is of the year 2012 and he served for a period of five years and he resigned. Thereafter, one another person, namely, Chander Shekhar Bhardwaj was appointed, who served at the post of Principal for about four years and died. The stand which has been taken by the learned State counsel while referring to the reply that once respondent No.5 was appointed to the post of Principal, the vacancy got consumed and even otherwise also, the waiting list cannot be elongated for more than six months carries weight. This Court is of the view that the petitioner therefore cannot be granted any notional benefit of fixation of pay for the post of Principal on which he had never worked. It is not the case that the petitioner is still in service nor the learned Senior Counsel for the petitioner so stated that the petitioner still has the right to be appointed to the post of Principal because of the simple reason that now the petitioner has already attained the age of superannuation and has got retired as Associate Professor. Therefore, this Court is of the considered view that notional

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fixation of pay and consequent pension for the post of Principal cannot be given to the petitioner.

9. Consequently, finding no merit in the present petition, the same is hereby dismissed.

10. All the applications pertaining to directions and impleadment shall also be deemed to be disposed of as the main case has already been dismissed.

01.02.2024

(JASGURPREET SINGH PURI)
JUDGE

Bhumika

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No