



Date of Decision : 04-09-2024

2. CWP-4556-2014 (O&M)

SANGEETAPetitioner

VERSUS

STATE OF PUNJAB & ORS.Respondent(s)

3. **CWP-4472-2022 (O&M)**

MANORMA DEVI **.....Petitioner**

VERSUS

STATE OF PUNJAB & ORS. **.....Respondent(s)**

Mr. Prateek Pandit, Advocate
for the respondent No.4.

In the present petitions, challenge is to the order dated 18.02.2014 (Annexure P-15) and 20.02.2014 (Annexure P-15) in CWP

No.4556 of 2016 whereby the petitioners have been terminated from service from the post of Hindu Mistress by revising the merit list under the freedom fighter category and that too in violation of principles of natural justice.

The respondents issued an advertisement dated 23.09.2009 advertising the post of Lecturer as well as Mistresses to be filled up in the Education Department, Government of Punjab on a consolidated salary for a specific period. As per the advertisement dated 23.09.2009, the selected candidates were to be given appointment for a period of one year which could be extended and in case, the candidate continues in service for a period of 3^{1/2} years and the work and conduct of the selected candidate remains satisfactory, the said candidate was to be considered for regular appointment.

The petitioner(s) competed for post of Master/Mistresses under the freedom fighter category. After the selection, a merit list was prepared with regard to the 7 posts reserved for freedom fighter category and the petitioner(s) were placed at Serial No.2/Serail No.4 in the said merit list. Keeping in view the said merit, the petitioner(s) were given appointment vide order dated 09.08.2011 as a Mistresses in the Education Department, Government of Punjab. Thereafter, one of the candidate who was competing for the post in the freedom fighter category, challenged the selection in the freedom fighter category that even the grand children of the freedom fighter have been selected which is contrary to the provisions of the instructions hence, the selection to the post of Master/Mistresses in the reserved category of freedom fighter should be revised.

During the pendency of the said petition, the respondent-Department decided to revisit the issue and the merit list in the category of

freedom fighter was revised and the petitioner(s), who were placed at Serial No.2 and 4 in CWP No.4556 of 2014 in the merit list were brought to Serial No.10 and Serial No.11 in CWP No.4556 of 2016 against the 7 vacancies to be filled up in the said category. Thereafter, a show cause notice was issued to the petitioner(s) on 20.10.2013/20.09.2013 in CWP NO.4556 of 2016 as to why the services of the petitioner(s) be not terminated as they have gone out of the zone of consideration keeping in view the fact that their merit has been determined at Serial No.10 and 11 against the 7 posts to be filled up in the reserved category of freedom fighter. The petitioner(s) filed the reply to the said show cause notice and ultimately, the impugned order dated 18.02.2014 was passed by the terminating the services of the petitioner(s) on the ground that the petitioner(s) are not within the merit list of 7 candidates to be appointed under the freedom fighter category against the post of Master/Mistresses as advertised on 23.09.2009.

The said order is under challenge in the present petition.

It may be noticed here that while issuing notice of motion, by an interim order, the petitioner(s) were allowed to continue in service and even as of now, the petitioner(s) are in service.

Upon notice of motion, the respondents have filed reply wherein, the respondents have stated that in fact, the initial merit list which was prepared was due to the incorrect information given by the petitioner(s) in their application form, where they described themselves as the daughter of the freedom fighter whereas they are grand-daughter of the freedom fighter hence, the initial merit prepared wherein the petitioner(s) were placed at Serial No.2 and 4, was revised and keeping in view the fact the petitioner(s) are the grand-daughter of the freedom fighter, their merit was ascertained at

Serial No.10 and 11 against the 7 posts to be filled up from the category of freedom fighter.

Hence, the impugned orders terminating the services of the petitioner(s) is valid as they have gone out of the merit list.

I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

Prima facie, there is no illegality in the impugned order which has been passed by the respondents. The petitioner(s) were given appointment keeping in view the fact that the petitioner(s) were at Serial No.2 and 4 in the merit list but the said merit list was prepared on the basis of the assertion of the petitioner(s) in the application form that they are daughter of the freedom fighter however, when it came to the notice of the respondents that the petitioner(s) were the grand-daughter of the freedom fighter, their merit was revised and from Serial No.2 and 4 of the merit list, they were brought to the serial No.10 and 11 of the merit list against the 7 posts to be filled up in the cadre of Master/Mistresses from the reserved category of freedom fighter. Once, the petitioner(s) were out of zone of consideration keeping in view their merit against the 7 posts to be filled up, the respondents were within their right to terminate the services of the petitioner.

It may be noticed that as of now, the petitioner(s) have 13 years of service to their credit as the petitioner(s) are continuing in service by an interim order of this Court. Further, the candidates who were brought inside the zone of consideration in the revised merit list, never raised any claim for appointment. Even as of now, against the 7 posts advertised to be filled up in the cadre of Master/Mistresses from the category of freedom fighter, 7

candidates are working including the petitioner(s). That being so, once the candidates who were brought in the revised merit list in the year 2013, never raised any claim for appointment, throwing the petitioner(s) out at this stage will be too harsh especially when, the petitioner(s) are working against the 7 posts of freedom fighter category. Hence, if the candidates who were higher in merit than the petitioner(s) in the revised merit list chose not to agitate their claim and have kept silent for a period of 10 years, terminating the services of the petitioner(s) at this stage, will be too harsh even though, at the time when the impugned order was passed, the ousting of the petitioner(s) was justified so as to accommodate candidate higher in merit.

The argument of the learned counsel for the respondent-State is that the continuance in service on the basis of the interim order will not create a vested right, cannot be accepted in the facts and circumstances of the present case especially when, the petitioner(s) have already become over-aged for consideration for any other appointment and they have more than 13 years of service to her credit as of now coupled with the fact that, the candidates who were higher in merit in the revised merit list, never chose to agitate their claim for appointment so as to oust the petitioner(s) from the post in question.

Keeping in view the above, as it is a conceded position before this Court that against the 7 posts, to be filled up from the reserved category of freedom fighter, in pursuance of the advertisement dated 23.09.2009, only 7 candidates are working including the petitioner(s) hence, the respondents are directed not to give effect to the impugned order any further.

Accordingly, petitions CWP No.4102 of 2014 and CWP No.4556 of 2014 are disposed of as above.

Further, the prayer of the petitioner Manorma Devi in her second petition in CWP No.4472 of 2022 is for regularisation of her services keeping in view the terms and conditions of the advertisement dated 23.09.2009, according to which, in case a candidate continues in service beyond 3^{1/2} years and in case their work and conduct is satisfactory, he/she shall be entitled for the grant of regularisation in service.

Learned counsel for the respondents have not been able to dispute that the other candidates appointed in pursuance to the said selection, have already been regularised in service including that of the private respondents who also appointed in the freedom fighter category. The claim of the petitioner was not considered for regularisation only on the ground that she is continuing in service under the interim orders of the Court after the passing of the order dated 18.02.2014 by which her services were terminated.

As, this Court has already directed that the impugned order dated 18.02.2014, by which her services were terminated, copy of which has been appended as Annexure P-15 be not given effect any further. The petitioners also get their right for consideration of regularisation of their services keeping in view the terms and conditions of the advertisement dated 23.09.2009.

The respondents are directed to consider the claim of the petitioner for regularisation of their services and pass an appropriate speaking order on the said claim within a period of 3 months from the receipt of copy of this order and in case, it is found that the petitioner is entitled for regularisation for their services, the said benefit be given otherwise due reasons will be mentioned for not accepting the claim of the

petitioner by passing an appropriate speaking order, which reasons will be conveyed to the petitioner and in case the petitioner is aggrieved against the said order to be passed, liberty is granted to petitioner to avail appropriate remedy for redressal of her grievance.

At this stage, learned counsel appearing on behalf of the respondent-State submits that there can be a dispute with regard to the seniority between the petitioner and the private respondents hence, the said issue be clarified so that there is no ambiguity.

It is noticed that for the purpose of seniority and all other benefits, revised merit list will be taken into account and not the initial merit list according to which, the petitioner was senior to the private respondent. It is only that the candidates who are higher in the merit than the petitioner in the revised merit list have chosen not to agitate their claim, the petitioner is allowed to continue in service despite the fact that the petitioner was outside from zone of consideration for being selected and appointed to the post in question and keeping in view the fact that it is not disputed that in the revised merit list, the private respondent is senior to the petitioner, he will remain senior to the petitioner in the cadre of Master/Mistresses.

The present petition is disposed of in above terms.

Pending application, if any, also stands disposed of.

Photocopy of this order be placed on the file of other connected case.

04-09-2024

Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

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