



CWP-26279-2021 (O&M) -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-26279-2021 (O&M)
Date of Decision :27.11.2024

Anita

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. G.P.S. Bal, Advocate with Mr. Shubham Makkar, Advocate
for the petitioners.

Mr. Amar Preet Singh Bains, AAG, Punjab.

* * *

Harsimran Singh Sethi, J. (Oral)

Learned counsel for the petitioner submits that during the pendency of the present petition, the petitioner has unfortunately died and prays that the legal heirs of the petitioner i.e. husband of the petitioner namely, Wilson Masih, aged 47 years and her son namely, Sameer Masih, aged 25 years be impleaded as legal representatives of the petitioner to continue with the present proceedings.

Learned counsel for the respondent-State raises no objection to the said prayer of the learned counsel for the petitioner.

Keeping in view the oral request of the learned counsel for the petitioner, legal heirs of the petitioner i.e. husband of the petitioner namely,

Wilson Masih and her son namely, Sameer Masih are ordered to be



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impleaded as legal representatives of the petitioner for the purpose of the present petition.

In the present petition, grievance being raised by the petitioner is that the petitioner was initially appointed as Art and Craft Teacher in pursuance to the advertisement dated 23.09.2009 after being selected in the reserved category of SC (M&B) on contract basis. The petitioner joined in pursuance to the appointment order dated 13.10.2011. The petitioner was allowed to continue as such and thereafter, on completion of 03 years of service, the services of the petitioner were regularized w.e.f. 06.04.2014 and the petitioner became a regular employee. Thereafter, the petitioner's probation period was also cleared and the petitioner became a confirmed employee.

One Gurmeet Singh, who also competed in pursuance to the same advertisement in the same reserved category filed a writ petition being CWP-22258-2014 after a period of 03 years of the appointment of the petitioner claiming appointment to the post of Art and Craft Teacher on the ground that the candidates having lower merit have been appointed. The petitioner herein was impleaded as respondent No.3 in the said petition. The said petition was decided on 17.10.2018 by holding that two vacancies in the reserved category SC (M&B) are available against which claim of Gurmeet Singh can be considered and his claim be considered against the said vacancies and in case, he is found entitled, he be granted the benefit of appointment. Thereafter, said Gurmeet Singh was granted appointment by the respondents but the services of the petitioner were terminated by the respondents vide impugned order dated 01.12.2021 (Annexure P/1) on the



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ground that as Gurmeet Singh had more marks than the petitioner, the petitioner is being removed from service. The said termination order is under challenge in the present petition.

Learned counsel for the petitioner submits that at the time when the petitioner was appointed as Art and Craft Teacher, a merit list was prepared by the respondents and the appointment was offered initially on contract basis in the year 2011 and thereafter, the services of the petitioner were regularized in the year 2014 and thereafter, the petitioner was confirmed after completion of the probation period and once the petitioner was confirmed, the petitioner could not have been removed from service on the ground that appointment to one Gurmeet Singh, son of Rakha Singh is to be given keeping in view the merit as well as direction given by this Court in CWP-22258-2014.

Learned counsel for the petitioner further argues that from the bare perusal of the order passed by this Court in the case of Gurmeet Singh it is clear that two posts in the category of SC (M&B) were available against which, the claim of the said Gurmeet Singh was to be considered and hence, the said Gurmeet Singh should have been adjusted against those two vacancies rather than terminating the services of the petitioner as, no such direction was given by this Court though, the petitioner was party to the said petition hence, the respondents have wrongly interpreted the order passed by this Court in CWP-22258-2014 so as to terminate the services of the petitioner.

Upon notice of motion, the respondents have filed reply wherein, it has been stated that though, the vacancies in the category of SC



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(M&B) were available out of the advertised posts but once Gurmeet Singh's claim was allowed by this Court for consideration and he was having more merit than the petitioner, the petitioner's services has rightly been terminated.

Learned counsel for the respondent-State further submits that there were number of candidates in between the petitioner and Gurmeet Singh, who were higher in merit than the petitioner but could not be appointed and therefore, those candidates could have raised the claim in case, the petitioner would have been allowed to continue in service and hence, in order to avoid further litigation, the order terminating the services of the petitioner was passed by the respondents.

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

In the present case, the petitioner was appointed in the year 2011 and had worked for a period of 10 years before her services were terminated on the ground that petitioner was wrongly appointed in pursuance to advertisement dated 23.09.2009.

Not only this, the services of the petitioner were regularized in the year 2014 and thereafter, confirmed. Once, the petitioner was a confirmed employee, the respondents could not have terminated the services of the petitioner only on the ground that another candidate who was having higher merit could not be appointed. Though, the said candidate namely, Gurmeet Singh having higher merit can be appointed by terminating the services of the candidate having lower merit even though, the candidate with lower merit had already been appointed but in the facts and circumstances of



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the present case, the order passed by the respondents is bad for the reason that Gurmeet Singh filed a writ petition being CWP-22258-2014 wherein it was directed to consider the claim of Gurmeet Singh against the two available vacancies in the category of SC (M&B) which were available out of the advertised posts. Once, two posts were available, the claim of Gurmeet Singh was to be considered against the said available two posts only and not by ousting the petitioner from service who had already rendered 10 years of services at the time when the impugned order terminating the services of the petitioner was passed.

Further, the petitioner was party to the said writ petition and in case, the services of the petitioner were to be terminated, this Court would have ordered that the Gurmeet Singh is to be accommodated by terminating the services of the petitioner but not such direction was given by this Court and hence, Gurmeet Singh was only required to be considered against the available vacancies and hence, the order passed by the respondents terminating the services of the petitioner despite the fact that two posts in the category in which the petitioner and Gurmeet Singh were competing, were available, is contrary and arbitrary to the direction issued by this Court.

A Coordinate Bench of this Court in **CWP-12835-2012 titled as, Sahil Aggarwal vs. State of Punjab and others, decided on 26.04.2014** has held that where the vacancies are available out of the advertised posts, the candidate should be accommodated against the said vacant posts and the candidates though having lower merit but were initially appointed should not be thrown out of service. Relevant paragraph of the judgment is as under.

“The enunciation of law, as emerges from the aforesaid cases, is that in case some candidates are appointed on the basis of



result of competitive examination and later on it was found that there was some error either in the questions or any answer key, their appointments is not to be set aside if they had worked on the selected post for three years or more, unless there are allegations of fraud, mischief or misrepresentation against the selected candidates. In the present case, the selection and appointments were made as a consequence of the result of the written test declared on 2.5.2010. The test was out-sourced to an independent agency, i.e., Panjab University. Undisputedly the last appointment from the waiting list was made in March, 2011, meaning thereby for the last three years they are working. The appointments on the basis of revised result after correction of the answer keys were made subsequently, hence, the appointment of the candidates, who got merit position in terms of the result declared at the first place cannot be set aside even if they have not got merit position in terms of the revised result declared after correction of the answer keys.

However, as stated by learned counsel for the State, the seniority and benefits accruing to the candidates earlier selected and who were appointed on the basis of revised result shall be strictly in terms of the guidelines given in judgment of Hon'ble the Supreme Court in Rajesh Kumar's case (supra).

Hence, the selection and appointment of the candidates, who were appointed on the basis of evaluation of answer sheets at first time and who do not find place in revised merit list, does not deserve to be set aside.”

Hence, the respondents acted in contravention of the settled principle of law while terminating the services of the petitioner though, the posts in her category were available when the services of the petitioner were terminated which fact has gone unrebutted.

The only argument which has been raised by the learned counsel for the respondents is that there were other candidates, who were higher in merit than the petitioner but could not be appointed hence, in case,



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the service of the petitioner had not been terminated, those candidates would have raised the claim for appointment.

It may be noticed that the selection process for the post in question was initiated in the year 2009 and completed in the year 2011. The services of the petitioner were terminated in the year 2021 i.e. after a period of one decade. In case, any candidate who had any grievance qua the selection process, he/she would have raised the claim within a reasonable time but not after a period of 10 years of the completion of selection and appointment of the petitioner.

Further, nothing has come on record that any writ petition was also pending raising grievance qua the appointment of the petitioner at the time when the services of the petitioner were terminated by the respondents. That being so, merely that there were other candidates having higher merit could have raised the claim, cannot be made a ground to remove the petitioner from service especially, when the petitioner had rendered more than one decade of service. An employee after rendering one decade of service, upon attaining age of superannuation becomes entitled for pensionary benefits whereas, the respondents terminated the services of the petitioner after rendering more than one decade of service.

Keeping in view the above, present petition is allowed. Impugned order dated 01.12.2021 (Annexure P/1) terminating the services of the petitioner is set aside.

As the petitioner has already died during the pendency of the present petition and her legal representative have been brought on record for the purpose of present petition, the respondents are directed to treat the



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petitioner in continuous service up to the date of her death. Petitioner will also be paid all the emoluments including arrears of salary and other benefits admissible during the period the petitioner remained out of service up to the date of her death by treating her to be in continuous service from the date of her termination. The service benefits which are admissible after the death of an employee, the same will be given to the legal heirs of the petitioner.

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

Civil miscellaneous application pending, if any, is also disposed of.

Present petition is allowed in above terms.

November 27, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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