

**CWP-4985-2015 (O&M)****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****204****CWP-4985-2015 (O&M)****Date of Decision: 01.03.2025****Shally Gupta****...Petitioner****Versus****Panjab University and others****...Respondents**

Present: - Mr. Rahul Sharma, Advocate for the petitioner

Mr. D.V. Sharma, Senior Advocate with

Mr. Arun Bakshi, Advocate for the respondent

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 08.12.2014 (Annexure P-25) whereby her claim to de-reserve the post of Professor (Oral Pathology) was declined. She is further seeking direction to respondents to treat her appointment as regular w.e.f. 02.08.2010.

2. The respondent vide Advertisement No.2/2008 invited applications for the post of Professor (Oral Pathology) on regular basis under General Category. No candidate came forward, thus, post was re-advertised vide Advertisement No.6/2008. Again, no candidate applied. The respondent third time vide Advertisement No.6/2009 invited applications. The post was declared as regular and under General Category. There was only one candidate and vacancy could not be filled up. The respondent again vide Advertisement No.1/2010 invited applications. No candidate applied for the post. The respondent vide Advertisement No.3/2010 again invited

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applications. This time the petitioner applied and she was called for interview on 09.07.2010. During the interview, she was informed that she does not have requisite publications to be appointed as Professor. She submitted letter dated 09.07.2010 (Annexure R-3) whereby she agreed to join on contract basis for a specified period/till publications in specified journals. She joined on 02.08.2010. The respondent vide Advertisement No.3/2012 advertised post of Professor (Oral Pathology) under reserved category. The petitioner submitted representation claiming that single post cannot be reserved. In a joint meeting of academic and administrative staff held on 20.04.2012, it was resolved that either post be de-reserved or an additional post under General Category be created to accommodate the already appointed candidate. The Vice Chancellor of the University vide communication dated 05.06.2012 rejected claim of the petitioner on the ground that post be filled as per roster. She preferred *CWP No.5050 of 2013* before this Court which was disposed of with a direction to respondent to decide her representation. The respondent referred the matter to duly constituted committee. The respondent formed an opinion that post of Professor (Oral Pathology) exists at Serial No.1 as per roster policy of University Grants Commission (for short 'UGC'), thus, it will go to reserved category.

3. Learned counsel for the petitioner submits that as per judgment of Supreme Court in *State of Karnataka and others v. K. Govindappa and another, (2009) 1 SCC 1*, single post cannot be reserved because it amounts to 100% reservation. The petitioner applied against a regular post and she was compelled to join as contractual employee. She got requisite research



papers published, thus, she complied with requirement which was imposed while compelling her to join as contractual employee.

4. Mr. D.V. Sharma, Senior Advocate submits that there were six vacancies in the Dental Faculty, thus, post at Serial No.1 was reserved. The petitioner is wrongly claiming that there would be 100% reservation if post in question is reserved. The respondent is also of the opinion that if there is one post in a particular faculty, it cannot be reserved, however, there were six posts in the faculty, thus, post in question could be reserved and was rightly reserved. The petitioner was selected against advertisement meant for regular post, however, she was not having requisite publications, thus, she was asked to join as contractual employee. She without any coercion joined as contractual employee. She is wrongly holding post in question for last 15 years.

5. I have heard the arguments of learned counsel for both sides and perused the record with their able assistance.

6. It is undisputed that petitioner is working with respondent since 2010. There is one post of Professor (Oral Pathology). The advertisement against which she was selected was published in 2010. The Syndicate/Senate of respondent decided to reserve posts as per UGC policy in 2008. The post in question from 2008 to 2010 was advertised as a regular post under General Category.

7. The respondent is claiming that there are six posts in the Dental Faculty, thus, one post could be reserved. It is undisputed fact that there is one post for Professor (Oral Pathology). The respondent is claiming that decision to reserve the post was taken in 2008. The respondent multiple



times from 2008 to 2010 advertised the post. Every time, the post was advertised as regular and under General Category. The respondent could not select even single candidate during 2008-10 because either no candidate applied or at one point of time only one candidate applied. The petitioner was selected against Advertisement No.3/2010. The said advertisement was for a regular post and under General Category. In the advertisement, there was no condition to have publications. The petitioner was asked to get her research papers published. She succeeded in getting her papers published. She is attempted to be substituted by a candidate from reserved category on the ground that post is meant for reserved category. The petitioner applied in 2010 as per terms and conditions of the advertisement. She fully complied with terms and conditions of the advertisement and was selected. There was no question to appoint her on contractual basis when the advertisement was for a regular post and she had complied with terms and conditions of the advertisement. She was asked to get published her research papers and she did so, thus, she complied with all the terms and conditions of the advertisement as well as oral condition of the recruitment board. She is working with respondent since 2010.

8. A five Judge Bench of Supreme Court in ***Sivanandan C.T. and Others v. High Court of Kerala and Others, 2023 SCC OnLine SC 994*** though held that appointment of judicial officers by Kerala High Court was bad in law, however, did not disturb appointment on the ground that already appointed officers have already served for nearly six years and gained experience. It would deprive the State and its citizens the benefit of experienced judicial officers. The relevant extracts of the judgment read as:



“60. *The following are our conclusions in view of the above discussions:*

(i) The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being termed as arbitrary and violative of Article 14;

(ii) An individual who claims a benefit or entitlement based on the doctrine of substantive legitimate expectation has to establish the following : (i) the legitimacy of the expectation; and that (ii) the denial of the legitimate expectation led to a violation of Article 14;

(iii) A public authority must objectively demonstrate by placing relevant material before the court that its decision was in the public interest to frustrate a claim of legitimate expectation;

(iv) The decision of the High Court of Kerala to apply a minimum cut-off to the viva voce examination is contrary to Rule 2(c)(iii) of the 1961 Rules.

(v) The High Court's decision to apply the minimum cut-off marks for the viva voce frustrates the substantive legitimate expectation of the petitioners. The decision is arbitrary and violative of Article 14.

(vi) In terms of relief, we hold that it would be contrary to the public interest to direct the induction of the petitioners into the Higher Judicial Service after the lapse of more than six years. Candidates who have been selected nearly six years ago cannot be unseated. They were all qualified and have been serving the district judiciary of the state. Unseating them at this stage would be contrary to public interest. To induct the petitioners would be to bring in new candidates in preference to those who are holding judicial office for a length of time. To deprive the state and its citizens of the benefit of these experienced judicial officers at a senior position would not be in public interest.”

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9. In the case in hand, the petitioner participated in the selection process which was initiated vide Advertisement No.3/2010. She is working with respondent-department without any complaint since 2010. She was selected through a regular selection process and against a regular post. She complies with eligibility criteria.

10. Supreme Court recently in ***Jaggo v. Union of India and others, 2024 SCC OnLine SC 3826***, noticing judgment of Constitutional Bench in ***Secretary, State of Karnataka v. Uma Devi, (2006) 4 SCC 1*** has held that no employee can be kept temporary for an indefinite period. An employee has right to be considered for regularization.

11. In the case in hand, the petitioner was appointed against regular post and she has already completed 15 years of service. She deserves to be considered as regular employee. Henceforth, for all intents and purposes, she would be a regular employee.

12. Allowed in above terms.

13. Pending application(s), if any, shall stand disposed of

(JAGMOHAN BANSAL)
JUDGE

01.03.2025
Mohit Kumar

Whether speaking/reasoned	Yes
Whether reportable	Yes