
(2000) 09 P&H CK 0059
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 929 of 1984

Kirpal Kaur

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 05-09-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 09 P&H CK 0059

Hon'ble Judges : Nirmal Singh, J

Bench : Single Bench

Advocate : Mr. V.P. Sharma, for the Appellant; Mr. H.S. Sra, D.A.G., for the Respondent

Judgement

Nirmal Singh, J.—Petitioner has prayed for issuance of writ in the nature of certiorari quashing orders Annexures P-6 and P-7 dated 19.1.1984 and 11.2.1984 vide which 3 advance increments granted to the petitioner were withdrawn.

Mr. V.P. Sharma, Advocate appeared on behalf of the petitioner and averred that petitioner was selected by the Departmental Selection Committee for the post of Art and Craft teacher in the grade of Rs. 170-350/-. Subsequently, the grade of Rs. 170-350/- was revised to Rs. 570-1080/- with three advance increments as, were admissible to the Art and Craft teacher in the State of Punjab. It was further averred by the learned Counsel that petitioner was appointed as Art and Craft teacher in Government High School, Lalru, District Patiala on 12.6.1972 and that after joining the service, the work and conduct of the petitioner has been outstanding and she had never been given any adverse remarks in her confidential reports. Petitioner was permitted to cross the efficiency bar as Art and Craft teacher. It is further the case of the petitioner that Teja Singh, respondent No. 4 joined a Head Master in the school in the year 1981 and started misbehaving in unbecoming manner with the petitioner. Respondent No. 4 also called the petitioner in his office and misbehaved with her. Petitioner

lodged a complaint of the Headmaster to respondents 2 and 3. An enquiry was conducted, but no action was taken against Teja Singh, Headmaster. Thereafter respondent No. 4 issued an order on the order book of the school showing the petitioner as tailoring mistress/Sewing teacher working against the post of Art and Craft teacher and he recommended to respondent No. 3 that a Drawing Master be posted in place of the petitioner. Respondent No. 3 also started treating the petitioner as tailoring mistress. Petitioner requested respondents 3 and 4 not to treat her as tailoring mistress or Sewing teacher but treat her as Art and Craft teacher as the petitioner was selected and appointed as such against a permanent vacancy in the year 1972. Petitioner also served legal notice on respondent No. 4 to stop harassing the petitioner. Thereafter petitioner was ordered to be transferred from Govt. High School, Lalru to Govt. High School, Lalru (Girls) on 20.4.1982, Annexure P-4 to the writ petition and she was shown as Sewing teacher in the said transfer order. Aggrieved by the said transfer order, petitioner has filed a Civil Writ Petition No. 1878 of 1982 in this Court and challenged the impugned order of transfer.

2. Notice of motion was issued in the said writ petition and respondents have filed written statement and took the stand that petitioner did not fulfil the qualification for the post of Drawing teacher and that she had been wrongly selected for the post of Art and Craft teacher, therefore, she is not entitled to the benefit of three advance increments. A Division Bench of this Court while disposing of the above said writ petition had passed the following order on 31.5.1982 :-

"The learned Counsel for the petitioner has produced a photostat copy of the order cancelling the impugned transfer of the petitioner. Mr. Syal had given an undertaking that in case, the impugned order was held to be invalid, she would be entitled to full pay. In view of the undertaking, we direct that the petitioner be paid full pay during the period she remained under transfer. The petitioner shall also be entitled to the costs of this petition. Costs Rs. 300/-. The petition is disposed of accordingly."

3. Learned Counsel further submitted that inspite of directions given by this Court, respondent No. 4 intentionally and wilfully withheld the pay due to the petitioner and instead of repeated requests made by the petitioner, she was not paid the salary and costs of the petition etc. Ultimately the petitioner filed a Contempt Petition No. 143 of 1982 to which respondent No. 4 had filed reply by stating that salary has been paid to the petitioner.

4. It is further submitted by the learned Counsel for the petitioner that respondent No. 4 vide letter dated 11.2.1984 (Annexure P-7) informed the petitioner that respondent No. 3, vide order dated 19.1.1984 (Annexure P-6) had withdrawn the benefit of 3 advance increments already granted to the petitioner. Learned Counsel further submitted that the impugned orders Annexures P-6 and P-7 are illegal, unconstitutional, without jurisdiction and against the rules and principles of natural justice. The prayer of learned Counsel for the petitioner is

that petitioner was eligible as she possesses the basic qualifications for the post of Art and Craft teacher and the 3 advance increments were withdrawn in wrongful manner by respondent No. 3.

5. On notice of motion having been issued, respondents have filed written statement and stated that petitioner is eligible only to work as a Sewing teacher for which she possesses the requisite qualification and that she is also entitled to the grade of the post of sewing teacher and not the grade of Art and Craft teacher with three advance increments, for which she does not possess the qualification. It is also stated that petitioner was wrongly designated as Art and Craft teacher because she was appointed against the post of Art and Craft teacher, though she never fulfils the qualifications of Art and Craft teacher. Rather, she was qualified for the post of Sewing teacher.

6. Shri H.S. Sra, Deputy Advocate General appeared on behalf of the respondents submitted that the petitioner was not fulfilling the basic qualification for the post of Art and Craft teacher and that she was only fulfilling the qualification for the post of Sewing teacher. He further submitted that three advance increments were with the post of Art and Craft teacher, which were rightly withdrawn by respondent No. 3. He pointed out that these increments have not been withdrawn as a measure of punishment, but to rectify the mistake.

7. After hearing learned Counsel for the parties and perusing the record, I am of the considered opinion that this petition has a merit and deserves to succeed.

8. It is admitted case of the parties that petitioner was selected by the Departmental Selection Committee as Art and Craft teacher. Appointment letter issued to the petitioner has been brought on record as Annexure P-2. It is also admitted case of the parties that petitioner continued to get three increments which were allowed to the post of Art and Craft teacher. The respondents in their reply have not mentioned the basic qualification for the post of Art and Craft teacher and have also not stated the qualification which the petitioner was lacking. Rather, it was admitted in the written statement that petitioner was appointed as Art and Craft teacher. Petitioner was transferred from Govt. High School, Lalru to Govt. High School, Lalru (Girls) as Sewing teacher. The District Education Officer has got no power to change the designation of the petitioner from the post of Art and Craft teacher to Sewing teacher. Petitioner was permitted to cross the efficiency bar as Art and Craft teacher vide Annexure P-5. The impugned order Annexure P-6, passed by respondent No. 3 vide which the benefit of three advance increments has been withdrawn was passed without affording opportunity of hearing to the petitioner. So the impugned order passed by respondent No. 3 is in violation of principles of natural justice. Once a benefit is given to an employee and if it is to be withdrawn, then an opportunity of hearing must be given to the said employee. In the case of the petitioner, no opportunity has been afforded to the petitioner before withdrawing the benefit of three advance increments. The respondents have not placed on record any document to show that petitioner is not possessing the basic qualifications for

the post of Art and Craft teacher.

9. For the reasons recorded above, this writ petition is allowed. Impugned orders Annexures P-6 and P-7 are quashed.

10. Petition allowed.