

(2001) 07 P&H CK 0177
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 11126 of 1988

Om Pati Hooda

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 18-07-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

Citation : (2001) 07 P&H CK 0177

Hon'ble Judges : S.S. Sudhalkar, J

Bench : Single Bench

Advocate : Anil Rathee, for the Appellant; Ritu Bahri, DAG, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sudhalkar, J.—By this writ petition, the petitioner is seeking quashing of the order dated 27.6-1983, 10.10.1983 and 6.6.1988, Annexure P/3, P/5 and P/6 respectively. In the prayer clause, the petitioner has not prayed for promotion, however, in the opening page of the writ petition, such prayer of promoting her to the post of Director Physical Education (for short D.P.E.) w.e.f. 27.6.1983 has been made.

2. Annexure P/3 is the promotion order of respondent No. 4. By order annexure P/5, representation of the petitioner was rejected and vide annexure P/6, appeal filed by the petitioner was also rejected.

3. The petitioner joined service as P.T.I, on 21.6.1972. She passed in diploma in Physical Education on 28.3.1979 from Nagpur University. Respondent No. 4, who had already passed the said diploma in the year 1975, joined service as P.T.I, on 24.8.1979. When the question regarding promotion to the post of Director Physical Education arose, respondent No. 4 was given preference over the petitioner. The petitioner states that she being senior in service to respondent No. 4 should have been considered for promotion before respondent No. 4 was promoted.

4. The official respondents have taken a stand in their written statement that respondent No. 4 having passed the diploma in Physical Education earlier in the year 1973, she stood senior and had to be considered earlier than the petitioner for promotion. This is stated by the respondents in paragraph No. 4 of the written statement. In paragraph 4, the official respondents have inter-alia stated as under :-

"... It is submitted that according to the instructions contained in letter No. 15/13-79-4-ED-III dated 19/21.11.1979 the seniority for promotion of masters/ Mistresses is determined from the date of passing the B.Ed./D.P.Ed. Examination."

5. Counsel for the respondent argued that in view of the instructions contained in the above quoted letter, the official respondents have rightly promoted respondent No. 4.

6. Counsel for the petitioner has argued that the stand taken by the respondent is not correct. He has drawn my attention to Annexure R/1 which is a memo dated 19/21.11.1989. It is from the Commissioner and Secretary to Government, Haryana, Education Department, Chandigarh to the Director of Public Instruction, Haryana, Chandigarh. The memo being a short one, the text of the same can be reproduced as below :-

"Sub :- Promotion of P.T.I's to the post of D.P.E's.

Reference your memo No. 2/62-78-E-II(1) dated 11.9. 1979 on the subject above.

2. The Govt. agrees to the instructions issued by the Joint Punjab vide Memo No. 10590-2/17-65-ES-M(2E) dated 26.8.65 to the extent that the P.T.I's who passed the qualifications of D.P.E. before entry into Govt. Service will also be considered for appointment to the post of D.P.E's.

3. The case of promotion of Sh. Ram Kumar may also be considered in the light of the above amended instructions. The original file is also re-turned to you."

7. It is apparent from the above quoted portion of annexure R/1 that it was in connection of with promotion of one Shri Ram Kumar. What the memo says is that the Government has agreed to the instructions dated 26.8.1965 to the extent that the P.T.Is. who have passed the qualifications of D.P.Es. before their entry into Government service will also be considered for appointment to the post of D.P.Es. This means that the persons having qualification of D.P.E. before joining service will be considered for appointment to the post of D.P.E. In the present case, this is not an appointment. Respondent No. 4 is promoted to the post of D.P.E. as is clear from the order annexure P/3. The word "promotion" is mentioned and she was already in service before the said order was passed. Therefore, the instructions contained in the memorandum, An-nexure R/1 do not go to show that respondent No. 4 should be considered senior to the petitioner because she had passed the diploma examination, earlier than the petitioner. No other instructions have been shown to me from which respondent No. 4 can be

said to be senior than the petitioner. It is also not shown that the seniority has to be ignored while promotions are made. It is also not shown that the petitioner is not meritorious. This being the case, the impugned orders cannot stand.

As a result, this writ petition is allowed.

The petitioner is ordered to be considered for promotion as Director Physical Education (D.P.E.) w.e.f. 27.6.1984, the date on which respondent No. 4 was promoted as such, with consequential reliefs. The monetary benefits, of course, shall be restricted to three years and two months prior to the date of filing of this writ petition, which was filed on 6.12.1988.

Let the needful be done within two months from today.

8. Petition allowed.