
(2011) 07 P&H CK 0108
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 11305 of 2009

Sharan Bala

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 27-07-2011

Acts Referred:

Punjab Civil Services Rules — Rule 4.23, 4.9

Citation : (2011) 07 P&H CK 0108

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Judgement

Ranjit Singh, J.—The Petitioner was initially appointed as Punjabi teacher on 20.11.1996 on adhoc basis at Government High School, Kharkhoda, District Sonapat. This appointment was made by the District Education Officer in the pay scale of Rs. 1400-2600, which was revised to Rs. 5500-9000 w.e.f. 01.01.1996. The Petitioner was relieved from her adhoc service on 03.06.1998 as the regular incumbent had joined the post, which was occupied by her. After gap of nearly 21/2 years, the Petitioner was appointed on 16.11.2000 on regular basis pursuant to her selection through Subordinate Services Selection Board on the same post of Punjabi teacher carrying the same pay scale as she was carrying earlier. The Petitioner joined the post on 16.11.2000 at Government Girls Senior Secondary School, Panipat. She was subsequently transferred to Government Senior Secondary School, Model Town, Sonapat.

2. The Petitioner claims that her pay was required to be fixed by taking into consideration the adhoc service, as per the provisions contained in Punjab Civil Services Rules. It was so done and the Petitioner had continued to draw this pay. On account of the some observations by audit raised written on 12.12.2007, objection was raised with regard to fixation of pay of the Petitioner at Rs. 5675/- on 16.11.2000. The pay of the Petitioner had been so fixed by granting benefit of adhoc service which could not be done. There was excess payment made and it is, accordingly, stated that sum of Rs. 25,976/-was required to be recovered

from the Petitioner.

3. The Petitioner pointed out that her pay scale was rightly fixed giving her benefit as per Rule 4.9 of CSR Vol-I, Part-I and by keeping in view the power to condone the delay as per Rule 4.23 of the rules. When the recovery was started, the Petitioner filed a representation for clarification. The Petitioner had made yet another representation on 05.04.2008 and relied upon the instructions issued on 05.12.2006, copy of which was annexed with the petition as Annexure P-9. When no further action was taken, the Petitioner approached this Court with the prayer that she would be entitled to benefit of adhoc service rendered by her from 21.11.1996 to 30.06.1998 for the purpose of fixation of her pay and grant of increment on her re-appointment on the same post in the same department carrying the same pay scale.

4. The Respondents have filed reply contesting the claim as made by the Petitioner. It is stated that the Petitioner had joined the post of Punjabi teacher on adhoc basis as per the details given by her and subsequently had joined on regular basis on 16.11.2000. It is, thus, pointed out that there was a gap of two years and 16 months in both the appointments, which cannot be considered for condonation under Rule 4.23 of Punjab Civil Service Rules. This was pointed out by the audit party of the AG, Haryana and it was stated that the benefit of past service on adhoc basis was not admissible and pay will have to be allowed at the initial stage on re-appointment of the Petitioner on regular basis. This justification is so offered to pass the impugned order directing the recovery.

5. I have considered the submissions made by the counsel for the parties. There was no misrepresentation on the part of the Petitioner when her pay was initially fixed. The Respondents would certainly not be justified in making recovery amounting to Rs. 25,976/-, in view of the Full Bench decision of this Court in Budh Ram and Ors. v. State of Haryana and Ors. 2009 (3) PLR 511. Accordingly, that part of the order will have to go.

6. Counsel for the Petitioner has placed strong reliance on Annexure P-9, which provides as under:

Therefore, adhoc service followed by regular service on the same post shall be counted as qualifying service even if gap is more than one year. However, period of gap will be omitted while working out aggregate service. This will, however, be subject to condition laid down in F.D's instructions dated 11.06.1974 and 31.01.1984.

7. Counsel, accordingly, says that the Petitioner would be certainly eligible to count the service rendered on adhoc basis for the purpose of her pay fixed even if condonation of the period of gap is not to be allowed. The counsel also points out that for the same, he has already submitted a representation to the higher authorities, which has not been considered and decided. This aspect of the matter may have to be re-considered in the light of the instructions and rule and is required to be decided in accordance with law. The part of the order whereby

the recovery has been order, however, is set aside. The Petitioner, if so advised, may supplement her representation on the basis of law or rule position.

8. The writ petition is, accordingly, disposed of.