

(2013) 10 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 22698 of 2013

Smt. Sushila

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 10-10-2013

Acts Referred:

Citation : (2014) 173 PLR 747

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Rajiv Narain Raina, J.—Learned counsel for the petitioner does not dispute that the petitioner did not possess the qualifications laid down in the rules for appointment to the post of Science Mistress. The recruitment rule for appointment to the post of Science Mistress is prescribed in the Haryana State Education School Cadre (Group-C) Service Rules, 1998. As per Appendix-"A" of these rules, Science Mistress/Science Master has to possess B.Sc. with B.Ed. Degrees from a recognized university with any two of the following subjects in B.Sc. (1) Physics (2) Chemistry (3) Botany (4) Zoology or B.Sc. Education (4 years course) from a recognized University with any of the same subjects as above. The petitioner was engaged as a Guest Teacher contrary to rule. Her services have been terminated by the impugned order for want of fulfilling essential qualifications laid down in the rules. It is trite to say that essential qualifications cannot be relaxed since that would violate the rule. The impugned order dated 30.09.2013 terminating the services of the petitioner as Science Mistress (Guest), GMS, Fazilpur Badli (Gurgaon) has been passed for want of possession of subject combination. By another order of even date (P-9) the petitioner has been relieved from duty consequent upon termination. I do not find any infirmity in the order of termination which has been passed in conformity with the rules of service. However, the petitioner's second complaint is that she has not been paid salary for the month from September 2012 till the

date of termination i.e. 30.09.2013 despite having discharged duties of post. If this is true to record then this prayer for claim to salary is justified on the principle of quantum merit for work performed and salary not paid.

2. Mr. Verma has relied on the decision of the Supreme Court in Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, to contend that even though the petitioner did not possess requisite qualifications to hold the post she would be entitled to continue and to be confirmed on the ground that practical experience would always aid the person to effectively discharge duties and is a sure guide to assess suitability. In the same chain of thought, he relies on a decision of the learned Single Judge of this Court in Saudamini Prabha v. The State of Punjab, 1993 (3) S.C.T. 359. The principle evolved in Bhagwati Prasad's case has been watered down in cases where recruitment qualifications stand governed by statutory rules by numerous subsequent judgments of the Supreme Court in main line service jurisprudence that laid down qualifications cannot be relaxed in violation of articles 14 and 16 of the Constitution. In Bhagwati Prasad the matter had reached the Supreme Court under the Industrial Disputes Act, 1947 and the posts involved there were of workmen performing skilled or semi-skilled jobs or work of a clerical nature. The claim in that case was based on regularization of services where the aggrieved workmen had spent long years of service with their employer and therefore directions were issued to save them from loss of jobs by treating experience as sufficient substitute of prescribed rules. In Bhagwati Prasad the Court did not consider a case arising out of statutory rules framed under the proviso to Article 309 of the Constitution of India. The case is, therefore, distinguishable on facts and is of no help to save the petitioner. The prayer for continuation as Guest Teacher is untenable and is, therefore rejected. However, this writ petition is partly allowed with respect to the claim for unpaid salary. A direction is issued to the respondents to consider the case of the petitioner for payment of unpaid salary, in case the financial liability has still not been discharged. If not, the same be paid to her within one month from the date of receipt of certified copy of this order with 6% interest till realization. Interest component may be recovered from the erring person/s found responsible for illegally withholding salary for the period of work done.

With this the petition stands disposed of.