
(2016) 03 P&H CK 0363
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 11819 of 2005 (O&M)

Smt. Veena Kumari

APPELLANT

Vs

State of Punjab and anr.

RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 311

Citation : (2016) 3 PLR 97

Hon'ble Judges : Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : Mr. M.L. Saggar, Sr. Advocate with Mr. Rohit Joshi, Advocate, for the Appellant; Mr. Inqulab Nagpal, AAG, Punjab, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Narain Raina, J. (Oral) - With the consent of the parties, main case is taken up for final hearing.

2. The short controversy involved in this petition is whether the petitioner deserves to be assigned seniority as per her merit position determined by the Punjab Public Service Commission, Patiala or not in a direct recruitment process initiated by requisition sent by the State Government. The result of selection was prepared on October 4, 1994 and forwarded to the Government for considering appointments from the select list prepared by the Commission. The petitioner was placed at merit position 5 in the recruitment process for filling up seven vacancies of Lecturers of Colleges in Punjab.

3. One Saroj Bhalla approached this Court by filing CWP No.15144 of 1994 challenging the selection which delayed the appointment of the petitioner for a considerable period of time. The petition was disposed of on December 17, 1996. This Court modified the order and directed the Government to consider the case of the petitioner for appointment to service. In the aftermath of the decision she was appointed. The present dispute started when the department wrote a letter

to the petitioner demanding from her an affidavit swearing that she would surrender her right to seniority prior to joining service, if offered appointment. A creature of forced circumstances, the petitioner was compelled to submit the affidavit in order to secure an appointment and accordingly she did as she was bid and joined service on April 24, 1998. When this Court passed final orders in the aforesaid writ petition on May 3, 2000, there was a categorical observation in the judgment that if the present petitioner [who was respondent No.3 in that petition] was amongst the first five candidates on merit then her merit position would not be interfered with, as is the prevailing law.

4. The petitioner's request for assigning seniority from the dates her batch mates secured appointment as per their merit determined by the Commission was rejected vide order dated January 28, 2005 [Annex P-7]. The immediate grouse of the petitioner is that she is due to retire in June 2016 and she would be injured if the case is not decided before retirement and if it is not, then she could only reap the benefit in a pyrrhic way.

5. Not to forget, she approached this Court in the year 2005 through the present petition claiming that her merit position determined by the Commission could not be disturbed in any case, which was protected by a direction in the writ petition filed by Saroj Bhalla. Her case has been rejected only on account of the fact that she gave an undertaking that she would give up her seniority prior to joining if she was offered appointment.

6. Calling for an affidavit to waive valuable rights at the insistence of the organ of the State is neither a fair nor is the right thing to do as that would be an inappropriate exercise of jurisdiction clearly in abuse of authority to appoint. The petitioner had no option but to sign on the dotted line to accept the appointment or forsake it. Fundamental rights are not open to waiver. Once the petitioner was appointed she was protected by Articles 14, 16 and 311 of the Constitution of India and rules of service governing the conditions of service in the cadre. The action of the respondents in demanding the affidavit is held to be unconstitutional, contrary to public policy, illegal and thus the unlawful demand should not be countenanced coming from the State which is expected to be a model employer. Duress is not a good defence to the action taken. Any person of reasonable intelligence may have signed up for a more beneficial path to be trodden to secure a job, seeing the bargaining power unequal. Calling for the affidavit of waiver of right was not only unlawful but ill conceived when the petitioner was the rightful owner of a merit position sufficient to make the grade. The Government was not doing any favour to the petitioner by curtailing her rights earned in the selection process by dint of merit. The petitioner was rather unfairly dealt with in forcing her to surrender her right to seniority from her batch leaving no reasonable option except to lose the job and then to redress her grievance before this Court.

7. For the foregoing reasons, there is substance in this petition and it is accordingly allowed. A writ of certiorari is issued quashing the impugned order

dated January 28, 2005 [Annex P-7]. A writ of mandamus is issued to the respondents to redraw the seniority list by placing the petitioner in the slot as per her merit determined by the Punjab Public Service Commission, Patiala published on October 4, 1994. As a necessary corollary, it cannot be gainsaid that the petitioner will take under this order all consequential benefits as would naturally flow from the declaration rights in her favour.