
(2022) 05 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 365 Of 2016

Sulekha Sharma

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 02-05-2022

Acts Referred:

Citation : (2022) 05 SHI CK 0004

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Bhuvnesh Sharma, Desh Raj Thakur, K.D. Sood, Ranjana Chauhan

Final Decision : Disposed Of

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioner has prayed

for the following substantive reliefs: -

"i "That the order dated 6.1.2006 passed by the respondent-Commissioner, Annexure P-13, whereby the pay of the petitioner has been ordered to be reduced w.e.f. the year 1995 and recoveries have been ordered to be effected from her salary, may kindly be quashed and set aside.

ii) That the letter, dated 8.1.2006 issued by respondent No. 2, Annexure P-14, pursuant to the order dated 6.1.2006, Annexure P-13 may kindly be quashed and set aside and the respondent may further be restrained from reducing the salary of the petitioner and also from effecting any recoveries from her

iii) That the petitioner may kindly be held entitled for grant of pay band IV due to her w.e.f. the due date, with all consequential benefits

iv) That the recoveries already effected from the petitioner may kindly be ordered to be restored to her."

2. Petitioner was appointed as Lecturer in Political Science in respondent No.5 College w.e.f. 06.08.1990 on temporary basis for three months against the payment of consolidated fixed pay of Rs.1800/- per month. Petitioner, however, continued to serve respondent No.5-College in the same capacity. She obtained M.Phil degree in Political Science on 06.07.1994. Thereafter petitioner was allowed running scale of 2200-4000/- w.e.f. 01.04.1995.

3. After initial appointment of the petitioner, respondent No.5 College had started recruitment process for fresh appointment to the post of Lecturer in Political Science against the post held by the petitioner. CWP No. 867/1992 was preferred by the petitioner but the petition was later withdrawn due to grant of regular pay-scale to petitioner by respondent No.5 College w.e.f. 01.04.1995.

4. Petitioner became entitled to senior scale on completion of five years after 1.4.1995 and to the selection grade on completion of another 5 years, but she was not allowed such benefits. Petitioner approached this Court by way of CWP No. 355 of 2006, which was disposed of on 23.07.2008 in following terms:

"The petitioner has preferred this writ petition against the action of respondents, who have refused to release the senior scale and selection grade of Lecturer to her w.e.f. April, 2005. The objection taken by respondents is that she has not qualified the National Eligibility Test and therefore, she is not eligible for the grant. My attention has been invited to Annexure R-2 which has been filed along with the reply and notification issued by University Grant Commission on 14th June, 2006. It is admitted by learned counsel for parties that case of the petitioner is covered by the regulations stating:

"NET shall remain the compulsory requirement for appointment as Lecturer for those with post-graduate degree. However, the candidates having Ph.D. degree in the concerned subject are exempted from NET for PG level and UG level teaching. The candidates having M. Phil degree in the concerned subject are exempted from NET for UG level teaching only."

Parties agree and accept that the case of the petitioner is covered by this notification. This writ petition is accepted and a direction is issued to the respondents that the case of petitioner be considered in terms of this notification. Such consideration shall be completed within a period of six weeks from today. This writ petition is disposed of accordingly. There shall be no order as to costs."

5. In purported compliance to aforesaid orders, Respondent No.2 passed order dated 04.09.2008 and held an amount of Rs. 8.64,809/- recoverable from the petitioner. Respondent No.3, vide correspondence dated 01.12.2008, clarified the correct import of order dated 23.07.2008 passed by learned Single Judge of this Court in CWP No. 355 of 2006 and issued direction to respondent No.2 to examine the case of the petitioner strictly as per order passed by this Court. In sequel to above, respondent No.2 issued office order dated 03.12.2008 in following terms:-

"In compliance to the order/direction of Hon'ble High Court of H.P. dated July 23rd, 2008 and in terms of the UGC, Notification F. No. 1-1/2002 (PS) Exemp. Dated 14-06-2006 and in supersession of the office order Endst. No.902-905/TA-1/SDB/2008 & 906-909/TA/SDB/2008, dated 04-09-2008, Smt. Sulekha Sharma is deemed to be appointed as Lecturer under-graduate classes w.e.f. 01-04-1995 i.e. the date from which grant of scale Rs. 2200-4000 & other allowances applicable to the post of Lecturer (w.e.f. April, 1995). She shall be eligible for the grant of selection grade w.e.f. the date of order passed by the Hon'ble High Court of the (HP) in CWP No. 355/2006 i.e. July 23rd, 2008."

Thus, petitioner was deemed to be appointed lecturer under-graduate classed w.e.f 1.4.1995. Accordingly, the pay of petitioner was fixed.

6. Aggrieved against the allowance of selection grade w.e.f. 23.07.2008 instead of 01.04.2005 petitioner assailed order dated 03.12.2008 issued by respondent No.2 by way of CWP No. 11893 of 2011 before this Court and also claimed benefit of pay band (iv) as per rules. The petition came to be decided on 02.07.2014 in the following terms:-

"Mr. Ramakant Sharma, Advocate, submits at the Bar that the present lis is squarely covered by the judgments rendered by this Court in CWP No 1743/2007 titled as V.D. & Vashistha and anr vs. State of H.P. & ors and other analogous matters decided on 8.7.2010 and in CWP No. 274/2001 titled as Dr. Karan Singh Rana & Ors vs. State of H.P. and ors decided on 31.10.2008.

2. in view of this, the present petition is disposed of with a direction to the respondents to consider the case of the petitioner strictly in view of the principles laid down in the judgments cited herein above, within a period of ten weeks,

Pending applications, if any, are also disposed of."

7. In compliance to order dated 02.07.2014 passed by this Court in CWP No. 11893 of 2011, respondent No.2 passed another order dated 05.11.2014 and held as under:-

"5. That as far as the relief sought by petitioner is concerned there are two main claims (1) Grant of Sr. scales and selection grade from the due date i.e. 01.04.2000 and 01.04.2005 respectively. (2). For fixation at Rs. 14940 w.e.f. April, 2010. As far as claim no.01 i.e. grant of senior scale and selection grade from the due date is concerned it seems justified in view of the judgment titled as "V.D.Vasishth and another VS State of H.P.& others" which is referred in the order dated 02.07.2014 by the Hon'ble High Court of H.P. The contents of the relevant portion of the above judgment already discussed in para supra. It is also found that the selection grade has already been granted from 23.07.2008 which was due w.e.f. 01.04.2005. The statement of the petitioner also taking in consideration therein she made her statement that there will be no objection to her if the senior scale due from 01.04.2000 is granted alongwith selection grade from 01.04.2005.

Hence in view of the above the senior scale and selection grade is allowed to the petitioner from 01.04.2005. As far as claim no. 02 regarding fixation of pay is concerned was also examined and found justified, hence the pay of petitioner will be fixed as per the scales applicable in the institution, therefore, the pay band IV has already been allowed to the petitioner..

Hence, the matter is decided as per the directions of the Hon'ble High Court of H.P as well as the direction given by the Deputy Commissioner, Hamirpur-cum-Commissioner, Temple vide his office letter No. 714/TA/Court Case/2014 dated 21.10.2014. A copy of the order be sent to the petitioner through the Principal, BBN Degree College, Chakmoh."

8. Despite passing of order dated 5.11.2014 by respondent No.2, the same was not implemented forcing petitioner to file Contempt Petition being COPC No. 638 of 2015 in this court. In reply to said petition, respondents therein came up with a specific plea as under:-

"5. The petitioner was given the arrear of pre-revise selection grade and revised selection grade by the SDO (C) Barsar-cum-Chairman trust BBN Temple Deotsidh vide letter No. 494-495/TA-II/SDB/2015 dated 20/03/2015. The case regarding payment of arrears of pay band IV claimed by the petitioner has been send to the Director Language Art and Culture H.P. Shimla by the respondent No.1 vide office letter No. 1097/TA-1/LAC/Hmr/2015 dated 17-9-2015.

9. Taking into consideration aforesaid para 5 of the reply filed to said contempt petition, a Division Bench of this Court, on 07.10.2005, passed the following order in COPC No. 638/2015,:-

"The learned Senior Counsel for the respondents stated at the Bar that the respondents have filed the reply. The learned counsel for the petitioner stated that he has already received the copy of the reply and prayed that the Contempt Petition may be disposed of in terms of para 5 of the reply, copy of which has been made available in the open Court.

2. In the given circumstances, the Contempt petition is disposed of along with pending applications, if any, in terms of para 5 of the reply and respondents are directed to do the needful in terms of para 5 of the reply within six weeks from today."

10. Respondent No.3 after disposal of COPC No. 638 of 2015 in aforesaid manner, passed an order dated 06.01.2016, whereby he held the entire service of petitioner w.e.f. 06.08.1990 till 14.06.2006 as gratis and as a consequence thereof, directed recoveries to be affected from the petitioner accordingly. It was held by respondent No.3 that petitioner did not have NET qualification and was only M.Phil. Her services could be said to be in terms of UGC guidelines only w.e.f. 14.06.2006 on which date UGC had exempted NET qualification for those incumbents who were M.Phil and were to teach under graduate classes. It is this order dated 06.01.2016 of respondent No.3, which is under challenge in the

present petition.

11. Respondents No. 2 to 5, while admitting the factual position on the one hand, have tried to justify impugned order dated 06.01.2016 Annexure P-13 on the other. It has been submitted on their behalf that petitioner became eligible for senior scale on 14.06.2011 and selection grade on 14.06.2016 and to the benefits of pay band (iv) on completion of another three years of service i.e. 14.06.2019.

12. I have heard learned counsel for the parties and have also gone through the record carefully.

13. The right of petitioner to have senior scale and selection grade considering her service w.e.f 01.04.1995 had already been recognised vide office order dated 03.12.2008 issued by respondent No.2 in pursuance to directions dated 23.7.2008 passed by learned Single Judge of this Court in CWP No. 355 of 2006. Office order dated 03.12.2008 issued by respondent No.2 had not been superseded, set aside or quashed by any authority or the Court.

14. It is not in dispute that vide order dated 05.11.2014 passed by respondent No.2 in compliance to order dated 02.07.2014 passed by this Court in CWP No. 11893 of 2011 the claim of the petitioner with respect to grant of selection grade w.e.f. 01.04.2005 as well as to pay band (iv) was further upheld. Again this order at no point of time had been superseded, set aside or quashed either by any authority or the Court.

15. COPC No. 638 of 2015 was filed by the petitioner with the grievance only that order dated 05.11.2014 had not been implemented. As is evident from para 5 of reply in said contempt petition as noticed above, there was again no denial to the claim of petitioner. Rather, it was represented that case regarding payment of arrears of pay band (iv) claimed by the petitioner had been sent to Director, Language, Art and Culture, Himachal Pradesh on 17.09.2015. It is evident from the records that petitioner, in fact, had agreed for grant of selection grade to her w.e.f. 23.07.2008, keeping thereafter her claim to pay band (iv) alive.

16. In this view of the matter, order dated 06.01.2016, Annexure P-13 passed by respondent No.3 cannot be sustained for the reasons firstly that office order dated 03.12.2008 Annexure P-7 and order dated 5.11.2014 Annexure P-9 issued by Respondent No.2 had attained finality. Once these orders had attained finality, respondent No.3 could not have superseded these orders especially, when these orders had imprimatur of this Court through orders passed from time to time in different proceedings as noticed above. Secondly, impugned order was passed even without affording any opportunity of being heard to the petitioner and lastly impugned order was passed on wrong interpretation of UGC guidelines dated 14.06.2006. The Notification dated 14.06.2006 issued by the UGC specifically declared that "the candidates having M.Phil degree in the concerned subject are exempted from NET for UG level teaching only." Petitioner had qualified her M.Phil examination in July, 1994. On the strength of this Notification dated

14.06.2006, petitioner was held eligible as per UGC guidelines to hold post of Lecturer in Political Science in UG classes. Even impugned order recognized right of petitioner to be eligible for all benefits under UGC norms w.e.f. 14.06.2006. An interpretation, that terms of UGC notification dated 14.06.2006 would be applicable prospectively only, will on one hand be absurd and on the other militate against the very purpose of such notification. In case petitioner was eligible for all benefits under UGC norms w.e.f. the date of issuance of notification, there cannot be any logic to deny her same benefits for the period she had worked with the same qualification. Even otherwise, the purposive construction of the notification dated 14.6.2006 would not be to apply the benefits thereof prospectively only. The term "are exempted" used in the notification itself suggest that the benefits thereof would be applicable to the incumbents with requisite M.Phil degree serving as Lecturers though without NET qualification. Any other interpretation would be absurd especially when the services of petitioner had already been utilized as Lecturer in Political Science for teaching under graduate classes in respondent No.5 College in the same manner as all other Lecturers in the College.

17. In the light of the above discussion, the petition is allowed. Order dated 06.01.2016 Annexure P-13 passed by respondent No. 3 is quashed and set aside as discriminatory being harsh and arbitrary. Consequently, communication dated 8.1.2016 Annexure P-14 issued by respondent No.4 is also quashed and set aside. The respondents are restrained from affecting any recoveries from the petitioner in pursuance to order dated 06.01.2016 Annexure P-13 and order dated 08.01.2016 Annexure P-14. Respondents are further directed to refund the entire amount to the petitioner, if already recovered, with interest @ 6% per annum within a period of eight weeks from the date of passing of this judgment. Further, the petitioner is also held entitled to pay band (iv) from the due date and the respondents are directed to grant the petitioner benefits of pay band (iv) in accordance with the Rules also within the aforesaid period of eight weeks.

18. The petition is disposed of in the aforesaid terms. Pending applications, if any, also stand disposed of.