

(2021-2)202 PLR 008

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Anil Kshetarpal.

DR.POONAM MALIK - Petitioner,

Versus

CHAUDHARY CHARAN SINGH HARYANA AGRICULTURAL UNIVERSITY, HISAR (HARYANA) -  
Respondent.

CWP-974-2021 (O&M)

**(i) Chaudhary Charan Singh, Haryana Agricultural University - Pursuant to the directions, the Selecting Authority re-conducted the interview and selected the petitioner - Claims that she is entitled to the seniority from the year 2010 because she was wrongly denied appointment - Regulations or Instructions to grant seniority prior to the date of appointment. In other words, there is no provision to grant seniority before an employee is born in the cadre - Only one post was advertised.**

**[Para 6]**

**(ii) Constitution of India, Article 226 - Mandamus - Before issuing a writ of mandamus, the petitioner is required to establish legal right and corresponding duty of the respondents - In view thereof, this Court does not find it appropriate to issue a writ as prayed for. [Para 9]**

Mr.Krishan Kumar Gupta, for the petitioner. Mr. Samarth Sagar, Addl. A.G. Haryana.

JUDGMENT

**Anil Kshetarpal, J. - (19th January, 2021)** - By invoking extra ordinary jurisdiction, the petitioner has sought the following reliefs:-

“i. a writ in the nature of certiorari may kindly be issued for quashing the decision dated 15.09.2020 (Annexure P-7) being totally arbitrary, illegal, unconstitutional, discriminatory and without any logic and basis;

ii. a writ in the nature of mandamus may also be issued directing the respondent to give the date of appointment of the petitioner as Assistant Professor in Department of Human Development and Family Studies of the University with effect from 14.07.2010 i.e. the date when Dr.SantoshSagwan was appointed and allowed to join the said post against which the petitioner has now been appointed consequent upon the quashing of the selection and appointment of the said Dr.SangoshSagwan in the writ petition filed by the petitioner, as has been done by the respondent itself in case of others under similar circumstances consequent upon the directions of this Hon'ble Court as well as at their own, with all consequential benefits including the benefit of seniority and arrears of salary with interest @ 12% per annum for the entire period;”

2. Some facts are required to be noticed. The respondent issued a recruitment notice on 17.08.2009 inviting applications for the post of Assistant Professors in the Department of Human Development and Family Studies (HDFS) in respondent university. Certain candidates including the petitioner applied. On recommendation of the Selection Committee, Dr.SantoshSangwan was appointed. The petitioner filed CWP-15950-2010 challenging her selection which came to be allowed on 17.05.2017, the concluding part whereof is extracted as under:-

“13. In view of the above facts and circumstances, selection and appointment of the 2nd respondent to the post of Assistant Professor (HDFS) is set aside and selecting authority is hereby directed to re-do the interview process and further directed that interview committee shall not have the benefit of looking into the marks awarded to each of the candidate in respect of qualifications academic + additional, experience, academic awards, publications in relevant field and quality of publications so that interview committee members would not be influenced by any marks for the aforesaid heads in order to avoid arbitrariness in award of marks for the performance and expression in interview. The above exercise shall be completed within a period of two months from receipt of copy of this order.”

3. Pursuant to the directions, the Selecting Authority re-conducted the interviews and selected the petitioner. The petitioner was issued an appointment letter on 16.03.2020. It may be noted here that the judgment passed by learned Single Judge was challenged before the Division Bench in LPA-819-2017 and therefore, the decision of the Selection Committee was initially kept in a sealed cover. Ultimately, LPA was disposed of as infructuous, as in the meantime, Dr.SantoshSangwan

attained the age of superannuation on 04.02.2020. Thereafter, the petitioner was issued the appointment letter on 16.03.2020.

4. Now, the petitioner claims that she is entitled to the seniority from the year 2010 because she was wrongly denied appointment.

5. This Court has heard learned counsel for the petitioner and with his able assistance perused the paper book.

6. At the time of hearing, learned counsel representing the petitioner, has fairly admitted that there is no provision in the Service Rules, Regulations or Instructions to grant seniority prior to the date of appointment. In other words, there is no provision to grant seniority before an employee is born in the cadre. However, he submits that there are precedents and therefore, this Court should issue a writ of mandamus. Learned counsel relies upon a decision in CWP-10718-1995 (Annexure P-8) on 05.02.2019. In the aforesaid case, the Court was deciding the writ petitions after a period of 14 years. The petitioners had sought the quashing of selection and appointment of respondent No. 3 to 5 as District Extension Specialists (Animal Science). The Court, in order to do complete justice, directed the respondents to give the details of the vacancy positions. Thereafter, in para 4, the Court noticed the issue which required adjudication. Ultimately, in para 9, the Court directed the notional fixation of the seniority of the candidates who would be selected pursuant to the directions of the Court. The directions passed in para 9 are extracted as under:-

“9.) Keeping in view the interest of justice and equity and without disturbing the equilibrium, suffice at this stage to observe, that the process adopted by the respondent-Chaudhary Charan Singh, Haryana Agricultural University, Hissar for selection was not as per the advertisement and the criteria, as originally prescribed. Consequently, respondent No.1 (Chaudhary Charan Singh, Haryana Agricultural University, Hissar) is directed to re-draw the merit list strictly according to criteria laid down in the advertisement as per the vacancy position reflected in affidavit dated 19.12.2017. It is made clear that in the event, it is found that marks awarded to respondent Nos.3 to 5 are disproportionate to their entitlement, they would be adjusted against the vacancies which are lying vacant, as reflected in the affidavit dated 19.12.2017. It is made clear that in the event petitioners' merit goes up and is decided favourably, they would not be entitled to any consequential pecuniary benefits other than notional fixation of their seniority. Let the needful be done within a period of 3 months from the date of receipt of certified copy of this order.”

7. Learned counsel has also contended that the aforesaid judgment has been implemented by the Haryana Agricultural University, Hissar, vide Annexure P-9. He further relies upon the judgment passed in CWP-13384-2011 decided on 08.08.2012 (Annexure P-11). In this case, application for the post of 42 Junior Accountants was invited. The question was “Could there be reservation of more than 50% of the post advertised?” The Court found that such action of the respondents was wrong. Thereafter, the Court after relying upon decisions in CWP-15415-2009 and CWP-1405-2009, directed that in order to do complete justice the petitioner shall be deemed to have been appointed as Junior Accountant w.e.f. from the date her other batch mates were appointed.

8. This Court has carefully examined both the judgments relied upon by learned counsel for the petitioner. It is important to note that in none of the judgments, the Court as a ratio decidendi laid down that in case a candidate is found to be wrongly denied the appointment then the Court shall be required to order appointment from the back date or grant notional benefits including seniority.

9. In the considered view of this Court, the writ as prayed for cannot be issued for the following reasons:-

1) Learned counsel for the petitioner has failed to draw attention of the Court to the Service Rules, Regulations or Instructions entitling the seniority prior to her date of entry in service.

2) In the previous writ petition, the court did not hold that selected candidate shall be entitled to notional seniority from the date Dr. Saroj Sangwan was appointed. As noticed above, the Court in the previous round only directed the appointing authority to re-conduct the interview. The petitioner has not challenged the correctness of the judgment passed in the previous writ petition and the same has become final as LPA filed by Dr. Santosh Sangwan has also been dismissed as infructuous.

3) The judgments relied upon by learned counsel for the petitioner are in the facts of the cases. With great respect, the aforesaid judgments do not lay down that whenever the Court quashes the selection and directs the appointment, the Court must direct granting of notional seniority

from the date the candidate was wrongly denied the appointment. In both the judgments relied upon by the learned counsel for the petitioner, the Court has ordered that the petitioner should be granted notional seniority alongwith their batch mate. Whereas in the present case, only one post is advertised.

4) Before issuing a writ of mandamus, the petitioner is required to establish legal right and corresponding duty of the respondents.

10. In view thereof, this Court does not find it appropriate to issue a writ as prayed for.

11. Accordingly, the writ petition is disposed of.

12. All the pending miscellaneous applications, if any, are also disposed of, in view of the aforesaid judgment.

*R.M.S. – Petition disposed of.*