

Vijay Kumari Vs. V.

Vijay Kumari Vs. V.

SooperKanoon Citation : sooperkanoon.com/1125919

Court : Punjab and Haryana

Decided On : Feb-11-2014

Appellant : Vijay Kumari

Respondent : V.

Judgement :

CWP No.3539 of 1993 [1].IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CWP No.3539 of 1993 (O&M) Date of decision: February 11, 2014
Vijay Kumari .Petitioner v.

State of Punjab and another .Respondents CORAM: HON'BLE Mr.JUSTICE RAJESH BINDAL Present: Mr.Amit Chopra, Advocate for the petitioner.

Mr.Suvir Sehgal, Addl.

Advocate General, Punjab.

Rajesh Bindal J.

The petitioner, who is working as Hindi Teacher, has filed the present petition for a direction to the respondents to treat the petitioner having been appointed retrospectively with effect from the date a candidate lower in merit than the petitioner was given appointment as Hindi Teacher.

Though in the petition, relief pertaining to seniority has also been claimed, however, learned counsel for the petitioner, at the time of arguments, submitted that the petitioner is restricting her petition only qua the claim for notional fixation of her pay.

Learned counsel for the petitioner submitted that the petitioner, being eligible, applied for the post of Hindi Teacher in response to the advertisement issued by Subordinate Services Selection Board (for short, 'the Board') on 1.11.1981.

The essential qualification therefor was Matric 2014.02.12 09:16 I
attest to the accuracy and integrity of this document CWP No.3539 of 1993 [2].with
Prabhakar and OT.

The petitioner appeared in the written test on 29.9.1984.

Having qualified the same, she was called for interview on 15.1.1985.

On 4.3.1985, she was informed that after selection, her name has been recommended by the Board to Director of Public Instructions (Schools).Punjab for appointment as Hindi Teacher.

The name of the petitioner was recommended to the District Education Officer, Amritsar for issuing the appointment letter.

Though other candidates, who were recommended along with the petitioner, were issued appointment letters but the same was denied to the petitioner, even though she was at No.1 in the merit displayed in the office of District Education Officer, Amritsar.

It was on the ground that OT qualification possessed by the petitioner had not been recognised in the State of Punjab.

Aggrieved against the aforesaid action of the authorities, the petitioner filed CWP No.311 of 1986 in this court, which was allowed on 17.7.1991 holding the petitioner eligible for the post and the respondents therein were directed to issue appointment letter to the petitioner as Hindi Teacher.

In pursuance thereof, on 12.8.1992, the petitioner was issued the appointment letter and joined her duty.

On joining, the petitioner moved a representation for giving her the benefits of seniority, pay fixation etc. from the date other candidates selected in the same process were granted as the petitioner was deprived of the appointment from that date not on account of any fault on her part.

However, as noticed above, learned counsel for the petitioner at the time of arguments submitted that the petitioner is restricting her claim in the present petition only to the extent of notional pay fixation from that date.

In support of the arguments, reliance was placed upon *Hawa Singh Sangwan v.*

Union of India and others, 1991 (6) SLR 753 (P&H). *Hawa Singh and others v.*

Haryana State Electricity Board, 1996 (6) SLR 335 (P&H) and *Sanjay Dhar v.*

Jammu and Kashmir Public Service Commission, (2000) 8 SCC 182 (SC). On the other hand, learned counsel for the State submitted that the writ petition earlier filed by the petitioner was initially dismissed on 28.4.1986, however, after the review petition was allowed, the same was restored to its original number and was finally disposed of on 17.7.1991.

In Kumar Manoj 2014.02.12 09:16 I attest to the accuracy and integrity of this document CWP No.3539 of 1993 [3]. the writ petition earlier filed, the only prayer was for issuance of appointment letter.

The relief as is being sought in the present petition regarding notional fixation of pay was available to the petitioner at that time and could have been sought in the writ petition earlier filed.

Having not claimed the same in the aforesaid writ petition, fresh writ petition for the same is not maintainable.

He further submitted that as the order passed by this court in the writ petition earlier filed by the petitioner was not complied with, the petitioner had filed

Contempt Petition.

The same was disposed of as the petitioner was satisfied with the order of appointment.

In response to the contentions raised by learned counsel for the State, learned counsel for the petitioner submitted that at the time when the earlier writ petition was filed, the only issue was regarding eligibility of the petitioner.

The question of claiming any other benefit was not there.

This court having found that the petitioner was eligible and the action of the respondents in rejecting her candidature was illegal, directed for appointment of the petitioner.

In the Contempt Petition, the petitioner was satisfied for the reason that the only direction in the writ petition was for offering her appointment.

The same was complied with.

The cause of action to file the present petition arose when despite at Sr.No.1 in the merit list, as displayed in the office of District Education Officer, Amritsar, the petitioner was placed at the bottom of the merit list, even though as per the rules, seniority is to be determined in terms of the placement in the merit list.

There was no fault on the part of the petitioner and she cannot be deprived of the benefit for the period she was compelled to remain out of service.

Though she is entitled to the benefit of salary, seniority etc.also for this period, however, still the claim is being restricted only for notional pay fixation.

The action of the authorities is anomalous as persons lower in merit are getting more salary than the petitioner.

Heard learned counsel for the parties and perused the paper book.

The only issue which requires consideration by this court in the present petition is as to whether the petitioner, who was at Sr.No.1 in the merit list displayed in the

office of District Education Officer, Amritsar and Kumar Manoj 2014.02.12 09:16 I attest to the accuracy and integrity of this document CWP No.3539 of 1993 [4].was denied appointment questioning her eligibility, is entitled to the benefit of notional pay fixation from the date the candidates, who were lower in merit than her, were given appointment.

After the candidature of the petitioner was rejected on the ground that OT qualification obtained by the petitioner was not from a recognised institute, the petitioner filed CWP No.311 of 1986 in this court, which was allowed on 17.7.1991 declaring the petitioner eligible and directed for issuance of appointment letter.

The needful was not done immediately thereafter, rather, the petitioner had to file to file a Contempt Petition.

It was only thereafter that the appointment letter was issued to the petitioner on 12.8.1992.

Thereafter, she joined service.

The present petition was filed when after the petitioner joined service, she was placed at the bottom of the seniority list vis-a-vis the candidates, who were recommended for appointment along with her after selection in the same process, even though the petitioner was higher in merit than other candidates.

The delay in offering appointment to the petitioner was only on account of the fact that her eligibility was questioned, however, the action of the authorities was declared illegal by this court.

The result of belated appointment of the petitioner was that she was being paid less salary and was also even placed at the bottom of the seniority list.

However, in the present case, the petitioner is restricting her claim only for notional fixation of pay from the date persons lower in merit than her were offered appointment.

It has been consistently opined that in case a candidate is wrongly denied appointment, though being higher in merit for no fault on his part while appointing

a candidate below in merit, the candidate higher in merit cannot be deprived of the right from the date a person lower in merit was appointed.

For the purpose, reference can be made to *Hawa Singh Sangwan v.*

Union of India and others.(supra).*Hawa Singh and others v.*

Haryana State Electricity Board, (supra) and Sanjay Dhar v.

Jammu and Kashmir Public Service Commission (supra).In view of the enunciation of law, referred to above, in my opinion, the petitioner is entitled to be granted the benefit prayed for, namely, notional fixation of her pay from the date persons lower in merit Kumar Manoj 2014.02.12 09:16 I attest to the accuracy and integrity of this document CWP No.3539 of 1993 [5].joined service with consequential benefits.

As the petitioner is not claiming seniority and in case there is any other person appointed in the intervening period, who is otherwise senior to the petitioner, but is drawing less pay on account of his appointment in a selection process initiated later on, the petitioner's pay will not be fixed above that person, as the same would create another anomaly and may open Pandora's box of litigation.

In that eventuality, the pay of the petitioner shall be fixed at par with such a person.

It is made clear that payment of arrears shall be restricted to 38 months from the date of filing of the petition.

(Rajesh Bindal) Judge February 11, 2014 mk Kumar Manoj 2014.02.12 09:16 I attest to the accuracy and integrity of this document

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com