

(2013) 09 P&H CK 0324

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 8614 of 1991

Bimla Rani

APPELLANT

Vs

State of Haryana and
Others

RESPONDENT

Date of Decision: Sept. 19, 2013

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: Ranjit Saini, for the Appellant; Deepak Girotra, AAG, Haryana, for the
Respondent

Final Decision: Partly Allowed

Judgement

L.N. Mittal, J.

Petitioner Bimla Rani was appointed as JBT teacher on 25.4.1968 in Education Department of State of Haryana. In June, 1980, she passed Shastri examination from Punjab University in Sanskrit with Honours, after seeking prior permission from the respondents. Respondents issued policy dated 3.6.1977 Annexure P/1 for promoting JBT teachers to C and V cadre against the posts of Hindi/Punjabi/Sanskrit teacher after the teacher acquired qualification of Prabhakar/Giani/Shastri. The promotions were restricted to 25% of the total posts. Pursuant to the said policy, the petitioner was promoted to the post of Sanskrit teacher on adhoc basis for four months vide order dated 22.9.1981 Annexure P/2. According to the written statement, the said period was extended by another four months till May, 1982. Thereafter, promotion period of the petitioner was not extended according to written statement. Grievance of the petitioner in the instant writ petition filed under Article 226 of the Constitution of India is that in view of policy Annexure P/1, the petitioner is entitled to be promoted as Sanskrit teacher. Another grievance of the petitioner is that she continuously worked as Sanskrit teacher since after her promotion vide order Annexure P/2 and therefore, she is entitled to salary for the said period in the grade of Sanskrit teacher (Master's grade).

2. The respondents pleaded that after her promotion was withdrawn with effect from 23.5.1982, she was posted as JBT teacher against vacant post of Sanskrit teacher because there was no vacant post of JBT teacher in that school at that time. It was also pleaded that petitioner has since been promoted as Head Teacher (Primary Department) with effect from 17.8.1990 which carries grade equal to Master's grade. It was also pleaded that policy Annexure P/1 was not implemented due to some silent or unclear points therein. Instructions dated 28.11.1984 Annexure R/3 were issued for not implementing policy Annexure P/1. Other averments of the petitioner were controverted.

3. I have heard counsel for the parties and perused the case file.

4. In so far as claim of the petitioner for promotion to the post of Sanskrit teacher on regular basis in view of policy Annexure P/1 is concerned, the same cannot be accepted because it is own pleaded case of the petitioner in the writ petition itself that policy Annexure P/1 was never implemented. Respondents have also pleaded that policy Annexure P/1 could not be implemented due to some unclear points and accordingly, vide letter dated 28.11.1984 Annexure R/3, it was directed that promotions on the basis of policy Annexure P/1 be not made till further orders. Since policy Annexure P/1 was not implemented at all, the petitioner cannot be singled out for promotion on the basis of said policy. Even otherwise, mere framing policy may not confer right on an employee to seek benefit thereof by way of writ of mandamus. Policy Annexure P/1 cannot be said to have conferred any legally enforceable right on the petitioner to seek promotion by writ of mandamus.

5. However, as regards second grievance of the petitioner that she is entitled to salary in Master's grade for the period she performed duty as Sanskrit teacher, the same has to be allowed to the extent the said claim is not barred by limitation. The petitioner was promoted on adhoc basis as Sanskrit teacher vide order dated 22.9.1981 Annexure P/2. She stood promoted as Head Teacher (Primary Department) since 17.8.1990. The petitioner having worked as Sanskrit teacher during the interregnum was entitled to salary as Sanskrit teacher even if she was made to work as Sanskrit teacher without regular promotion. If an employee is asked to perform duty of a higher post, the employee becomes entitled to pay of the higher post for the period he is asked to perform the said duty. However, claim of the petitioner in this regard has to be restricted to the period of 3 years 2 months preceding the filing of the instant writ petition. Resultantly, the instant writ petition is allowed partly and the respondents are directed to pay salary to the petitioner in Master's grade for the period she worked as Sanskrit teacher during the period of 3 years 2 months preceding the filing of the writ petition (excluding the period out of it during which the petitioner worked as Head Teacher). The petitioner shall not be entitled to refixation of pay as Head Teacher or any other benefit on account of the aforesaid relief granted to her because the petitioner was not promoted or appointed to the post of Sanskrit teacher but only worked on the said post. The

arrears of difference in salary for the relevant period be paid to the petitioner within four months from today failing which she shall also be entitled to interest thereon @ 9% per annum from today till payment.