

Before Hemant Gupta & Mohinder Pal, JJ

SMT. SHASHI TEJPAL,—Petitioner

versus

STATE OF HARYANA & OTHERS,—Respondents

C.W.P. No. 17260 of 2007

11th March, 2008

Constitution of India, 1950—Art. 226—Haryana Affiliated Colleges (Security of Service) Rules, 2006—Rl. 7—Petitioner appointed as Lecturer against an unsanctioned post approved by University—Confirmation—No difference in procedure for appointment against aided or sanctioned post and in respect of unsanctioned post—Petitioner rendering more than 14 years of service against unsanctioned post—Action of respondents appointing another person against sanctioned post is wholly unreasonable—Petition allowed, respondents directed to treat post occupied by petitioner as post against which grant-in-aid is payable.

Held, that a lecturer who is working for the last more than 14 years on an unaided post, is entitled to seek approval from the State Government so as to receive grant-in-aid for such post. It will be wholly unreasonable if a person, even more than 14 years of continuous service against the unsanctioned post, is not granted grant-in-aid to the post occupied by her, though the fresh appointment is permitted against the sanctioned post in the same College and by following the same procedure. Therefore, as against the petitioner, the respondent can appoint another person against the sanctioned post, but the petitioner, who has already rendered 14 years of satisfactory service, is not considered fit for approval for granting grant-in-aid by the State Government. The effect of the grant-in-aid is that the petitioner would be entitled to pensionary benefits in terms of the scheme framed by the State Government. No reason has been explained as to why the post occupied by the petitioner cannot be treated as a sanctioned post either in communication dated 3rd August, 2007 or in the written statement. Once the procedure for appointment as contemplated under the Statute has been followed, it

is only an administrative decision to grant sanction to the post occupied by the petitioner, for the purposes of grant-in-aid. Such interpretation alone would be fair and reasonable keeping in view that the petitioner has worked for more than 14 years against an unsanctioned post.

(Paras 9 & 10)

R.K. Malik, Senior Advocate, with Nigam Bhardwaj, Advocate,
for the petitioner.

O.P. Sharma, Additional AG, Haryana, for respondent
Nos.1 and 2.

R.C. Kapoor, Advocate, for respondent No. 3.

HEMANT GUPTA, J.

(1) The petitioner has invoked the writ jurisdiction of this Court for the issuance of a writ of certiorari so as to quash the order dated 3rd August, 2007 (Annexure P-10).

(2) Earlier the petitioner was appointed on regular basis on 27th July, 1980 in S.D. College of Education for Women (Narwana). The said appointment was approved by the Kurukshetra University and the petitioner was also confirmed. The said college was closed and all the lecturers including the petitioner, were relieved. The Director, Higher Education,—*vide* communication dated 13th August, 1984 directed the Hindi-Girls College, Jagadhri to adjust the petitioner but no appointment letter was issued to the petitioner.

(3) It is the case of the petitioner that the petitioner has applied for the post of lecturer in Physical Education in pursuance of the advertisement issued by Guru Nanak Girls College, Santpura, Yamuna Nagar. The petitioner was selected by the duly constituted selection committee and offered appointment on 6th September, 1993. The selection committee consisted of a representative of the Director, Higher Education; a nominee of the Vice Chancellor of the University and a subject expert. The appointment of the petitioner was approved by the Kurukshetra University and the services of the petitioner were confirmed on 6th September, 1995. It is the case of the petitioner that

at the time of her appointment as a lecturer in the physical education, the post against which she was appointed was unsanctioned post. However, one post of lecturer in physical education became available on 1st July, 2004. A request was made by the management for converting the post held by the petitioner from unsanctioned post to the sanctioned one, but the same has been declined on 3rd August, 2007, *vide* the order impugned in the present writ petition.

(4) It is the case of the petitioner that the petitioner has been appointed by following the due procedure provided under Haryana Affiliated Colleges (Security of Service) Act, 1979 (hereinafter referred to as 'the Act') and the Rules framed thereunder. The prayer of the petitioner is for approval of the post of the petitioner as against the sanctioned post, meaning thereby that pay and allowances of the post occupied by the petitioner shall be payable by the State Government in terms of its grants-in-aid policy and not by the management.

(5) In reply it has been pointed out that the petitioner was appointed as lecturer in physical education against an unsanctioned post at its own level by the Management on a monthly consolidated salary. The State has no role in respect of appointment against unsanctioned posts and that the State Government provides grants-in-aid to the college to the extent of 95% of deficit only in respect of salary of the employees working against sanctioned posts in Government aided Colleges. It is pointed out that the representation of the petitioner was examined by the competent authority and rejected as per the Haryana Affiliated Colleges (Security of Service) Rules, 2006, there are no Rules or Instructions for adjusting the petitioner against the sanctioned post from the unsanctioned post.

(6) It is the categorical case of the petitioner that the representative of the Director, Higher Education was present in the meeting of the Selection Committee, which met to fill up one permanent post of lecturer in Physical Education. The procedure for recruitment as stipulated in Rule 7 of the 2006 Rules has been complied with. The Selection Committee consisted of the representative of the Director, Higher Education; a nominee of the Vice-Chancellor of the University and a subject expert, therefore, there was nothing more which is

required to be done by the respondents for approving the appointment of the petitioner against the sanctioned post as it is only an administrative decision, which is required to be taken by the respondents on availability of the sanctioned post in the privately affiliated aided college. It is argued that the provisions of the Act make no distinction in the manner of filling up of the aided or unaided post, therefore, the distinction sought to be drawn by the respondents is wholly untenable.

(7) The affiliated College under the Act means a College, which is not run by the Central Government or by the State Government or a Local Authority and which is recognised by the Kurukshetra University. The employee means any person who is in whole time employment of an affiliated College. Section 4 of the Act deals with the method of recruitment and conditions of service. Initially, Haryana Affiliated Colleges (Security of Service) Rules, 1980 were framed. However, such Rules were substituted by Haryana Affiliated Colleges (Security of Service) Rules, 1993. It is the said Rules, which have since been substituted with the 2006 Rules on June 13, 2006. The petitioner was appointed in the year 1993. At that time, the Rules applicable in respect of appointment of the Lecturers were the 1993 Rules published on 14th March, 1993. Rule 7 of such Rules, which deals with the method of recruitment, reads as under :—

"7. Method of recruitment.—(1) Recruitment to the Service shall made :—

(a) xx xx xx xx

(b) In the case of lecturer, Director Physical Education and Librarian by direct recruitment through a Selection Committee comprising the Chairman, Managing Committee or in his absence the Vice-Chairman or in the absence of both the General Secretary of the Managing Committee. If none of them is able to attend then the Chairman of the Managing Committee will nominate any other member of the Managing Committee and four other members, namely :—

(i) a nominee of the Vice-Chancellor who should be an expert on the relevant subject.

- (ii) A subject expert selected by the Chairman of the Managing Committee out of the panel of ten names for which 5 names will be nominated by the Vice-Chancellor of the concerned University and five names by the Director.
- (iii) Principal of the College.
- (iv) A representative of the Director.

Quorum

- (i) The quorum of the Selection Committee for the selection of lecturers Director Physical Education and Librarians shall be four members out of five. But the presence of the Vice-Chancellor's nominee and the representative of Director will be essential.
- (ii) If the Chairman of the Managing Committee or his nominee is unable to attend, the Vice-Chancellor's nominee shall be the Chairman of the Selection Committee."

(8) The learned counsel for the respondents could not point out any difference in procedure for appointment against the aided or sanctioned post and in respect of the unsanctioned post. Once, the procedure for appointment of the post under the Statute has been complied with, then only an administrative decision, in respect of payment of the grants-in-aid to the post occupied by the petitioner, has to be taken. It was submitted that the Act is applicable to an affiliated College and not to aided posts of an affiliated College.

(9) In our view, a lecturer, who is working for the last more than 14 years on an unaided post, is entitled to seek approval from the State Government so as to receive grant-in-aid for such post. It will be wholly unreasonable if a person, even after more than 14 years of continuous service against the unsanctioned post, is not granted grant-in-aid to the post occupied by her, though the fresh appointment is permitted against the sanctioned post in the same College and by following the same procedure. Therefore, as against the petitioner, the respondent can appoint another person against the sanctioned post, but the petitioner, who has already rendered 14 years of satisfactory service, is not considered fit for approval for granting grant-in-aid by the State Government. The effect of the grant-in-aid is that the petitioner

would be entitled to pensionary benefits in terms of the scheme framed by the State Government. No reason has been explained as to why the post occupied by the petitioner, cannot be treated as a sanctioned post either in communication Annexure P-10 or in the written statement.

(10) Therefore, we are of the opinion that once the procedure for appointment as contemplated under the Statute has been followed, it is only an administrative decision to grant sanction to the post occupied by the petitioner, for the purpose of grants-in-aid. Such interpretation alone would be fair and reasonable keeping in view the that the petitioner has worked for more than 14 years against an unsanctioned post.

(11) Consequently, the present writ petition is allowed. The impugned order Annexure P-10 is quashed. The respondents are directed to treat the post occupied by the petitioner as the post against which the grants-in-aid is payable.

R.N.R.

Before Hemant Gupta & Mohinder Pal, JJ.

KULDIP KUMAR,—Petitioner

versus

MANAGING DIRECTOR, UHBVN & OTHERS,—Respondents

C.W.P. No. 6005 of 2007

12th March, 2008.

Constitution of India, 1950—Art.226—Instructions dated 8th May, 1995 issued by State of Haryana—Father of petitioner died in harness at the age of 55 years—Claim for compassionate appointment on basis of 1995 instructions—Rejection of—No right to seek appointment on compassionate ground on the basis of executive instructions alone—Framing of 2003 rules—Petitioner not fulfilling eligibility criteria as defined under Rl. 8 of 2003 Rules—Petitioner not entitled to be appointed on compassionate ground—Rl.2(iii) of 2003 Rules provide that a Government employee who has