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I.L.R. PUNJAB AND HARYANA

2015(1)

specific judgment pertaining to the Education Department being there dealing with the issue that no promotion should be made on the basis of administrative instructions if the statutory rules do not provide for such a promotion, still the instructions were issued on 26.9.2001, 17.4.2003 and 2.5.2003. The same has not only resulted in creating avoidable litigation but shows conduct of the officer issuing instructions that he has no respect for the judgment of this court. The action of the officer concerned is *prima facie* contemptuous.

(13) Learned counsel for the State seeks time to apprise the court about the officer, who had approved issuance of these instructions so as to proceed against him in accordance with law.

(14) It is directed that in future, if any instructions are to be issued, the same shall be first got vetted from Law Department, which shall specifically deal with and mention in the instructions the provisions in the statutory Rules, vis-a-vis instructions.

(15) The cases be listed for the purpose on 1.5.2014.

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***J.S. Mehndiratta***

***Before Ajay Tewari, J.***

**SUDESH KUMARI—*Petitioner***

*versus*

**STATE OF HARYANA AND OTHERS—*Respondents***

**CWP No. 4663 of 2011**

August 23, 2013

***Constitution of India, 1950 - Arts. 14 and 226 - Retiral benefits - DW CRA Scheme, 2005 - Petitioner appointed as Craft Teacher on 01.05.1976 at Panchayat Samiti, Karnal - Her service was regularized by order dated 13.05.1985 - State of Haryana started DW CRA Scheme on 2005 creating additional post of Gram Sevika in each Block - Petitioner and 45 other regular Craft Teachers were transferred to Development Department on ad hoc basis - Services of petitioner as Gram Sevika were not regularized on account of non-availability of record but services of some teachers junior to petitioner were regularized as Gram Sevikas - Petitioner retired on 31.01.2010 - Retiral benefits denied to petitioner on ground that her services as Gram Sevika had***

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***not been regularized and that when she joined as Gram Sevika she had given undertaking that she would not claim any benefit of her previous service as Craft Teacher and that by the time her records were traced DWCRS Scheme had lapsed - Held, that the respondents are directed to grant the same benefits as have been granted by the writ Court to one of the persons who was junior to the petitioner, whose case had also similarly not been regularized and it had been concluded therein that notwithstanding the undertaking given, she would be entitled to retiral benefits along with benefit of service rendered as Craft Teacher with Panchayat Samiti while computing pensionable service - Principle of Estoppel would not apply.***

*Held*, that there is force in argument of the petitioner that the right of the petitioner for regularisation crystallised on the date when a person junior to her was regularised and thereafter what the petitioner would be asserting would not be so much a right of regularisation but a right of non discrimination. That had the scheme not lapsed and subsequently petitioner's case considered for regularisation it would have to be from the date her junior was regularised. That the fact that the scheme lapsed would have no relation to the case of the petitioner for regularisation with effect from the date her junior was regularised. That in CWP No. 17695 of 2011 decided on 27.03.2012 in *Dropadi Devi v. State of Haryana* the petitioner therein was one of the persons who were junior to the petitioner, this Court held that notwithstanding the undertaking given by the petitioner that she would not claim benefit of past service it cannot operate to estop her. The petitioner shall be granted the service period of Craft teacher in the Panchayat Samiti as part of pensionable service and the pension shall be worked on that basis and the arrears be released to her within a period of 12 weeks.

(Para 6)

K.L.Dhingra, Advocate *for the petitioner.*

Shruti Goyal, AAG, Haryana.

**AJAY TEWARI, J. (Oral)**

(1) This order shall dispose of the the aforesaid two petitions bearing CWP Nos. 4663 and 10.284 of 2011. Since common questions of law and facts are involved, the same are being disposed of by this common order. The facts are being taken from CWP No. 4663 of 2011.

(2) By this petition the petitioner claims retiral benefits. She was appointed as a Craft Teacher on 1.5.76 in the Panchayat Samiti, Karnal. Thereafter the following order was passed on 13.5.85 regularising her services:-

“From

Commissioner & Secretary to Govt., of Haryana  
Development and Panchayat Department

To

All the Deputy Commissioners in the State of  
Haryana.

Memo. No. 632-I ECD-III-83/3287 Chandigarh,  
Dated 4.5.83

Subject: Regarding Service of Sewing Teachers.

Reference: This department memo N. 435-I-ECD-  
III-83/1304 dated 18.2.83.

Government has taken decision on the above noted subject that the Sewing Teachers should possess 3 years or more service for appointment on regular posts. Sewing Teachers working in the State and having three years or more service and still not appointed on regular posts their details are as under:-

Sr.No.	District	Block	Name	Total Service period	
				Year	months
XX	XX	XX	XX	XX	
XX	XX	XX	XX	XX	
20.	Kukukshetra	Shahabad	Sudesh Kumari	3	11

(3) These female Sewing Teachers are allocated as under for their regular appointment:-

Sr.No.	Name of Teacher	Present Block	Proposed Block	Total service	
				Years	Months
XX	XX	XX	XX	XX	XX
XX	XX	XX	XX	XX	XX
20	Sudesh Kumari	Shahabad	Pehowa	3	11

(4) In the year 2005 a new scheme was started called DWCR Scheme by the respondent-State of Haryana in each block and under the

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scheme an additional post of Gram Sevika was sanctioned. Those posts were lying vacant and, therefore, Government felt that since great hardship was being faced in the proper implementation of the scheme the department of Development and Panchayats was ordered to take 45 teachers in the Development Department by transfer on ad hoc basis. The petitioner was one of those 45 regular Craft Teachers who were transferred under the said scheme. By letter dated 01.10.2003 the respondents took a decision to regularise all persons who were working on ad hoc basis and pursuant thereto the services of 33 out of 45 Craft Teachers were regularised as Gram Sewika including some who were junior to the petitioner as Craft Teachers. The case of the petitioner and other persons could not be considered because their service record was not available. In the meantime the petitioner retired on 31.01.2010. Much to her shock she was denied retiral benefits on the ground that her services as Gram Sewika had not been regularised and at the time when she had joined as a Gram Sewika she had given an undertaking that she would not claim any benefit of her previous service as a Craft Teacher. Hence the present petition.

(5) In reply the above stand has been reiterated and it has been further asserted that by the time the record of the petitioner was traced out the scheme of regularisation had lapsed and she had retired. As per the State once the scheme had lapsed the petitioner could not be regularised.

(6) The first argument of learned counsel for the petitioner is that the right of the petitioner for regularisation crystallised on the date when a person junior to her was regularised and thereafter what the petitioner would be asserting would not be so much a right of regularisation but a right of non discrimination. He has further argued that had the scheme not lapsed and subsequently petitioner's case considered for regularisation it would have to be from the date her junior was regularised. In these circumstances as per learned counsel the fact that the scheme lapsed would have no relation to the case of the petitioner for regularisation with effect from the date her junior was regularised. He has further relied upon a decision of this Court in CWP No. 17695 of 2011 decision on 27.03.2012, *Dropadi Devi v. State of Haryana* and has argued that the petitioner therein was one of the persons who were junior to the petitioner and whose case has also similarly not been regularised. In the said case this Court held as follows:—

*“2. If the petitioner had been made regular from a particular date through an order and continued in the same department and assigned to a different duty and a different designation, the fact that an undertaking was received cannot be taken to estop the person from contending that the service she has put in the same department in another capacity should be excluded. The issue was answered in a slightly different situation by a Bench of this Court in Om Pati Versus State of Haryana 20071 RSJ 582. The Bench was considering the issue of counting of service in a Panchayat Samiti for eligibility for family pension for the person that was absorbed in the said service. The Court held that the service rendered in Panchayat Samiti which in terms of Government policy also allowed for absorption in the State service would make the person eligible to count such service in Panchayat Samiti as aggregating to pensionable service. I would apply the same principle and hold that notwithstanding the undertaking given by the petitioner that she would not claim benefit of past service it cannot operate to estop her. The petitioner shall be granted the service period of Craft teacher in the Panchayat Samiti as part of pensionable service and the pension shall be worked on that basis and the arrears be released to her within a period of 12 weeks.”*

(7) He has further pointed out that this judgment has become final and all the benefits have been released to that petitioner.

(8) In my opinion the argument of learned counsel for the petitioner cannot be brushed aside.

(9) In the circumstances the aforesaid writ petitions are allowed and the respondents are directed to grant to the petitioner/s the same benefits as have been granted to the said Dropadi Devi. Let the necessary exercise of working the same out and releasing them be carried out within a period of three months from the date of receipt of a certified copy of this order failing which the petitioner would be entitled to claim the same with interest at the rate of 8% p.a. from the date of her retirement till the date of payment.

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***S. Gupta***