

Harsimran Singh Sethi, J.

LALITA—Petitioner

versus

STATE OF HARYANA AND OTHERS—Respondents

CWP No. 2911 of 2023

December 21, 2022

Constitution of India, Ar.14—Discrimination—Petitioner appointed as PGT Home Science on regular basis—Issued appointment letter but not given regular appointment letter on ground that experience certificate yet to be verified—No fault on part of petitioner—Hence entitled to benefits of regular employee—Consequential benefits and intent on delayed payment.

Held, that the delay, which is attributable to the Department, cannot be made a ground to deny the petitioner the benefit of regular selection and appointment. Once, the petitioner was fully eligible and was duly selected against one of the post advertised and in fact has been working with the Department as a Guest Lecturer even after the regular appointment, the petitioner is entitled for the benefits of a regular employee by treating her as regular incumbent keeping in view the appointment order dated 14.12.2013 (Annexure P-7).

(Para 12)

Surya Parkash, Advocate, *for the petitioner.*

Sandeep Singh Maan, Addl. A.G., Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

(1) In the present petition, the grievance of the petitioner is that though the petitioner has been selected on regular basis and appointed as far as back in December 2013 but no benefit of the regular employment is being extended to her and that too without any valid justification, hence, the petitioner be given all the benefits of a regular incumbent from the date of appointment with all consequential benefits.

(2) The facts mentioned in the petition are that the petitioner was appointed as Guest Lecturer in the Government Girls Senior Secondary School, Kanina Mandi in January 2006 and she worked at the said school upto 30.07.2006 and was relieved thereafter. Once

again, the petitioner joined as Guest Teacher on 17.05.2007 and while the petitioner was working, the petitioner applied for the post of PGT Home Science in pursuance to the advertisement issued by the Haryana School Teacher Selection Board. The petitioner claimed eligibility for competing to the said post and applied for the same before 20.01.2013 i.e. the last date for the submission of the application form. Along with the application, the petitioner attached all the required documents proving her academic eligibility as well as with regard to the experience which the petitioner had upto the date of application.

(3) After due application of mind and considering the claim of the petitioner, the respondents found the petitioner eligible and she was selected for the post of PGT Home Science keeping in view the merit obtained by her in the selection process against the number of posts advertised. The petitioner was appointed by the respondents as a PGT Home Science vide an appointment order dated 14.12.2013 (Annexure P-7) in the pay scale of Rs.9300-34800+4800 Grade Pay.

(4) As per the allegation of the petitioner, though the petitioner had already been issued an appointment on regular basis but no benefit of the same was being given to her on the ground that her experience certificate is yet to be verified.

(5) As the respondents did not pass any order with regard to the verification of the testimonials of the petitioner and despite having an appointment order on regular basis, the petitioner was being treated as Guest Lecturer. Feeling aggrieved against the said action of the respondents, the petitioner filed the present petition with a prayer that the respondents be directed to treat the petitioner as a regular incumbent from the date of appointment order and release all the benefits admissible to regular employee keeping in view the fact that the petitioner has been working with the respondent-Department on the said post without any interruption.

(6) After notice of motion, the respondents have filed the reply wherein, the factum of the petitioner is being discharging the duties as Guest Lecturer continuously since 2007 onwards and her appointment on regular basis in December 2013 is conceded. In the reply, the respondents have mentioned that the documents submitted by the petitioner at the time of regular appointment were sent for verification and keeping in view the facts, which have come into existence, there is no discrepancy in any of the certificate depicting the education qualification of the petitioner or even the experience

certificate given by the petitioner in support of her claim, which was taken into consideration while selecting and appointing the petitioner as PGT Home Science but as there is a delay of eight years from the date of selection, the petitioner cannot claim the benefit of her regular appointment.

(7) I have heard learned counsel for the parties and have gone through the record with their able assistance.

(8) It is a conceded position that the petitioner is working with the respondents continuously since 17.05.2007. It is also a conceded position that the petitioner applied for the post of PGT Home Science in pursuance to the advertisement which was published by the Haryana School Teacher Selection Board and that the petitioner being meritorious enough was selected at one of the posts advertised and was duly appointed vide order dated 14.12.2013, a copy of which has been appended with this petition as Annexure P-7.

(9) As per the respondents, the only impediment in not granting the benefit of regular appointment to the petitioner was that her certificates including the experience certificate were sent for verification which took a long time to be verified, hence, at this belated stage, the petitioner cannot be allowed to join on regular basis.

(10) The facts show that the petitioner is not at fault in any manner and the petitioner is being punished for the inordinate delay which has occurred due to the inaction on the part of the Department. It was the Department, which was to get the testimonials verified. Further, it is a conceded position now that even after the verification, no discrepancy has been found in any of the testimonials of the petitioner as the petitioner fulfilled all the required qualifications as well as the experience. That being so, the petitioner has been kept away from her benefits by the Department and that too without any valid justification.

(11) In the reply filed by the respondents, following averments have been made:-

“7. That thereafter, a request has been received from the Respondent No.3 whereby they requested for clarification w.r.t. non-completion of 4 year working experience of petitioner. However, due to negligence of the then Branch Officials, the said request was not entertained. Forasmuch, it has been now decided by the Department to take strict Disciplinary action against the said defaulting officials.

8. That thereafter, a written request from the petitioner vide letter dated 15.10.2020 was received. Accordingly, on the basis of said written request of the petitioner, the Authorities referred the claim of the petitioner to Departmental Document Verification Committee (hereinafter referred as 'DVC'. Thereafter, the petitioner was called for Document Verification on 08.01.2021. After perusing the Documents pertaining to the petitioner, the DVC found that the experience related qualification obtained by the petitioner is as per Rules and she holds the experience of 5 years 5 months and 8 days. However, since there is delay of about eight years therefore, case of the petitioner is not tenable and liable for dismissal on the ground of delay.

In pursuance to report of DVC, the claim of the petitioner was minutely examined on the basis of terms and conditions referred in appointment order of petitioner, accordingly, it has been decided that the claim of the petitioner as prayed for is not tenable on account of delay, therefore, the claim of the petitioner was rejected.”

(12) The delay, which is attributable to the Department, cannot be made a ground to deny the petitioner the benefit of regular selection and appointment. Once, the petitioner was fully eligible and was duly selected against one of the post advertised and in fact has been working with the Department as a Guest Lecturer even after the regular appointment, the petitioner is entitled for the benefits of a regular employee by treating her as regular incumbent keeping in view the appointment order dated 14.12.2013 (Annexure P-7).

(13) The facts and circumstances of the present case shows that the respondents even after the selection of the petitioner on regular basis, treated the petitioner as Guest Teacher, which act of the respondents cannot be justified. Once the petitioner was already working with respondents after regular selection, the petitioner should have been paid by treating him as regular incumbent for all intents and purposes subject to the verification of her testimonials. It cannot be said that once the regular appointment has been given, the candidate cannot be allowed to join or discharge the duties on the pretext that first the documents have to be verified. That being so, the petitioner is entitled for all the benefits arising out of the appointment order dated 14.12.2013 with all consequential benefits.

(14) The petitioner, if not already paid the regular salary of the post of PGT Home Science starting from 14.12.2013, will be paid the regular salary of the said post along with arrears from the date of appointment order i.e. 14.12.2013. The petitioner will also be entitled for arrears of the said regular appointment. Further, the petitioner is to be treated as regular incumbent on the post of PGT Home Science from 14.12.2013 onwards for all intents and purposes and other benefits including the seniority, salary as well as further promotion.

(15) Now the question arises whether the petitioner is entitled for the grant of interest on the arrears or not.

(16) In the facts and circumstances of this case, it is clear that despite working on the post of PGT Home Science and being regularly selected employee, the petitioner was not extended the pay scale of the said regular post and other benefits. The petitioner was denied the same benefit and the said denial was only on account of the negligence of the respondents. The respondents have conceded before this Court that they were negligent. Once, the respondents were negligent in performing their duties, which has caused prejudice to the petitioner, the petitioner is held entitled for interest @ 6% per annum from the date the amount became due till the actual payment of the same as the claim of the petitioner is covered by the settled principle of law in *J.S. Cheema versus State of Haryana*¹, wherein it has been held that an employee will be entitled for the interest on an amount which has been retained by the respondents without any valid justification. The relevant paragraph of *J.S. Cheema's case (supra)* is as under: -

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

(17) Further, as the petitioner was forced to approach this Court and to litigate with the respondents, the petitioner will also be entitled for cost which is assessed at Rs.25,000/-. The said cost will be paid by

¹ 2014 (13) RCR (Civil) 355

the Officer from his/her own pocket, who is responsible for the denial of the benefit to the petitioner despite being regular selected.

(18) Let the present order be complied with within a period of two months from the receipt of copy of this order.

(19) The present writ petition is allowed in above terms.

Divay Sarup