

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.12206 of 2011(O&M)

Date of decision: 08.10.2015

Kuljit Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. G.S.Bhatia, Advocate for the petitioner

Mr. Pankaj Mulwani, Deputy Advocate General, Punjab
for the respondents.

G.S.SANDHAWALIA, J. (Oral)

The petitioner seeks quashing of order dated 11.1.2013 (Annexure P/4) whereby her claim for appointment as Teaching Fellow against the vacant post of JBT/ETT in pursuance of her appointment order dated 25.11.2009/17.12.2009(Annexure P/2) had been rejected during the pendency of the writ petition. By virtue of the amended writ petition, the said order is subject matter of challenge apart from the claim of Mandamus to permit her to join.

The pleaded case of the petitioner in the amended writ petition is that an advertisement was issued in August, 2007 for appointment of teaching fellows in the State of Punjab and 943 posts were advertised in the District Gurdaspur in 50% ratio of female and male categories. The petitioner having been eligible applied for the same and was at Sr. No.8 of the merit list by virtue of having secured 65.193 marks which would be clear from the list Annexure P/1 wherein it was specifically mentioned that counselling has been done in the case of the petitioner. In pursuance of the said merit list, the appointment letter was issued to the petitioner on 25.11.2009/17.12.2009 (Annexure P/2). The said appointment letter was dispatched on 22.12.2009 and delivered on 26.12.2009 to the petitioner. As per terms of the appointment letter, the petitioner was to contact the District Education Officer, Gurdaspur within seven days alongwith original certificates so that posting order and place of posting could be allotted. Compliance of various conditions was to be done including the execution of agreement and producing medical fitness certificate issued by the Civil Surgeon, Gurdaspur, as per Clause 5. The affidavit was to be executed on

non judicial stamp paper of Rs.300/- as per Clauses 4 & 6. It is the case of the petitioner that she underwent the medical fitness test and medical fitness certificate(Annexure P/5) was issued by the Assistant Civil Surgeon, Gurdaspur on 28.12.2009. It is further the case of the petitioner that she purchased the stamp paper on the said date and placed on record the extract of the relevant register of the Stamp Vendor (Annexure P/6).

The categorical averment is that the petitioner along with medical fitness certificate and agreement executed in terms of the conditions mentioned in the appointment letter approached the District Education Officer, Elementary Education, Gurdaspur on 28.12.2009. The original agreement executed and attested was retained in the office of respondent no.3 along with photo copy of medical certificate. The original medical certificate was returned as was done in the case of other similarly situated persons who were selected and appointed as ETT teaching fellows. On account of the petitioner not being given joining station, she had made repeated representations but later on she came to know in December, 2010 that persons mentioned at Sr. no.9 to 13 of the merit list and below her have been allowed to join their duties. Accordingly, she made representation on 27.12.2010 (Annexure P/3). However, no action was taken by the respondents and according to her knowledge there were 5 to 6 vacancies available in District Gurdaspur. The persons so appointed had also been offered regular appointments on completion of three years of service in view of the decision taken by the Cabinet.

In such circumstances, the petitioner has approached this Court by filing the unamended writ petition. In the original counter affidavit filed by the then Education Officer, Ms. Joginder Kaur, the plea taken was that the petitioner had not appeared before the District Education Officer, Gurdaspur within the stipulated period and was not entitled to the claim and the appointment was deemed to be cancelled and the next candidate in the merit had been given offer of appointment. The pleadings in para 5 were not controverted that the agreement had been executed and medical certificate dated 28.12.2009 had also been furnished on the said date within the prescribed period.

In the replication filed, the petitioner had specifically mentioned that it was false plea and at no point of time, it was communicated that the petitioner could not be offered appointment on the ground that she did not

come present within the period of seven days and it was an after thought especially keeping in view the fact that the representation dated 27.12.2010 had been made. An additional affidavit was also filed by the petitioner on 25.9.2012 to show that the letter of appointment dated 17.12.2009 was dispatched on 22.12.2009 and received on 26.12.2009. A coordinate Bench of this Court by order dated 26.9.2012 has noticed that original postal envelope has been produced by the counsel and shown to the counsel for the State and therefore, it was clear that the petitioner had submitted her joining within the stipulated period of seven days and there was no delay on her part in joining the post in terms of the appointment letter dated 17.12.2009. The order reads as under:-

“Learned counsel appearing for the petitioner has filed in Court today an additional affidavit dated 25.9.2012 of the petitioner herself. Same is taken on record. A copy has been furnished to learned State counsel.

In terms of averments made in the additional affidavit the appointment letter had been dispatched by the D.E.O. (Elementary) from the Gurdaspur Head Post Office on 22.1.2009 at 3.44 PM and it was delivered to the petitioner only on 26.12.2009. The original postal envelope to substantiate such assertion has also been produced by learned counsel for the petitioner and has been shown to learned State counsel.

In the light of the factual backdrop, it is clear that the petitioner had submitted her joining report within the stipulated period of 7 days and there was no delay on her part in joining the post in terms of the appointment letter dated 17.12.2009.

Hearing is deferred to 4.10.2012.

Learned State counsel shall seek instructions in regard thereto.”

Repeated opportunities thereafter were given to the State to complete instructions regarding the order dated 26.9.2012 whereby time was given to the counsel for the State to seek instructions. On 4.12.2012 noticing the non compliance, the District Education Officer, Elementary Education, Gurdaspur was directed to remain present in person in Court which was duly complied with on 11.12.2012 and the following order was passed:-

“In pursuance to the order dated 4.12.2012 passed by this Court, Mrs. Joginder Kaur, DEO (Elementary), Gurdaspur is present in Court.

Hearing is deferred to 21.12.2012.

In the interregnum, it is directed that the petitioner shall appear before the D.E.O.(Elementary), Gurdaspur along with all the supporting documents as regards her claim for appointment to the post of E.T.T. Teacher on 17.12.2012 at 10.30 AM.

After grant of hearing to the petitioner and upon perusal of the documents that may be produced on that date, an order be passed by the D.E.O.(Elementary), Gurdaspur as regards the claim of the petitioner and be conveyed to the Court on the adjourned date.

Personal appearance of the officer is dispensed with.

A copy of this order be furnished to learned State counsel under the signatures of Bench Secretary.”

It is in pursuance of the aforesaid order, the impugned order dated 11.1.2013(Annexure P/4) had been passed whereby the claim of the petitioner for appointment has been rejected.

A perusal of the said order would go on to show that respondent no.3 has rejected the petitioner's case on the ground that she did not produce the proof regarding submission of documents within stipulated period and did not know the name of the witnesses who had signed on agreement which she had given in writing. Resultantly, the said order was passed which is now subject matter of challenge by filing amended writ petition.

Another coordinate Bench of this Court thereafter on 19.8.2014 recorded a finding that a false stand has been taken by the respondents while filing affidavit that the petitioner had not responded to the appointment process within the stipulated period and the said plea had already been negated vide order dated 26.9.2012. The said order reads as under:-

“The facts would indicate a completely false stand taken by the respondents in filing the affidavit by pleading that the petitioner had not responded to the appointment process within the stipulated time. This plea has already been negated in an earlier order dated 26.9.2012. If that being so, then the Court does not understand as to why the situation has not been remedied, particularly when this is the only plea taken by the respondents to deny appointment to the petitioner. This Court would have imposed costs for the false plea taken by the respondents but in view of the request of State counsel that he be given time to seek instructions regarding remedial action, his prayer is accepted.

Adjourned to 11.9.2014.”

In pursuance of the aforesaid order, additional affidavit dated 5.5.2015 was filed taking the same plea that documents had not been furnished within the prescribed period which was also the plea taken in the amended written statement.

Counsel for the State has placed reliance upon a document dated 10.1.2013 (Annexure R/3) whereby the petitioner is alleged to have submitted that if agreement on non judicial stamp paper is not available, she would submit the same and thus submits that the petitioner had not submitted any proof that she appeared on 28.12.2009 before the concerned District Education Officer and resultantly sought to justify the impugned order.

The State has not challenged the earlier findings recorded by this Court on 26.9.2012 and 19.8.2014. Sufficient material has been placed by the petitioner on record and a categorical averment has been made as noticed above that the petitioner on the receipt of the appointment letter had complied with the conditions incorporated within a period of two days. She has been running from pillar to post to secure appointment on the strength of her higher merit and admittedly appointments had been given to the persons who were below in the merit than her. If the State was so sure of its stand that she had not appeared on 28.12.2009, there was no hitch in replying to her representation dated 27.12.2010 at the first instance. The plea which has been taken that she had not appeared had also been noticed by two Coordinate Benches of this Court and had rejected the same. The State has been asked to take remedial measure which it had failed to do so. Sufficient material in the form of medical certificate and receipt of producing the same has been appended as proof. It is not a case where the petitioner had staked her claim at a subsequent stage. The original record would obviously be not with the petitioner but with the State. In such circumstances, the petitioner cannot be denied appointment of ETT teaching fellow which she was entitled to way back in the year 2009 and had also been offered but for the reasons best known to respondent no.3 she had not given requisite place of posting and allowed to join.

Counsel for the State has also placed reliance upon a Division Bench judgment of this Court in **LPA No.1781 of 2014-Loveleen Kaur Vs. The State of Punjab and others** decided on 3.11.2014. **The said**

judgment is not applicable to the facts and circumstances of the present case since even before the Single Bench, the said appellant could not make out a case that she had appeared before the Selection Committee and the Division Bench upheld the said judgment on the ground that on account of failure of the appellant in appearance before the Selection Committee, the grievance could not be entertained on a subsequent date. The position of the present petitioner is totally different as noticed above.

Accordingly, the present writ petition is allowed and the order dated 11.2.013 (Annexure P/4) is quashed. Respondents are directed to offer appointment as ETT Teacher Fellow to the petitioner within a period of two months from the date of receipt of a certified copy of this order. The petitioner shall also be entitled to the notional benefits of appointment from the date her juniors were appointed.

October 08, 2015
Pka

(G.S.SANDHAWALIA)
Judge