

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Civil Writ Petition No.13465 of 2012

Date of decision: 5.11.2015

Bhupinder Kaur

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Harinder Sharma, Advocate,
for the petitioner.

Mr.Vaibhav Sharma, DAG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

On July 19, 2012, a coordinate Bench while issuing notice of motion to the respondents recorded the gist of the case pithily in the following words : -

“Heard.

The School Education Department, State of Punjab had issued a public notice dated 23.09.2009 (Annexure P-1) inviting applications for recruitment of 7654 posts of teaching and non-teaching cadre including 2106 posts of Vocational Masters/Mistress in different trades, out of which 78 posts were earmarked in the trade of Food Preservation. The petitioner, who belongs to reserved category of Schedule Castes (M&B) was eligible and

applied for the post of Vocational Mistress in the trade of Food Preservation. It is contended that in such reserved category, the name of the petitioner appears at Sr.No.1. The 1st counseling for such category for appointment to the post of Vocational Master/Mistress was held on 29.04.2010. However, on account of compelling circumstances, the petitioner could not attend such counseling process. Thereafter, the second counseling was fixed for 10.07.2011 for which a public notice was issued.

The grievance of the petitioner is that in the process of second counseling even though she was at Sr.No.1 in the order of merit but her case was not considered only on the ground that she had not attended the first counseling which was held on 29.04.2010.

Notice of motion for 05.09.2012.”

2. The only defence taken in the written statement to contest the case is that the petitioner failed to appear in the first counselling for verification and scrutiny of documents for the post of Vocational Mistress in the trade of Food Preservation to be filled on contractual basis vide public advertisement dated September 23, 2009. The counseling was held between July 14, 2010 and July 16, 2010.

3. On January 8, 2010, the Division Bench of this Court in **Neelam Rani v. State of Punjab**, 2010 (2) RSJ 70 struck down separate seniority lists for male and female teachers by interpreting the term Headmaster to include both sexes. Otherwise separate cadres would violate the equality clause in the Constitution and run foul of Art. 15 and 16 of the Constitution. As a result, a combined provisional list of male and female candidates were prepared for all the posts including the post in the trade of Food Preservation. This led to corrigendum notice being published in

various newspapers wherein it was mentioned that failure of any candidate to report personally with all/complete original certificates/documents would lead to forfeiture of claim. It is the petitioner's case that since the schedule of counselling was issued by notification after about 7 months from the date of inviting applications, the petitioner despite due diligence had no knowledge of the counselling process and, therefore, failed to attend it.

4. However, C-DAC respondent No.5 issued another public notice for conducting the second counselling which was held in the month of December, 2011. The counselling for vocational masters/mistresses in all the trades was scheduled to be held on July 10, 2011. On July 10, 2011, the petitioner appeared for the second counselling and submitted a representation for consideration of her case explaining that for bonafide reasons she could not attend the first counselling. However, the Chairman, Departmental Selection Committee [Teaching], Chandigarh was not impressed. He did not consider the case of the petitioner fit and as a result persons lower in merit than the petitioner in the category of scheduled caste [M & B] secured appointments. There were other similarly situated persons who approached the Court who could not attend the counselling for bona fide reasons and their writ petitions were disposed of with a direction to the respondents to consider their cases by passing a speaking order thereon. Those directions are contained in CWP No.14902 of 2011; Harpreet Kaur and others v. State of Punjab and another disposed of August 16, 2011 and CWP No.17202 of 2011; Anshu Singla v. State of Punjab and another; decided on September 14, 2011. The Court was of the view that cases in Harpreet Kaur and Anshu Singla required sympathetic consideration and it

was possible that the date of second counselling put on the website may not have come to the knowledge for lack of internet facilities in the hinterland of Punjab. Similarly, in CWP No.13539 of 2011; Kuldeep Kaur v. State of Punjab and others decided on July 29, 2011 [P-9], directions were issued to decide Kuldeep Kaur's representation for the third counselling. The case of Kuldeep Kaur was decided by the Secretary, School Education, Punjab, Chandigarh vide order dated December 19, 2011 endorsed on January 5, 2012 wherein it was decided to reject the request of Kuldeep Kaur. However, it was made clear that in case the counselling is conducted by the Department for filling up left out posts, the claim of the petitioner shall be considered along with the other candidates present in the counselling as per their merit/rules. It transpires that the Chairman, Recruitment Cell, Punjab [Schools] issued a public notice [P-12] for yet another counselling to be held on December 7, 2012 at Chandigarh which would be the final call to the candidates of all subjects before the curtains were drawn who could not attend the counselling and could not attend third counselling held on November 30, 2009 and December 1, 2012 under RMSA were granted last chance on December 7, 2012.

5. On April 24, 2015, a Coordinate Bench passed the following order when confronted with a situation where the State has not filed written statement on behalf of respondents No.3 to 5 : -

“On March 17, 2015, learned State counsel was granted final opportunity to file the written statement, on behalf of respondents No.3 to 5 within three weeks from the date of the said order. Concededly, no written statement on behalf of the said respondents has been filed. Learned State counsel submits that he had written a D.O. Letter dated

18.03.2015 to Director Public Instructions (EE), Punjab, (respondent NO.3) but neither the same has been responded to, nor any official has come present to assist him. That being so, respondent No.3 is directed to remain present in Court on the next date of hearing. However, if in the meanwhile, written statement on behalf of respondents No.3 to 5 is filed, his presence shall not be required, on the adjourned date.

Adjourned to 07.05.2015.”

6. A short affidavit of Balbir Singh, DPI [SE], Punjab was filed tendering apology and explaining that public notice was for recovery of 7654 posts in the teaching and non-teaching cadre including 2106 posts of vocational Masters/Mistress in different trades out of which 78 posts were earmarked for Food Preservation trade. It has been explained that scrutiny of original documents of all the candidates was done by the Chairman, Departmental Selection Committee [Teaching] to determine the merit and eligibility. The Departmental Selection Committee [Teaching] comprised of the representatives of various other departments such as Social Welfare Department, Sainik Welfare Department and Sports Department of Punjab and the DPI [EE], Punjab had no role in the selection process. It is, therefore, apparent that the petitioner has an active and subsisting claim for consideration for appointment since the persons lower in merit than the petitioner in the reserved category have been selected and appointed. The merit of the petitioner is 61.45% as uploaded by C-DAC on its official website. The petitioner is a qualified person and holds the B.Sc. Degree in Food Technology from Khalsa College Amritsar, affiliated to GNDU, Amritsar which is one of the prescribed qualifications for the post of a

teacher in the trade of Food Preservation in the cadre of Vocational Masters/Mistresses. Besides above, the petitioner also possesses the other qualifications of Post Graduate Diploma in Computer Applications [PGDCA] from Khalsa College and M.Sc. I.T. from Allahabad University. In the open combined provisional merit result the name of the petitioner stands at Serial No.24 and in the reserved category of Scheduled Castes [M&B] her position reflects at Serial No.1. She is the topper in her reserved category. It has been recorded in the order dated November 19, 2011/January 5, 2012 passed by the Secretary, Schools Education, Punjab, Chandigarh that a proposal has been sent for conducting another counselling of the candidates who could not attend the counselling earlier which is under consideration.

7. It is relevant to note that the appeal of Kuldeep Kaur was rejected on the ground that CWP No.3656 of 2010 in Kuldeep Kaur v. State of Punjab and others was dismissed by the learned Single Judge on March 3, 2010 by passing the following order : -

“The petitioner was a candidate for the post of Head Master. It is the conceded position that vide a Public Notice dated 13.11.2006, it was clearly informed that the candidates who did not attend the 1st counselling, their claim shall stand cancelled and the next candidate in order of merit shall be considered in the subsequent advertisement, to which the petitioner responded, it was stipulated that the public notice was only with regard to those candidates who attended the 1st counselling but their claims could not be considered for no fault on their part.

As the petitioner did not appear in the 1st Counselling, no illegality has been committed by the respondents in rejecting his claim.”

8. This order relates to the previous selection in the same department and the Secretary, School Education, Punjab, Chandigarh has misused the orders passed by this Court and has wrongly applied it to the case of Kuldeep Kaur and therefore, to the present selection process. If only one counselling is held and the candidates fail to attend, it is a different matter but in cases where the counselling process is multiple or more than one, then the rule in Kuldeep Kaur would not apply.

9. Mr.Vaibhav Sharma learned DAG, Punjab points out to a letter dated August 13, 2013 passed by the Principal Secretary, Government of Punjab, Department of School Education, Mohali relating to the present selection wherein it is stated the process was completed in 2011 and there is no necessity to operate the waiting list. It has been recorded in the letter that the Education Department had again advertised 5178 posts in the year 2012 which earlier remained vacant on account of non-joining of the candidates who were selected by treating these posts unfilled. However, the petitioner has been in Court pressing for her rights in the present petition filed in July, 2012 and the rights have to be determined on the date of the petition i.e. July 18, 2012. She has a case for directions being the topper of her group who presented herself for the second counselling but was wrongly shown the door.

10. The last question which requires to be examined is the forfeiture clause. In Note-I to the advertisement for the posts of Vocational Masters, Male and Female in the subject of Food Preservation, the date for counselling was shown fixed as April 29, 2010. Note 1 reads as follows : -

“1. Candidates having merit rank (as published at <http://recruitment.cdadmohali.in>) falling in the slot given above must report for counseling/scrutiny of original certificates/documents along with one set of attested photocopies of certificates/documents on the appointed date in person by a HIGH LEVEL COMMITTEE at the above specified place. Failure of any candidate to report personally with all complete certificates/documents shall lead to forfeiture of his/her claim. The candidates must also bring the registration form (last edited) affixed with recent passport size photograph duly attested by the gazette officer.”

11. In case no further counselling was held beyond April 29, 2010, then the claim would stand forfeited. However, where there have been further counselling for any reason whatsoever then applying the vigours of forfeiture clause may be inappropriate and the clause would stand watered down. What is equally important is that the counselling entails only scrutiny of original documents and certificates. It is not creative or destructive of rights such as result from interview, viva-voce etc. where marks are assigned as per criteria which can alter merit. When the criteria for selection is strait jacket by marks under different heads and scrutiny of original certificates/documents is only an affirmation of eligibility. The petitioner was deprived of her right to scrutiny of documents on the date of second counselling when she was turned away and it is from there where her rights originate and not from the first counselling which she admittedly could not attend for the reasons explained by her which cannot be viewed in disbelief where internet facilities are not accessible or open to all to create a presumption of due knowledge when C-DAC published its recruitment

process on its website <http://recruitment.cdacmohali.in>. It is also not the case that the degrees and certificates are fake or forged. To the mind of this Court, the petitioner has been wronged. There is no dispute that she is a topper in her category and stands at merit position No.1 and equity is clearly in her favour.

12 For the foregoing reasons, this petition is allowed. A direction is issued to the respondents to consider offering an appointment to the petitioner as per her merit against a vacant post, since admittedly, the posts in the category applied for are lying vacant. Her case be considered within one month from the date of receipt of a certified copy of this order. In case, she is otherwise eligible as per her certificates/degrees, then she would be offered appointment which would secure to her seniority from the date when the persons lower in merit were appointed in the reserved category [M&B] on the posts of Vocational Mistress [Food Preservation]. She would, however, not be entitled to monetary benefits prior to the date of this order but she will be entitled to seniority as per merit position and consequential benefits notionally in terms of increments etc. to bring her pay at par with juniors/less meritorious candidates appointed to service.

(RAJIV NARAIN RAINA)
JUDGE

November 5, 2015

Paritosh Kumar