

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 17840 of 2010 (O&M)

Date of decision: 20.1.2015

Rajesh Chauhan

.. Petitioner

v.

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. R. K. Malik, Senior Advocate with
Mr. Mandeep Singh, Advocate for the petitioner.

Mr. Gagandeep S. Wasu, Addl. Advocate General, Haryana.

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Rajesh Bindal, J.

The petitioner filed the present petition with a grievance that persons, who were lower in merit, were offered appointment, whereas the claim of the petitioner was not considered.

As during the pendency of the present petition, the petitioner was offered appointment, the claim is being restricted to notional benefits from the date persons lower in merit were appointed.

Learned counsel for the petitioner submitted that in pursuance to advertisement issued on 20.7.2006 for filling up 816 posts of Art & Craft Teachers, the petitioner, being eligible, applied for the same. After the process of selection, the result was declared. The name of the petitioner was at Sr. No. 418 in BCA (M) category. As the candidate, who was lower in merit at Sr. No. 511, was issued appointment letter on 12.5.2010, the petitioner filed the writ petition specifically raising the aforesaid issue in the petition. The contention raised by the petitioner in paragraph 6 (iv) alleging that persons, who were lower in merit, namely, Manoj Kumar and Pardeep Kumar had been offered appointment with same qualification, as the

petitioner possesses, i.e., Bachelor of Fine Arts from Delhi University, was not replied to specifically. When this was brought to the notice of the court, repeated adjournments were sought by learned counsel for the State and finding no reply, the petitioner was offered appointment vide order dated 6.2.2013. Statement to that effect was made by counsel for the petitioner in court on 28.5.2013.

Learned counsel for the petitioner, while referring to the judgment of this Court in CWP No. 5203 of 2010—Narender Singh Yadav v. State of Haryana, decided on 23.1.2012, submitted that the petitioner be granted the benefit of pay fixation and seniority from the date persons lower in merit were appointed, however, the actual payment may be made from the date the petitioner joined service.

Learned counsel for the State could not dispute the fact that the petitioner was eligible as no reply to paragraph 6 (iv) of the petition was specifically filed despite seeking repeated adjournments for the purpose. He further submitted that seniority and other benefits shall be available to the employees who are appointed against the substantive posts. The appointment of the petitioner as well as other candidates is on temporary basis. They will be confirmed only against the substantive posts, which shall be on the basis of their seniority. He further submitted that otherwise, the appointments to the post of Art and Craft Teacher are under challenge before this court.

Heard learned counsel for the parties and perused the paper book.

In response to the advertisement issued on 20.7.2006 for filling up 816 posts of Art and Craft Teacher, the petitioner, being a degree holder in Fine Arts, applied for the same. The qualifications required as per the advertisement was Matriculation with two years Diploma in Art & Craft Examination conducted by Haryana Industrial Training Department or equivalent qualification recognised by Haryana Education Department. The claim of the petitioner was that degree in Fine Arts is higher qualification than diploma in Art & Craft Examination, hence, he was fully eligible. After completion of the process of selection, the result was declared. The

petitioner was placed at Sr. No. 418 in the merit list of the candidates belonging to BCA (M) category. The candidate at Sr. No. 511 in the merit list of BCA (M) category was offered appointment, whereas the petitioner was ignored on the ground that he did not possess the requisite qualification. The grievance was raised by filing the present petition. The issue was specifically raised by the petitioner in paragraph 6 (iv) of the petition, which is extracted below:

“6. That the action on the part of the respondents not to consider the claim of the petitioner for appointment as Art & Craft Teacher is illegal, unjust, unfair, unconstitutional, arbitrary and liable to be set aside on the following reasons:

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xx

xx

iv) That the candidates with the same qualification have been selected and appointed as Art & Craft Teachers in the same selection in other Districts.

The Haryana Staff Selection Commission has made the selection and name of the candidates were recommended in various Districts for appointment as the posts of Art & Craft Teachers is of District Cadre. Some candidates who have passed Bachelor of Fine Arts and they have been selected and appointed in the same batch in which the petitioner was selected. Few names which are in the knowledge of the petitioner are Manoj Kumar, Art & Craft Teacher, Govt. Sr. Sec. School, Babehbalpur (Hisar), another candidates namely Pardeep Kumar presently posted in Govt. High School, Kheri, District Jhajjar who has passed the same qualification from the same University and selected and appointed in the same batch. So, action of the respondents is on the face of it discriminatory.”

In the written statement filed by Kamlesh Sharma, District Education Officer, Karnal on behalf of the respondents, no specific reply was given to the aforesaid paragraph. When the aforesaid point was raised by learned counsel for the petitioner, on 24.5.2012 this court passed the

following order:

“Counsel for the petitioner has, while referring to para 6 sub-para (iv), submitted that the candidates, who had passed Bachelor of Fine Arts, were selected along with the petitioner. Few of them are Manoj Kumar, Art and Craft Teacher, Govt. Sr. Sec. School, Babehbalpur (Hisar) and Pardeep Kumar, Govt. High School, Kheri, District Jhajjar, who had passed the same qualifications from the same University as the petitioner, they stand selected and appointed.

A perusal of the reply shows that no response has been filed by the respondents to the said sub-para (iv) of para 6. Counsel for the respondents prays for an adjournment to file a specific affidavit in this regard.

Needful be done within a period of four weeks.

List for further consideration on 29.8.2012.”

Thereafter, learned counsel for the State sought adjournments till 11.2.2013 to file reply in terms of the aforesaid order. On 28.5.2013, this court recorded the statement of learned counsel for the petitioner that the petitioner has been offered appointment as Art and Craft Teacher. The order dated 6.2.2013 offering appointment to the petitioner as Art and Craft Teacher was subsequently placed on record.

The claim now is that the petitioner, being more meritorious and fully eligible to be appointed as Art and Craft Teacher, deserved to be offered appointment before the persons lower in merit were appointed or from the same date. It is not in dispute that candidate at Sr. No. 511 in the category of BCA (M), to which the petitioner belongs, was offered appointment on 12.5.2010 and he joined his service subsequently. The petitioner was at Sr. No. 418 in the merit list. The stand taken by the petitioner regarding his eligibility and also that other candidates possessing same qualification were given appointment in the same process of selection was not specifically replied to by the State, rather, finding it difficult the petitioner was also offered appointment. Meaning thereby, rejection of the

candidature of the petitioner at the initial stage, he being treated as ineligible, was wrong. Under these circumstances, the claim of the petitioner is justified to the extent that he be given notional benefits from the date persons lower in merit were appointed, i.e., fixation of pay and placement in seniority as per his merit position and the actual monetary benefits be granted from the date the petitioner joined service.

The contention of learned counsel for the State that appointments are temporary and confirmation shall be made subject to availability of posts does not, in any way, debar this court from granting relief to the petitioner as the petitioner is claiming same benefits, which have been granted to the candidates lower in merit, who were appointed prior to the petitioner. As per one of the conditions contained in the appointment letter, the appointment has been made against temporary post where confirmation shall be against substantive post on the basis of seniority. Seniority has to be determined on the basis of merit prepared by the Commission as per merit in the select list.

For the reasons mentioned above, the writ petition is allowed. The respondents are directed to grant notional benefits to the petitioner from the date candidate at Sr. No. 511 in the merit list joined service, however, the monetary benefits shall be payable from the date the petitioner joined service.

(Rajesh Bindal)
Judge

20.1.2015
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