

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

CWP No.14125 of 2013

Date of Decision: 17.08.2015

Jagjit Singh

... Petitioner

Versus

State of Punjab & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Kapil Kakkar, Advocate,
for the petitioner.

Mr. Nikhil K. Chopra, D.A.G., Punjab.

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

RAJIV NARAIN RAINA, J.(Oral)

The petitioner is a physically challenged person. He has approached this Court under Article 226 of the Constitution of India praying for issuance of writ of mandamus to the State to appoint him on one of the vacant posts of Teaching Fellows under the Physically Handicapped Category. When appointment was denied, the petitioner approached this Court through CWP No.14427 of 2011. The Court was of opinion that the prayer was covered by the decision of this Court rendered in CWP No.12886 of 2010 (*Jagjit Kaur & ors. vs. State of Punjab & ors.*). In *Jagjit Kaur's* case, this Court held that physically challenged persons were entitled to appointment by applying the principles laid down in Clause 6 of the Govt. letter dated May 2, 1997 which entitled them to be considered against unfilled vacancies of the recruitment process initiated in the year 2007, which is the same recruitment process under consideration in this case. In *Jagjit Kaur's*

case, the respondent State was directed to consider the cases of the petitioners therein for appointment within one month. Thereafter, several writ petitions were filed claiming the same relief. Those were disposed of in the same terms. CWP No.14427 of 2011 filed by the petitioner was allowed and the Court held that the petitioner's case is squarely covered by the ratio of the judgment in *Jagjit Kaur's* case and a direction was issued that the case of the petitioners therein would be considered for appointment, if any vacancy is available, subject to their merit and rank determined in the selection process and other eligibility criteria standing fulfilled. It was further directed that the said process be completed within two months from the date of receipt of certified copy of the order which is dated August 9, 2011. After expiration of more than a year, the District Education Officer (DEO), Ludhiana, passed an order on December 12, 2012 ordering on the administrative side that in case candidates with higher merit do not join the posts and the posts remain vacant in the physically challenged category then the name of the petitioner will be considered for issuance of offer letter. The order is placed on record as Annexure P-7. Since the petitioner had no information on availability of posts, he sought information under the Right to Information Act, 2005 to supply him information if any vacancy in the physically challenged quota is still available. The District Education Officer informed the petitioner vide Annexure P-8 dated March 1, 2013 that 8 candidates have been offered appointment under the physically handicapped quota. Those 8 persons were named in letter dated April 12, 2013 (Annexure P-9).

It is the submission of learned counsel for the petitioner that 38 posts were earmarked amongst physically handicapped category out of

which half had to go to women and half to men as per quota allocated. Therefore, 19 vacancies were to be filled from amongst the special category. If only 8 posts were filled then 11 vacancies were still available for offer. This was sequitur. The submission presently is to accommodate the claim of the petitioner against an available vacancy after receipt of RTI disclosures. Aggrieved, the petitioner submitted a representation to the department dated April 29, 2013 [Annexure P-10] reminding the office that as per the information received from the department itself under RTI Act, there were sufficient vacancies available to accommodate the claim on merit which would bring the petitioner within the zone of consideration of 19 vacant posts of physically handicapped persons going abegging and therefore, he may be offered appointment in view of order dated December 12, 2012 (Annexure P-7). When no action was taken on the representation, the petitioner was left with no other remedy except to prefer the present petition before this Court.

On notice being issued, respondent-State has filed a reply. The defence to the writ petition is that the recruitment process has been closed and therefore no appointments can be granted to the aspirants as Teaching Fellows and the available vacant vacancies have to be carried forward for future direct recruitment. The second contention to deny relief as pointed out by the learned State counsel is contained in para. 6 of the reply, which reads as follows:-

“6. That keeping in view the various judgments of Hon'ble High Court including the decision dated 3.4.2013 rendered in CWP No.11071 of 2011 titled as Abhishek Rishi Vs. State of Punjab, the D.P.I.(E.E.) Punjab issued Public Notice dated 29.7.2013 vide which the process of recruitment of teaching fellow,

which was initiated in 2007 has been closed and counseling for filling up vacant posts of teaching fellow which was held on 13.12.2011 and 20.12.2011 is hereby cancelled. In the light of this Public Notice (Annexure R-1) no candidate can be issued appointment letter at this stage. Therefore the present civil writ petition deserves to be dismissed in the interest of justice.”

The impugned order passed on December 12, 2012 in relation to the recruitment process initiated in the year 2007 does not extinguish the right of the petitioner to appointment which depends on availability of vacancies as was assured and which has led to legitimate expectation. Vacancies were available as on December 12, 2012 but the same could not be offered to the petitioner without any justification. If vacancies were kept in wraps then the petitioner cannot be blamed for inaction or delay not attributable to him. Thus, the right to appointment denied to the petitioner is unfair, discriminatory and unreasonable. The employer being State is always expected to be a model employer welfare in a State and owes fairness in action vis-a-vis and aspirants to public posts and its employees.

The other contention of the State to deny relief is based on the decision of the Full Bench of this Court in **Abhishek Rishi vs. State of Punjab**, 2013 (5) SLR 359: 2013 (3) SCT 1. It is the stand of the State that the issue involved in that case related to grant of weightage of marks for studying in schools located in rural areas. The issues before the Court were with respect to award of additional 10 marks to rural candidates as had passed the 8th, 10th, 12th examination from the Zila Parishads schools situated in the rural areas of Punjab. This was held unconstitutional and

was struck down.

Mr. Kakkar is right when he submits that the law laid down in *Abhishek Rishi's* case would not be applicable to the facts of the present case as none of the issues involved therein can have any bearing on the facts of this case. The defence of the State based on the *Abhishek Rishi's* case is not tenable. The present is not a case of awarding additional marks to rural candidates but of rights originating directly from the main selection to the extent of candidates within the advertised quota of physically handicapped persons and posts lying unfilled. The impugned order is found unreasonable and unfair and wholly discriminatory and thus this Court has no hesitation in allowing this petition.

As a result, a mandamus is issued to the respondent-State to offer appointment to the petitioner from amongst one of the 12 vacancies available and lying unfilled. Needful be done within 6 weeks. Resultantly, Annexure P-6 does not require to be set aside but has only to be directed to be implemented since it gave a legitimate expectation to the petitioner which in the view of this court is actionable. It is, however, ordered that while making this order the petitioner would not be entitled to any monetary benefits beyond the period of three years from the date of filing of the first writ petition No.14427 of 2011 when the petitioner approached this court to vindicate his grievance and was directed to get his representation decided even when his rights had matured by then for consideration of grant of relief by court. The period spent by the respondent Govt. in deciding the representation cannot run against him to deny him real and due relief.

It is also directed that the seniority of the petitioner would run from the date his batch mates were appointed from the same selection process so that in the event of appointment no further litigation comes to this court on the issue of seniority to waste the time of this court which could be spent on more important matters of the day. It is not disputed that the petitioner does not make the grade on merit within the zone of consideration. It is also ordered that no other claim against other unfilled vacancies will be entertained by this Court from the category of physically handicapped persons, other than those who have approached this Court already for relief and whose cases remain pending, if any.

The petition stands allowed with the above direction.

Since the petitioner has been harassed for far too long and has been compelled to approach Court even after a promise was made to him on December 12, 2012 he deserves costs which are quantified at Rs.20,000/- which will be personal to him. Let the needful be done within 4 weeks of the receipt of this order.

17.08.2015
monika

(RAJIV NARAIN RAINA)
JUDGE