

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

Civil Writ Petition No.8189 of 2011

Date of decision: 23.1.2015

Amrit Versha and others

... Petitioners

Versus

The State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.R.K.Arora, Advocate,
for the petitioners.

Mr.Rajiv Prashad, Addl. AG, Punjab.

Mr.Shekhar Verma, Advocate,
for respondent No.3.

Mr.J.S.Tanwar, Advocate,
for respondent No.7.

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

RAJIV NARAIN RAINA, J.(Oral)

Short affidavit of Pardeep Kumar Agrawal, Director General
School Education, Punjab filed in Court today is taken on record.

2. Mr.Shekhar Verma, on instructions from Mr.Gurpreet Singh,
Law Officer, Sarv Shiksha Abhiyan (SSA) present in Court, submits that the
first counselling was done according to separate male and female lists of

candidates which was not correct. The second counselling was the result of the decision of this Court in **Neelam Rani v. State of Punjab**; 2010 (1) SCT 588 which declared gender based seniority lists as unconstitutional. There could only be a joint list of men and women. The judgment was made to run prospectively. There can be no doubt that the second counselling was done after the decision was rendered in Neelam Rani's case. This judgment had altered the lists which had to be amalgamated and, therefore, the second counselling was required. It is, however, not disputed that the reason for merger of lists of both male and female candidates was not published or put in public domain and, therefore, the candidates were not made aware of the real reasons for the second counselling. Resultantly, Sonia Sharma [petitioner No.4] did not appear in the second counselling although she had appeared in the first counselling process. If she had appeared in the first counselling process and was not informed of the reasons for the second counselling process, she may have remained under the impression that her effort in the first counselling held good. Especially when, the process was only meant for scrutiny of documents and nothing more since it was not in the nature of interview towards the selection criteria. Then the scrutinized documents would hold good till the end of the recruitment process and she may not have been required to appear in the second counselling. This explains her absence in the second counselling.

3. So far as the other petitioners are concerned, a few events and disputed facts have crystallized which may be noticed. The principal fact from those events is that when the advertisement was issued online inviting applications for the post of Hindi Masters/Mistresses, the candidates were

required to keep track of the selection process through the notified official website of C-DAC, which was the recruiting agency appointed by SSA for making recruitment on its behalf. In the advertisement/public notice, there was no mention that candidates would have to keep track of the process on the official website of the SSA and, therefore, the petitioners cannot be disadvantaged by failing to follow the recruitment process on the website of SSA, i.e., <http://ssapunjab.org> in addition to website of C-DAC i.e. <http://recruitment.cdacmohali.in>.

4. Mr.R.K.Arora appearing for the petitioners draws the attention of this Court to the decision of the coordinate Bench of this Court in the earlier petition filed by the petitioners bearing CWP No.2974 of 2011 decided on 17th February, 2011 [P-12] when the following directions were issued which are reproduced in extract from the operative part of the order :

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“Having heard learned counsel for the petitioners and considering the above stated plea taken by the petitioners, I deem it appropriate to dispose of this writ petition with a direction to respondent No.2 to consider the claim of the petitioners for their appointment as Hindi Teachers sympathetically against the available vacancies and also keeping in view their merit position. Suffice it to say that if the counselling is meant only for verifying the genuineness of the certificates/documents and willingness of the candidates, the petitioners would appear as and when called for by the authorities and would produce the relevant documents. It is also directed that if respondent No.2 decides to appoint them, the petitioners shall not be entitled to claim back wages. A speaking order in this regard shall be passed within a period of one month from the date of receiving a certified copy of this order. Till then, six posts of Hindi Teachers shall be kept reserved.

Ordered accordingly.

Dasti.”

5. This Court had clearly delineated in the order the purpose of counselling that if was meant only for verifying the genuineness of the certificates/documents and willingness of the candidates to join, the petitioners would appear as and when called for by the authorities and would produce the relevant documents and in this exercise, the Court directed consideration to be accorded “sympathetically”. It has not been disputed before me that the counselling did not involve any element of interview or viva-voce for drawing the merit list and, therefore, was not material in the criteria for determination of merit in the selection. It is also not disputed that the petitioners have secured a higher merit than those who have been appointed. Since there was a clear direction in the order that 6 posts of Hindi Teachers shall be kept reserved then in the face of this direction, the posts will be deemed to have been kept vacant till the disposal of the present petition on merits and not by reason of faulty implementation of the order dated 17th February, 2011.

6. Mr.Rajiv Prashad appearing for the State submits that the posts in SSA were only contractual posts. That may be so but the selection has to be done in a fair and reasonable manner. It matters little whether the posts were temporary, *ad hoc*, contractual or permanent, since filling up contractual posts would also have to suffer the standards of articles 14 and 16 of the Constitution.

7. It transpires that all those who were appointed in pursuance of the advertisement dated 2nd January, 2010 through which 455 posts of Hindi

Teachers were advertised for both eligible male and female applicants on a consolidated remuneration of Rs.16,500/- per month have been absorbed in Government service on contractual basis since the Central Government Scheme in which they were appointed has been closed down with effect from 31st March, 2012 on the directives issued by the Central Government at New Delhi. All those who were appointed have been given fresh appointments by the respondent-State but in the same contractual status. Since the rights of the petitioners came to be vested and accrued prior to the closure of the scheme, then they would have a right to participate in the cascading and consequential new deal and to be treated in the same manner as the persons appointed under the same advertisement to which the petitioners had applied and are ranked higher in merit than some of those who were appointed in SSA and stand transferred/deployed in Government service in equivalent status.

8. Mr.Arora points out that the present petition was one among other petitions which were decided by the learned Single Bench in CWP No.7997 of 2011 decided on 17th January, 2012 [P-15]. However, during the course of arguments in the present case, he submits that it was segregated on account of a doubt which arose because no date was mentioned in Annexure P-5 [at page 27 of the paperbook]. The true translation of P-5 does not bear any date. However, a photocopy of its original, which was part of the Court file, reveals the date 10th October, 2010 initialled by an unknown person, which Mr.Arora suggests must be the initials of a receipt clerk. P-5 was a letter written by Amrit Versha petitioner No.1 to the Director General School Education, SSA Chandigarh explaining the reason why she could not

appear in the first counselling due to non-intimation of the date to her as it was not downloaded in the C-DAC website. She informed the Director that her rank was 40 in the merit list. She requested for a last opportunity to appear in the counselling. It may not be necessary to go into these disputed questions of fact regarding date of letter, in view of the existence of much larger rights claimed by the petitioners to appointment as per their merit. The fact that SSA and C-DAC websites have created confusion and serious doubt in the mind of the Court, then the benefit of doubt I think must go in favour of those candidates who are higher in merit than those selected and for which reason, by and large, I would interfere in the matter and allow the petition as it appears to deserve a remedial action in writ jurisdiction. When persons lower in merit have been appointed and have been shifted from SSA to the Education department, Government of Punjab and are serving the State directly as contractual employees, the right to appointment has turned into a fundamental right by virtue of Article 14 and 16 of the Constitution of India to be treated similarly and with equal opportunity which was denied by faulty notice of dates of counselling.

9. Resultantly, this petition is allowed and the impugned order dated 24th March, 2011 [P-15] is set aside. The petitioners are declared as possessing right to appointment as per their merit in the select list and to be offered appointments to the posts of Hindi Teachers against 6 posts kept reserved by order of this Court on 17th February, 2011 and after due consideration in the light of this order. They would have a right to be treated at par with those who were selected under advertisement P-1 and who are presently holders of contractual posts under Government on closure of the

SSA scheme by the Central Government in the State of Punjab. They would be accorded similar treatment notionally as those earlier appointees who were lower in merit than each of the petitioners but gained entry to service on contract basis stealing a march over the petitioners. They would, however, not be entitled to any monetary benefits prior to the date of this order. Their seniority would run next below persons lower in merit and at the appropriate slots. They would take the notional benefits of increments, if the benefit of increments is available to those similarly situated, otherwise not. The Court places on record its appreciation for the fairness and tenacity with which Mr. Shekhar Verma has argued this case for his clients.

(RAJIV NARAIN RAINA)
JUDGE

January 23, 2015
Paritosh Kumar