

*IN THE HIGH COURT FOR THE STATES OF PUNJAB
AND HARYANA AT CHANDIGARH.*

LPA No. 642 of 2012. [O&M]
Date of Decision: 18th March, 2015.

Sunila
Versus
Appellant through
Mr. S.P.Laler, Advocate

Sunita Rani & Ors.
Respondents through
Mr. Gulab Singh Sheoran, Advocate,
for respondent No. 1.
Mr. R.D.Sharma, DAG, Haryana.

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

SURYA KANT, J. [ORAL]

This Letters Patent Appeal impugns the order dated 29.04.2011 whereby learned Single Judge allowed the writ petition filed by respondent No. 1 to the extent that appointment of appellant as Lecturer in Hindi [School Cadre] was quashed and respondent No. 1 has been ordered to be appointed in her place.

[2]. The appellant is a differently-abled person. She applied for the post of Lecturer in Hindi [School Cadre] in response to Advertisement dated 13.09.2008 wherein the requirement of passing of State Teachers' Eligibility Test [for short 'STET'] was not prescribed as an essential qualification. It is, however, an admitted fact that as per the Statutory Rules amended on 24.07.2008, the STET was a mandatory eligibility condition. The appellant was selected as per the qualifications prescribed in the advertisement. Her selection and appointment has been set aside by the learned Single Judge at the

instance of respondent No. 1 for lack of the requisite qualification of STET as per the Statutory Rules. The first respondent who was in possession of such a qualification, has been ordered to be appointed. It also deserves to be mentioned here that after the advertisement dated 13.09.2008 was issued, the STET was held on 01.10.2008 and its result was declared on 15.10.2008. The appellant did not appear in that test under the *bona-fide* impression that such a qualification was not necessary to be passed for the advertised posts.

[3]. Two views are possible. The one taken by the learned Single Judge on literal interpretation of the Statutory Rules which holds that once the field, on the relevant date, was occupied by the Rules, then the qualification prescribed under such Rules ought to have been adhered to. The second view is that the candidates were required to fulfill the eligibility conditions as per the Public Notice.

[4]. Before we advert to these divergent views, it needs to be further noticed that in compliance to the order passed by learned Single Judge, the first respondent has already been appointed and she is working. In this fact situation where the appellant has been made to suffer partly on account of the error attributable to the Education Department or the Staff Selection Commission, who failed to issue the advertisement in conformity with Statutory Service Rules, we are of the considered view that the ends of justice would be adequately met if the respondent – Authorities are directed to offer appointment to the appellant as well on the post of Lecturer in Hindi [School Cadre] from the date when another vacancy reserved for

differently-abled person became available, of course, notionally, without payment of back wages.

[5]. The objection taken by the Authorities that the validity of the selection list has since lapsed deserves to be rejected outrightly, for the parties are litigating before the Court since the time when the list was very much valid. The authorities can not raise such an objection against appointment of the appellant also for the reason that in Para No. 4 of the affidavit dated 30.05.2014 filed by Principal Secretary, Education Department, Haryana it is candidly admitted that out of 36 appointees in the category of Differently-abled persons, 35 were those who had not passed STET. Why then appellant alone be singled out?

[6]. Similarly, the contention of learned State Counsel that LPA No. 1389 of 2011 preferred by the State against the judgment of learned Single Judge already stands dismissed by a Coordinate Bench on 09.08.2011 does not cut much ice for the reason that the only contention raised therein was based upon the principle of 'Old Vacancy Old Rules' as enunciated by the Hon'ble Supreme Court in **Y.V.Rangaiah & Ors. Vs. J.Sreenivasa Rao & Ors., AIR 1983 SC, 852.** Such a plea was rightly repelled as the above stated principle can not be invoked in a case of direct recruitment. The issues like [i] 35 out of 36 candidates appointed pursuant to the same advertisement had not qualified STET; [ii] the respondent – Authorities themselves were responsible for issuing an erroneous advertisement ignoring the amendment carried out in the Statutory Rules on 24.07.2008 and [iii] no STET was ever held before the

advertisement was issued etc. etc., were not raised or gone into in the appeal.

[7]. In the light of the above stated reasons, we allow this appeal in part and modify the order dated 29.04.2011 passed by the learned Single Judge to the extent that the respondent – Authorities shall offer appointment to the appellant on the post of Lecturer in Hindi [School Cadre] from the date subsequent vacancy reserved for differently-abled person became available, of course, notionally, without payment of back wages and without disturbing the appointment of respondent No.1.

[8]. Disposed of. Dasti.

(SURYA KANT)
JUDGE

March 18, 2015.
dinesh

(P.B.BAJANTHRI)
JUDGE