

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

LPA No. 560 of 2015 (O&M)

DATE OF DECISION : 19.05.2015

State of Punjab and others

.... APPELLANTS

Versus

Mamta Thakur

.... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present : Mr. K.K. Gupta, Addl. A.G., Punjab,
for the appellants.

* * *

SATISH KUMAR MITTAL, J. (Oral)

The State of Punjab through Secretary, Department of Education; Director Public Instructions (Elementary Education), Punjab; and the District Education Officer (Elementary Education), Amritsar, have filed this intra-court appeal under Clause X of the Letters Patent against the order dated 09.12.2014 passed by the learned Single Judge, whereby the writ petition (CWP No. 9197 of 2014) filed by Mamta Thakur (respondent herein) seeking direction to the appellants to give her posting as per the appointment letter dated 08.11.2012 (Annexure P-4) already issued to her, has been allowed and the appellants have been directed to appoint the respondent forthwith and assign her place of posting within a period of two months from the date of receipt of certified copy of the order.

Though there is delay of 81 days in filing the instant appeal and the appellants have filed an application (CM No. 1127-LPA of 2015) for condoning the said delay, yet we have heard learned counsel for the appellants on merits and have gone through the order passed by the learned Single Judge.

In this case, it has not been disputed that advertisement dated 05.09.2007 (Annexure P-1) was issued for recruitment of 9998 posts of Teaching Fellows. Against the said advertisement, 8865 persons including the respondent were selected for the said post. The appointment letters were also issued, but somehow or other, the posting order was not issued to the respondent. Therefore, she approached the court by way of CWP No. 9197 of 2014. The learned Single Judge, while allowing the said writ petition, observed that it was due to the fault of the appellants that the respondent was not given posting order. Before the learned Single Judge, the appellants herein took a stand that in the meanwhile, this court in CWP No. 11071 of 2011, titled as “Abhishek Rishi vs. State of Punjab and others” held that awarding of 5 additional marks for rural areas and 10 additional marks for candidates who were sitting idle after passing of professional qualification was illegal. In view of the said order, the posting order was not issued to the respondent. However, it was not disputed that all the selected candidates who were also awarded some additional marks were not removed from service. While holding that the similarly situated persons who were selected

along with the respondent were given appointment, it was held that on the basis of the decision in Abhishek Rishi's case (supra), the respondent could not be denied the posting order.

On April 10, 2015, an argument was raised by learned counsel for the appellants that after the aforesaid decision in Abhishek Rishi's case (supra), no person, who joined the service in pursuance of the advertisement in question, was retained in service. Accordingly, learned counsel was granted time to file an affidavit of the Director Public Instructions (Elementary Education), Punjab (appellant No.2 herein) in this regard.

Today, affidavit dated 15.05.2015 duly sworn by appellant No.2 has been filed in court, which is taken on record. In this affidavit, it has been stated that the candidates selected and appointed in pursuance of the advertisement dated 05.09.2007 (Annexure P-1) are working on the appointed posts, in spite of the judgment in Abhishek Rishi's case (supra) and none of them has been removed from service. Thus, in view of the fact that the similarly situated persons who were selected and appointed in pursuance of the advertisement dated 05.09.2007 (Annexure P-1) are still working and none of them has been removed on the basis of the judgment in Abhishek Rishi's case (supra), the respondent who was also selected and appointed before the pronouncement of the judgment in Abhishek Rishi's case (supra) cannot be denied the posting, on the ground that subsequently the aforesaid judgment has been rendered. The aforesaid judgment is not

applicable to the persons already selected and appointed.

In view of the above, we do not find any illegality in the impugned order passed by the learned Single Judge.

No merit. Dismissed.

(SATISH KUMAR MITTAL)
JUDGE

May 19, 2015
ndj

(HARINDER SINGH SIDHU)
JUDGE