

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

**LPA No.82 of 2015 (O&M)
Date of decision: 10.04.2015**

Vinod Kumar and others

....Appellants

Versus

State of Haryana and others

.... Respondents

**CORAM: Hon'ble Mr. Justice Surya Kant
Hon'ble Mr. Justice P.B. Bajanthri**

Present: Mr.Vikas Chatrath, Advocate
for the appellants.

P.B. Bajanthri, J.

The appellants have questioned the validity of the order of the learned Single Judge dated 01.07.2014. The Haryana Staff Selection Commission notified 664 posts of Art & Craft Teachers in the State of Haryana on 18.10.2003, which included 287 posts for General category. The appellants were candidates for the advertised posts. During the process of recruitment, the respondent Department did not consider those candidates eligible who had passed their two years diploma in Art & Craft from Punjab including from the Punjab State Board of Technical Education and Industrial Training. Consequently, some of the candidates approached this Court. A

coordinate Bench of this Court was pleased to allow the bunch of writ petitions and interim directions were issued to interview such of those petitioners i.e. in CWP No. 2575 of 2004 titled as ***Gurbax Singh versus State of Haryana and others*** on 11.03.2004.

(2) Thereafter, on 31.08.2004 respondent-Commission issued one more notification to fill up 239 posts of Art & Craft Teacher which were not filled up for want of eligible candidates in the earlier recruitment. It is learnt that the advertisement dated 31.08.2004 was withdrawn. Subsequently, on 29.10.2004, 200 posts of Art & Craft Teachers were again advertised. Consequently, the posts for General category got increased proportionately to 126. As there was administrative chaos regarding eligibility of such of those candidates who had passed their two years diploma in Art & Craft from Punjab State Board of Technical Education and Industrial Training, and the matter was still sub-judice in a large number of cases, this Court in the case of Mukta Tayal and another versus State in CWP No.2555 of 2004 directed the State Government to form a Committee and to take a decision in respect of equivalency of diploma in terms of Clause 5(i) of the Policy dated 02.11.1999 for the purpose of consideration and issuance of appointment to the post of Art & Craft Teacher. Pursuant to the aforesaid direction, Government-Department took a decision vide its communication dated 20.04.2007 that two years of diploma of Art & Craft from Punjab was equivalent to two years Art & Craft Teacher training course run by Industrial training and Vocational Education Department, Haryana.

(3) In the aforesaid background, the process of recruitment to the post of Art & Craft teacher was completed in piecemeal. In other words, in

number of installments appointment orders were issued to the selected candidates.

(4) The appointing authority issued appointment orders in 3 phases. Initially on merit basis, one list was prepared. Thereafter, in order to overcome dispute regarding eligibility of those candidates who had passed their two years diploma in Art & Craft from Punjab State Board of Technical Education and Industrial Training, one more merit list was prepared after issuance of clarification by the State Government in the year 2007.

(5) Ultimately, merit list was revised in which names of the petitioners were reflected in additional list/waiting list. By virtue of court direction, names of the petitioners were also considered for appointment. They were also thus appointed on 16.10.2009 and 26.10.2009, respectively. After issuance of revised merit list, some of the eligible candidates were found more merited than the candidates who had been initially appointed. These more merited candidates were obviously entitled for retrospective benefits since lesser meritorious persons whose names were reflected in the merit list/main list had already been appointed. In this background the subsequent appointees, namely, the candidates higher in merit list approached the authorities seeking service benefits from 2004 the date on which candidates lowest in merit were initially appointed. The department rectified the error committed and extended the service benefits to the higher merit candidates from retrospective dates. The appellants who were also appointed to the post of Art & Craft teacher, sought for extending similar service benefits at par with the above stated higher merit appointees.

(6) Learned Single Judge dismissed the claim of the petitioners on

01.07.2014, after analyzing the facts relating to process of recruitment to the post of Art & Craft Teacher read with the dates of appointment and after taking notice of the fact that the appellants were too lower in merit that they cannot seek ante-dated appointments.

(7) Feeling aggrieved by the order of the learned Single Judge, the appellants have preferred this LPA. All along the appellants claim is that similarly situated persons who were also appointed subsequently, have been granted service benefits retrospectively but no such benefit has been extended to them, hence the action is in violation of Articles 14, 16 and 21 of the Constitution. The appellants also relied on decisions relating to discrimination in extending service benefits.

(8) Heard counsel for the appellants and the record perused..

(9) The fact of the matter is that the names of the appellants are reflected in the 'waiting list' and their names were not recommended for appointment in the main selection list. They are entitled for appointment only if any candidate/candidates in the main select list is/are not reported or his/her/their antecedents are not in order or for any other reason then only the waiting list was required to be operated. Thus, the appellants/candidates who are in the waiting list form a distinct class of persons. At the same time, name of the candidates which are reflected in the main list whose names have been recommended by the selecting authority for appointment, are entitled for consideration for appointment as they form an altogether separate class. In the main selected list there were two groups who are appointed initially and subsequently by virtue of the court order read with clarification issued by the Government in relation to the acceptance of

diploma certificate who had studied in Punjab. In other words, the Government equated the diploma qualification obtained in the Punjab and to that of diploma qualification obtained in Haryana State. The authorities issued a revised select list with reference to merit and who were actually more merited than the first appointees, have been rightly extended the service benefits for which they are entitled to. On the other hand, the appellants who were lesser merited than the selected candidates in the main select list and have been appointed subsequently, cannot claim any service benefits on par with the candidates higher in merit. At this juncture, it is to be noted that none of the junior to the appellants was appointed prior to their appointments so as to seek service benefits on par with the junior.

(10) It is relevant to extract at this stage the contention of respondents No.1 and 2 in CWP No.8142 of 2013. In their written statement filed by one Sh. Harcharan Singh, Joint Director (C&V) office of the Director General, Elementary Education, Haryana, Panchkula contended as follows:-

“2. That in reply to above said claim, it is submitted that the Haryana Staff Selection Commission had issued an advertisement for filling up 664 posts of art and craft teacher in State of Haryana vide advertisement no.7/2003 category no.4 published on 18.10.2003 including 287 posts for General Categories. It is pertinent to mention here that the present writ petition relates to claim of deemed date appointment with consequential relief regarding General Candidates only.

3. That after completion of process, 287 posts in General Category had already been filled up. Meaning there by, all the vacancies of art and craft teacher in General Category were filled up. But petitioners did not become under the preview of

merit zone/selection zone and they were only in waiting list i.e. 310, 313, 327, 312, 301, 293, 342 and 299.

4. That the petitioners have given an example of other candidates who were given benefit of deemed date appointment, (Annexure P-14) has been attached herewith by which benefit was extended. In this regard, it is submitted that the candidates who were given benefit of deemed date appointment as per (Annexure A-14) are not similarly situated candidates with the petitioners as they have been given benefit of deemed date only because their Junior was already appointed but in the present case, not even a single junior was given appointment to the post of art and craft teacher prior to the petitioners. Petitioners can not claim deemed date appointment as no junior to the petitioners was given appointment prior to petitioners.”

(11) It is crystal clear from the aforesaid factual aspects that appellants were in the waiting list and they have been appointed over and above the notified vacancies. Consequently, none of their junior was appointed prior to their appointment nor any candidate lower in merit has got service benefits retrospectively. Therefore, the claim of the appellants that they are entitled for appointment from retrospective date is impermissible. In fact the very appointment of the appellants itself is contrary to the decision of the Hon'ble Supreme Court, since the authorities are required to fill up notified vacancies alone and it is impermissible to appoint a person/candidate against a non-notified vacancy. If a candidate or person is appointed against a non-notified vacancy it amounts to violation of Article 14 and 16 of the Constitution of India for the reasons that other eligible candidates have not been given opportunity.

(12) That apart, the appellants were fence sitters for the reasons that

they were appointed on 16.10.2009 and retrospective service benefits were extended to names were reflected in the main list after publication of revised merit list more merited candidates on 08.07.2010. The appellants claimed that they had issued a notice for extending service benefits to the Department but it was not true as is evident from para 17 of the written statement filed by respondents No.1 and 2. An extract of para 17 is reproduced herein:-

“17. That the contents of para no.17 are wrong and hence denied. In reply to contents of para 17, it is submitted that no legal notice has been received in the office of answering respondents. Moreover, they are not entitled to get benefit of deemed date appointment and other consequential benefits i.e. GPF Account, Pensionary Benefits, pay fixation, seniority etc. as no junior to the petitioners has been given appointment prior to giving the appointment to the petitioners. It is worthwhile to mention here that it was true Jagtar Singh and Rama Shanker were having merit no. 153 and 148 respectively, therefore, they were appointed from deemed date i.e. 20.08.2004 (the date when their juniors were given appointment) but the merit No. of the petitioners are 310, 313, 327, 312, 301, 293, 342 and 299 and it is clear from the merit No. of the petitioners that they were not recommended by the Commission in main list and they were only in waiting list.”

(13) The aforesaid contention of respondents No.1 and 2 has not been controverted by the appellants. The appellants then approached this

Court for the first time in the year 2013. On this count also, the appellants are not entitled for the relief sought.

(14) For the reasons stated above we uphold the order of the learned Single Judge and decline to interfere. The appeal is accordingly dismissed.

(15) No order as to costs.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

10.04.2015
pooja saini