

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

**RA No. 456 of 2014 (O&M) in
CWP No. 11229 of 2008
Date of decision: 22.12.2015**

Tarvinder Kaur ... Petitioner
versus
State of Punjab and others Applicants.

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Ms. Vandana Malhotra, Addl. Advocate General, Punjab.

Mr. Madhav Pokhrel, Advocate for
the non-applicant/petitioner.

K.Kannan, J. (ORAL)

CM No. 10818 of 2014

For the reasons mentioned in the application, duly supported by an affidavit, delay of 289 days in filing the review application is condoned.

CM is disposed of.

RA No. 456 of 2014

The selection of the petitioner made through the order is sought to be reviewed through an application filed by the State contending that by virtue of the decision of the Full Bench the criteria adopted, among others, namely, of giving weightage to the rural candidate and the assignment of mark for each year of employment for the completion of B.Sc. degree was erroneous and would required to be

recalled.

The petitioner had been rejected on the ground that she did not have the requisite qualifications, though she had got more than the cut off marks for selection to the post. The cut off marks were 70.263 when the petitioner had 72.31. The alleged disqualification was that she had not completed all the papers, but, the said disqualification was found to be bad and that she could not have been disqualified on the grounds mentioned for appointment to the post.

The matter that required consideration was whether the petitioner should be treated as selected having regard to the fact that she had above the cut off marks. The decision was taken on 22.10.2013 applying certain marks to be assigned as a person belonging to rural area and one mark given for each year of unemployment after the completion of B.Ed. The State counsel states that Full Bench of this Court has held that two of the criteria adopted namely, allowing for same weightage to be given for a rural candidate and marks to be assigned for the number of years when a person stood unemployed after completion of B.Ed. degree were not permissible and ordered them to be deleted out of reckoning for computation of marks. This decision of the Full Bench has come about on 03.04.2013 in CWP No. 11071 of 2011 Abhishek Rishi Vs. State of Punjab and others and if this decision were to be applied, the petitioner would qualify only for 57.31 marks which fell below the cut off marks.

Counsel for the petitioner states that this decision of the

Full Bench was to be applied prospectively and the candidates who had been selected for the year in which the petitioner was an aspiring candidate was for a period prior to the date of the decision. Admittedly, the candidates who had secured above the cut off marks have not been disqualified by application of the decision of the Full Bench and this decision has been operational only for selection made subsequently. The selection of the petitioner ought to be considered only on the parameters that were applied for every other candidate aspiring for the post along with petitioner and the manner of reckoning the marks that had been applied by the decision of the Full Bench could be applied fully for cases of selection subsequently done and could not be applied to candidate who ought to have been selected but disqualified by application of certain factors which admittedly could not have disqualified candidate. I accede to the contention of the petitioner/non-applicant and hold that the denial of selection which was made on the ground that she was disqualified was on a wrong understanding of her eligibility and if the grounds of disqualification were found to be erroneous and the petitioner could not be fettered from her entry by citing the judgment of the Full Bench that was rendered subsequently and the ratio of which was not applied to any of the candidates who had been selected for the year prior to the date of the judgment. By denying access to the petitioner by applying the judgment of the Full Bench, the act of the respondents will be seen to be discriminatory, for, candidates who had participated in the selection process along with her

would obtain the benefit of selection on the very same criteria which are used against the petitioner for exclusion. It is wholly irrelevant that the decision of this case was taken subsequent to the decision of the Full Bench. If the decision of the Full Bench were to operate only prospectively then the non-selection of the petitioner must be remedied by treating the petitioner as having been appointed on the day when other candidates were appointed.

The application for review is dismissed with above observations. If the petitioner has not been appointed already pursuant to the decision dated 22.10.2013, the same be done forthwith with all consequential benefits worked out as already provided. The arrears will be calculated from 22.10.2013 till the actual date of appointment and paid to her with 6% interest within 4 weeks from the date of the receipt of the copy of the order.

(K.KANNAN)
JUDGE

22.12.2015

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