

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11541 of 2011
Decided on : 11.02.2016

Chand Chopra

... Petitioner

Versus

State of Punjab & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr.Amit Chopra, Advocate, for the petitioner.

Mr.Pankaj Mulwani, DAG, Punjab.

G.S. Sandhawalia , J. (Oral)

The petitioner seeks appointment as Lecturer in Commerce, in view of the merit position. The claim is based on the advertisement dated 23.09.2009 (Annexure P15) whereby 40 such posts were advertised for the said subject out of which 20 were for the General Category candidates. The petitioner, as per the first merit list, had been given 67.6 marks and was at Sr.No.12 in the combined merit list (Annexure P16). Thereafter, her merit was reduced to 60.60 marks. The petitioner challenges the said lowering of merit and in the alternative also, took the plea that even if the said merit has to be considered, she falls within the zone of consideration, as 20 persons had to be appointed.

In the initial written statement filed, the lowering of marks was justified on the ground that experience was prior to the acquisition of the qualifications.

However, it was noticed by this Court on 03.02.2014 that since 20 candidates had to be selected, the petitioner would still come within the zone of consideration but had not been offered

appointment.

Counsel for the State had, thereafter, taken time to file additional affidavit, in which plea was taken that the petitioner did not fall within the zone of consideration, being lower in the merit in the General Category. Copy of the list of selected candidates was annexed as Annexure R1.

It was, accordingly, noticed by this Court that the said list only contained a list of only 19 General Category candidates and the name of 20th candidate was missing and the list was not complete. Accordingly, further direction was issued on 28.04.2014 to respond to the earlier order.

In the last affidavit dated 13.05.2014, the respondent-Department has, now, taken a totally new stand and introduced one Pankaj Chopra in the race, over and above the petitioner, by holding out that the said candidate was over and above the petitioner, having 62.715 marks and therefore, the petitioner still did not fall within the zone of consideration.

Counsel for the State has produced the record. A perusal of the same would go on to show that Pankaj Chopra was shown as ineligible in the merit-list and the reason recorded is that the domicile certificate was not attached.

It is not disputed that as per the advertisement, the application had to be submitted by 09.10.2009. It was on this account that the said candidate was declared ineligible. It is not

disputed that the said candidate has neither been asked to remove the ineligibility by the respondents nor has he approached any Court of law. As per the record, another representation was filed on his behalf on 08.05.2014, stating that he should be given the reasons for his ineligibility. The State has also not placed any material on record to show that the said candidate was called and asked to remove any ambiguity, in order to make him eligible. As on date, he remains ineligible and even if he was higher in merit, until and unless he challenges the action declaring his holding out to be ineligible and arbitrary, the State cannot bank on this defence, at least.

In such circumstances, this Court is of the opinion that the petitioner, who has been agitating for her rights from the year 2011, is entitled for consideration on the strength of her merit, being the only eligible candidate against the available vacancy. Accordingly, a direction is issued to respondent no.2 to consider the case of the petitioner for appointment to the said post, keeping in view her eligibility, within a period of 2 months from the receipt of a certified copy of this order. In case the petitioner gets a positive consideration, she would also be entitled for notional benefits from the date when similarly situated candidates were granted the same.

FEBRUARY 11, 2016
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(G.S. SANDHAWALIA)
JUDGE