

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

**CWP No.11596 of 2012
Decided on :18.01.2016**

Amrit Kaur

... Petitioner

Versus

State of Punjab and others

... Respondents

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

Present : Mr. G.S. Sidhu, Advocate for
Mr. Satbir Gill, Advocate for the petitioner.

Mr. L.S. Virk, Addl. AG, Punjab.

G.S. Sandhawalia , J. (Oral

The petitioner seeks the quashing of the order dated 14.05.2012 (Annexure P-7), whereby the claim for appointment as a Physical Training Instructor (P.T.I.) has been rejected, in spite of the fact that the petitioner was higher in the merit than the candidates appointed.

The petitioner in pursuance of the advertisement dated 21.10.2006 applied for the post of the P.T.I. in the pay scale of ₹ 4550-7220.

It is the case of the petitioner that the said appointment was subject matter of litigation, which was finally disposed of by a Full Bench of this Court in ***CWP No.451 of 2008 titled as 'Manjit Singh Vs. State of Punjab and others'*** and the litigation became final on 27.07.2010. Thereafter, the candidates were called for

counselling on 09.07.2011 vide public notice dated 22.06.2011 (Annexure P-3). The petitioner at that point of time had enteric fever i.e. infective Hepatitis and could not attend the counselling on the said date, which was fixed for her District Faridkot, as per the certificate dated 10.07.2011 (Annexure P-4).

She, accordingly submitted an application dated 01.08.2011 (Annexure P-6) to respondent No.2 to give her an opportunity to appear again, but no action was taken. She filed **CWP No.14976 of 2011**, which came for hearing on 17.08.2011 and a direction was issued that the correct position be ascertained and appropriate decision be taken on the representation dated 01.08.2011. Resultantly, she filed the representation dated 21.09.2011 (Annexure P-5), on which the impugned order has been passed, whereby her case for consideration has been rejected on the ground that she had produced the medical certificate on 10.05.2012 after almost a gap of one year and neither she appeared nor her representative had appeared to submit the medical certificate during the scrutiny of the documents. It was, accordingly, further observed that the selection process has already been completed and the revised list has been sent and, therefore, her case could not be considered and is not sustainable.

The State defended the action by filing the written statement by taking the plea that she had not appeared at the time

of counselling on 09.07.2011 and, therefore, the claim was not sustainable as she had remained absent and the impugned order was justified.

This Court noticed the fact that the impugned order indicated the complete mis-statement of the facts recorded by Director Public Instructions (SE), wherein it had been recorded that the medical certificate was produced for the first time on 10.05.2012. It was noticed that the representation was made on 21.09.2011 (Annexure P-5). The copy of the medical certificate had been appended alongwith the same. It was, thus, on this basis concluded that there was a mis-application of mind. The observations of this Court passed in the order dated 25.11.2014 read as under:-

“The facts would indicate that the petitioner had produced her medical certificate which was duly received by the office of respondents on 21.9.2011. Annexure P-5 is indicative of that. Prior to that in the writ petition filed by the petitioner the respondents were given liberty to verify the medical certificate which had prevented the petitioner from participating in the counselling process. The Court had directed a sympathetic consideration subject to verification of her claim. The impugned order (Annexure P-7) would indicate a complete mis-statement of facts recorded by the Director Public Instructions (SE) wherein he has stated that medical certificate was produced by the petitioner on 10.5.2012. This date does not reconcile with the date given in Annexure P-5. Let an affidavit be filed by the said officer to explain aforesaid contradiction. Adjourned to 16.12.2014.”

In pursuance of the said order, the additional affidavit has been filed by the Deputy Director (School Administration) and it has been admitted that the representation was not taken into consideration and unconditional and unqualified apology has been submitted. The relevant paragraph of the affidavit reads as under:-

“6. That it is humbly submitted that the respondent department never concealed any material fact intentionally. However, the representation dated 21.09.2011 could not be taken into consideration while deciding the claim of the petitioner vide order dated 14.05.2012, for which the deponent tenders unconditional and unqualified apology. However, the petitioner could not explained any reason for remaining absent from the scrutiny of her original documents on 11.07.2011 and no representative of the petitioner submitted any medical certificate at the time of scrutiny of her original documents on 09.07.2011 as well as on 11.07.2011. Therefore, even the representation dated 21.09.2011 did not support the claim of the petitioner.”

Another important factor in the affidavit also goes to show that after directions were issued by this court on 17.08.2011, the matter was sent to the Departmental Selection Committee, who was the respondent No.3 in the earlier writ petition and the said representation was never decided. The petitioner was rather forced to file the contempt petition before this Court, due to which the impugned order was passed on 14.05.2012. The relevant paragraphs of the affidavit read as under:-

“3. That in compliance of the above orders of the Hon'ble Court, the representation dated 01.8.2011 along with order

*dated 17.08.2011 was sent to the then Chairperson, Departmental Selection Committee (Teaching) for the purpose of consideration of claim of the petitioner. The Department also sent various reminders, time to time with a direction to the Chairperson, Departmental Selection Committee (Teaching) to decide the representation dated 01.08.2011 in compliance of order dated 17.08.2011. However, the said Chairperson being respondent No.3 in **CWP No.14976 of 2011** filed by the petitioner earlier, never decided this representation.*

*4. That the petitioner filed **Civil Contempt Petition No.228 of 2012** titled as **Amrit Kaur versus Shri Avtar Chand Sharma**, in this Hon'ble High Court. Hence, in order to redress the grievances of the petitioner, an opportunity of personal hearing was afforded on 10.05.2012 in the Office of answering deponent. The claim of the petitioner was rejected vide order dated 14.05.2012, Annexure P-7."*

It is, thus, apparent from the above facts and circumstances that the petitioner has been running from the pillar to post and was trying to justify that she had a valid reason of absence on 09.07.2011 and her case should be reconsidered on the basis of strength in the merit list.

The said claim has firstly never been reconsidered as directed by the Chairperson of the Departmental Selection Committee, which is an admitted fact as noticed above. When the contempt petition came to be filed, the impugned order has been passed, which as noticed has been found to be totally unjustified. Even the record has not been perused properly but a finding was recorded against the petitioner that the certificate has been

produced for the first time after a period of one year. Another reasoning given is that the process stands completed. As noticed the petitioner has been agitating her case right from the initial start in the year 2011 and, therefore, the respondents cannot hide behind the shield of the completion of the selection process, on account of their own fault, the petitioner's case was not being validly considered.

Thus, it is apparent that the action of the respondents cannot be justified. Accordingly, the order dated 14.05.2012 (Annexure P-7) is quashed and the respondent No.2 is directed to reconsider the case of the petitioner, after taking into account the fact that whether there was a valid reason for her absence. The necessary exercise be completed within a period of 3 months from the date of the receipt of the certified copy of this order.

With the above observations, the present writ petition stands allowed.

JANUARY 18, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE