

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17285 of 2011
Reserved on: 03.02.2016
Decided on : 12.02.2016

Manpreet Kaur & another

... Petitioners

Versus

State of Punjab & others

... Respondents

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

Present : Mr.D.V.Sharma, Sr.Advocate
with Ms.Akshita Chauhan, Advocate, for the petitioners.

Mr.Pankaj Mulwani, DAG, Punjab.

Mr.Shekhar Verma, Advocate, for respondent No.2.

G.S. Sandhawalia , J.

Petitioner seeks quashing of the condition whereby the minimum cut-off marks of 14 have been fixed for appointment as a Science Mistress, in respect of candidates belonging to Scheduled Castes (Majhbi Sikhs & Balmiki) (for short, 'M & B'). Accordingly, a writ in the nature of mandamus is sought to be issued directing appointment of the petitioner as Science Mistress.

The petitioner No.2's case had been dismissed as not pressed on 03.02.2016.

The pleaded case of petitioner No.1 is that respondent No.2-authority issued an advertisement dated 20.11.2010 (Annexure P1) inviting applications for filling up posts on contract basis with Sarv Shiksha Abhiyan Authority, in various districts, 538 posts were advertised for the Science subject and as per Clause 2, the recruitment was to be made on the basis of merit in the written test. The basic and professional qualifications required was B.Sc.

(Medical) with 50% marks and with B.Ed. along with one of the teaching subjects as Science, from a recognized University.

Relevant part of the basic qualifications read as under:

“B.Sc Medical with 50% marks and B.Ed. with 50% mark along with one of the teaching subject as Science from recognized university. B.Sc Non Medical Candidates may also apply however Preference will be given to the B.Sc Medical candidates. B.Sc Non Medical Candidates will only be considered if the B.Sc Medical candidates are not available.”

Thereafter, a corrigendum was issued on 03.12.2010 (Annexure P2) that the condition of minimum marks in Graduation had been reduced to 45% in cases of General Category and in case of candidates belonging to Scheduled Castes/Backward Classes- 40%. The petitioner, thereafter, appeared in the written test held from 27.12.2010 to 29.12.2010, in which she obtained 13 marks. Thereafter, counselling was to be held from 20.01.2011 to 28.01.2011, in which the cut-off marks was prescribed for M & B at 14 marks and in the case of Ram Dasia (for short, 'RD'), the cut-off marks was fixed at 18.75, for the subject of Science. On account of non-filling of the posts, the second counselling was held on 02.08.2011 and the public notice was issued on 16.07.2011. Thereafter, another public notice was issued on 03.09.2011 (Annexure P22) wherein the cut-off was reduced to 14 marks for the RD candidates also and there were similar reduction in the cases of English Masters and for Hindi Masters but not for the

Science Mistress of M & B.

Accordingly, the present writ petition has been filed, taking the plea that the non-selection of the petitioner on the basis of the minimum prescribed marks was not justified. Reliance was placed upon the Division Bench judgment of this Court in **Dr.Lovekesh Kumar & others Vs. State of Punjab & others 1998 (1) RSJ 566** and the judgment of the Apex Court in **State of Punjab & others Vs. Manjit Singh & others 2003 (4) SCT 310**.

Accordingly, it is submitted that there was no reduction in the case of the petitioner whereas similarly situated persons have been granted the benefit and the fixing of the minimum marks was wrong and the petitioner is entitled for selection on account of the marks obtained in the test.

Counsel for respondent No.2, on the other hand, justified the action in fixing the cut-off marks criteria by referring to Clause 2, to submit that recruitment was to be on the basis of the written test only and the petitioner had no absolute right of appointment.

After hearing counsel for the parties, this Court is of the opinion that the judgment of the Division Bench has already been upheld by the Apex Court in Manjit Singh's case (supra) as the appeal arose from the said case. However, the said judgment is not applicable to the facts and circumstances of the present case. In the said case, challenge was laid to the condition whereby the

Public Service Commission had fixed the requirement that there should be a minimum of 45% marks for the General Category and 40% marks for the Scheduled Caste category candidates in the screening test which was to be held by the Commission. It was, accordingly, held that the said action would lead to rejection of the candidates who had already qualified for interview and it was within the domain of the State Government to provide the criteria for selection and the Commission could not impose its own criteria.

Relevant observation reads as under:

“11. In the case in hand, it was not for the Commission to have fixed any cut-off marks in respect of reserved category candidates. The result has evidently been that candidates otherwise qualified for interview stand rejected on the basis of merit say, they do not have the upto the mark merit, as prescribed by the Commission. The selection was by interview of the eligible candidates. It is certainly the responsibility of the Commission to make the selection of efficient people amongst those who are eligible for consideration. The unsuitable candidates could well be rejected in the selection by interview. It is not the question of subservience but there are certain matters of policies, on which the decision is to be taken by the Government. The Commission derives its powers under Article 320 of the Constitution as well as its limits too. Independent and fair working of the Commission is of utmost importance. It is also not supposed to function under any pressure of the government, as submitted on behalf of the appellant Commission. But at the same time it has to conform to the provisions of the law and has also to abide by the rules and regulations on the subject and to take into account the policy decisions which are within the domain of the State Government. It cannot impose its own policy decision in a matter beyond its purview.”

It was, in such circumstances, the action of the Commission was quashed since the State had taken a decision that there should be no test regarding the reserved candidates to check their suitability for appointment. In the present case, as noticed, the merit was to be on the basis of the written test only, as per Clause 2. Similarly, as per Clause 5, the candidate did not have any absolute right for appointment on the posts. Relevant clauses read as under:

“Instructions

1.....

2. The recruitment will be made based on the merit of the WRITTEN TEST ONLY.

3.....

4.....

5. The candidate has to verify himself that he/she fulfils all the eligibility conditions for this post. Appearing in the examination and qualifying the test does not entitle him/her for appointment to the post. The selection will be subject to his/her found eligible for the post. Verification of original documents would be done at the time of counseling/joining. The purpose would be to verify different records regarding identification, age, qualifying examination, state of eligibility, category etc, of the candidate. On failing to establish of any of the documents the candidate will not be considered for recruitment and liable for criminal action.”

The Constitutional Bench of the Apex Court in **Shankarsan Dash Vs. Union of India 1991(2) SCR 567** has held that there is only a right of consideration and there is no absolute right of appointment. It is open to the appointing authorities to

show reasonable cause for not filling up the posts. Relevant observation reads as under:

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subhash Chander Marwaha*, (1974)1 SCR 165, *Miss Neelima Shangla v. State of Haryana*, (1986)4 SCC 268, or *Jitendra Kumar and others v. State of Punjab and others*, (1985)1 SCR 899.”

In the present case, as noticed, while calling the candidates for counselling, a cut-off had been fixed whereby the passing marks for General Category candidates was to be 24 and for Reserved Category candidates-14. Initially, the cut-off marks for the RD candidates was fixed at 18.5 for applying for the Science stream, which was, thereafter, brought at par along with M & B candidates at 14 marks. Once the authorities had fixed a

prescribed minimum marks, the argument that the same could not be fixed, is without any basis. Reliance upon instructions dated 14.05.1969 (Annexure P23) is also of no avail, since vide the subsequent instructions dated 05.05.1970 (Annexure P24), it was clarified that where there was recruitment made through competitive examination, the Scheduled Caste candidates were to acquire the minimum prescribed standards, on merit. However, where a vacancy was to be filled up by way of interview, the said candidates were not to be put to any test if they possessed the minimum qualifications and experience. The said letters were subject matter of consideration in the above referred judgment, by the Apex Court and therefore, the circulars do not, in any manner, help the petitioner.

It is the categorical contention of the respondents that no candidate has been appointed after the reduction in the minimum marks and the last selected candidate had secured 14.5 marks. The said benchmark had not been relaxed for any other candidate and resultantly, the respondents are well justified in holding out that the quality of education cannot be compromised as the petitioner seeks claim for appointment as a Teacher.

Resultantly, finding no merit in the present writ petition, the same is, hereby, dismissed.

FEBRUARY 12, 2016
sailash

(G.S. SANDHAWALIA)
JUDGE