

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

**CWP No.15250 of 2012 (O&M)
Decided on : 16.05.2016**

Harveen Kaur

... Petitioner

Versus

State of Punjab and another

... Respondents

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

Present : Mr.Gagandeep Singh, Advocate, for
Mr.A.S.Manaise, Advocate,
for the petitioner.

Mr.Avinit Avasthi, AAG, Punjab.

G.S. Sandhawalia , J. (Oral)

The petitioner seeks quashing of order dated 30.5.2012 (Annexure P-15) whereby the petitioner's claim for consideration and appointment to the post of Hindi Mistress in Ex-servicemen (dependent) general category has been declined despite the fact that there are three vacant posts available. The petitioner is the candidate having merit of 61.450. The petitioner's case is based against the advertisement No.2 dated 27th October, 2006 (Annexure P-1) wherein the said posts were advertised and out of the same, 17 were for Hindi Mistresses of the said category. The petitioner applied and her merit came to 61.450 and as per her case, only 5 candidates were selected and appointed against the 17 posts.

The second round of counselling was held on 17.2.2008 and the candidates having merit more than 58% were called. Since only 3 appointment letters had been issued and the merit of the last selected

counselling, she had given a representation dated 21.2.2008 (Annexure P-5). Thereafter, she filed CWP No.4070 of 2008 (Annexure P-6) which was disposed of on 17.3.2008 by the Division Bench directing the respondents to take a decision on the representation within a period of one month. Thereafter, another notice dated 20.8.2008 (Annexure P-7) was issued for the third counselling to be held from 25.8.2008 to 28.8.2008 in which, it was mentioned that the candidates who filed civil writ petitions in the Hon'ble High Court were also to appear along with documents. She had appeared for the counselling on 27.8.2008 and her documents were verified and her merit was confirmed at 61.450. She sought information regarding the number of seats filled against the said category and was supplied information on 3.2.2010 (Annexure P-10-A) that only 14 posts have been filled. However, on 10.5.2010 (Annexure P-9), her application for consideration was rejected on the ground that 14 candidates were selected during the scrutiny on 18.2.2008. Accordingly, another representation was filed on 18.11.2010 (Annexure P-11) and 6.6.2011 (Annexure P-12) for filling up the vacant three seats. The Education Minister was also moved on 4.7.2011 (Annexure P-13) but of no avail.

Resultantly, CWP No.15270 of 2011 was filed on the ground that some of the advertised posts remained unfilled due to non-joining of selected candidates. The writ petition was disposed of on 8.9.2011 (Annexure P-14) to consider the claim of the petitioner which has been noticed above against vacant seats and dispose of the said representation within a period 4 months. The said request was rejected vide order dated 30.5.2012 (Annexure P-15) which is now impugned.

The reasoning given in the order is that only 14 candidates

have joined and the name of the petitioner does not fall in the zone of selection and no waiting list had been prepared. Resultantly, the present writ petition was filed.

The defence taken by the State was that the petitioner was beyond the zone of consideration and below the last person appointed. Reference was made that earlier also, the case of the petitioner had been rejected on 10.5.2010. However, the categorical averment that there were 3 vacancies, was not denied but it was admitted that only 14 candidates have joined in the category. Thus, the name of the petitioner did not fall in the zone of selection. The said defence is not acceptable. The petitioner has been consistently fighting for her rights on the strength of her merit and has approached this Court three times. The respondents, for the reasons best known to them, have denied her consideration by skirting the issue in question. It has been her categorical case that 17 posts were never filled and there were vacancies. It has not been rebutted by saying that 17 persons had joined and some candidates have left so the posts were consumed. It is, thus, apparent that against the vacancies, the State has refused to act upon the claim of the petitioner who has been agitating for her rights since the last 8 years. In the impugned order also, earlier directions of this Court given on 8.9.2011 (Annexure P-14) have been reproduced wherein the specific case was that the petitioner was entitled to consideration against unfilled seats but the said issue has not been addressed. It is not disputed that as per settled law, the petitioner being in the merit list, has right of consideration but the State does not have a right to act in an arbitrary manner and make no appointment even when candidates are available for the vacant seats. No justification has been given by the State in their written statement as to why

3 seats have not been filled which were advertised for which the petitioner has been fighting since 2008. The observations of the five Judge Bench of the Apex Court in **Shankarsan Dah v. Union of India**; 1991 (2) SCT 194 to the effect can be noted.

“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 disordant 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.”

It is neither the case of the respondents also that there are other candidates higher in merit who would consume the three vacancies and, therefore, the petitioner would not fall in the zone of consideration. In such circumstances, this Court is of the view that the impugned order dated 30.5.2012 (Annexure P-15) is not justified. It is accordingly quashed and the respondents are directed to consider the case of the petitioner in the

by the respondents in case of successful consideration, the petitioner shall also be entitled to all the notional benefits similar to the last candidate appointed.

The writ petition is accordingly allowed.

May 16, 2016
Paritosh Kumar

(G.S. SANDHAWALIA)
JUDGE