
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.16688 of 2012

Date of decision: 5.5.2016

Hardeep Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

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

Present: Mr. G.P.Vashisht, Advocate for the petitioner.

Mr. Avinit Avasthi, Assistant Advocate General, Punjab

G.S.SANDHAWALIA, J. (Oral)

The petitioner seeks quashing of speaking order dated 27.4.2012/11.5.2012 (Annexure P/6) whereby her claim for appointment as Math Mistress in Ex-Serviceman Dependent General Category was rejected on the ground that the petitioner was not required to be informed personally about the date of 2nd phase of counselling which was conducted from 6.7.2011 to 11.7.2011. The appointment letters had already been issued to the candidates and therefore, her claim was rejected.

The petitioner seeks consideration for appointment on the strength of advertisement dated 23.9.2009. She had earlier approached this Court by way of filing Civil Writ Petition No.17143 of 2011. The said petition was disposed of on 14.9.2011 (Annexure P/5) by noticing the averment that she could not come to know of the counselling in January, 2011 and the fact that she had already lodged her claim for appointment vide legal notice dated 1.8.2011 (Annexure P/4). The petitioner's claim was thus to be considered within a period of three months which has now been rejected vide impugned order dated 27.4.2012 (Annexure P/6). It is her specific case that 3rd counselling was done on

8.7.2011 and candidates lower in merit had been appointed. In spite of her appearing in the said counselling held at Government Model Senior Secondary School, Phase 3B1, Mohali where her documents had been checked by respondent no.2 in room no.9 and relevant record had been collected. Her provisional merit was of 52 whereas the merit of last candidate appointed was 51.5409 (Annexure P/3).

Counsel for the petitioner has further pointed out that in pursuance of said direction dated 14.9.2011, the petitioner was sent communication after the decision had been taken to appear on 20.7.2012 vide letter dated 3.8.2012 (Annexure P/7). This fact has also not been denied in the additional affidavit which has been filed now. It is apparent that the State has now put the cart before the horse after they have taken decision rejecting the claim. The petitioner was called for a date to submit her papers for consideration in pursuance of order this Court. The denial had already taken place and reason has already been discussed above. A specific averment has been made in paragraph no.6 of the writ petition that she had attended the 3rd counselling on 8.7.2011. In the written statement, the said fact has not been denied that the petitioner was present in the 3rd counselling. On 15.2.2016, the following order was passed by this Court:-

“The case of the petitioner is that she is having 52 marks in the merit list (Annexure P-3) and had missed the second date of counselling conducted between 06.07.2011 to 11.07.2011. She had filed CWP No.17143 of 2011, which was disposed of on 14.09.2011 (Annexure P-5), by which her case had to be re-considered and the impugned order dated 11.05.2012 (Annexure P-6) has been passed.

It is the case of the petitioner that the last candidate appointed for the Math's Mistress has 51.54 marks in the exservicemen category and the petitioner, thus, was entitled for reconsideration on the strength of the order of this Court.

Even notice dated 03.08.2012 was issued (Annexure P-7) but appearance was asked for 20.07.2012 and also in the meantime the impugned order had already been passed.

The above facts have not been clarified by the respondents in a appropriate manner. Nothing has been shown that how many vacancies are there of this category and the merit of the last candidate appointed and when the process of the selection was closed down. On what account the letter dated 03.08.2012 was issued, after the passing of the impugned order.

Let, a better affidavit be filed clarifying the above facts.

List on 29.03.2016.”

In pursuance of above order, additional affidavit dated 29.3.2016 has been filed. It has been averred in the said affidavit that 90 posts were reserved for Ex-servicemen and 67 candidates were issued appointment letters. Thus, it is apparent that there are vacancies available against the said advertisement. The petitioner was having more marks than the last selected candidate. The only defence taken is that the selection process has closed in the year 2011 and thereafter on 9.8.2013 the Government took a conscious decision to cancel even the waiting list.

The said defence need not detain this Court. The petitioner has admittedly come to this Court for redressal of her grievance firstly way back almost five years earlier. At that time the decision dated 9.8.2013 to cancel the wait list had not been taken. Even the impugned order was passed, prior to said decision. The denial on the ground that the petitioner had not appeared in the 3rd phase of counselling has been made even without demonstrating the factual aspect. Rather in the written statement there is no denial to para 6 of the averment and no denial to the fact that the petitioner was present on 8.7.2011 in the 3rd counselling. The petitioner first approached this Court in 2011 and being higher in merit than the last

candidate and in view of the vacant seats is entitled for consideration.

Resultantly, in view of the fact that there are vacancies and the fact that the petitioner has been running from pillar to post for the last five years, the present writ petition is allowed. Respondents shall consider the case of the petitioner for appointment as Math Mistress in Ex-Serviceman Dependent General Category. In case the petitioner is favourably considered, she will be given notional benefits from the date when similarly situated persons were appointed in pursuance of counselling done in July/August, 2011. The needful be done within three months from the date of receipt of certified copy of this order.

May 05, 2016
Pka

(G.S.SANDHAWALIA)
Judge