

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 22410 of 2010

Date of decision : January 29, 2016

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Manju Buttar and another

.....Petitioners

Versus

The State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Satbir Gill, Advocate for the petitioners.

Mr. Pravindera Singh Chauhan, Addl.A.G., Haryana.

Mr. Shashi Kumar Yadav, Advocate for respondent no.4.

Mr. Rakesh Bakshi, Advocate for respondents no. 7 & 8.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

The petitioners are seeking writ of certiorari for setting aside the impugned order dated 24.1.2010 (Annexure P-3) qua selection of Hindi Teachers.

The petitioners participated in the selection process for appointment of Hindi Teachers as per advertisement dated 20.7.2006 (Annexure P-2). As per the advertisement, the essential qualification

for the post of Hindi Teacher is as under:-

I)Matric from Haryana School Education Board or an equivalent qualification recognized by the Haryana School Education Board.

II)Parbhakar/B.A (Hons.) in Hindi from a recognized University.

III)L.T.C/OT in Hindi conducted by the Haryana Education Department or an equivalent qualification recognized University.

Note: In case the candidate of above qualifications are not available then B.A with Hindi as an elective subject with B.A/E.Bed with Hindi teaching subject from a recognized University will be considered

IV)knowledge of Hindi up to matric standard.

The petitioner no.1 applied for the post of Hindi Teacher in the category of General Female and petitioner no.2 applied under the category of SCB. They were issued Roll numbers for the purpose of interview. After completion of the selection process, result was declared as per Annexure P-3. The petitioner no.1 sought necessary information under the RTI Act 2005 with regard to selection of the Hindi Teachers and she was given the necessary information vide Annexure P-13 and Annexure P-16.

Counsel for the petitioners has argued that as per the advertisement in case the candidates having essential qualification point I to III are not available then only the candidates having B.A

with Hindi as an elective subject or B.A/B.Ed with Hindi teaching subject from a recognized University should have been considered. But on the contrary, respondents have selected the candidates while ignoring the candidates who were having the essential qualifications mentioned under Point I to III in the advertisement. The grievance of the petitioner no.1 is that respondent no.5-Manju Bala as per the Annexure P-13 belonging to the General category (female) has been selected. She was having the qualification of B.A with Hindi as an elective subject and the petitioner who was having the qualification of B.A (Hons.) Hindi could not be ignored for appointment.

On notice, a written statement has been filed by the Secretary, Haryana Staff Selection Commission-respondent no.3 stating therein that petitioner no.1 namely, Manju Buttar belonging to General Category appeared against Roll No. 3774 and secured 45.28 marks as against 52.74 marks of the last selected candidate in her category. Similarly petitioner no.2 namely Wazir Singh belonging to SC category secured 49.04 marks as against 50.58 marks of the last selected candidate in his category. The petitioners could not make grade in the selection list due to lesser marks as compared to the last selected candidates. Petitioners cannot challenge the assessment made in the interview as unfair and seek setting aside of the selection list as held by Hon'ble the Supreme Court in **Chander Parkash Tiwari vs. Shakunta Shukla 2002 (3) RSJ 507 SC** and this Court in **Devki Nandan Sharma vs. State of Haryana and others 2002 (I) RSJ 64.**

In a separate written statement filed by the Director, Elementary Education, Haryana on behalf of respondents no. 1 & 2 , it was stated that the selection process was carried out by respondent no.2 on the basis of performance in the interview and academic qualification of the candidates. A merit list was prepared by the Haryana Staff Selection Commission and recommended the name of all 405 candidates. On receiving recommendations from the Haryana Staff Selection Commission, an appointment was offered to all the selected candidates. Respondents no. 4, 7 and 8 have filed their separate written statements and have taken a stand that their selection cannot be interfered with as they do not belong to the categories of the petitioners. Respondent no.4-Karan Singh has been selected against the post meant for BCB category. Respondent no.7-Manjit Lal has been selected against the post meant for BCA Category and respondent no.8-Ram Naresh belongs to ESM Gen category. Petitioner no.1 belongs to General Category female and the petitioner no.2 belongs to SCB category. Hence no case for comparing the merits of selection with these respondents is made out. Present writ petition is dismissed qua these three respondents.

The Secretary, Haryana Staff Selection Commission in the written statement has not denied the fact that the last candidate appointed in the General Category female i.e Manju Bala is having the requisite qualification of B.A with Hindi as an elective subject. As per the advertisement only in the absence of availability of eligible candidates having the qualification of B.A (Hons.) Hindi , the

candidates having B.A with Hindi as an elective subject can be considered. As per the written statement filed on behalf of respondent no.3, petitioner no.1 secured 45.28 marks and was having the qualification of B.A (Hons.)Hindi. It is not the case of the Commission that the petitioner no.1 was required to take more marks than 45.28 marks to be considered for appointment for the post of Hindi Teacher. The last selected candidate namely, Manju Bala had done B.A with Hindi as an elective subject. As per the advertisement (Annexure P-2) she would only be liable to be considered in case the candidate of the prescribed qualification of BA (Hons.) Hindi was not available. There was no question of comparison of the marks allotted to the candidates. The petitioner cannot be denied selection mainly on the ground that she has secured 45.28 marks as against the 52.74 marks of the last selected candidate in her category. She had a prior right of consideration for appointment to the post of Hindi Teacher. The stand taken in the written statement filed by respondent no.3 was that they have appointed the respondents in view of the judgment passed by this Court in the case of **Ashok Kumar and others vs. State of Haryana and others (CWP No. 10926 of 2007)** decided on **21.12.2007**. In that petition, the petitioners were having higher qualification than prescribed qualification for the posts of Sanskrit teachers where B.A (Hons.) Sanskrit was the eligibility qualification. The writ petition was allowed by directing the respondents to treat the petitioners eligible for the post of Sanskrit Teachers and call them for interview. This judgment

will not be applicable to the facts of the present case. In the present case, as per the advertisement, the necessary qualification for the appointment to the post of Hindi Teacher was B.A (Hons.) in Hindi from a recognized University. As per a note in the advertisement, in the absence of availability of candidates of this qualification, candidates having B.A. with Hindi as an elective subject will be considered. Despite the petitioner no.1 having the qualification of B.A (Hons.) Hindi, respondent no.5-Manju Bala who was having qualification of B.A with Hindi as an elective subject has been selected. Even if petitioner no.1 has participated in the selection process, she is not challenging any selection criteria or eligibility criteria after the result has been declared. The question for consideration is whether eligible candidates can be ignored and preference can be given to candidates who were not having the prescribed qualification? The answer to this question would be in favour of the petitioner. The present writ petition is being allowed qua petitioner no.1 by giving direction to the respondents to give appointment to her as she fulfills prescribed eligibility qualification as per advertisement.

As far as the case of petitioner no.2 is concerned, he belongs to SCB category and none of the respondents who have been impleaded in the present writ petition belonged to SCB category. The respondents in the written statement have merely stated that petitioner no.2 namely Wazir Singh belonging to SC category secured 49.04 marks as against 50.58 marks of the last

selected candidate in his category. As far as petitioner no.2, a direction is being given that the Department will further verify whether a candidate who has more than 49.04 marks in the SC category who is having the qualification of BA with Hindi as an Elective subject has been selected. In case on verification it is found that such a candidate has been appointed ignoring petitioner no.2, then the case of petitioner no.2 shall also be considered for appointment on a vacant post of Hindi Teacher along with petitioner no.1. The judgments passed by Hon'ble the Supreme Court in **Chander Parkash Tiwari's case (supra)** and this Court in **Devki Nandan Sharma's case (Supra)** are not applicable to the facts of the present case.

Present writ petition is disposed of in the above said terms.

January 29, 2016
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(**RITU BAHRI**)
JUDGE