

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

CWP No.1162 of 2016

Date of decision: 3.3.2016

Sushil Kanta

... Petitioner

Versus

State of Punjab & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. RK Arora, Advocate,
for the petitioner.

Mr. Inqulab Nagpal, AAG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

1. Heard learned counsel for the parties at considerable length.
2. The petitioner applied for the post of Rural Associate Teacher (Master Cadre) in the Scheduled Caste category. She produced her caste certificate dated July 15, 2010. The last date for submission of application form was September 9, 2012. The caste certificate of the petitioner was recorded in the name of the husband. She was asked to supply a Scheduled Caste certificate claiming status through her father to establish her maiden bona fide status. She produced the certificate sought on October 1, 2013. This was at the time of counselling, whereas the last date as said before was September 9, 2012. The solitary question which arises for consideration is whether the caste certificate issued in her name but through her father would relate back to the caste certificate in the name through her husband and the answer lies in the decision of the

Supreme Court in **Charles K Skaria & ors. v. Dr. C. Mathew & ors.**, 1980(2) SCC 752. Production of a certificate after the cut off date in the case of Scheduled Caste category candidate relates back to birth and the claim of the petitioner cannot be rejected on this account so long her application in the first instance was under SC category. It is not disputed that the petitioner is successful on merit as she secured 49.9521 marks on the basis of criteria adopted. The last SC(R&O) candidate admitted to service secured lesser marks scoring 48.9583. The last candidate has been offered appointment by the Government on the post of Rural Associate Teacher (Master Cadre) which was advertised for filling from amongst different categories including the post of Social Studies Master/Mistress for which the petitioner applied. Reference to last candidate as above is in the context of Social Studies Master/Mistress. It may be noted that the petitioner did not make it in the initial merit in the Scheduled Caste category. However, some posts remained unfilled due to non-joining of candidates. It is the petitioner's case that if the unfilled posts are offered to the meritorious candidates in the merit list; the petitioner would then fall within the zone of consideration for appointment. Her claim has been rejected for the specious reason that her caste certificate has been submitted after the cut-off date i.e. September 9, 2012.

3. In order to satisfy the court that the petition does not suffer from delay and laches due to negligence in pursuing remedy, Mr. RK Arora, learned counsel appearing for the petitioner informs the Court that the last candidate selected and appointed came through counselling held on November 21, 2015 in pursuance to the public notice dated November

18, 2015 (Annex P-10). The petitioner had made a representation on March 2, 2015 and then again on November 23, 2015 for vindication of her rights and grievance but no order has been passed on those representations as she has not heard anything regarding their fate. In this background the petitioner has approached court under Article 226 of the Constitution praying for a writ of mandamus to the respondents to offer her appointment since person lower in merit in her reserved category has admittedly been appointed as Rural Associate Teacher (Master Cadre).

4. Therefore, no useful purpose will be served by issuing a mere direction to decide the pending representations as that would postpone the right of the petitioner to judgment and relief claimed i.e. of consideration for appointment and salary in the event of appointment being made as the cause of action has accrued in her favour with a corresponding right to sue. She most certainly has a case fit for interference since person lower in merit stands appointed and if the petitioner is denied relief it would result in infraction of Articles 14 and 16 resulting in unreasonable discrimination in matter of equal opportunity.

5. For the foregoing reasons, this petition is allowed. The operating reason ascribed to deny appointment to the petitioner as Social Studies Mistress is declared illegal and arbitrary. Her caste certificate holds good as it would relate back to before the cut off date in view of the earlier scheduled Caste certificate submitted by the petitioner dated July 15, 2010 being replaced, confirming that she was the daughter of a member of the SC category and married to one. As a corollary, a writ of

mandamus is issued to the respondents to consider the case of the petitioner for appointment as per merit achieved in the selection process. She may accordingly be adjusted against one of the available vacancies/posts lying unfilled. And in case this is not so, then a direction is issued to the respondents not to displace the last reserved category candidate [SC(R&O)] selected and appointed though lower in merit in which case respondents would devise ways and means within prevailing rules and instructions to protect her and proceed to accommodate the genuine claim of the petitioner. If the petitioner is appointed then monetary benefits would run from the date of filing of this petition including the arrears of salary and allowances. The remaining monetary benefits will be given notionally. Still further, in the event of appointment, the seniority of the petitioner would relate back to her batch as per merit determined by the recruiting agency. This all be done after completing necessary formalities of background check/character verification, medical examination etc. The case of the petitioner is directed to be finalized within two months from the date of receipt of a certified copy of this order, if not earlier.

(RAJIV NARAIN RAINA)
JUDGE

3.3.2016
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