

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17428 of 2013
Decided on : 25.04.2016

Gurinder Kaur

... Petitioner

Versus

State of Punjab & others

... Respondents

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

Present : Mr.V.K.Shukla, Advocate, for the petitioner.

Mr.I.P.Goyat, Addl.A.G., Punjab.

Mr.H.S.Batth, Advocate, for respondent No.5.

G.S. Sandhawalia, J. (Oral)

Petitioner challenges the order dated 27/31.05.2013 (Annexure P7), passed by respondent No.2 whereby the petitioner's request for consideration for appointment to the post of Assistant Librarian against the Reserved Category of Scheduled Caste (M&B), was rejected. The ground for rejection is that the required certificate had not been produced on the basis of which the petitioner was seeking appointment in the said category. Resultantly, the case of the petitioner was considered in the General Category and being out of the zone of consideration, the claim for consideration of appointment was denied.

It is pertinent to mention that the petitioner had earlier approached this Court in CWP-2027-2012 on the ground that she was erroneously being considered in the open category at

Sr.No.107 and she was entitled to be considered in the Reserved Category (Annexure P5). In such circumstances, this Court had directed on 03.02.2012 that the respondent should consider and dispose of the claim of the petitioner as contained in the representation, in accordance with the rules, within a period of 4 months. The petitioner had applied for the said post in response to the advertisement dated 23.09.2009 (Annexure P1), issued by the School Education Department, having secured 52.6603 marks.

Counsel for the petitioner has pointed out that the provisional merit list (Annexure P3) was prepared, in which the petitioner figured at Sr.No.20 and the list was on the basis of the Scheduled Caste certificate which was dated 30.10.2007 (Annexure P4). The original of the certificate has also been produced before this Court. It is, thus, apparent that the petitioner was in possession of the said certificate and even the respondents had considered her case in the said category but for reasons best known to them, the petitioner was shifted to the said general category, due to which, she was constrained to approach this Court.

After getting a direction from this court on 03.02.2012, the petitioner again approached respondent No.2 for re-consideration and was afforded an alleged personal hearing on 20.03.2013, on the basis of which, the impugned order has been passed. The order specifically records that the petitioner was

afforded an opportunity of being heard. A perusal of the written statement, filed by respondent No.2, would go on to show to the contrary, that one Smt.Harkesh Kaur, the Establishment Officer, had recorded the note that the petitioner did not have the copy of the required certificate and neither submitted any written representation. Relevant part of the reply reads as under:

“The then Establishment Officer – Smt. Harkesh Kaur working in the office of respondent No.2 recorded the following note on the concerned file:-

“The petitioner remained present in office on 20.3.2013, but neither the petitioner submitted any written representation nor copies of required certificates. Therefore, speaking orders are required to be issued. Draft of speaking orders is being submitted for approval.”

The above-said reply, apparently, would go on to show that the order, which is now under challenge, does not depict the correct picture regarding the personal hearing given by respondent No.2. The petitioner has been running from pillar to post, since the last 6 years, as the first scrutiny was on 07.05.2010 and the respondents have continued to deny her appointment even though she was higher in merit than the last candidate in her category, who is at Sr.No.17 and having merit of 46.15, as per the merit list. The case of the respondents that she was not in possession of the certificate, cannot be accepted, as a perusal of the original certificate and the annexures would go on to show that the certificate was issued way-back on 13.10.2007. Therefore, it

would be apparent that the reasoning given and the defence which has been taken by the State is totally untenable. The petitioner had approached this Court and the least respondent No.2 could do, was to give a personal hearing and solicit from the petitioner the fact whether the certificate was available or no. The dealing hand has just put up a note that no written representation was submitted nor the copy of the required certificate is present. The said recording seems to be, apparently, without any basis.

The petitioner had only approached this Court on account of the wrong categorization having been taken out of the zone of consideration from her Reserved Category and instead of redressing the grievance of the petitioner, the respondent-department has only further added agony and delayed her appointment.

Accordingly, the present writ petition is allowed. The impugned order dated 27/31.05.2013 (Annexure P7) is set aside. Respondents are directed to issue the appointment order to the petitioner to the post of Assistant Librarian. The petitioner shall also be entitled for all the notional benefits from the date when similarly situated persons were appointed, since it is on no fault of her that she has been denied her legitimate rights. The petitioner shall also be entitled to costs of Rs.25,000/-, which can be recovered from the concerned officials who were responsible for this lackadaisical attitude. It is made clear that the private

respondents, apart from respondent No.5, have not bothered to contest the writ petition and in case the last candidate has to be moved out, to accommodate the petitioner, in case there is no other vacancy available, the State shall, accordingly, do the needful. Same be done within a period of 2 months from the receipt of a certified copy of this order.

APRIL 25, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE