

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

**CWP No.23855 of 2011 (O&M)
Decided on : 04.02.2016**

Rajbir Kaur

... Petitioner

Versus

State of Punjab and another

... Respondents

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

Present : Mr. Gurjinder Singh Chahal, Advocate
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab
for respondent No.1.

Mr. Deepak Gupta, Advocate
for respondent No.2.

G.S. Sandhawalia , J. (Oral)

CM-6638-CWP-2014

Application for placing on record the result sheet of the recruitment of 7654 English Lecturer as Annexure P-5 and also for exemption from filing the certified copy of the same is allowed, subject to all just exceptions.

CM stands disposed of.

Main Case

The petitioner seeks the quashing of the selection of the respondent No.2 as Lecturer in English against the Sports Category (B) on the ground that she was higher in merit having secured 52.0160 marks in the result-sheet (Annexure P-5),

wherein the said respondent had secured 48.4100 marks and for issuance of writ of mandamus directing the respondent No.1 to appoint the petitioner on the post of a Lecturer in English.

At the outset, counsel for respondent No.2 has submitted that she has not joined on the abovesaid post and, therefore, her appointment is not the subject matter of consideration.

The defence taken by the State is that the petitioner had applied against the advertisement dated 23.09.2009 (Annexure P-1), wherein 40 posts of Lecturer were advertised. The merit in eligibility had to be determined by the Department of Sports and the entire record was sent to the office of the Director of Sports, Punjab. The same was returned vide letter dated 13.05.2010 (Annexure R-1). As per the said list, the petitioner's name was at Sr. No.2 of the selected candidates. Since, there was only one seat, the petitioner's name was placed in the waiting list at Sr. No.1, as per the recommendations of the Department of Sports, Punjab.

Thus, it is an admitted fact that the petitioner was placed at the wait list at Sr. No.1, as noticed above. Even, if the stand of the State is to be taken to be correct that respondent No.2 was at a higher position and therefore the petitioner was not entitled for appointment, the same now is of no consequence, keeping in view the fact that the said respondent has not joined on

the said post. In such circumstances, it was imperative for the State to operate the waiting list on which the petitioner's was at Sr. No.1 and could not have acted in an arbitrary manner in the absence of any valid justification.

Faced with this difficulty, counsel for the State has placed on record photocopy of the communication dated 09.08.2013 to submit that the wait list was no longer in operation, in view of the decision taken by the Government.

The said argument does not help the State. It is not disputed that the present writ petition was filed by the petitioner on 20.12.2011 and the matter has remained pending before this Court. Merely, because the State has taken a decision that the wait list is not to be operated would not restrain this Court from exercising its powers, on account of the inaction of the State to appoint the petitioner who was at Sr.No.1 in the wait list. Once respondent No.2 being placed higher in merit, even as per the case of the State, had not opted to join, it was the bounden duty of the State to give the offer to the petitioner during the currency of the wait list. Having failed to do so, the petitioner is entitled for the relief claimed.

Accordingly, the writ petition is allowed. A writ of mandamus is issued to respondent No.1 to consider the case of the petitioner and issue necessary orders within a period of 2 months from the receipt of the copy of this order.

The petitioner will also be entitled for all notional benefits from 28.04.2011 when the appointment was offered to respondent No.2, to avoid unnecessary litigation.

FEBRUARY 04, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE