

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

**CWP No.21270 of 2013
Decided on : 18.02.2016**

Davinder Kaur and another

... Petitioners

Versus

State of Punjab and others

... Respondents

(2)

CWP No.21280 of 2013

Amandeep Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

(3)

CWP No.12820 of 2015

Maninderjit and another

... Petitioners

Versus

State of Punjab and others

... Respondents

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

Present : Mr. Kapil Kakkar, Advocate for the petitioner (s)
in CWP Nos.21270 and 21280 of 2013.

Mr. M.L. Saini, Advocate for the petitioner (s)
in CWP No.12820 of 2015.

Mr. Avinit Avasthi, AAG, Punjab.

G.S. Sandhawalia, J. (Oral)

The present judgment shall dispose of three writ petitions i.e. CWP Nos. 21270 & 21280 of 2013 and 12820 of 2015. The facts are being taken from ***CWP No. 21270 of 2013 titled as 'Davinder Kaur and another Vs. State of Punjab and others'***.

The petitioners in the present writ petition have challenged the order dated 19.08.2013 (Annexure P-14), whereby their claim for consideration to the appointment to the post of a Teaching Fellow in the physically handicapped category for District Amritsar has been rejected.

The decision is based on the ground that the process of recruitment in pursuance of the advertisement dated 05.09.2007 (Annexure P-1) had been closed down on 29.07.2013 (Annexure R-1) and, therefore, keeping in view the judgment delivered by the Full Bench of this Court in ***'Abhishek Rishi Vs. State of Punjab' 2013 (3) SCT 1***, the petitioners were not entitled for consideration for appointment in the physically handicapped category at this stage.

It is not disputed that the petitioner No.1 in the present writ petition in pursuance of the first advertisement has a merit of 45.809 marks and the merit of petitioner No.2 is 47.920 marks. Similarly, in CWP No.21280 of 2013 the merit of the petitioner is

44.65 marks and in CWP No.12820 of 2015 the merit of the petitioner No.1 is 36.68 marks and merit of the petitioner No.2 is 41.702 marks, as per the additional affidavits dated 17.12.2015 filed by the District Education Officer (Elementary Education) Amritsar.

It is further admitted that out of the 33 posts of Teaching Fellows 17 posts had been filled up and there are 16 vacant posts available. The petitioners would fall in the zone of the consideration upto the last post. It was further deposed that appointment letters were only being issued where orders were being passed by this Court and no candidate had been appointed after the pronouncement of the judgment in the case of **Abhishek Rishi (supra)** by the department on its own level.

Reference has also been made to the appointment of one Yogita in whose favour the appointment letter was issued on 30.11.2015 in pursuance of order passed by this Court in **CWP No.19944 of 2013 'Yogita Vs. State of Punjab and others'** on 12.10.2015 upon which the petitioners have placed heavy reliance.

It is not disputed that in **CWP No.12886 of 2010 'Jagjit Kaur & others Vs. State of Punjab & others'** decided on 12.01.2011 (Annexure P-5), handicapped category candidates approached this Court and it has been held that the candidates available in any of the three handicapped categories can be

allowed to occupy the posts of physically disabled candidates from the other categories while interpreting Clause-7 of the circular which provides the roster point for appointment.

The petitioners had taken part in the counselling which was conducted on 13.12.2011 and petitioner No.1 was also issued the letter of appointment dated 08.11.2012 (Annexure P-11) and the medical certificate of fitness (Annexure P-12) was also given. Thereafter, the petitioners approached this Court in **CWP No.12919 of 2012 'Amandeep Singh and others Vs. State of Punjab and others'** that their case be considered, keeping in view the decision of this Court passed in the case of **Jagjit Kaur (supra)** decided on 12.01.2011. Resultantly, the impugned order has been passed on 19.08.2013 (Annexure P-14), in view of direction issued on 23.04.2013.

As noticed above, it is not disputed that the vacancies are available in the District Amritsar against the handicapped quota. Once this Court had directed in the case of **Amandeep Singh (supra)** that the petitioners case should be considered, it would not be a valid ground for the respondents to reject the case of the petitioners only on account that the decision had been taken in principle not to appoint candidates after the decision by this Court on 03.04.2013 in the case of **Abhishek Rishi (supra)**. A similar issue as noticed above has also been decided by this Court

in the case of **Yogita (supra)** and as noticed the respondents have also issued the appointment letter dated 30.11.2015. It is further pertinent to mention that at one stage the cases were being heard together also and **Yogita's case (supra)** on an earlier occasion has been disposed of, whereas, these cases were adjourned on the said date.

Keeping in view the above, this Court is of the opinion that the petitioners are also identically situated and are also entitled for the similar relief having been fighting for their rights, since the year 2012 and at one stage even in the case of petitioner No.1 the appointment order also had been issued, but the petitioner was not permitted to join.

The objection of the State regarding the petitioners in CWP No.12820 of 2015 is that the order directing their consideration was only passed on 25.07.2013 in **CWP No.15939 of 2013 'Maninderjit and another Vs. State of Punjab and others'** (Annexure P-6) in the said petition. The same was after the decision in the case of **Abhishek Rishi (supra)** and therefore, once a decision had been taken in principle not to appoint, thereafter the petitioners should not be given the said benefit. At the first blush, the argument seems to be attractive, but however counsel for the petitioners has able to demonstrate that the petitioners had already starting agitating for their legal rights prior

to the decision of the State on 29.07.2013 and rather had served a legal notice dated 20.04.2013, which would be clear from the said order dated 25.07.2013 in the said case.

In such circumstances, this Court is of the opinion that even the petitioners are entitled for the similar relief, keeping in view the fact that vacancies are available and specially that the petitioners are physically handicapped persons. A Co-ordinate Bench of this Court in **CWP No.14125 of 2013 'Jagjit Singh Vs. State of Punjab and others'**, whereby the dispute was regarding the appointment for District Ludhiana noticed that the vacancies had been kept in the wraps by the department and the petitioner could not be blamed for the inaction of delay and right to appointment was being denied unfairly and unreasonably.

Keeping in view the above cumulative discussion, this Court is of the opinion that the petitioners deserve the same relief as in **Yogita's case (supra)**.

Resultantly, the present writ petitions are allowed. The respondents are directed to consider the case of the petitioners for appointment within a period of 2 months from the date of receipt of the certified copy of this order.

FEBRUARY 18, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE