

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP No. 21912 of 2013  
Reserved on: 17.03.2016  
Date of decision: 12.04.2016

Parminder Kaur ....Petitioner(s)

Versus

State of Punjab and others ...Respondent(s)

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

Present: Mr. Gaurav Singla, Advocate,  
for the petitioner.

Mr. Pankaj Mulwani, DAG, Punjab.

**G.S.SANDHAWALIA, J.**

The present judgment shall dispose of two writ petitions i.e. CWP Nos. 21912 and 26805 of 2013, as common questions of facts and law are involved in both the writ petitions. Facts are being taken from ***CWP No. 21912 of 2013, Parminder Kaur vs. State of Punjab and others.***

The grouse of the petitioner is that she is not being allowed to join on the post of the Math Mistress on account of the order dated 03.10.2013 (Annexure P-7 in CWP No. 26805 of 2013) being passed during the pendency of the writ petition on the basis of the directions issued by this Court earlier on 19.10.2012 (Annexure P-1). The reasons given by respondent no. 2 to reject the case of the petitioner is that she had been appointed in pursuance of the advertisement dated 23.09.2009 on 07.07.2011 and she had been posted at Government High School, Bhutal Khurd, District Sangrur. She had requested on 09.05.2012 to post her at Zirakpur/Mohali and thus, had not joined within 15 days from the date of

the issuance of the appointment letter and the cut off period was 10.08.2011 and, therefore, appointment was deemed to be cancelled. The representation for change of station had been made after a gap of 10 months and, therefore, no selected candidate could claim any particular station for the purpose of posting as a matter of right and, therefore, keeping in view the fact that service was to be done at any place within the State of Punjab, the request of the petitioner was rejected.

It is not disputed that the petitioner had approached this Court earlier in CWP No. 21380 of 2012 and it is her case that she was unmarried at the time of applying for the post on 14.11.2010. She got married with Amrinder Singh, resident of Zirakpur and the marriage card had been attached as Annexure P-3 in the earlier set of litigation. She had filed an application on 18.07.2011 to the Education Minister, Punjab that she be given place of posting near Mohali or Zirakpur and the same had been recommended by the Punjab Works Minister, Punjab at that point of time. She had subsequently made any representation on 16.08.2011 that she be adjusted at District Mohali or any station near Zirakpur as her husband was working in Chandigarh. Thereafter, she filed another reminder and representation dated 03.09.2011 by registered post. Lastly, the representation was made on 09.05.2012, which was recommended by the Finance and Planning Minister. Thereafter, there was a dispute with her husband and on 28.08.2012, she had wanted to join at the place of her initial posting wherein, there were vacant posts as per the certificate issued by the Head Master. A legal notice had also been served on 10.09.2012. A reference was also made to the case of one Sweety Garg, d/o Suresh Kumar Garg, who was lower in merit but had been allowed to join as she was at Sr.

No. 515 whereas, the petitioner figured at Sr. No. 495. Resultantly, a direction was issued on 19.10.2012 that the representation dated 09.05.2012 be decided sympathetically. It is also noticed that the petitioner had apparently not submitted the joining report within the stipulated period but she had also submitted that she be accommodated at Zirakpur and now, she was seeking direction that she was willing to join at the initial place of posting. The order dated 19.10.2012 reads as under:-

*“Counsel would refer to the appointment letter dated 07.7.2011 (Annexure P-1) whereby the petitioner had been offered appointment as Math Mistress in the Punjab Education Department and issued posting order to join at Government High School Bhutal Khurd (Sangrur).*

*Apparently the petitioner did not submit her joining report within the stipulated time of 15 days. However, within this stipulated period she had submitted a representation to be accommodated at Zirakpur. The present writ petition has been filed seeking directions to the respondent/authorities to permit her to join as she is willing to join at the initial place of posting as stipulated at Annexure P-1. Learned counsel submits that even a representation to such effect dated 09.5.2012 (Annexure P-7) already stand submitted.*

*In the light of the facts noticed here-in-above, I deem it appropriate to dispose of the present writ petition with a direction to the respondents/competent authorities to consider the request of the petitioner and to take a decision on the representation dated 09.5.2012 (Annexure P-7) sympathetically.*

*Petition disposed of.”*

Keeping in view the said directions, the impugned order dated

03.10.2013 (Annexure R-3) has been passed rejecting the case of the petitioner on the grounds noticed above.

A plea has now been taken that vide notice dated 09.01.2013 (Annexure P-2), candidates who had not joined and who had been issued appointment letters were given a last chance to join within 15 days. The petitioner had submitted a claim but had not been allotted any joining center. Reference was also made that information had been supplied to the petitioner that her name had been included in the list but the case was pending for consideration. The petitioner had made a request on 19.07.2013 (Annexure P-6) also for issuance of the appointment letter on account of the public notice issued and that a direction had also been issued by this Court on 19.10.2012.

State, in its defence, has submitted that the candidates were to join within 15 days from the issuance of the appointment letter and she had failed to submit her joining within the stipulated period and her appointment had been deemed to be cancelled. It is also admitted that public notice dated 09.01.2013 had been issued. But due to irregularities made in the selection process the Government had taken a decision to withdraw the said notice on 19.09.2013 (Annexure R-4). Resultantly, the department was unable to proceed with the said notice as the matter was under investigation with the Department of Vigilance, Punjab. The allegations regarding Sweety Garg were denied and she had been appointed on 27.07.2011 and joined on 19.08.2011.

Counsel for the petitioner has thus vehemently submitted that though the petitioner had no legal vested right as such to seek change of station and the appointment was on a consolidated salary but keeping in

view the fact that the said request had been filed within the prescribed period, the respondents were under a legal obligation at least to process and reject the same. Thereafter also, a window had been opened on 09.01.2013 in which the petitioner's case could have been considered before the withdrawal had been done by the department on 09.09.2013 (Annexure R-4) specially keeping in view the directions issued by this Court.

State, on the other hand, has defended the action and the passing of the impugned order by submitting that the petitioner was to report for duty within the stipulated period of the appointment, failing which, the appointment letter was considered to be cancelled. Reference has been made to the clause in the appointment letter, which reads thus:-

*“If the candidate accepts the aforesaid conditions, then he/she shall submit his/her joining report to the concerned District Education Officer (Secondary Education) in which he/she has been posted, within 15 days from the date of issue of the appointment letter. If she does not report for duty within the stipulated period, then the appointment letter shall be considered as cancelled.”*

There is no dispute regarding the above said defence which is taken by the State and which is legally tenable. However, the fact remains that the petitioner had within 10 days filed the representation dated 18.07.2011 on account of the fact that she had got married and it will not be possible for her to join duties at Sangrur. The factum that no decision was taken on it has not been even adverted to while passing of the impugned order even though this Court had specifically noticed all these facts while issuing directions that she was willing to join at the initial place of posting and has not submitted her joining report within the prescribed period. The

petitioner thereafter also on 16.08.2011 submitted similar representation to the respondent no. 2 with a reminder on 03.09.2011, which was followed up by the letter dated 08.05.2012 which had been finally directed to be decided by this Court on 19.10.2012. Respondent no. 2 has only referred to the last representation and made it a ground to reject the case of the petitioner by noticing that it was done after 10 months without taking into consideration the earlier requests made. The directions issued by this Court in its entirety have not been appreciated and only taking into consideration the last portion of the order, the claim has been rejected. It is not disputed that thereafter also, a decision had been taken and a public notice had been issued on 09.01.2013 (Annexure P-2) and the petitioner's name had been included in the list of persons who had not joined earlier but were to be given an opportunity to rejoin. In spite of the order being passed by this Court on 19.10.2012, the respondents let the matter again drift and in spite of fresh representation also being filed on 19.07.2013 (Annexure P-6).

Thereafter, in the meantime, a policy decision was taken on 19.09.2013 (Annexure R-4) withdrawing the public notice dated 09.01.2013. It is thus apparent that the petitioner who had been running from pillar to post from the date of the issuance of the appointment letter has been unnecessarily vexed. Respondents themselves had taken out a public notice and a direction had been issued by this Court but no action was taken for a period of almost one year. The impugned order dated 03.10.2013 fails to notice all the relevant facts and has been passed in a stereo typed manner apparently only on account of the fact that the petitioner had filed the present writ petition for the necessary relief in which counsel for the State had accepted the notice on the same day on

03.10.2013. In such circumstances, the defence of the State that there is no legal vested right for the petitioner and she had given up her right on account of the clause in the appointment letter cannot be accepted.

Reliance can also be placed upon the judgment of the judgment passed in ***CWP No.20148 of 2012, Venus Vs. State of Punjab and another*** decided on 05.10.2013. In the said case, in response to the advertisement dated 23.09.2009 the petitioner had approached this Court for the post of Vocational Mistress (Taxation Practices) on the ground that she was at Sr. No.1 in the waiting list.

The State had taken the defence of the public notice dated 09.01.2013 and 19.09.2013 to submit that the person in the wait list had no right and that decision had been taken not operate the wait list. It was, accordingly, held that candidates had been selected and offered appointments, but had chosen not to join. The post had not been consumed and, therefore, the candidates next in the order of merit was justified in staking a claim on the basis of wait list, irrespective of the fact that the matter was inquired into by the Vigilance Department. The selection process had never been scrapped and the candidates were appointed and working. The said view has been upheld by the Division Bench in LPA No. 403 of 2014 decided on 13.03.2014 by holding that it was valid expectation of the candidates on the wait list prior to the scrapping for being selected. It was noticed that candidates may become overage and the younger candidates may be more competent and may steal a march over the older ones in a subsequent selection process and resultantly, the appeal was dismissed. The relevant observations read as under:-

*“It has been contended by counsel for the State that the*

*directions of the learned Single Judge are contrary to the well settled proposition of law that mere selection does not give right to the selected candidate to be appointed and that if judgment of the learned Single Judge is sustained, it would create a wrong precedent and that the candidates in the waiting list would claim their rights to be appointed. In our view, the contention of the counsel is ill-founded. The learned Single Judge took note of the facts of the present case that the selection has been made as far back as in the year 2011, the Government had subsequently issued two notifications calling upon the selected candidates who had not joined, to come and offer themselves for appointment. It was only at a much later stage in the year 2013 that the decision was taken to scrap the waiting list. Till the scrapping of the waiting list, it was an expectation of the candidates in the waiting list that in the event the posts remained unfilled, the vacant posts would be filled up from the candidates of the waiting list.*

*In view of the aforementioned the facts and circumstances, especially when the candidate from amongst the waiting list of Backward Class Category was offered appointment, the order of the learned Single Judge that the respondent be given appointment appears to be justified and there is no reason to interfere with the said order.*

*One cannot lose sight of the fact that public appointments are very hard to come by. It often happens that a candidate selected during one selection may not be lucky the next time as well. There are a large number of imponderables. Posts may not be advertised for long. The candidate may become overage. Younger candidates may be more competent and may steal a march over the older ones. Hence, any decision not to appoint from amongst the selected candidates or those in the waiting list ought to be only for sound reasons for what is at stake may well be entire future career of the selected candidates.*

*Accordingly, this appeal is dismissed.”*

In the present case the petitioner is placed on a better footing as she was selected and an appointment letter had been issued on which she could not join and thereafter the State itself had given an opportunity to the candidates to join and a direction was also issued by this Court in the case of the petitioner.

Keeping in view the peculiar facts and circumstances of the present case, specially the fact that a direction had been issued and there was an advertisement dated 09.01.2013 upon which the respondents could have acted upon within a reasonable time, the defence taken by the State is not acceptable.

Accordingly, the writ petition is allowed. Order dated 03.10.2013 (Annexure R-3) is quashed and the respondents are directed to issue posting orders to the petitioners on the basis of her appointment letter dated 07.07.2011. It is, however, made clear that the petitioner shall not be entitled for any financial benefits or notional benefits on account of the fact that she herself was looking for posting at a different place initially. Needful be done within a period of two months from the date of certified copy of the order.

12.04.2016  
shivani

(G.S. SANDHAWALIA)  
JUDGE

