

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

Date of decision:02/08/2016

Karamjit Kaur

.....Petitioner

VS

State of Punjab and others

.....Respondents

CORAM:- HON'BLE MR.JUSTICE JASWANT SINGH

Present:- Mr.Vivek Sharma,Advocate for the petitioner.

Mr.Harkesh Manuja,Addl.AG Punjab for respondents 1 to 3

Mr.Kapil Kakkar,Advocate for impleaded respondent no.4.

Jaswant Singh,J(Oral)

The petitioner was an aspirant for selection and appointment against 43 posts of Head Mistresses against Female Scheduled Castes category(22 reserved for Mazhabi/Balmiki) and 21 for (Ramdasia and others) out of 215 (Female Category) posts advertised vide advertisement dated 21.10.2006 (P-3). The merit, as per mode of selection stated in the advertisement, was to be computed based on the percentage of marks obtained in the basic minimum prescribed academic qualification/ professional qualification. There was no separate recruitment test or interview marks. The petitioner belonging to Ramdasia category of Scheduled Caste competed against 21 posts out of 43 reserved for Female Scheduled Castes categories. Her name did not figure in the merit list keeping in view her lower merit. All the 21 posts in the said category were filled up in the year 2006. Out of 22 posts reserved for Female Scheduled Castes (Mazhabi and Balmikis) only 5 candidates were appointed and 17

2006.

Petitioner-Karamjit Kaur filed **CWP No.19127/2006** titled as **Karamjit Kaur v State of Punjab** seeking filling up of 17 unfilled vacancies in the Female Scheduled Castes (Mazhabi and Balmikis) categories from the candidates available in the category of Female Scheduled Castes (Ramdasias). The said writ petition was disposed of vide order dated 7.4.2010 by learned Division Bench of this Court in the light of stand of the Department that the process for filling up the said 17 vacancies from the categories of Female Scheduled Castes belonging to Ramdasias was under process. A direction was issued to the respondents to complete the process in a speedy manner, preferably within six months from the said date.

In compliance of the directions 16 candidates as per their merit from the Female Scheduled Castes(Ramdasias) category came to be appointed against 17 vacancies reserved for the Female Scheduled Castes (Mazhabi/Balmikis)category. Thus, as on 7.4.2010 only one post remained vacant out of 22 advertised posts in the category of Female Scheduled Castes (Mazhabi and Balmikis).

Faced with the threat of **Contempt Petition No.9321/2013** filed by the petitioner for the alleged violation of the order dated **7.4.2010** passed by this Court in the earlier writ petition filed by the petitioner, the claim of the petitioner for appointment against remaining 1 aforesaid vacancy has been declined by passing a speaking order dated **23.8.2013(P-7)**. Hence the present writ petition challenging the order **P-7** and praying for issuance of a mandamus for appointing her against the said vacancy.

Upon notice, reply was filed.

Pursuant to the interim directions counter affidavits dated 25.4.2014, 16.10.2014, 23.2.2015 and 25.5.2016 have been filed.

Learned counsel for the petitioner has argued that the petitioner is entitled to be appointed against the remaining solitary vacancy of Head Mistress in the category of Female Scheduled Castes (Mazhabi/Balmikis) in view of the petitioner pressing her right for appointment right from the year 2006 and the same cannot be denied to her on account of persons higher in merit to her, for the reason that they have slept over their rights.

Learned counsel for the State in the light of contents of affidavits filed on behalf of official respondents state that petitioner cannot claim right of appointment against the solitary vacancy on account of 18 candidates higher in merit to her in the in the Female Scheduled Castes (Ramdasias) category available for appointment.

It is next contended that neither the petitioner nor respondent no.4, who is next in merit after the candidate appointed against 17 vacancies, can claim a right for appointment in the light of select/waiting list having lapsed.

Counsel for the impleaded respondent no.4 has argued that his client namely-Mrs.Avinash is next in the merit and much above the petitioner available for appointment against the solitary 17th vacancy and therefore, has a prior right of appointment. He submits that in fact merit position of respondent no.4 entitled her to be appointed against 21st vacancy originally advertised in the Ramdasia category which was illegally denied to her.

After hearing the learned counsel for the parties and perusing the paperbook with their able assistance, no case for interference in exercise

of writ jurisdiction is made out.

It is not in dispute that there are at least 18 candidates higher in merit to the petitioner in the category of Female Scheduled Castes (Ramdasias and others) available for appointment as Head Mistress against the unfilled solitary 17th vacancy of Female Scheduled Castes (Mazhabi/Balmikis) category. It is too late for the petitioner to urge that relief of appointment be restricted to her in the light of her previous litigation as the appropriate moment for the petitioner,if at all was to press this claim at the time of disposal of her earlier writ petition no.19127/2006 on 7.4.2010. Any direction by this Court for ignoring the claims of persons higher in merit would be violative of Articles 14 and 16 of the Constitution. That apart, any right of appointment based on the selection in the year 2006 is now highly belated as the select/waiting list itself has to be accepted to have lapsed.

As regards the claim of respondent no.4, she by her own conduct is estopped from raising a claim for appointment after a delay of so many years as the select/waiting list has to be accept to have lapsed.

In view of the above, rejection of claim of the petitioner for the reasons recorded in the impugned order dated 23.8.2013 (P-7) is upheld.

Dismissed.

02.08.2016
joshi

(Jaswant Singh)
Judge

Whether speaking/ reasoned	Yes/No
Whether Reportable:	Yes/No