
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.23424 of 2013

Date of decision: 10.2.2016

Shailja Sharma

...Petitioner

Versus

The State of Punjab and others

...Respondents

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

Present: Mr. Sameer Sachdeva, Advocate for the petitioner.

Mr. Avinit Avasthi, Assistant Advocate General, Punjab
for respondents no.1 to 3.

Mr. Dheeraj Chawla, Advocate for respondent no.4.

G.S.SANDHAWALIA, J, (Oral)

The petitioner seeks quashing of order dated 10.5.2013 (Annexure P/9) whereby in view of direction issued on 25.1.2013 (Annexure P/8) passed by this Court in Civil Writ Petition No.352 of 2013, the case of the petitioner was to be considered for appointment to the post of a Primary School Teacher on account of defect in the merit list. The said consideration has been rejected on the ground that there were other candidates higher in merit and that there were only eight vacancies in general category and therefore, the case of the petitioner cannot be considered on the basis of counselling.

The petitioner in pursuance of the advertisement dated 5.9.2007 had applied and it is not disputed that while calculating the benefits of educational qualification she was only given four marks for M.A. Degree since she had passed the same in third Division as per the Detailed Marks Card dated 21.9.2000. Resultantly, her total merit was assessed at 62.655 merit points and she was kept in the waiting list as per her merit

points.

It is not disputed that there was a mistake as she had improved her result for the Post Graduate degree and Detailed Marks Card of the improvement was dated 26.6.2001 wherein she had passed her M.A. in second division had not been taken into consideration as she had failed to produce the same. Thus actually she was entitled for the benefit of six marks and increase of two marks would take her tally to 64.655 merit points. At the time of initial counselling the last female candidate who was appointed in the general category at that point of time was having 62.681 marks and therefore if her marks had been correctly calculated the petitioner would have made the cut.

In view of the litigation which ensued regarding the separate preparation of merit list of male and female candidates in **Neelam Rani Vs. State of Punjab and others** 2010(1) SCT 588 which was decided on 8.1.2010, the combined merit of male and female candidates was prepared. In the said list, it is not disputed that the petitioner's case slipped down and out of the zone of consideration which is the reason the impugned order has been passed by coming to the conclusion that there were more than 10 candidates having more merit points than the petitioner whereas there were only 8 posts lying vacant in the general category.

As noticed above it is not disputed that the merit of the petitioner has been prepared without taking into account her improvement due to her own fault. The petitioner at that point of time would fall within the zone of consideration before the litigation started while calculating the merit point of the petitioner. In a subsequent exercise, she was considered for appointment and at that point of time she was entitled for the benefit of improved result.

Counsel for the State has vehemently submitted that public notice dated 29.7.2013 has already been issued vide which process of recruitment of Teaching Fellows which was initiated in year 2007 has been closed down and therefore, the petitioner is not entitled on the basis of counselling held on 13.12.2011 since there were candidates higher in merit than the petitioner.

The said argument cannot be accepted. It is not disputed that the petitioner was already agitating for her rights prior to the decision taken by the State Government and filed Civil Writ Petition No.352 of 2013 before this Court. This Court had directed for reconsideration of her case in pursuance of which the impugned order has been passed. In such circumstances, closing down of the recruitment process would not prejudice the petitioner as her rights remained intact due to pendency of litigation.

The argument that there are candidates higher in merit and have prior right of appointment than the petitioner is also without any basis. As per pleadings in the written statement itself, it has been specifically stated that no offer letter or appointment letter was issued to any candidate due to pending litigation in the second round. It has further been admitted that eight posts are lying vacant in general category. In such circumstances, candidates who have not approached this Court for their rights in pursuance of advertisement dated 5.9.2007 and recruitment process in the year 2011 would any ways be not entitled for the appointment especially in view of the decision of the Government dated 29.7.2013 whereby recruitment process has been closed down.

Resultantly, the present writ petition is allowed. The impugned order dated 10.5.2013 (Annexure P/9) is quashed. A writ of mandamus is

issued to respondent no.2 to consider the case of the petitioner for appointment to the post of ETT/JBT Teacher on the strength of her merit. It is further clarified that the petitioner will be entitled for all notional benefits from the date similarly situated employees were issued appointment letters in order to avoid unnecessary litigation.

February 10, 2015
Pka

(G.S.SANDHAWALIA)
Judge