

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

**CWP No. 23948 of 2013
Date of decision : 14.07.2016**

Savita Rani

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. D.S. Patwalia, Sr. Advocate with
Mr. Sahil Sablok, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl.A.G. Haryana

Mr. Rajbir Sehrawat, Advocate
for respondent No. 3 to 5

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI , J.

The present petition is for issuance of writ in the nature of certiorari quashing order dated 03.10.2013 (P-21) vide which the permission which was earlier denied on merits, has been awarded arbitrarily for filling up of vacant single cadre post of Junior Librarian by direct recruitment and further prayer is for quashing the advertisement dated 20.10.2013 (P-22).

In the year 1914, the Jat Education Society (herein after to be referred as 'the Society') was established and registered with the

noble cause of spreading education in rural parts of the State of Haryana. As per Rules of the Society, any person belonging to Jat Community can become life member of the Society after depositing the requisite fees and thus, attains the voting right for election of the working committee consisting of President, Vice President, General Secretary, Secretary and Treasurer. Chottu Ram Polytechnic, Rohtak-respondent No. 3 is run by respondent No. 4-Society and is affiliated by the Haryana State Board of Technical Education, which has been constituted by the Government of Haryana vide Haryana act No. 19 of 2008, which receive the assent of Governor of Haryana on 18.04.2008 and the Act came into force after the same was notified on 06.05.2008 by the State Government.

Petitioner was initially appointed as Librarian on regular basis with Chhotu Ram Memorial Public School run by Society and worked from the period running from 25.02.2008 to 04.07.2009, as per copy of appointment letter dated 22.02.2008 along with experience certificate (P-1 collectively). The post of Librarian is a post carrying higher responsibility than the duties of Library Assistant, which in fact is a feeder cadre post for the promotion to the post of Junior Librarian.

Petitioner was then appointed as Library Assistant in Chhotu Ram Polytechnic Rohtak which is also run and managed by the Society, after following the due process of selection, vide appointment

letter dated 30.07.2009.

The post of Library Assistant is a feeder cadre post and the post of Junior Librarian is a single cadre post and as per the Haryana Technical Education Department, Technical Field Staff (Group C) Service Rules, 1998 (for short 'Rules 1998') (P-3), this post is to be filled by 50% by promotion amongst the Library Assistant and 50% by direct recruitment. The post of Librarian was re-designated as Junior Librarian.

The Principal of Chhotu Ram Polytechnic vide letter dated 27.11.2009 (P-4) sought permission to fill up various posts by direct recruitment including the post of Junior Librarian. The permission was forwarded by the Financial Commissioner and the Principal Secretary to Government of Haryana, DTE (P-5).

The petitioner immediately approached the respondent-authorities by filing a detailed representation dated 02.11.2010 to fill up the post of Junior Librarian by promotion and not through direct recruitment (P-6). Thereafter, Principal of Chhotu Ram Polytechnic vide letter dated 04.11.2010 (P-7) applied for cancellation of permission earlier sought for filling up the vacancy of Jr. Librarian by direct recruitment. However, again, the Principal wrote a letter dated 22.02.2011 (P-8) to respondent No. 2 that the post in question be filled by direct recruitment and not by promotion.

Subsequently, an advertisement was issued on 24.02.2011 to fill up the post of Junior Librarian by direct recruitment (P-9). Thereafter, respondent No. 1 vide order dated 06.05.2011 ordered for cancellation of administrative approval for filling up the vacant post of Junior Librarian by direct recruitment and further suggested that the petitioner be adjusted against the vacant post of Jr. Librarian in her own pay scale till the time she becomes eligible for regular promotion (P-10). However, vide letter dated 26.09.2011 Principal of chhotu Ram Polytechnic wrote to respondent No. 2 seeking once again approval for filling up the post in question by direct recruitment (P-11), which was rejected vide letter dated 17.11.2011 (P-12) and direction was given to follow order dated 06.05.2011. The request was again made to fill up the post by direct recruitment, vide letters dated 31.10.2012, 21.11.2012 and 05.11.2012 just to get someone selected of their own choice. But the Management was directed to follow the decision taken by the State Government, vide letter dated 02.01.2013 (P-16) and 30.01.2013 (P-17). However, vide letter dated 07.02.2013 the Management started the same rant for getting the permission to file the post in question by direct recruitment (P-18). Respondent No. 2 once again replied to Management and this time the Principal of 3Polytechnic was conveyed in clear terms that the post being single cadre cannot be allowed to be filled up on direct recruitment basis,

vide letter dated 04.03.2013 (P-19). However, Management once again vide letter dated 18.09.2013 sought permission to fill the post in question by direct recruitment (P-20). Thereafter, the State Government gave the permission to fill the post in question by direct recruitment, vide order dated 03.10.2013 (P-21) and subsequently impugned advertisement dated 20.10.2013 was issued (P-22)

On notice, a written statement has been filed on behalf of respondent Nos. 1 and 2 taking a stand that petitioner is working in a private Educational Institution, receiving grant in aid qua aided courses from the respondents. 75% of the non-recurring cost and 95% of the recurring cost are borne by the answering respondent in the shape of grant in aid as per provisions contained in the bye laws notified by the State Government and respective Management of Aided Polytechnic in the State of Haryana. Reference has been made to notification dated 01.02.2006 whereby bye laws have been made. The extract of the bye laws is reproduced as under:-

Rule 11 “all decisions of Board of Management of the Polytechnic will be made valid, if made by majority of votes of the members present and voting. The chairman will have a casting vote in case of tie on a point. However, in case of financial matters promotions, appointments, major punishment, dismissal, termination, compulsory retirement, CP, EB etc, the approval of the Government/Department is needed.”

Reference has been then made to Rule 17 of Rules 1998 which reads as under:-

Rule 17 (Power of Relaxation)

“Where the Government is of the opinion that it is necessary or expedient to do so, it may by order for reasons to be recorded in writing relax any of the provisions of these rules with respect to any class or category of persons.”

The permission to fill the post by way of direct recruitment is being justified stating that to fill up the post from Library Assistant by way of promotion, Library Assistant should have 05 years of experience and the petitioner was appointed vide appointment letter dated 30.07.2009 and she will become eligible on 01.08.2014. The claim of the petitioner that her experience in private school run under the control of respondent No. 4 be counted was rightly rejected as it cannot be counted as a part of experience on feeder post as required in the Service Rule of 1998 of the Department. Since the post was lying vacant since 2010, respondent No. 3 and 5 requested time and again sought permission to fill up various posts by direct recruitment by referring to order dated 02.07.2012 passed in CWP No. 19788 of 2008, as per which if there is no eligible candidate in the feeder cadre post, the single cadre post cannot be kept vacant.

The State Government had granted the approval to

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respondent Nos. 3 to 5 to fill up the post of 50 lecturer by way of direct recruitment along with other various posts vide letter dated 17.12.2009 . On request made by respondent No. 4, the State Government vide letter dated 06.05.2011 informed that this post be filled by promotion as per provisions contained in the service rules and withdrew the approval given vide letter dated 17.12.2009. In this letter further it was written that Savita Rani be adjusted against the vacant post of Junior Librarian in her own pay scale till such time she becomes eligible for regular promotion to the post of Junior Librarian and the resultant vacancy of Library Assistant be filled up as per Rules. The request was again made to fill up the post by direct recruitment, vide letters dated 21.11.2012, 07.02.2013 and 18.09.2013 to fill up this post by way of direct recruitment, in view of the judgment passed by this Court in CWP No. 19788 of 2012 decided on 02.07.2012 and finally it was ordered that the post be filled by way of direct recruitment since there was no eligible person for promotion. This decision was taken keeping in view that the petitioner who was lacking in experience and was thus trying to keep the post vacant till she became eligible for promotion. She had been appointed as Library Assistant on 13.07.2009 and the post of Junior Librarian was lying vacant since 01.05.2010 and the petitioner at that time was not even having experience of 01 year.

The initial permission was granted to fill up this post of by way of

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direct recruitment on 17.12.2009. However, subsequently this permission was withdrawn on 06.05.2011. Even on this date, the petitioner was not eligible for promotion to the post of Junior Librarian. Finally on the repeated request of respondent No. 3, the permission was granted to fill up the post by way of direct recruitment.

In a separate written statement filed by respondent Nos. 3 to 5, the stand has been taken that in the absence of such provision in the rule it is purely the discretion of the competent authority to decide the mode of recruitment. The petitioner has relied upon a circular dated 14.03.2008 (P-23) to say that first vacancy has to be filled by promotion. However, this circular is not the statutory instructions under Article 309 of the Constitution of India and is only the guidance and is not binding upon the answering respondents. It is only an administrative order and not part of the rules. This instruction/circular has been interpreted by this Court in CWP No. 19788 of 2008 decided on 02.07.2012 (R-3/1) wherein it has been held that even as per this circular the single post would be required to be filled up by promotion in the first instance only if there is some eligible promotion in the channel of promotion. Thus, since on the date when the management decided to fill-up the post, the petitioner was not eligible, therefore, the post has rightly been advertised for being filled by way of direct recruitment through open competition. The process of selection has

already been completed, however, the result of the same has not been finalized, in view of the interim order dated 30.10.2013 passed by this Court.

The judgment (R-3/1) had been referred in the context to fill up the post of Head of the department, Electronics and Communication Engineering. In the facts of the present case, the petitioner was appointed as Library Assistant on 13.07.2009 and as per 1998 Rules, she would get 05 years experience as Library Assistant and will become eligible for promotion on 01.08.2014 as per experience certificate (P-1). But the experience of the petitioner cannot be counted for promotion to the post of Junior Librarian as per Service Rules. The petitioner was only adjusted to the post of Jr. Librarian in her own pay scale till the time she becomes eligible for regular promotion (P-10).

The question for consideration before this Court would be whether the post can be kept vacant till the petitioner attains eligibility. This question has been answered by this Court in CWP No. 19788 of 2012, decided on 02.07.2012 wherein it has been clarified that as per 1998 Rules, the total experience of 05 year be considered for promotion and the experience should be of a regular employee and not contractual employee. Since the petitioner was not having this experience, she has rightly not been considered for promotion.

The writ petition is dismissed accordingly.

(RITU BAHRI)
JUDGE

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