

CWP No.26708 of 2015
CWP No.27348 of 2015
CWP No.27286 of 2015

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.26708 of 2015

Asha ... Petitioner

Versus

State of Haryana and others ... Respondents

2. CWP No.27348 of 2015

Sushila Bai Yadav ... Petitioner

Versus

State of Haryana and others ... Respondents

3. CWP No.27286 of 2015

Sudha Bundela ... Petitioner

Versus

State of Haryana and others ... Respondents

Date of Decision: 14.09.2016

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Balbir Kumar Saini, Advocate and
Mr. Ram Niwas Sharma, Advocate,
for the petitioner in CWP No.26708 of 2015.

Mr. Ankur Lal, Advocate,
for the petitioner(s) in CWP Nos.27348 and 27286 of 2015.

Mr. Harish Rathee, Sr. DAG, Haryana and
Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.

1. This order will dispose of CWP No.26708 of 2015 titled *Asha v. State of Haryana and others*, CWP No.27348 of 2015 titled *Sushila Bai Yadav v. State of Haryana and others* & CWP No.27286 of 2015 titled *Sudha Bundela v. State of Haryana and others* as common issues are involved which can conveniently be decided in one order. For the sake of convenience, the facts are extracted from CWP No.26708 of 2015.

2. Five posts of Lecturer in Hindi (School Cadre) were advertised reserving them for the Backward Class candidates under public employment notice dated August 14, 2014. The selection process led to the names of the petitioners being recommended by the Haryana Staff Selection Commission, Panchkula, not in the backward class category but against general category vacancies because their cut off marks were higher than the lowest in the general category. The petitioners were offered appointment and they joined service. These appointments were withdrawn vide order dated December 14, 2015 on the ground that seven posts of general category could not be filled up in compliance of orders passed by the High Court. However, the Backward Class candidates and Scheduled Caste candidates lower in merit were issued appointment letters against five posts reserved for the Backward Class category and 11 for Scheduled Castes and they are continuing in service.

3. The position obtaining is that the Backward Class candidates in CWP Nos.26708 and 27348 of 2015 and Scheduled Caste category candidate in CWP No.27286 of 2015 have lost their jobs while persons

lower in merit in their respective categories have obtained appointment against reserve posts and are working as Lecturers in Hindi. The appointments and posting orders were issued on November 26, 2015 and December 01, 2015 but were withdrawn all of a sudden by the Director Secondary Education, Haryana on December 14, 2015 on the ground that the Haryana Staff Selection Commission had intimated vide letter dated November 24, 2015 to keep seven posts unfilled, of candidates who are lower in merit in the list of recommendations dated September 28, 2015 as belonged to the general category.

4. Initially, in view of the Commission's letter, appointment of candidates at Sr. No.23, 24 and 26 to 30 were held up. Then the Commission clarified on December 02, 2015 to keep seven posts of general category unfilled i.e. from Merit No.27 to 33. The department had already issued appointment letters to reserve category candidates falling at Sr. Nos.31 to 33 and the three petitioners before this Court in their respective petitions. These seven posts have been kept reserved in compliance of interim orders passed by this Court on September 28, 2015, October 08, 2015 and October 13, 2015 in CWP Nos.20103, 20058, 21557 and 21563 of 2015 respectively filed by the unsuccessful candidates challenging the selection.

5. The petitioners have approached this Court complaining that they are toppers in their reserve categories but shown selected in general category being higher in merit and by the action of the respondents resulting from the misapplication of the interim orders they have lost their

appointments, while persons lower in merit in their own category have been appointed and are working. This they say is a travesty of justice. The petitioners have been punished on account of their higher merit. The primary issue which falls for consideration in the cases involving challenge to the selection are for rectification of the merit list due to wrong answer keys to some questions put in the selection test and consequential award of grace marks, other than the 8 grace marks already granted by the Commission for admitted wrong answer keys. That litigation is still pending.

6. Is there any justification in withdrawing the appointment of the petitioners who were higher in merit than the general category candidates and were, therefore, offered appointment in the general category leaving vacancies to be filled up by persons lower in merit in the Scheduled Caste and Backward Class category? If some posts of Lecturer in Hindi are not to be filled up due to the interim orders and the pending litigation as aforesaid then the axe should not have fallen on the present three petitioners. The tailenders in their reserved categories should have been shown the door to make way for the petitioners who had superior right to appointment. There is no doubt that they had a preferential right to be appointed in the Backward Class category etc. than those who were lower in merit to them but those persons have been retained in service causing grave injustice to the petitioners.

7. The challenge in the four pending writ petitions is by unsuccessful candidates and those interim orders have been placed on

record of the present cases, the main case being CWP No.20103 of 2015, *Arun Kumar and another v. State of Haryana and others*.

8. It may be noticed that in CWP No.26708 of 2015, in the final result of the selection, the petitioner secured 159 marks and being female the cut off marks in the general category for female was 159. The cut off marks for BC candidates was 138. As against 138 the petitioner had secured 159 marks which is a huge difference.

9. In CWP No.27348 of 2015 the position is the same. The petitioner belonged to the Backward Class category and secured the minimum cut off marks 138 but was selected in the general category.

10. In CWP No.27286 of 2015 the cut off marks for the SC candidates was 146 while the petitioner had secured 159 marks and as such the selection was made against general category post. The result of the selection was announced in all the categories on July 29, 2015. Therefore, the gaps are wide enough to secure to the three petitioner's appointment even if the four writ petitions succeed on the issue of grace marks. The petitioners could not have been disturbed by a misreading of the interim orders and the law and, therefore, the action of the Government in arbitrarily withdrawing the appointments of the petitioners is in gross misapplication and misreading of the interim orders passed by the High Court directing the respondents to keep in total 11 vacancies unfilled to await the outcome of the petitions.

11. I have heard the counsel for the parties and have perused the record made available in the three petitions.

12. On the above noticed premises, and in the considered opinion of the Court, the three writ petitions deserve to succeed on the short ground that persons admittedly lower in merit in the respective categories of the petitioners have been appointed and the petitioners who are higher in merit not only in their own reserved categories but are superior in merit than some of the general category candidates appointed to service. The appointment of the petitioners deserve to be restored to prevent hostile and invidious discrimination. Merit cannot suffer on the altar of interim orders passed in the pending litigation. Such an insidious result could not even have been imagined or present in mind when the interim orders were passed restraining the respondents from filling cumulatively 11 posts unfilled to await the final result of those cases. The petitioner have amply demonstrated that even if the four pending petitions succeed even than their rights will remain unaffected.

13. For the foregoing reasons, these petitions are allowed. The impugned orders dated December 14, 2015 are invalidated by writ of certiorari as they are held illegal, arbitrary and discriminatory which would secure to the petitioners revival of their appointment as Lecturers in Hindi (School Cadre) in the Secondary Education Department, Haryana. The petitioners would stand reinstated to service by revival of their appointment orders which were wrongly withdrawn. They will get their seniority from their batch and as per their merit position. They would also be entitled to all consequential benefits including salary for the intervening on the principle of no fault on the part of the petitioners and the grievous injury being

CWP No.26708 of 2015
CWP No.27348 of 2015
CWP No.27286 of 2015

-7-

caused by the respondent department.

14. However, as a matter of abundant caution their restored appointments will remain subject to the result of CWP Nos.20103, 20058, 21557 and 21563 of 2015.

15. The petitioners will take costs of litigation assessed at ₹ 10,000/- each.

(RAJIV NARAIN RAINA)
JUDGE

14.09.2016
manju

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>