

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

**CWP No.5196 of 2016
Date of decision: 29.3.2016**

Navjot Kaur ... Petitioner

Versus

State of Punjab & ors. ... Respondents

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

Present: Mrs. Ritam Aggarwal, Advocate,
for the petitioner.

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

RAJIV NARAIN RAINA, J.

1. The petitioner works as Social Studies Mistresses at Government Girls Senior Secondary School in Lehragaga, Distt. Sangrur. In the instant petition the petitioner seeks appointment against an advertisement published on October 1, 2006 calling applications from eligible candidates including from the sports category for filling up the posts of Head Masters/Head Mistresses in the Department of Education, Punjab by direct recruitment. Conditions of service of Lecturers in school cadre are governed by the Punjab State Education Class-III (School Cadre) Service Rules, 1978.

2. The petitioner is a sports person who had applied in 2006 under the sports category. She asserts she has a Grade A & Grade B sports gradation certificates secured as a Hockey player while representing the Kurukshetra University, Kurukshetra, Haryana at the inter-varsity level in the year 1986-87 and 1987-88. She is thus eligible for appointment in the

sports category. After undergoing the selection process she was called by the Selection Committee through a public notice issued to all candidate in November 13, 2007 for a second process initiated for scrutiny of original documents. The petitioner's claim was rejected the scrutiny committee on the ground that the Sports Gradation Certificate does not fit the criteria prescribed as it was earned in the neighbouring State of Haryana.

3. Subject to what is pointed out later, the petitioner slept over her perceived grievance and her rights from 2007/2008 till 2015 till she woke up to approach this Court in CWP No.7452 of 2015 which petition was disposed of on April 23, 2015 as withdrawn with liberty to pursue the matter with the second respondent before whom she was at liberty to press her representation dated March 25, 2015. The instant petition has been filed praying for issuance of a writ in the nature of certiorari quashing the advertisement dated October 1, 2006 (Annex P-2) to the extent it imposes offending condition No.4 which is stated to be wrong and illegal. Condition 4 deals with sports quota and defines eligibility. Even when she has earned her sports credentials in Haryana her case could not have been rejected at the time of scrutiny of documents.

4. Right to appointment for sports category persons is not indefeasible just as other appointment are not and in the present case right is governed by the the provisions of the Punjab Recruitment of Sportsmen Rules, 1988 (for short 'the Rules'), which grants the special reservation to them for services under the Punjab State enabled by Article 15 of the Constitution. Then all one needs to do to determine the rights is to read the definition of “sportsman” with the eyes of the employer which

term Rule 2 (d) defines and reads:-

"2(d) "Sportsman" means a person of either sex who fulfills the following conditions, namely :-

(a) In the case of recruitment to a reserved vacancy in Class I or Class II posts :-

(i) that he belongs to the State of Punjab; and

(ii) that he has won national championship in team or individual events while representing the State of Punjab in such sports events as have been conducted by such respective national federations as are affiliated to the Indian Olympic Association;

Or

(i) that he has won national championship in team or individual events which are organized by the Indian Olympic Association;

Or

(ii) that he has won first, second or third position in team or individual events and/or he has won Gold or Silver or Bronze Medals at International Sports Meets, conducted by International Federations affiliated to the International Olympic Committee or by the International Olympic Committee itself.

(b) In the case of recruitment to reserved vacancy in Class III posts :-

(i) that he belongs to the State of Punjab; and

(ii) that he has won first, second or third position in team or individual events while representing the State of Punjab in a State Level Championship in any of the discipline affiliated to the Punjab Olympic Association organized by the State Level Federation.

(c) In the case of recruitment to a reserved vacancy in Class-IV post :-

(i) that he belongs to the State of Punjab; and

(ii) that he has attained the first, second and third position in a District Level Association affiliated to the State Level Association in the respective discipline."

5. The petitioner's claim in Class III recruitment has been

rejected by the competent authority vide order dated October 16, 2015 and her representation has been declined for very good reasons. Her sports certificate has been rejected on the ground that it has been issued by the Sports Department, Haryana. Therefore, she is not entitled for reservation in the sports quota in in the State of Punjab. According to para 4(1) of Sports Gradation Policy, 1997, sports certificates are issued to those sports persons of the State of Punjab who are domicile of/belong to Punjab and have represented the State of Punjab as per the criteria mentioned in the Rules. Plain reading of Rule 2 (d) (b) (i) & (ii) of the Rules removes the base of the petitioner's case.

6. Neither is a recruitment process initiated and concluded in the years 2006-2007 open to criticism at the hands of the petitioner after about a decade nor are the grounds of rejection of candidature perverse or irrational and to the contrary are within the four corners of the rules. The officer of the State had no option except to abide by the rules. Moreover, the State of Punjab can not only restrict entry of candidates in sports category to its services who belong to Punjab and have represented it in the fields of sports enumerated and at the levels prescribed but can exclude other sportsmen belonging to other States when providing a concession or reservation for sportsmen in the manner provided based on reasonable classifications in Article 15 of the Constitution.

7. Be that as it may, it is sad that the petitioner has not disclosed in the petition that she had filed CWP No.789 of 2008 making similar prayers of appointment as Head Mistresses and for a direction to the respondents to accept the sports certificate issued by the Sports

Department, Haryana praying to Court that action ousting her from competition and merit be declared illegal, arbitrary and against the principles of natural justice that petition was disposed of on January 18, 2008 with a direction to the 3rd respondent therein to take final decision by passing a speaking order on the representation. This litigation has been suppressed in the petition and this Court would not make an fishing inquiry as to the after math of the directions in the aforesaid writ petition except to say that suppression of material fact amounts to contempt of court and can lead to summary dismissal of the petition. I refrain from going the way and would dismiss this petition on the grounds of delay, laches and bar of limitation, quite apart from the fact that Rule 2 (d) (b) (ii) excludes consideration altogether, if not Rule 2 (d) (b) (i) which may be suspect on domicile/belonging to Punjab in view of the Full Bench decision in Abhishek Rishi v. State of Punjab, 2013 (3) SCT 1. However, since I am not inclined to interfere for the several reasons recorded, including the prescription in Rule 2 (d) (b) (ii), an opinion is not expressed on the vires of Rule 2 (d) (b) (i) even though in this half baked petition there is neither specific reference to rules nor is there a challenge to the provisions of the 1988 rules and the petition is confined in its challenge to Condition No 4 of the Advertisement which obviously speaks the language of the rules. The Court assumes that the petitioner found no fruit from the litigation in 2008 after a casual order was passed to decide her representation when the issue could have been nipped in the bud and stemmed the rot.

8. Moreover, the speaking order; decided under Court

directions issued in 2015, which is challenged in this petition does not create a fresh cause of action or excuse legal objections such a delay, laches as explained by the Supreme Court in State of Uttaranchal & anr. v. Shiv Charan Singh Bhandari & ors., 2013 (12) SCC 179 or on the proposition of law on bar of limitation vis-à-vis writ jurisdiction with reference to civil suits, in the Constitution Bench decision of the Supreme Court in State of Madhya Pradesh v. Bhailal Bhai, AIR 1964 SC 1006 guiding the High Court that where a suit has become time barred normally it would be prudent for it to refuse writ on the same cause of action. In the present case limitations have long expired an the claim is stale. It appears for this reason Condition 4 was challenged to try and overcome the insuperable hurdle which is repelled.

9. The petitioner qualifies as a fence-sitter alighting to try one's luck on the horses. There is a huge social responsibility in litigation to be shared by both the Bench and the Bar as partners in Court to rescue justice and strike down injustice wherever and whenever found; the forensic sword ever out of the scabbard, but never injuring. Justice Krishna Iyer had lamented long years ago; “Law is no trade, briefs no merchandise”

10. No merit. Dismissed.

(RAJIV NARAIN RAINA)
JUDGE

29.3.2016
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