

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-3144 to 3146-LPA-2015 in/and

LPA No.1467 of 2015 (O&M)

Date of Decision: 24.05.2016

State of Punjab & Anr.

... Appellants

VS.

Sarabdeep Kaur

... Respondent

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE A.B. CHAUDHARI

Present: Mr. DS Sobti, Addl. AG Punjab

Mr. VD Sharma, Advocate and

Mr. Sukhdev Kamboj, Advocate for the respondent

SURYA KANT, J. (Oral)

(1) This Letters Patent Appeal assails the order dated 16.12.2014 whereby learned Single Judge has directed the appellant-State to appoint the respondent on the post of Headmistress (Female) General “*with all consequential benefits including right to receive salary from 31st July, 2012 the date of filing of the present petition*” besides costs of ₹25000/-.

(2) The facts may be noticed briefly. The respondent applied for the post of Headmistress (General) in response to Advertisement No.1 of 2006. A total 215 posts were advertised for General category and applying the ratio of 50:50 amongst the male and female, 107 female candidates were to be given appointment. The respondent was initially at Sr.No.106 in the merit list but after reconsideration of the candidature of some candidates, the list was subsequently revised and as a result thereof, her merit position descended to Sr.No.109 i.e. beyond the advertised posts.

(3) It appears that three candidates higher in merit did not join. The respondent thus put up her claim for appointment. But finding no positive response, she approached this Court and pursuant to the directions issued on

12.01.2012 in CWP No.19055 of 2009, her case for appointment was considered and rejected on 11/22.05.2012 (P19) on the ground that she cannot claim appointment as a matter of right being at No.1 in the waiting list.

(4) Aggrieved by the said order, the respondent filed the instant writ petition wherein the learned Single Judge has rejected the above-stated reasoning observing that once three candidates higher in merit did not join, the merit position of respondent automatically stood upgraded and she being within the advertised posts was entitled to be appointed.

(5) Learned State counsel at the outset points out that the respondent has since been appointed and even the cost amount of ₹25000/- has also been paid to her. He submits that the appointment of the respondent was not withheld for any *mala fide* or extraneous reasons rather there were debatable issues. In these circumstances, the learned Single Judge ought not have granted consequential benefits more-so when the respondent did not serve as Headmistress during the period from July 2012 till she was offered appointment. He further submits that no candidate lower in merit was appointed, therefore, also there was no justification to grant consequential benefits.

(6) On the other hand, learned counsel for the respondent argues that the respondent should not be made to suffer due to the inaction of the authorities as no sooner three candidates higher in merit did not join, it was imperative upon them to call upon the next candidate in order of merit for appointment.

(7) Having given our thoughtful consideration to the rival submissions, we are satisfied that it is not a fit case where consequential benefits particularly salary from 31st July, 2012 ought to have been awarded in

favour of respondent. The fact of the matter is that due to revision of merit list, the respondent was pushed down from main selection list to waiting list. She became entitled to be considered for appointment due to fortuitous circumstance of non-joining of three candidates higher in merit. The view formed by the competent authority that the respondent was claiming appointment on the basis that she was at No.1 in the waiting list may not be legally sound but it cannot be termed totally flimsy or baseless. Taking into consideration the totality of the circumstances especially the fact that (i) the respondent has not served on the post during the period she has been litigating and (ii) no candidate lower in merit has been appointed, we are of the considered view that the order of learned Single Judge to the extent of awarding salary for the aforesaid period is liable to be modified.

(8) We thus allow this appeal in part; modify the order of learned Single Judge to the extent of awarding salary to the respondent for the period from 31st July, 2012 till she was offered appointment. The respondent, however, shall be entitled to fixation of notional pay from the date the last candidate above her in merit was offered appointment. She will also be placed in seniority immediate below such last candidate for all intents and purposes. A formal order to this effect shall be passed within four months from the date of receipt of a certified copy of this order.

(9) Ordered accordingly.

(Surya Kant)
Judge

24.05.2016
vishal shonkar

(A.B. Chaudhari)
Judge