

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

CWP No. 12526 of 2000 (O&M)
Date of decision: March 3, 2017

Jatinder Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Gaurav Sharma, Advocate, for
Mr. Amit Chopra, Advocate,
for the petitioner.

Mr. Pankaj Mulwani, DAG, Punjab.

JAISHREE THAKUR, J.

1. The instant writ petition has been filed under article 226 and 227 of the Constitution of India for the issuance of an appropriate writ, direction or order quashing Memo dated 28.04.2000 (Annexure P/9) by which the claim of the petitioner for allowing him to continue in service as Vocational Master on regular basis in pursuance of appointment letter dated 14.07.1994 has been rejected.

2. In brief, an advertisement dated 19.8.1992 was issued for filling up 2461 posts of Lecturers/Masters/Teachers in various subjects, out of which 5 post were for Vocational Master (Computer Science). The petitioner applied thereto in the Vocational Master (Computer Science) Category, and candidates were called for interview by the Departmental Selection Committee. In all, 7 names were recommended by the

Departmental Selection Committee for giving them appointment as Vocational Master/Mistress in Computer Science, in which 4 names were recommended from General Category (Male), one candidate was recommended from Scheduled Caste category (Male) and 2 names were recommended for appointment as Vocational Mistress from the General Category (Female). In the merit list, the name of the petitioner was reflected at serial No. 3 in the General Category (Male). The petitioner was appointed as Vocational Master in Computer Science on a regular basis on 14.07.1994.

3. The entire selection process was challenged in writ petition number **CWP No. 5985 of 1994 titled as Yashwinder Rana and others Versus State of Punjab and others**, as the State had offered appointment to 6885 candidates as against 2461 posts advertised. All those persons who were appointed on regular basis in excess of the number of posts advertised were converted from regular to ad hoc basis and they were appointed on 89 day basis. The candidates, who were selected over and above the advertised vacancies and appointed on 89 days basis, challenged the judgment rendered in **Yashwinder Rana's case (supra)** by SLP before the Supreme Court which appeal came to be dismissed. In compliance of the orders passed by the Supreme Court, the services of candidates over and above the advertised posts were terminated as was in the case of the petitioner. Thereafter, in order to provide relief and to remove hardship to all those Teachers/Masters/Mistresses, who were regularly selected and appointed but whose services were terminated on the ground that their appointment was beyond the posts advertised, the State of Punjab issued an Ordinance by the Notification dated 08.06.1999 called the Punjab Recruitment of Teachers

Ordinance 1999 wherein it was decided to give regular appointment to those Teachers/Masters/Mistresses who were regularly selected pursuant to the advertisement dated 19.08.1992 but whose services were subsequently terminated. The State of Punjab also issued a memo by vide which 291 posts were sanctioned for adjustment of such Lecturers/Masters/Teachers. The petitioner was allowed to rejoin his services on 21.09.1999.

4. In the stream of Vocational Master (Computer Science) as against 5 posts, 7 persons were offered appointment, but first and second candidates from the General Category, namely Raman Kumar and Harjinder Singh did not join service. The petitioner who was No. 3 on the merit list prepared and who had been offered a regular appointment, came to be treated as an ad hoc employee on account of the fact that the Department had made excess appointments over and above the sanctioned strength. He was allowed to work on adhoc basis and eventually his services were terminated. On the basis of an Ordinance issued in 1999 he was appointed again made regular w.e.f. 21.9.1999. As two persons had not joined the post, the petitioner represented to the Department that his service should be counted from the date he had initially been given regular appointment that is 14.07.1994. The claim of the petitioner was rejected by the impugned order dated 28.4. 2000 which has been challenged in the instant writ petition.

5. Mr. Gaurav Sharma, learned counsel appearing on behalf of the petitioner argues that the petitioner came to be regularly appointed in the year 1994 after facing regular selection and if two persons did not join on the said posts, the petitioner being next on the merit list should have been offered appointment against the unfilled post.

6. Per contra, Mr. Pankaj Mulwani, learned counsel appearing on behalf of the respondents argues that in first instance the selection of the petitioner was over and above the number of posts advertised and, therefore, could not be appointed on regular basis. His services were terminated, as per law laid down by this Court and affirmed by the Apex Court in CWP No. 5985 of 1994 and SLP 23952 of 1996 respectively.

7. I have heard the counsel for the parties and with their assistance have gone through the record of the case.

8. The sole question that arises for adjudication is, whether the petitioner who had faced a regular process of selection and had been placed at No. 3 on the merit list would be entitled to be appointed against the unfilled vacant post. Undisputedly, two posts of Vocational Masters (Computer Science) were to be filled up from the General Category and the petitioner's name was at merit No. 3. Candidates at serial No. 1 and 2 of the merit list did not join and, therefore, being meritorious and next senior most on the list, had a right to be considered for appointment against the post which had been advertised. It is well settled that once the post is not filled up and another meritorious candidate in the merit list is available, then the vacancy has to be filled up by appointing the next person from the merit list. Here the petitioner was one of the 7 candidates selected and only five had to be retained in order of merit, 2 out of General Category (Male), 2 out of General Category (Female), and one out of Scheduled Caste category. When two out of general category male did not join the petitioner being next in merit should have been asked at that point itself to join which was not done.

9. A similar view was taken by the learned Single Judge in

Gajraj Singh versus State of Haryana and others in Civil Writ Petition No. 13215 of 2009 decided on 5.5.2010, which has been affirmed by the Division Bench in **LPA No. 716 of 2011 titled State of Haryana and others Versus Gajraj Singh decided on 20.4.2011.**

10. In view of the fact that the selected candidates did not join on post and the petitioner being the next meritorious candidate should have be retained in service. Therefore, this writ petition is allowed with the direction to consider the petitioner to be in service from 14.07.1994 with notional benefits.

March 3, 2017
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No