

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

CWP No. 465 of 2009 (O&M)
Date of decision: 25.4.2017

Pushpinder Kaur

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Madhav Pokhrel, Advocate,
for the petitioner.

Ms. Lavanya Paul, AAG, Punjab.

JAISHREE THAKUR, J. (Oral)

1. The instant writ petition has been filed seeking appointment on the post of Science Mistress having the necessary qualifications.

2. The respondent on 29.8.2007 invited applications from the eligible candidates for recruitment of Educational Services Providers upto 31.3.2011 on a consolidated pay of Rs. 5400/-. As per the advertisement, 5 marks were to be given to the candidates who have passed both middle and matriculation examination from the rural schools and 1 additional mark was to be given for each year of experience gained. The petitioner applied for appointment on the post of Science Mistress in the general category and as per her own calculation she obtained 72.687% marks. However, in the merit list published, the name of the petitioner was not reflected. She represented against denial of her appointment by contending that the persons having less

marks than her have been offered appointment. The candidature of the petitioner was rejected on account of the fact that the advertisement spelt out that a candidate shall be B.Sc. from a recognized University with any three subjects, namely Physics, Chemistry, Mathematics, Botany, Zoology and Computer Science/Electronics in all the three years of graduation with B.Ed.

3. Admittedly, the petitioner had only two subjects in her graduation course, namely Chemistry and Botany and on this account her candidature was rejected.

4. Mr. Madhav Pokhrel, learned counsel appearing on behalf of the petitioner, contends that the qualifications that was prescribed in the advertisement was dehors the statutory rules under the Punjab State Education Class-III (School Cadre) Service (1st Amendment) 1995, under which the qualifications, as stipulated is B.Sc. with B.T. or B.Ed. Senior Basic Trained with any two of the four subjects, namely, Physics, Chemistry, Botany and Zoology and, therefore, having the necessary qualifications of two subjects, the candidature of the petitioner could not have been rejected. It is further pointed out that a similar issue came up for hearing in **CWP No. 11229 of 2008 titled Tarvinder Kaur Versus State of Punjab and others decided on 22.10.2013**, where in a similarly situated candidate whose candidature had been rejected having only two subjects in B.Sc. approached this Court and the writ petition was allowed. It was brought to the notice of this Court that additional subjects mentioned in the advertisement has been held to be not valid. While allowing the writ petition, learned Single Judge relied upon Division Bench judgment in

State of Punjab and others Versus Priya Mahajan and others in LPA

No.1988 of 2011, decided on 16.01.2013, wherein it had been held that additional qualification dehors the rules cannot be sustained. So much so even a review application being RA No. 456 of 2014 was filed CWP No. 11229 of 2008 and the same was dismissed.

5. Learned counsel appearing on behalf of the State is not in a position to dispute the fact that the judgment rendered in **Tarvinder Kaur's case (supra)** has dealt with the issue wherein it has been held that the additional subjects, as mentioned in the advertisement over and above, as specified in the statutory rules, would not be sustainable.

6. I have gone through the judgments relied upon and find that it is fully applicable to the facts of the instant case.

7. At this stage, learned counsel for the State, on instructions from Ms. Rupali Tandon, Senior Assistant, DPI (School) informs that no post is lying vacant and all the posts were filled in the year 2008 itself. Be that as it may, no fault can be attributed who has approached this Court well in time and denial of appointment to her was certainly not justified. Moreover, the Department, after dismissal of the review application in **Tarvinder Kaur's case (supra)** has recently given appointment to her.

8. For the reasons afore-stated, the instant writ petition is allowed. The respondents are directed to issue an appointment letter to the petitioner as a Science Mistress in the general category. If no post is available, then a supernumerary post shall be created. She will be deemed to be appointed from the date when the persons of her batch were provided with the letter of appointment with notional benefits.

However, there shall be no arrears of pay for the period during the time when she was not working. The appointment letter shall be issued within a period of 4 weeks from the date of receipt of copy of this order.

25.4.2017
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No