

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No.10558 of 2014(O&M)
Date of Decision: 28.07.2017

Isha Sharma

--Petitioner

Versus

State of Punjab and another

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Kapil Kakkar, Advocate for the petitioner.

Ms. Monica Chhibber Sharma, Sr. D.A.G., Punjab.

TEJINDER SINGH DHINDSA.J

Challenge in the instant petition is to the order dated 8.12.2013 (Annexure P-7), passed by the Director Public Instructions (S.E.), Punjab and in terms of which the claim of the petitioner seeking appointment as Math Mistress under the General Category, has been declined.

Brief facts would require notice.

Petitioner, who belongs to the General Category, had applied for the post of Math Mistress in response to an advertisement dated 23.9.2009, issued by the Punjab State School Education Department. A total of 3638 posts were advertised of Math Mistresses. Upon scrutiny of the application form submitted by the petitioner, she was found eligible and issued the requisite registration number so as to participate in the process of selection. On the basis of the marks obtained by the petitioner in her educational and professional qualifications and in the light of the teaching experience possessed, the petitioner was assigned 62.5761% marks. In the combined merit list declared and put in public domain, name of the petitioner figured at Sr. No.1053. The first counseling exercise was

conducted in the first week of July, 2010, wherein candidates securing merit position up to Sr. No.960 were called. Clearly, the petitioner was not eligible to participate in such counseling process. The respondent department, thereafter, issued a public notice calling the candidates for the second counseling which was fixed for 8.7.2011. Petitioner could not attend such process of counseling for the reason that she had given birth to a male child on 8.7.2011 itself. Petitioner having submitted representation to the respondent authorities to consider her claim for appointment strictly as per merit secured against the post of Math Mistress (General Category) and which was still lying vacant and having not evoked any favorable response, filed CWP No.5693 of 2012 by placing reliance upon a birth certificate issued by the Health & Family Welfare Department, State of Punjab reflecting the birth of a male child on 8.7.2011 i.e. the relevant date the second counseling had been held.

This Court taking an overview of the matter, allowed CWP No.5693 of 2012 in the following terms:-

“Broad facts of the case are not in dispute. The merit position of the petition at Serial No. 1053 having secured 62.5761% marks stands admitted. From the documents placed on record, it is clear that the petitioner had not appeared in the process of counseling fixed for 08.07.2011 for genuine reasons. The specific averments contained in the writ petition as regards a representation, having been preferred to the respondent-Department for considering her to be appointed to the post in question, have met with an evasive reply. That apart, the categoric assertions made by the petitioner i.e. post of Math Mistress (General Category) are still lying vacant, have not met with any denial.

Accordingly, in the peculiar facts and circumstances of the case and without the same being cited as a precedent, the writ petition is disposed of with a direction to the respondent-authorities to consider the petitioner for appointment to the post of Math Mistress (General Category)

against any vacant post that may be available. Such consideration for appointment shall be made strictly as per merit position and only, if any candidate, who secured lower merit than the petitioner has been appointed to the post. Still further, it shall be obligatory for the petitioner to produce all the requisite/ original certificates that she otherwise was liable to produce at the stage of counseling. It is further more clarified that such right for appointment would not be entail displacing any other candidate, who might had already been appointed in pursuance to the counseling process that was held on 08.07.2011.

At this stage, learned State counsel would apprise the Court that some vigilance enquiry stands initiated with regard to the entire selection process that was initiated in the light of advertisement dated 23.09.2009 i.e. in response to which, the petitioner herself had applied. Be that as it may, such reason and basis would not be held against the petitioner to deny her consideration for appointment against a vacant post in the light of her merit position secured. Even if the entire selection process is under a cloud and the petitioner secures appointment in pursuance to the direction issued by this Court, she would obviously face the consequences of any such enquiry that may have been initiated.

Writ petition allowed in the aforesaid terms.

Sd/-

*(TEJINDER SINGH DHINDSA)
JUDGE”*

It is in purported compliance of the directions issued by this Court in the judgement dated 30.8.2013 in CWP No.5693 of 2012 that the petitioner was given opportunity to participate in a counseling exercise conducted on 14.11.2013. However, her claim for appointment as Math Mistress in the General Category stands rejected vide impugned order dated 8.12.2013 (Annexure P-7).

Perusal of the impugned order would reveal that the merit of the petitioner stands re-assessed and now stands determined at 60.576% as opposed to 62.5761% earlier in point of time. Reasoning has been

furnished in the impugned order that the merit of the last candidate selected in the General Category in the subject of Math is 62.4483% and as such, the appointment letter cannot be issued to the petitioner.

In the joint written statement filed on behalf of respondents no.1 and 2 further elaboration has been provided to justify the determination of the final merit of the petitioner to be 60.576%. The tabulation giving the break-up of marks assigned to the petitioner has been furnished in paragraph 3 of the preliminary submissions contained in the written statement and which is reproduced hereunder:-

40% of graduation marks	40% of B.Ed marks	Marks in lieu of Higher Qualification	Marks in lieu of Experience	Total
26.75	27.8260	6.00	Nil	60.576

The tabulation reveals that the petitioner has been assigned 'Nil' marks in lieu of experience.

In the written statement itself the respondent department has taken a stand that the petitioner had produced certificates to claim weightage towards experience for the period 2.7.2007 to 20.3.2008 (8 months, 18 days) in the light of a certificate dated 22.11.2011 in the Singh Sabha Kanya Pathshala (Senior Secondary), Abohar as also a certificate dated 14.8.2013 for the period 24.3.2008 to 31.5.2008 (2 months, 7 days), 14.7.2008 to 31.3.2009 (8 months, 17 days) and 1.4.2009 to 14.8.2013 (4 years, 4 months and 13 days) from Assumption Convent School, Abohar but no weightage has been granted for such experience on two counts i.e. the certificate dated 22.11.2011 was issued after the last date of submission of application forms stipulated in the advertisement i.e. 9.10.2009 and the experience certificate from Assumption Convent School, Abohar also having been issued after the last date of submission of application forms and

the certificate having not been countersigned by the District Education Officer.

The validity of the decision of the respondent authorities in having rejected the claim of the petitioner seeking appointment to the post of Math Mistress (General Category) vide impugned order dated 8.12.2013 (Annexure P-7) would have to be examined against the backdrop of the relevant terms and conditions contained in the advertisement dated 23.9.2009 (Annexure P-1) in terms of which the recruitment process had been initiated.

The details of the various posts were mentioned in the advertisement and a total of 3638 posts of Masters/Mistresses had been advertised. Such posts in relation to the subject of Mathematics were 1275. The basic qualification prescribed was M.A or M.Sc. or M.com. with B.T or B.Ed. Selection procedure was also defined in the advertisement and in the following terms:

SELECTION PROCEDURE:

The recruitment in the concerned category will be made only on the basis of merit by calculating the percentage of marks obtained in the prescribed basic and professional qualification and the higher qualification and experience countersigned by concerned District Education Officer (S.E.) or by competent authority, if admissible. The criteria for calculating the merit would be as under:-

1(A) Max. Marks as per the percentage of educational and professional qualification: 80

(B) For non teaching (Sr. Laboratory Attendant and Library Restorer) Cadre max. marks as per the percentage of total marks: 80

2. MARKS FOR HIGHER QUALIFICATION:

For Lecturers xxx xxx xxx

For Master Cadre

- | | | |
|----|-------------------------|----|
| 1. | M.A./M.Sc./M.Com./M.Ed. | 06 |
| 2. | With M.Phil | 08 |
| 3. | With Ph.D. | 10 |

For Vocational Masters/Mistresses

xxx xxx xxx

3. **Max. marks 10 are admissible by calculating 1 mark for each year experience after obtaining the basic qualification. No mark will be given for the experience less than 1 year.** **10**

For non teaching cadre, the experience will be counted only of the concerned post.

Total Marks **100”**

The advertisement also contained certain general conditions applicable to the prospective candidates. Clauses 4 and 15 of the general conditions would be relevant to the issue at hand and are reproduced hereunder:-

“4. The candidates will ensure that they fulfill all the prescribed qualifications and conditions on the last date of submission of the applications. In case before or after the appointment, it is found that they don't fulfill any qualification/condition or the information given is found false or incorrect, then their right of candidature will be cancelled and criminal proceedings will be initiated separately under the rules.

15. The experience for the teaching posts will be considered only of the Government, non Government Aided, recognized and affiliated schools. The experience certificate should be countersigned by the District Education Officer (Secondary) of the concerned District.”

As per advertisement, maximum 10 marks were admissible towards weightage for experience by assigning one mark for each year of experience after obtaining the basic qualification.

The last date for submission of applications from eligible candidates was stipulated up to 9.10.2009.

A conjoint reading of clause 4 and clause 15 of the general conditions contained in the advertisement makes it clear that the candidates were to fulfill all the prescribed qualifications and conditions on the last date of submission of the application forms.

For the purpose of grant of weightage towards experience the last date for submission of application forms i.e. 9.10.2009 would be relevant inasmuch as the experience for which a candidate was to claim weightage had to be prior to such date. Clauses 4 and 15 of the general conditions contained in the advertisement do not spell out a mandate that the certificate towards experience should also have been issued prior to the last date of submission of application forms. It is relevant for the candidates to have acquired eligibility as also experience to claim weightage prior to the last date of application forms i.e. 9.10.2009. Petitioner is claiming weightage for experience on the basis of certificates issued on 22.11.2011 and 14.8.2013 but for a period prior to the last date for submission of application forms. The requisite weightage of 2 marks, as such, could not have been denied to her only on the basis that the certificate placed reliance upon, had been issued after the last date for submission of application forms. In the absence of a specific stipulation in the advertisement as regards the experience certificate to have also been issued prior to the last date of submission of application forms, the objection raised by the respondent authorities cannot sustain.

The stand taken by the respondent authorities that the certificate dated 14.8.2013 claiming experience from 24.3.2008 onwards

and till the last date of submission of application forms i.e. 9.10.2009 from Assumption Convent School, Abohar also cannot be taken into account as such certificate is not countersigned by the District Education Officer is misconceived.

In the relevant clause under the advertisement detailing the selection procedure it was specifically mentioned that the merit would be calculated on the basis of percentage of marks obtained in the prescribed basic/professional/higher qualifications and experience countersigned by the concerned District Education Officer or by **Competent Authority**, if, admissible.

Clause 15 of the general conditions contained in the advertisement stipulated that experience for the teaching post will be considered only of the govt., non-govt. Aided, recognized and affiliated schools and that the experience certificate should be countersigned by the District Education Officer (Secondary) of the concerned district.

Placed on record at Annexure P-9 is the certificate issued by the Principal of Assumption Convent School, Abohar. It has not been disputed that such school is affiliated to the Council for the Indian School Certificate Examinations. Such certificate has been countersigned by the Assistant Secretary, Council for the India School Certificate Examinations, New Delhi.

It is not the case made out on behalf of the State that the school in question i.e. Assumption Convent School, Abhohar was not a recognized and affiliated school. It is not even the case of the State for such certificate has not been countersigned by the competent authority as per requirement under the clause laying down the **Selection Procedure** under the

advertisement.

The objection raised by the respondent authorities as regards the experience certificate not having been countersigned by the District Education Officer is utterly frivolous. The requirement of countersigning by the concerned District Education Officer or by the competent authority is only to ensure the authenticity and genuineness of the teaching experience reflected in the certificate and relied upon by a candidate to claim weightage. Clearly, with regard to a school which is affiliated to the Council for the Indian School Certificate Examinations, the exercise of verification would lie within the competence of an official of the Council of the Indian School Certificate Examinations, New Delhi. The certificate produced by the petitioner has been countersigned by the Assistant Secretary of such council. To ignore such certificate, the respondent authorities had to conclude that the Assistant Secretary of the Council is not the competent authority as mentioned in the relevant clause of the advertisement defining selection procedure. That is not the view taken. The action of the respondent authorities is illegal, arbitrary and capricious.

Furthermore, the petitioner has also made out a case of having been discriminated against. In the writ petition it has been specifically averred that another candidate namely Vandana Mittal (Registration No.20090795) has been granted weightage towards experience certificate, even though, the experience certificate had not been countersigned by the District Education Officer. By way of response in the written statement, it has been conceded that one mark towards experience had been awarded to Vandana Mittal as her experience certificate had been countersigned by the Regional Manager, Punjab School Education Board, Patiala. It is difficult

to fathom as to on what basis the respondent authorities are treating the Assistant Secretary, Council for the Indian School Certificate Examinations, New Delhi to be not the competent authority to countersign an experience certificate as opposed to the Regional Manager, Punjab School Education Board, Patiala. The respondent authorities are clearly adopting different yardsticks in the matter of grant of weightage towards experience while computing merit in a common selection process. Such action would have to be held to be violative of Articles 14 and 16 of the Constitution of India. The petitioner is, accordingly, held entitled to the weightage of 2 marks towards experience and her merit to be determined as 62.576% instead of 60.576 and as had been calculated by the respondents earlier in point of time.

Concededly, the last selected candidate in the General Category in the subject of Mathematics has secured 62.4483% marks. Petitioner by adding 2 marks towards experience would secure 62.576% marks and would be at a merit position higher than the last selected candidate.

On a specific query having been raised during the course of arguments, learned State counsel has conceded that 75 posts in the category to which the petitioner belongs are still lying vacant in relation to the advertised posts as per advertisement dated 23.9.2009.

In the light of the discussion herein above, the present writ petition is allowed. Impugned order dated 8.12.2013 (Annexure P-7) is quashed. Respondent authorities are directed to appoint the petitioner as Math Mistress (General Category). Such appointment would relate back to the date when the last selected candidate in the General Category had been appointed. Petitioner would be entitled to the consequential benefits of

continuity in service, seniority etc. but would not be paid the actual arrears of salary for the period in question.

Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

28.07.2017

lucky

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No