

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

CWP No.11445 of 2014

Reserved on : August 30, 2017

Decided on: September 07, 2017

Jaspreet Kaur

....Petitioner

vs.

State of Punjab and others

....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.

1. Petitioner assails the order dated 24.04.2014 (Annexure P-9), passed by the Director Public Instructions (Secondary Education) Punjab, whereby, her claim for appointment to the post of Punjabi Mistress under the Backward Class Category, has been rejected.

2. Briefly noticed that the Punjab State Government, Department of School Education, issued an advertisement dated 23.09.2009, inviting applications for recruitment to various posts of School Teachers. In terms of such advertisement, 1200 posts of Punjabi Masters/Mistress were also advertised. Petitioner claiming herself to be eligible in terms of the advertisement and belonging

to the Backward Class Category, applied for the post of Punjabi Mistress in the General Category as also Backward Class Category. Having participated in the process of Selection, a provisional merit list pertaining to the Backward Class Category was put in public domain and wherein, name of the petitioner figured at Sr. No.100. Petitioner was shown to have secured 61.9166% marks.

3. Apparently, petitioner was not considered for appointment on the ground that the Backward Class Category Certificate produced by her, was dated 12.10.2009 i.e. issued after the closing date stipulated in the advertisement i.e. 09.10.2009.

4. Petitioner at that stage, preferred CWP No.23973 of 2012, raising a grievance that insofar as, her claim for the post under the Backward Class Category is concerned, the Backward Class Category Certificate that had been relied upon by the petitioner and submitted first in point of time, was dated 12.10.2009, whereas, in terms of the advertisement, the stipulation was that such Backward Class Category Certificate was to be issued within one year from the last date of submission of application forms and accordingly, at the time of counselling i.e. on 05.01.2010, she had produced another certificate which was within the stipulated time frame as per general conditions under the advertisement. CWP No.23973 of 2012 was disposed of by this Court in the light of order dated 05.12.2012 (Annexure P-8) with a direction to the competent authority to consider the claim of the

petitioner and to take a decision upon the representation dated 17.08.2012 that the petitioner had already submitted.

5. It is in purported compliance of the directions issued by this Court that the impugned order dated 24.04.2014 (Annexure P-9) has been passed by the Director Public Instructions (Secondary Education) Punjab.

6. Perusal of the impugned order would reveal that the candidature of the petitioner for appointment to the post of Punjabi Mistress has been considered against the Backward Class Category, but, in such exercise of consideration, merit list has been revised inasmuch as the seven marks awarded earlier for experience, have been reduced and her merit now stands determined at 54.9167%. The last selected candidate for Backward Class Category is shown to have secured 59.4939% marks. The petitioner has been denied seven marks for experience on the ground that the experience certificates submitted by her, were not counter signed by the concerned District Education Officer.

7. In the written statement filed on behalf of respondents No.1 & 2, a tabulation has been furnished with regard to three experience certificates produced by the petitioner at the time of scrutiny of her original documents and the same is extracted hereinbelow:---

3. That it is respectfully submitted that the petitioner had produced three experience certificates

at the time of scrutiny of her original documents. The detail of which is as under:-

<i>Sr. No.</i>	<i>Name of the Institution</i>	<i>Period</i>	<i>Remarks</i>
<i>1.</i>	<i>B.G.S.U.S. Sr. Sec. School, Khandur Sahib</i>	<i>04.07.2002 to 24.12.2002</i>	<i>Not counter signed by the District Education Officer</i>
<i>2.</i>	<i>Sikh National School, Amritsar</i>	<i>06.01.2003 to 06.08.2007</i>	<i>Not counter signed by the District Education Officer</i>
<i>3.</i>	<i>G.N.K.S. Sr. Sec. School, Fatehpur Rajputan, Amritsar</i>	<i>07.08.2007 to 03.10.2009</i>	<i>Not counter signed by the District Education Officer</i>

8. Counsel for the parties have been heard at length.
9. Validity of the decision of the respondent-authorities in having rejected the claim of the petitioner seeking an appointment to the post of Punjabi Mistress (Backward Class Category) vide impugned order dated 24.04.2014 (Annexure P-9) would have to be examined against the backdrop of the relevant terms and conditions contained in the advertisement dated 23.09.2009 (Annexure P-1), in terms of which, the recruitment process had been initiated.
10. The details of the various posts were mentioned in the advertisement and a total of 3638 posts of Masters/Mistress had been advertised. Such posts in relation to subject of Punjabi, were 1200. 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 counter-signed 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: 10
FOR LECTURERS

- | | |
|-----------|----|
| 1. M.Phil | 06 |
| 2. Ph.d. | 10 |

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

- | | |
|--------------------------------|----|
| 1. First Higher Qualification | 05 |
| 2. Second Higher Qualification | 10 |

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

11. The advertisement also contained certain general

conditions applicable to the prospective candidates. Clause 15 of the general conditions would be relevant to the issue at hand and is reproduced here under:-

“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 counter signed by the District Education Officer (Secondary) of the concerned District.”

12. As per advertisement, maximum ten 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 09.10.2009.

13. The stand taken by the State is that the certificates produced by the petitioner claiming experience over a period in excess of seven years and as reflected in the tabulation hereinabove, have not been counter signed by the District Education Officer and as such, she is not entitled for weightage of seven marks.

14. 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, counter signed 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 government, non-government aided, recognized and affiliated schools and that the experience certificates should be counter signed by the District Education Officer (Secondary Education) of the concerned District.

15. There would be a requirement to read the relevant Clause under the “**Selection Procedure**” as also Clause 15 under the general conditions in a conjoint manner. It is not the case made out on behalf of the State that the schools in question mentioned in the tabulation hereinabove were not recognized/affiliated schools. The experience certificates furnished by the petitioner at the stage of counselling, have been placed on record and stand appended at Annexure P-9 (Colly). All the three certificates stand counter signed by the Manager, Field Office, Punjab School Education Board, Amritsar and it has been certified that the School in question is affiliated to the Punjab School Education Board, S.A.S. Nagar. It is not even the case of the State that such certificates have not been counter signed by the “**Competent Authority**” as per requirement under the Clause laying down, the “**Selection Procedure**” under the advertisement.

16. The objection raised by the respondent-authorities as regards the experience certificates not having been counter

signed by the District Education Officer is utterly frivolous. The requirement of counter signing 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 certificates and relied upon by a candidate to claim weightage. Clearly, with regard to schools that are affiliated with the Punjab School Education Board, the exercise of verification and counter signing, would lie within the competence of an official of the Punjab School Education Board itself. The certificates produced and relied upon by the petitioner have concededly been counter signed by the Manager, Field Office, Punjab School Education Board, Amritsar. To ignore such certificates, the respondent-authorities had to conclude that the Manager, Field Office of the Punjab School Education Board, Amritsar was 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 clearly arbitrary and capricious.

17. Furthermore, the petitioner has also made out a case of having been discriminated against. During the course of hearing, Mr. Kapil Kakkar, learned counsel representing the petitioner, has asserted that two candidates namely Karamjyoti D/o Anoop Singh and Maninder Kaur D/o Jaswant Singh, have been appointed as Punjabi Mistresses and while calculating their final

merit, they were given weightage towards experience on the basis of certificates that had been counter signed by the same very authority i.e. the Manager, Field Office, Punjab School Education Board, Amritsar.

18. Learned State counsel upon instructions from Shri Chander Parkash, Senior Assistant D.P.I. (Schools Punjab), would concede that both the afore noticed candidates i.e. Karamjyoti and Maninder Kaur have been granted weightage of four marks and one mark respectively on the basis of experience certificates dated 19.10.2009 and 15.10.2009 and which was counter signed not by the District Education Officer (Secondary Education) of the concerned District, but, by the concerned official of the Punjab School Education Board. Clearly, the respondent authorities are 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 & 16 of the Constitution of India. The petitioner is accordingly held entitled to the weightage of seven marks towards experience and as had been granted first in point of time and her merit is determined at 61.916% instead of 54.916%. Concededly, the last selected candidate to the post of Punjabi Mistress under the Backward Class Category has secured 59.4939% marks. Petitioner by adding seven marks, towards experience, would secure 61.9166% marks and as such, would be add a merit position

higher than the last selected candidate.

19. On a specific query having been raised during the course of arguments, learned State counsel has conceded that posts in the category to which the petitioner belongs, are lying vacant in relation to advertised posts as per advertisement dated 23.09.2009.

20. There is one more aspect that would require to be dealt with. In the written statement filed on behalf of the State, there is a reference to general condition No.4, contained in the advertisement to the effect that a candidate must fulfil all the qualifications and conditions on the last date of submission of applications i.e. 09.10.2009. A corrigendum dated 15.10.2009 is stated to have been issued, wherein, it was clarified that the Backward Class Category certificate of the candidate must be within one year of the last date of submission of an application. An objection has been raised on the candidature of the petitioner in the written statement that Backward Class Certificate produced by the petitioner at the time of scrutiny of her documents was issued in favour of the petitioner on 12.10.2009 by the competent Authority and since, such certificate was issued after the last date of submission of the application forms, her claim cannot be considered in Backward Class Category.

21. Such stand and objection taken in the written statement is wholly untenable.

22. In Paragraph 9 of the writ petition, it was categorically averred that even though initially, the petitioner had submitted the Backward Class Category certificate, issued on 12.10.2009 but, at the time of counselling, she had also produced a certificate issued on 20.03.2009 and which fulfilled the time frame requirement stipulated in advertisement/corrigendum i.e. Backward Class Certificate of the candidate to be within one year of the last date of submission of application forms i.e. 09.10.2009. These averments have not met with any denial in the written statement.

23. Even otherwise, such objection does not find a mention in the impugned order dated 24.04.2014 (Annexure P-9). The objection is sought to be raised only in the written statement. In law, it would not be open for the respondent-authorities to raise such an objection. It is by now well settled that the validity of an order has to be examined in the light of the reasons assigned therein and cannot be supplemented by a fresh basis in the shape of filing of subsequent affidavits or otherwise. In taking such view, this Court would draw support from the judgment of the Hon'ble Supreme Court referred in **Mohinder Singh Gill & another Vs. The Chief Election Commissioner, New Delhi & others** reported as **AIR 1978 S.C. 851** and wherein, it was observed in the following terms:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be

judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In Gordhandas Bhanji (AIR 1952 SC 16) (at P. 18):

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

24. In the light of the discussion above, the present writ petition is allowed. Impugned order dated 24.04.2014 (Annexure P-9) is set aside. Respondent-authorities are directed to appoint the petitioner as Punjabi Mistress under the Backward Class Category. Such appointment would relate back to the date when the last selected candidate in the Backward Class 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.

25. Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

07.09.2017
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Whether speaking/reasoned : *Yes/No*
Whether reportable *:* *Yes/No*