

CWP-23137-2012

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-23137-2012

Date of Decision: May 19, 2017

Sandeep Singh & another

...Petitioners

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sanjeev Pandit, Advocate
for the petitioners.

Mr. Harkesh Manuja, Additional Advocate General, Punjab.

Mr. Vipin Mahajan, Advocate
for respondents No.3 and 4.

AUGUSTINE GEORGE MASIH, J. (Oral):

Petitioners have approached this Court praying for quashing of the order dated 01.11.2012 (Annexure P-8), vide which, the representation submitted by them in pursuance to the order passed by this Court in an earlier writ petition filed by them i.e. CWP No.18112 of 2012, titled as 'Sandeep Singh & another Vs. State of Punjab & others', whereby, they have asserted that as per the public notice/advertisement calling for the applications, the counseling schedule was to be uploaded on the official website of the Department but has not been done so, because of which, the petitioners could not participate in the counseling although, they were higher in merit than the selected candidates and therefore, selection was not sustainable, has been rejected.

It is the contention of the learned counsel for the petitioners that as per the public notice/advertisement, whereby, online applications were called for and in the online application format, there was clause 8, according to which, all updates would be available on the website of the Sarva Sikhsha Abhiyan Authority, Punjab, for the scheduled period of counseling and other aspects. In pursuance to the said clause, petitioners had been checking the website for finding out the schedule of the counseling after they had applied online but nothing was uploaded on the website of the concerned authority resulting in the petitioners not participating in the counseling on the date which was fixed for their category i.e. 29.06.2012. It was asserted that since there had been no intimation sent to the petitioners especially as per the requirement in the online application format, the petitioners were deprived of an opportunity to be selected and appointed to the post of Laboratory Attendant. He, therefore, contends that non-selection of the petitioners despite they being higher in merit than the selected candidates, cannot sustain and the petitioners deserve to be appointed on the said post as they had prior right to be appointed than the persons who were lower in merit than the petitioners.

On the other hand, learned counsel for the State submits that the assertion of the counsel for the petitioners and the averments made in the writ petition with regard to the fact that the dates of counseling or the counseling schedule had not been uploaded on the website, is totally false. Reference has been made by the counsel to para 2 of the preliminary submissions and para 7 on merit of the reply. The preliminary submission

No.2 reads as follows:-

“That in this regard it is submitted that the schedule regarding counseling was uploaded on the website as well as in the various newspapers on 23.06.2012 (Annexure R-1). The counseling for General category candidates was held on 28.06.2012. The counseling for Scheduled Caste category and Backward Class category candidates was to be held on 29.06.2012 and for rest of the categories was to be held on 30.06.2012. The petitioners were supposed to appear in counseling on 29.06.2012 but did not appear for the counseling. Therefore, the petitioners were absentee candidates and were not considered for these posts. That it is further submitted that appointment process is over and appointment letters have already been issued to all selected candidates. Hence, the claim of the petitioners is not maintainable.”

On the basis of the above, counsel for the State contends that the writ petition of the petitioners is without merit and deserves to be dismissed. It has also been pointed out that there is no denial to the positive averment made by the respondents in the written statement.

Counsel for the petitioners asserts that nothing has been placed on record which would indicate that actually the schedule was uploaded on the website as has been stated in the written statement and therefore, the said assertion cannot be accepted.

I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the records of the case.

The only question which is required to be considered and decided is whether the schedule for counseling had been uploaded on the website or not as this is the only ground on which the petitioners assert that they had been deprived of an opportunity to participate in the selection process?

The positive assertion as has been made by the respondents in the written statement, which says that the schedule regarding counseling was uploaded on the website as well as in the various news-papers on 23.06.2012. Thereafter, the details of the schedule of the counseling has also been mentioned in para 2 of the preliminary submissions as also in para 7 on merits in the written statement. There is no rebuttal to the assertion made by the State in the reply. Merely because no document has been placed on record to show that the schedule was uploaded, cannot be a ground for disbelieving the positive statement given by a party especially when it is not rebutted in any form.

There being no merit in the present writ petition, the same, therefore, stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

May 19, 2017
Harish

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No