

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

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CWP No.22206 of 2013 (O&M)

Date of Decision: 25.10.2017

Harjinder Kaur

....Petitioner

vs.

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. B.K. Bagri, Advocate for
Mr. Anil Rathee, Advocate
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

TEJINDER SINGH DHINDSA, J. (Oral)

Even though a written request for adjournment has been circulated on the ground that Mr. Anil Rathee, Advocate, is unwell, yet, Mr. B.K. Bagri, Advocate has put in appearance on behalf of the petitioner and states that he has the authority to advance submissions.

The instant writ petition was preferred seeking directions to the respondent/Punjab State Education Department to appoint the petitioner as Assistant Librarian under the Handicapped Backward Class Category in pursuance to the recruitment process initiated vide advertisement dated 23.09.2009 (Annexure P-14).

On the last date of hearing i.e. 13.07.2017 the following order was passed by this Court:-

Petitioner suffers from a 65% disability element being hearing impaired. She clearly would be covered under the expression of a disabled person under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (herein after to be referred as the 1995 Act).

State of Punjab, School Education Department issued advertisement dated 23.9.2009, whereby 316 posts of Assistant Librarians were advertised. Essential qualifications prescribed were Matric with Diploma in Library Science (one year course).

It is not in dispute that 3% vacancies in direct recruitment in Class-I, II, III and IV service stand reserved for physically handicapped persons. The break up of such reservation is as follows:-

- | | |
|---|-----------|
| <i>(i) Blindness or low vision</i> | <i>1%</i> |
| <i>(ii) Hearing impaired</i> | <i>1%</i> |
| <i>(iii) Locomotor disability or cerebral palsy</i> | <i>1%</i> |

In terms of the reservation policy, 3 vacancies out of the 316 posts of Assistant Librarian would fall to the share of persons with disabilities (hearing impaired).

Grievance of the petitioner raised in the instant petition is that inspite of possessing essential qualifications and having participated in the process of selection she has not been selected and appointed to the post of Assistant Librarian. Case of the petitioner is that none of the 3

vacancies falling in the 1% reservation quota for physically disabled (hearing impaired) have been filled up.

The denial of appointment to the petitioner is sought to be justified by the State Govt. on the premise that at the stage of submission of her application form online she had mentioned the relevant category to be Sr. No.126 which was for handicapped persons (locomotor disability). It is contended that at the stage of counselling the petitioner had produced a certificate showing herself to be hearing impaired instead and in the light of having furnished wrong information and having applied against a category to which she did not belong she could not have been selected and appointed to the post in question.

In my considered view, this is a matter which requires reconsideration at the hands of the Additional Chief Secretary, Department of School Education, State of Punjab.

Concededly, petitioner had applied against the category (Sr. No.126) to which she did not belong. Be that as it may, petitioner is a physically disabled person i.e. suffering from a 65% disability element (hearing impaired). The requisite certificate to substantiate such disability had been produced by the petitioner at the stage of counselling. The 3 vacancies reserved against the 1% quota for physically handicapped (hearing impaired) have not been filled up.

The short issue that arises is as to whether filling up of the wrong category of physically disabled in the peculiar facts and circumstances

of the present case would be fatal so as to deny to the petitioner the right of consideration for selection and appointment against the backdrop of vacancies falling to her quota having remained unfilled. Even if the petitioner, who otherwise is eligible were to be accommodated, it would cause no prejudice to any other selected candidate.

It is in the light of such backdrop that the Additional Chief Secretary, Department of School Education, State of Punjab is being called upon to have a re-look at the matter as regards the claim of the petitioner as set out in the petition. Such directions are also being passed keeping in view the laudable object as envisaged under the 1995 Act.

A final view in the matter be taken and conveyed to the Court, within a period of two months from today.

List for further consideration on 25.10.2017.

A copy of this order be furnished to learned State counsel under the signatures of Bench Secretary.

In compliance of the order dated 13.07.2017, passed by this Court, learned State counsel has filed in Court today an additional affidavit dated 25.10.2017 of the Director, Public Instructions (Secondary Education) Punjab along with order dated 23.10.2017 appended as Annexure R-1. The same is taken on record and a complete copy has been furnished to counsel opposite.

Perusal of the additional affidavit filed in Court today, reveals that the matter has been re-considered and a decision has been taken to offer appointment to the petitioner on the post of Assistant Librarian on contractual basis on a fixed remuneration for a period of 3 ½ years and thereafter, her services would be liable to be regularized in case her work and conduct is found to be satisfactory.

Mr. Avinit Avasthi, AAG, Punjab, further apprises the Court that in pursuance to the order dated 23.10.2017 at Annexure R-1, even an appointment letter dated 24.10.2017 has been issued.

In the light of such fair decision taken by the appropriate State Government, nothing survives in the instant writ petition and the same is disposed of as infructuous.

(TEJINDER SINGH DHINDSA)
JUDGE

25.10.2017
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***Whether speaking/reasoned* : Yes**
***Whether reportable* : No**