

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

102

CWP No.1913 of 2015 (O&M)

Date of Decision: August 16, 2017

Deepa

....Petitioner

vs.

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Ms. Alka Chatrath, Advocate
for the petitioner.

Mr. T.P.S. Chawla, DAG, Punjab.

TEJINDER SINGH DHINDSA, J. (Oral)

Petitioner has invoked the extra ordinary writ jurisdiction of this Court under Article 226 of the Constitution of India, assailing the action of the respondent - School Education Department, State of Punjab, in having denied to her appointment to the post of Hindi Mistress.

Facts in brief may be noticed.

The Department of School Education, State of Punjab, issued advertisement dated 23.09.2009 (Annexure P-1), inviting applications for recruitment to various posts including 713 posts of Hindi Masters/Mistress. The minimum academic and professional qualification prescribed for the post of Hindi Masters/Mistress was as follows:-

“Three years graduation degree from recognized University with Hindi as subject with all the three years of graduation and B.Ed. with Hindi of Teaching.”

The selection procedure was also disclosed in the advertisement itself and as per which, the recruitment was to be made on the basis of merit by calculating the percentage of marks obtained in the prescribed basic and professional qualification as also higher qualifications (if any) and teaching experience, the certificate of which, was to be counter signed by the concerned District Education Officer (S.E.) or by the Competent Authority. For the Masters Cadre, six marks were to be granted to a candidate possessing higher qualifications. As regards teaching experience, is concerned, the specific recital in the advertisement was to the following effect:-

“Maximum marks-10, are admissible by calculating one mark for each year experience after obtaining the basic qualification. No mark will be given for the experience lesser than one year.”

Petitioner who belongs to the General category and possesses the qualifications of B.A., M.A. and B.Ed., applied for the post of Hindi Mistress. Being eligible for the post, application of the petitioner was duly processed and in the combined provisional merit list of Masters/Mistress (Hindi) at Annexure P-4, the petitioner was assigned a total of 64.2 marks (Annexure P-4). The break up of the marks, which was also indicated in such provisional list, clearly

indicates that the petitioner had been granted six marks for possessing higher qualification of M.A. and ten marks towards teaching experience.

The precise grievance raised in the petition is that the last selected and appointed candidate to the post of Hindi Masters/Mistress in the General Category, has secured 62.42 marks, whereas, the petitioner having secured a higher merit position i.e. 64.2, has been denied appointment. It is contended that such action is per se arbitrary and violative of Articles 14 and 16 of the Constitution of India.

During the course of arguments, it has been conceded by counsel representing the petitioner that the petitioner passed the B.A. qualification in 1997 and acquired the B.Ed. qualification in the year 2009. The teaching experience possessed by the petitioner is reflected in terms of a certificate dated 26.11.2009 at Annexure P-3 and which, apparently reflects that the petitioner has taught in Dayanand Public Senior Secondary School, Naya Nangal, since 01.08.1998. Such experience certificate does not reflect any teaching experience after the petitioner had acquired B.Ed. qualification in the year 2009.

Learned counsel representing the petitioner would vehemently contend that the petitioner had acquired the Nursery Teacher Training Course (two years course) in the year 1994 and as such, the teaching experience possessed by the petitioner after acquiring such Nursery Teacher Training Course, would have to be

reckoned for assigning weightage of one year for each completed year of teaching experience and as such, the grant of weightage of 10 marks towards teaching experience, while calculating the final merit of the petitioner as 64.2 marks, was perfectly valid. It is further urged that under the statutory rules governing the service conditions of the post of Hindi Masters/Mistress i.e. Punjab State Education Class-III (School Cadre) Service Rules 1978 (as amended from time to time), there is no provision as regards weightage towards experience, to be granted only after acquiring of the qualification of B.A./B.Ed.

On behalf of the State, the action of denying to the petitioner, appointment to the post in question is justified on the basis that after the provisional merit list had been prepared, a discrepancy that had crept in, was made good and the ten marks awarded towards teaching experience to the petitioner, were deleted. As per State counsel, in the revised final merit list, the petitioner has secured 54.199 marks.

Counsel for the parties have been heard.

There can be no dispute that selection and appointment to the post of Hindi Masters/Mistress would have to be governed strictly as per terms and conditions contained in the advertisement dated 23.09.2009 (Annexure P-1) and in response to which, the petitioner had submitted her application and participated in the process of selection. The minimum/basic academic and professional qualifications for the post of Hindi Masters/Mistress were a three years Graduation Degree with Hindi as a subject, in all the three

years of Graduation and B.Ed. with Hindi of teaching. The marks admissible towards experience were by calculating one mark for each year experience “**after**” obtaining the basic qualification.

What clearly emerges from the advertisement is that a candidate who possesses teaching experience after possessing the basic/minimum qualifications i.e. B.A. And B.Ed., would be granted one mark for each completed year of experience. The conceded position of fact is that after the year 2009 i.e. when she acquired the basic qualification, petitioner does not possess any teaching experience. Under such circumstances, the grant of ten marks towards teaching experience to the petitioner and as reflected in the provisional merit list, was an error. It was always open for the respondent-authorities to have corrected such error. The same in fact has been done and ten marks from the total merit, has been deducted and thereby reducing the petitioner's merit position to 54.199 marks. The last selected candidate in the General category has secured 62.42 marks. Petitioner as such, has rightfully been denied appointment to the post of Hindi Mistress.

The contention raised by counsel as regards counting of teaching experience acquired after Nursery Teacher Training Course, acquired in 1994, is wholly misconceived. The grant of weightage towards experience has to be governed in terms of the specific conditions stipulated in the advertisement. Accepting the arguments raised on behalf of the petitioner would amount to grant of weightage towards teaching experience, which is alien to the

advertisement. That apart, it would be presumed that the petitioner had read each and every term and condition of the advertisement that was issued on 23.09.2009 (Annexure P-1). It is not the case of the petitioner that any challenge had been laid to the advertisement at the very threshold. Petitioner had participated in the selection process by accepting the terms and conditions contained in the advertisement. Petitioner cannot be now permitted to turn around and contend that experience after acquiring the Nursery Teacher Training Course as well, has to be taken into reckoning for grant of weightage.

Even as regards the statutory rules governing service are concerned, the same are completely silent insofar as grant of weightage towards experience is concerned. As regards the essential/minimum qualifications are concerned, the advertisement was *para materia* and in line with the qualifications prescribed under the statutory rules. Under such circumstances, it was open for the respondent-authorities to have made a stipulation for grant of weightage towards teaching experience. Such a stipulation would not be construed to be operating in contradiction to the statutory rules.

In the totality of circumstances, no exception can be taken to the action of the respondent in having denied to the petitioner, the weightage towards teaching experience that she had acquired after possessing Nursery Teacher Training Course. Since concededly after acquiring the basic qualifications of B.A./B.Ed., in the year 2009, petitioner does not possess any teaching experience, ten marks

assigned towards weightage of experience in the provisional merit list, have been rightfully deducted.

On a pointed query having been put, counsel admits that there is no other candidate who has been granted weightage towards teaching experience prior to possessing the basic essential qualifications.

For the reasons recorded above, there is no merit in the petition and the same is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

16.08.2017
anju rani

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