

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

CWP No.23703 of 2014 (O&M)

Date of Decision: 11.07.2017

Iqbal Singh

....Petitioner

vs.

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. R.K. Arora, Advocate
for the petitioner.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

TEJINDER SINGH DHINDSA, J.

Petitioner impugns the order dated 10.12.2013 (Annexure P-20) passed by the Director of Public Instruction (Secondary Education) Punjab and whereby, his claim for appointment on the post of Art and Craft Teacher, has been declined. Directions are sought to the respondent-authorities to appoint him to the post in question.

2. Advertisement dated 10.12.2006 was issued by the Subordinate Services Selection Board for filling up various teaching posts under the Department of Education, State of Punjab including 500 posts of Art and Craft Teachers. 250 posts each were allotted to Male and female category candidates. 50 posts were reserved for Backward Class Category i.e. 25 having been reserved for Backward Class (Male) Category. Petitioner belongs

to Backward Class (Male) Category. Having fulfilled the requisite qualifications and other conditions stipulated in the advertisement, he submitted his application for the post of Art and Craft Teacher in his category within the stipulated time frame. Being eligible, candidature of the petitioner was accepted. Petitioner has secured 137.15 marks in view of his basic and professional qualifications which was the criteria for assessing merit as per advertisement. Against the 25 posts, reserved for Backward Class (Male) Category, 24 posts have been filled up and one has remained vacant.

3. The precise case set up on behalf of the petitioner is that the last candidate in Backward Class (Male)Category who has been selected has secured 137.23 marks and the present petitioner is next in order of merit. Contention raised is that the petitioner having been considered eligible and one post of Art and Craft Teacher of his category i.e Backward Class (Male) Category having remained vacant, he being next in order of merit is vested with the right to be appointed on such post.

4. *Per contra* learned State counsel would submit that the recruiting agency i.e. Punjab Subordinate Service Selection Board had recommended the names of 45 candidates in the category of male Backward Class against 25 posts meant for this category and the merit of the last recommended candidate was 137.23 marks. Learned State counsel submits that since name of the petitioner did not exist in the list of recommendations, there would be no basis to

accept the prayer for issuance of appointment letter. While justifying the action of the State Government in denying appointment to the petitioner, it is argued that no candidate having lower merit in the category of Backward Class (Male), has been appointed. State counsel has also argued that placement of any candidate in the select list as well as in the waiting list does not create any equitable right for appointment unless a candidate having lesser merit pertaining to that category is appointed. An objection regarding delay has also been raised during the course of arguments by contending that the present writ petition was instituted in the year 2014 in relation to a recruitment process initiated in the light of advertisement dated 10.12.2006 and as such, it would be too late in the day to direct appointment of the petitioner to the post of Art and Craft Teacher.

5. Counsel for the parties have been heard at length and the pleadings on record have been perused.

6. The Hon'ble Supreme Court in ***Shankarsan Dash vs. Union of India 1991 (2) SLR 779*** had crystallized the proposition that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire an indefeasible right to be appointed. A notice/advertisement was held to be merely an invitation to qualified candidates to apply for recruitment and on their selection, they did not acquire any right to the post. The State was

under no legal duty to fill up all or any of the vacancies. Having so held, the Apex Court further observed that the decision not to fill up the vacancies, has to be taken bona fide for valid reasons and the State would not have the license of acting in an arbitrary manner in choosing not to fill up the vacancies from amongst the candidates in order of merit.

7. The short question that arises for consideration, is as to whether the action of the respondent-authorities in the light of peculiar facts of the present case in denying appointment to the petitioner to the post of Art and Craft Teacher, Backward Class Category(Male) is just, fair and reasonable?

8. Facts are not in dispute. 25 posts of Art and Craft Teachers were reserved for the Backward Class Category (Male). In the advertisement dated 10.12.2006 (Annexure P-1), the Mode of Selection had been disclosed in the following terms:-

“Recruitment shall be strictly made to respective categories only on merit. Merit will be prepared by adding the percentage of marks contained in basic qualification and professional qualification.”

9. Petitioner possessed the requisite basic and essential qualifications and was considered eligible. As per Mode of Selection/Criteria of determining merit, he has secured 137.15 marks. In the written statement, it has been disclosed that names of 45 candidates, were recommended in the category of Backward Class(Male) against 25 posts . Out of the list of 45 candidates, 21

candidates were adjusted in the General Category since they have secured higher marks than the last selected candidate of General Category. Remaining 24 candidates, have been appointed as Art and Craft Teachers against 25 posts reserved for Backward Class (Male) Category. Concededly one post for such category and to which, the petitioner belongs, has remained vacant in relation to original advertised posts. What emerges is that a list of 45 candidates, were recommended as against 25 posts advertised for the Backward Class (Male) Category since the State/Recruitment Agency was alive to the eventuality that such candidates of the Backward Class Category who secured higher marks than the candidates in General Category, would have to be adjusted/considered in General Category and thereby leaving the quota of Backward Class Category intact. There was no bar for the State/Recruitment Agency to have recommended more than 45 candidates. They could have well recommended even 50 candidates. Be that as it may, a list of 45 candidates from the Category of Backward Class (Male) having been recommended, it so transpires that 21 of such candidates, secured more marks than the last selected candidate in the General Category and as such, were considered in the General Category. That left a balance of 24 candidates and who have come to occupy 24 of the 25 advertised posts in the Backward Class (Male) Category. The petitioner concededly is next in order of merit having secured 137.15 marks.

His claim to be appointed on such unfilled post which was part of the original advertised posts under advertisement dated 10.12.2006, as such, is well founded.

10. The justification sought to be furnished by the State that the name of the petitioner does not figure in the list of 45 candidates recommended by the Recruitment Agency is utterly frivolous. It is not the case of the respondent-authorities that any conscious decision had been taken as regards fixation of cut off marks/percentage and which would be considered as a benchmark and below which no candidate was to be considered as suitable for appointment to the post in the Backward Class (Male) Category. It so happens that just because a list of 45 names had been prepared and furnished as opposed to 25 posts for the Backward Class (Male) Category and the last candidate in such list of 45 candidates had secured 137.15 marks, it cannot be said that 137.15 marks would be the benchmark for purposes of selection and appointment in such category and any candidate securing lesser marks would be seen as unsuitable for selection and appointment. Rather the action of preparing a list of 45 candidates against 25 posts reserved for Backward Class (Male) Category would clearly reflect the intent of the State to fill up all the advertised posts of such category.

11. It is by now well settled that once a post duly advertised, has not been consumed then the candidate next in

order of merit as determined in a regular process of selection, if available, has to be invited for filling up such vacancy.

12. The objection as regards delay raised by learned State counsel is without merit. The sequence of facts and circumstances of the present case would reveal that the petitioner having been a participant in the process of selection, the recommendations of various candidates against different categories were made on 19.12.2006. One post of Art and Craft Teacher pertaining to the category of the petitioner having remained vacant and he being next in order of merit, had got a legal notice served upon the respondent-authorities on 25.06.2007. His claim having not been responded to, the petitioner filed CWP No.5724 of 2008 before this Court seeking appointment to the post in question. On 07.04.2008, CWP No.5724 of 2008 came to be disposed of with directions to the respondents to decide the legal notice dated 25.06.2007. The matter thereafter was kept under consideration but no final orders were passed. Under such circumstances, the petitioner was constrained to file COCP No.3326 of 2012. It is during the pendency of the Contempt Petition that the impugned order dated 10.12.2013, rejecting the claim of the petitioner was passed and conveyed. This Court disposed of COCP No.3326 of 2012 on 13.10.2014 in terms of granting liberty to the petitioner to challenge the order dated 10.12.2013. The instant writ petition has thereafter being filed without any delay. The petitioner has been

agitating his claim diligently. The objection of delay as such is overruled.

13. For the reasons recorded above, the writ petition is allowed. Impugned order dated 10.12.2013 (Annexure P-20) is quashed. The respondents are directed to issue appointment letter to the petitioner as Art and Craft Teacher against the Backward Class (Male) Category, subject to scrutiny of his documents as envisaged in the advertisement dated 10.12.2006 (Annexure P-1). Such appointment shall relate back to the date when the last selected candidate under the Backward Class (Male) Category have been issued appointment letter. The petitioner shall be entitled to the consequential benefits of continuity in service, seniority etc., but shall not be granted any arrears of salary for the period in question.

14. Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

11.07.2017
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***Whether speaking/reasoned* : Yes/No**
***Whether reportable* : Yes/No**