

CWP No.67 of 2012 (O&M)

#1# Manoj Kumar
2017.05.15 09:54
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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.67 of 2012 (O&M)
Date of decision: 01.05.2017

Maninder Singh

....Petitioner

Vs.

State of Punjab and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Gurbachan Singh, Advocate for the petitioner.

Mz. Sudeepti Sharma, D.A.G, Punjab for
respondent Nos.1 to 4.

Mr. Balwinder Singh, Advocate for respondent No.5.

Mr. Ashok Bhardwaj, Advocate for respondent No.6.

Jaswant Singh, J

1. The petitioner, who belongs to Balmiki/Mazbi Sikh and was aspirant for the post of Assistant Lecturer, has preferred this writ petition seeking a writ of Certiorari for quashing the reply dated 19.12.2011 (P.13) in response to the legal notice dated 02.12.2011 sent on behalf of the petitioner whereby it has been intimated that no interview for the post in question could be held until and unless the same is properly advertised.

2. Learned counsel for the petitioner contends that in view of the Government Instructions dated 05.05.1975 (P.1) and Clarifications of Instruction dated 08.4.1980 (P.2) issued by the Punjab Government and in view of mandate of Section 4 (5) of the Punjab Schedule Castes and Backward Classes (Reservation in Services) Act, 2006 (for short "the Act"), the claim of the petitioner for filling up the post from the sub-category of Balmiki/bazbi Sikh

is liable to be accepted.

3. On the contrary, learned counsel appearing on behalf of the respondents have opposed the prayer of the petitioner in view of the fact that the post in question against which the petitioner is claiming the relief was advertised for SC Category and both the candidates i.e the petitioner as well as respondent No.6 were duly considered by the Selection Committee wherein the petitioner was not found suitable whereas respondent No.6 stood selected.

4. Heard learned counsel for the parties and perused the paper book with their able assistance.

5. It is not in dispute that the Principal, Malout Institute of Management and Information Technology-respondent No.5 issued an advertisement dated 25.2.2011 (P.11) for Teaching and non-Teaching posts, including six posts of Assistant Professor/Lecturers in the Mechanical Engineering Branch in the pay scale of Rs.15600-39100/- (revised) with GP Rs.6000/- per month and break up of the same is as under:

"General	ESM	SC	BC	Total
03	01	01	01	06"

In response to the aforesaid Advertisement, the petitioner applied for the post of Assistant Professor/Lecturer Mechanical Engineering in SC Category. Thereafter, vide letter dated 05.4.2011 (R.5/14), the petitioner made a request to respondent No.5 that in view of Section 4 (5) of the Act of 2006, the post of Scheduled Caste be amended/re-published after the same is categorised. It is also necessary to mention here that certain other applications including under RTI Act were also made by the

petitioner and his father; but this Court does not deem it proper to go into the details of the same being similar to the application dated 05.4.2011.

6. In paragraph 17 of Preliminary Submissions in the written statement of respondent No.5, it has been submitted that the provisions of Act of 2006, regarding reservation policy are required to be incorporated in the Bye-laws of the Institute. It is clarified that Malout Institute of Engineering and Technology is a Society registered under the Societies Registration Act, 1860 as amended by Punjab Act of 1957 and the same was registered on 11.8.1998 by the Registrar of Firms & Societies, Punjab, Chandigarh (R.5/1). Neither the petitioner nor respondent No.5 has placed on record the Bye-laws of the Institute to delineate the procedure of regulations of making selection and appointment to the post of Assistant Professor/Lecturer.

In para 17, it has further been submitted that one post of Assistant Professor/Lecturer in SC Category is lying vacant in the Department of Mechanical Engineering of the Department of the Institute and the same shall be advertised by the Institute against the particular category i.e SC (Balmiki/Mazbi Sikh) subject to the approval of their office to incorporate the said Notification in the Bye-laws of the Institute and a communication dated 13.7.2011 was also sent to respondent No.1-Principal Secretary, Department of Technical Education and Industrial Training, Punjab (R.5/21). Still further, there is another letter dated 17.8.2011 (R.5/23) addressed to respondent No.4, which clearly depicts that the candidature of the petitioner was duly considered by the Selection Committee but

he was not found suitable for the post and thus he could not be selected and the selected persons stood higher in merit than the petitioner and thus selection has been made purely on merit-cum-performance basis, on the recommendation of the Selection Committee and a reference of this letter finds mention in para 19 of the Preliminary Submission and relevant part of the same reads as under:

" 19. That the answering respondent sent a detailed reply vide its letter No.1882-83-84-85 dated 17.08.2011. In this reply the answering-respondent had clarified that the Institute had called all the five candidates including the petitioner for the interview and had not ignored his candidature at any level. He was considered by the Selection Committee but did not find him suitable for teaching job as he failed to perform before the Selection Committee when he was asked to speak/deliver lecture on the given topic. It was further clarified that the candidate who had been selected stood higher in merit than the petitioner and the selection had been made purely on merit cum performance basis on the recommendations of the Selection Committee. Finally, it had been submitted that in future the vacant post of SC category will be filled by the Institute from the particular category i.e Balmikis and Mazhabi Sikhs for which the case had already been sent to the Govt of Punjab. A copy of this letter had also been endorsed to the Secretary, Govt of Punjab, Deptt of Welfare (Reservation Cell), Chandigarh, the Director, Technical Education and Industrial Training, Punjab, Chandigarh and the District Welfare Officer, Muktsar."

7. It is relevant to mention here that there is no replication

filed by the petitioner against the submissions made in this paragraph of the written statement. Again, the Government of Punjab in the Department of Technical Education and Industrial Training vide letter dated 08.9.2011 (R.5/24) has intimated to respondent No.5 that one post of Assistant Professor/Lecturer, which is lying vacant, may be advertised in future for SC Category by clearly specifying that the post is meant for Balmiki/Mazbi Sikh and the same shall be notified in the Bye-laws of the Institute after obtaining sanction from the Government. It was further stipulated that this intimation may be sent to the petitioner also by the College and consequently, vide letter dated 08.9.2011 (R.5/25), the petitioner was intimated in the following terms:

" This has reference to memo no.02/09/2011-2TE2/3541 dated 09.08.2011 received from Govt of Punjab, Deptt of TE&IT on the aforesaid subject (copy enclosed). In this regards, the Institute wish to inform you that in future the vacant post of SC catgory in the department of Mechanical Engineering will be advertised and filled from this particular category of post i.e Balmikiand Mazbi Sikh after taking necessary approval from the Govt of Punjab and incorporating the same in the Institute's bye-laws.

This is for your information please."

8. In view of the above, it is apparently clear that respondent No.5 has in no uncertain terms, intimated to the petitioner that there is one post of Assistant Professor/Lecturer lying vacant in the Mechanical Department of the College and as and when the same is advertised in future, the same shall be clearly categorised in SC

(Balmiki/ Mazbi Sikh) in the light of provisions of Section 4 (5) of the Act of 2006 as well as reservation Policy applicable in the State of Punjab and the same will be duly incorporated in the Bye-laws of the Institute.

In view of the above, no cause of action survives in favour of the petitioner for issuance of any direction against the respondent-College regarding the post of Assistant Professor/Lecturer.

9. Despite the aforesaid factual position, the petitioner had got served a legal notice dated 02.12.2011 (P.12) through his counsel and the same was duly replied by respondent No.5 on 19.12.2011 (P.13), which, in the opinion of this Court, does not give any cause of action to the petitioner, as the reply sent by respondent No.5 to the Advocate of the petitioner cannot be termed as an impugned order and the same is not liable to be treated as an adverse order passed by the Competent Authority for the purpose of judicial review of this Court while exercising powers under Article 226 of the Constitution.

10. There is another aspect of the matter for dismissal of this writ petition, in view of the fact that the perusal of Advertisement dated 25.2.2011 (P.11) makes it clear that the posts in question were on contractual basis, initially for a period of three years and thereafter the contract was to be renewed subject to the requirement of the Institute and performance of the individual(s). In the present case, we are concerned with the sole post of Assistant Professor/Lecturer in SC Category against which the petitioner had applied and it is not clear as to who has been

appointed against the sole post.

11. Be that as it may, it is clear that the post in question was advertised on contractual basis for a period of three years and by now a period of more than five years has already lapsed and that being the position, the petitioner has no cause of action at this juncture and the present writ petition is only an academic exercise.

12. Before parting with the order, it is relevant to observe here that respondent No.6 has unnecessarily been impleaded as a party respondent as he has no concern with the Advertisement dated 25.2.2011 (P.11) and was selected and appointed on the basis of earlier Advertisement dated 30.10.2010 (P.6) in which the petitioner was also a contender, but remained unsuccessful. Thus, it is not understandable as to what prompted the petitioner to implead respondent No.6 as a party in the present writ petition without any cause or basis. The only inference, which can be drawn is that it is only the incorrigibility of the petitioner, which has resulted into the impleadment of respondent No.6 as a party respondent just to face the harassment while defending the present *lis*, which could have been avoided by the petitioner.

In view of the aforesaid, this Court finds that the present petition is devoid of any merit and the same is dismissed.

May 1st , 2017
manoj

(JASWANT SINGH)
JUDGE