

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

CWP-17309-2015

Date of decision: 16.1.2018

Neha Aggarwal and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.Kapil Kakkar, Advocate for the petitioners

Mr.Navdeep Chhabra, DAG, Punjab

JITENDRA CHAUHAN, J.

This writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of certiorari for quashing the orders dated 23.7.2015 (Annexures P-4 and P-5) whereby the claim of the petitioners for appointment to the posts of Math Mistresses was rejected by lowering the merit after deducting the marks against experience on the ground that the experience certificate was not countersigned by the concerned District Education Officer (for short 'DEO').

The brief facts of the case are that in response to the advertisement dated 23.9.2009, issued by the Department of School Education, Punjab Government for recruiting 7654 teachers on contract basis for various subjects, both the petitioners being eligible for the post of Math Mistress had applied for the same. Thereafter, in pursuance of the public notice dated 9.7.2010, whereby the candidates were asked to again appear for counselling/

scrutiny of documents on the basis of a revised combined merit list of male and

female candidates in which, the names of the petitioners figured at merit Nos. 847 and 950 respectively on their having acquired 63.21 and 62.86 marks/merit respectively. The petitioners could not attend the counselling held between 14.7.2010 to 16.7.2010 due to lack of proper information in this regard. Thereafter, again vide public notice dated 29.6.2011, issued by the respondents, the candidates, who could not attend the first counselling, were called to attend the counselling to be held on 8.7.2011. The petitioners attended the said counselling and their documents were checked by the concerned authority. The merit of the last selected candidate was 62.44. However, vide order dated 23.7.2015 (Annexure P4) the claim of petitioner No.1 for appointment was rejected on the ground that her merit was calculated 63.2167 and now '2' marks awarded against experience were deducted due to non countersigning of the certificates by the concerned DEO and by calculating her merit instead of 63.2167, the same was calculated at 61.2167 and also similarly, in the case of petitioner No.2, her claim was rejected after deducting 1 mark towards experience due to non-countersigning her certificates by the concerned DEO and by calculating her merit instead of 62.8667, the same was calculated at 61.8667.

I have heard the learned counsel for the parties and perused the record carefully.

This Court on 24.8.2017 noticed as under:-

“After hearing counsel for the parties, it is not disputed that the case of the petitioner is squarely covered by a judgment of this Court rendered in CWP No.10558 of 2014 titled as Isha Sharma Vs. State of Punjab & another, decided on 28.07.2017. Although an objection has been raised by

learned State counsel that the petitioner did not attend the counselling whereas it has been brought to the notice of this Court by learned counsel for the petitioner that the issue with regard to attending of counselling has already been dealt with by this Court in CWP No.13421 of 2011. Moreover this objection/reason was not mentioned in the impugned order also. Learned counsel also submits that 75 posts are still lying vacant.

Learned counsel for the respondent seeks time to get instructions in the case.

Adjourned to 05.09.2017.”

It is pertinent to mention here that vide public notice dated 29.6.2011, issued by the respondents, the candidates, who failed to appear in the first counselling, were again called for counselling and checking of documents on 8.7.2011 and in pursuance thereof, the petitioners appeared before the competent authority on the said date. Moreover, this fact is itself proved from the impugned order dated 23.7.2015, wherein no objection was raised for not attending the first counselling, which was held between 14.7.2010 to 16.7.2010. In the order dated 24.8.2017, the learned State counsel himself admitted that the case of the petitioner is squarely covered by the judgment dated 28.7.2017 passed this Court passed in CWP-10558-2014 (O&M), wherein the issue regarding “whether the marks of experience certificate, which was not countersigned by the concerned District Education Officer, should be considered or not” has been dealt with and the same was decided in favour of the petitioners. In the present case, perusal of the impugned orders shows that as per the online data/ information provided by petitioner No.1, he secured 63.2167 marks tentatively/ provisionally but as per the actual merit, which was calculated after scrutiny of the original documents,

he secured 61.2167 marks after deducting 2 marks admissible towards experience as the experience certificate had not been countersigned by the concerned DEO as per condition No.15 of the Advertisement dated 23.9.2009 and her claim was declined. Also in the similar situation, in the case of petitioner No.2, as per the actual merit, he secured 61.8667 marks after deducting 1 mark towards experience and her claim was also rejected.

The experience certificate of petitioner No.1 was issued by St.Ezra International School, Kharar, District SAS Nagar (affiliated to Central Board of Secondary Education, New Delhi) and also it has been countersigned by Assistant Secretary of CBSE, Regional Centre, Panchkula. Similarly, the experience certificate of petitioner No.2 was issued by Vishvas Public School, Bathinda and countersigned by Assistant Secretary of CBSE, Regional Centre, Panchkula and the authenticity and genuineness of the document is duly established.

In the above circumstances, the case of the petitioner is squarely covered by the judgment dated 28.7.2017 passed in CWP-10558-2014, wherein it has been held as under:-

The objection raised by the respondent authorities as regards the experience certificate not having been countersigned by the District Education Officer is utterly frivolous. The requirement of countersigning by the concerned District Education Officer or by the competent authority is only to ensure the authenticity and genuineness of the teaching experience reflected in the certificate and relied upon by a candidate to claim weightage. Clearly, with regard to a school which is affiliated to the Council for the Indian School Certificate Examinations, the exercise of verification would lie within the competence of an

official of the Council of the Indian School Certificate Examinations, New Delhi. The certificate produced by the petitioner has been countersigned by the Assistant Secretary of such council. To ignore such certificate, the respondent authorities had to conclude that the Assistant Secretary of the Council is not the competent authority as mentioned in the relevant clause of the advertisement defining selection procedure. That is not the view taken. The action of the respondent authorities is illegal, arbitrary and capricious.

Furthermore, the petitioner has also made out a case of having been discriminated against. In the writ petition it has been specifically averred that another candidate namely Vandana Mittal (Registration No.20090795) has been granted weightage towards experience certificate, even though, the experience certificate had not been countersigned by the District Education Officer. By way of response in the written statement, it has been conceded that one mark towards experience had been awarded to Vandana Mittal as her experience certificate had been countersigned by the Regional Manager, Punjab School Education Board, Patiala. It is difficult to fathom as to on what basis the respondent authorities are treating the Assistant Secretary, Council for the Indian School Certificate Examinations, New Delhi to be not the competent authority to countersign an experience certificate as opposed to the Regional Manager, Punjab School Education Board, Patiala. The respondent authorities are clearly adopting different yardsticks in the matter of grant of weightage towards experience while computing merit in a common selection process. Such action would have to be held to be violative of Articles 14 and 16 of the Constitution of India. The petitioner is,

accordingly, held entitled to the weightage of 2 marks towards experience and her merit to be determined as 62.576% instead of 60.576 and as had been calculated by the respondents earlier in point of time.

Concededly, the last selected candidate in the General Category in the subject of Mathematics has secured 62.4483% marks. Petitioner by adding 2 marks towards experience would secure 62.576% marks and would be at a merit position higher than the last selected candidate.”

Accordingly, the present writ petition is allowed and the impugned orders dated 23.7.2017 (Annexures P-4 and P-5) are hereby quashed. The respondent authorities are directed to issue the appointment letters to the petitioners for the post of Math Mistresses according to their merit. They also would be entitled notionally to the consequential benefits of continuity in service, seniority etc. but would not be paid the actual arrears of salary for the period in question.

16.1.2018
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No