

221

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Date of decision-12.01.2018

1. CWP-2302-2015 (O&M)

|                             |                |
|-----------------------------|----------------|
| Rekha and others            | ...Petitioners |
| Vs.                         |                |
| State of Punjab and another | ...Respondents |

2. CWP-2514-2015

|                             |                |
|-----------------------------|----------------|
| Vanita                      | ...Petitioner  |
| Vs.                         |                |
| State of Punjab and another | ...Respondents |

3. CWP-2737-2015

|                             |                |
|-----------------------------|----------------|
| Reeta Rani                  | ...Petitioner  |
| Vs.                         |                |
| State of Punjab and another | ...Respondents |

4. CWP-10951-2015

|                             |                |
|-----------------------------|----------------|
| Suman                       | ...Petitioner  |
| Vs.                         |                |
| State of Punjab and another | ...Respondents |

5. CWP-11217-2015

|                             |                |
|-----------------------------|----------------|
| Geeta                       | ...Petitioner  |
| Vs.                         |                |
| State of Punjab and another | ...Respondents |

6. CWP-2486-2015

|                             |                |
|-----------------------------|----------------|
| Savita Rani                 | ...Petitioner  |
| Vs.                         |                |
| State of Punjab and another | ...Respondents |

7. CWP-2815-2015

|                             |                |
|-----------------------------|----------------|
| Sunita Rani                 | ...Petitioner  |
| Vs.                         |                |
| State of Punjab and another | ...Respondents |

8. CWP-3346-2015

|                             |     |             |
|-----------------------------|-----|-------------|
| Mamta Sharma                | ... | Petitioner  |
| Vs.                         |     |             |
| State of Punjab and another | ... | Respondents |

**CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN**

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

Ms. Sudeepti Sharma, Addl.AG.Punjab.

\*\*\*

**JITENDRA CHAUHAN, J. (Oral)**

The above noticed eight writ petitions under Articles 226/227 of the Constitution of India, being disposed of by this common judgment, have been filed for the issuance of a writ in the nature of Certiorari for quashing the action of the respondents in revising the merit list of the category of Hindi Master/Mistress after more than three years of appointment of the petitioners. For brevity, the facts are being derived from CWP-2302-2015.

Brief factual background necessary for deciding the controversy involved in the instant writ petitions is that applications were invited by the respondents for various posts of Master, Lecturer and Vocational Master/Mistress on contractual basis, including 713 vacancies of Hindi Master/Mistress (356 unreserved vacancies) vide advertisement dated 23.09.2009. In pursuance thereof, the petitioners applied for the post of Hindi Master/Mistress. On the basis of the information provided by the candidates, a provisional merit list was prepared. In order to determine the merit, counselling was conducted in different phases. In the first phase, candidates from serial Nos.1 to 535 of the provisional merit list (General

Category) were called for counselling vide Public Notice dated 09.07.2010 and in pursuance thereof, 301 vacancies were filled up, whereas, 55 vacancies remained unfilled. In the second phase, candidates with the rank from 536 to 649 of the provisional merit list (General Category) were called for counselling vide Public Notice dated 28.06.2011. Thereafter, counselling was held and after proper verification of all the documents, final merit list was prepared, wherein, the petitioners were recommended for appointment as per their merit and the appointments were offered. The last candidate to be called for counselling was having a merit of 62.3667. All the petitioners were selected and appointment was offered to them on 04.11.2011. All the petitioners joined the services on different dates between 18.11.2011 to 07.12.2012 and have been working continuously as such till date. There was no misrepresentation or fraud attributed to the petitioners at any stage.

Learned counsel for the petitioner(s) contends that after more than three years' continuous service of all the petitioners, impugned orders dated 16.01.2015, have been issued to the petitioners, whereby, they have been directed to show cause as to why they be not removed from service on account of preparation of fresh merit list, wherein, their merit has been lowered than the last selected candidate in the general category. It has been alleged in the show-cause noticed that last selected candidate in the revised merit is having 62.4221 marks. The respondents are proceeding to grant appointment to those persons allegedly higher in merit as per directions contained in LPA No.999 of 2013 and LPA No.1000 of 2013. While issuing

directions, Hon'ble Division Bench directed the State to give appointments to those candidates who are higher in merit as per revised merit list, against the 'available vacant posts'. Hon'ble Division Bench nowhere directed the State to remove the candidates who have already been given appointment and who are continuously working for the last more than three years. It is asserted that the petitioners herein were neither party in the writ petition, nor in the LPA. The respondents have misinterpreted the directions of Hon'ble Division Bench.

On the other hand, learned State counsel submits that inadvertently, seven candidates having their merit lower than 62.3667 were wrongly selected in the general category including one Jyoti Jindal. The actual merit of Jyoti Jindal was 62.1167. The candidates who had merit higher than 62.1167 (the merit of last selected candidate) but had merit less than 62.3667 (cut of merit fixed for scrutiny) approached this Court by way of different writ petitions, one being CWP No.608 of 2012, tilted as **Sonia Verma Vs. State of Punjab**, which was disposed of by this Court on 11.01.2012 with a direction to consider the claim of the petitioners therein and issue appointment to them in case, candidates lower in merit to the petitioners had already been appointed. The petitioners in CWP No.608 of 2012 filed COCP No.1667 of 2012 in this Court. The department, in order to redress the grievance of the petitioners, conducted an inquiry as to how seven candidates were given appointments despite having merit lower than the cut-off merit. A report in this regard was also sought from the then Chairperson, Departmental Selection Committee (Teaching) and vide its

report dated 25.08.2012 (Annexure R-1/4), it was informed that seven persons were wrongly selected due to some inadvertent mistake committed during the preparation of result after the second phase of scrutiny by taking into consideration cut-off merit as 62.1167 instead of 62.3667. On the basis of the said report, the claim of the petitioners in CWP No.608 ibid was rejected on the ground that proceedings against the wrongly appointed seven candidates shall be initiated for termination of their services. Thereafter, show-cause notices were issued to the wrongly appointed candidates, who challenged this action of the department by filing different writ petitions, one being CWP-25579-2012, titled as **Jyoti Jindal Vs. State of Punjab**, which were allowed vide order dated 06.05.2013 (Annexure R-1/6).

Feeling aggrieved, the State of Punjab, challenged the said judgment by filing LPA Nos. 999 and 1000 of 2013. Hon'ble Division Bench, vide interim order dated 21.5.2013 (Annexure R-1/7), directed the State to provide an opportunity for the purpose of scrutiny of original documents to those applicants who were placed higher in the merit list and deprived of the appointments. In compliance thereof, the department, vide a public notice dated 27.5.2013 (Annexure R-1/8), called the applicants for the purpose of scrutiny of their original documents who had provisional merit between 62.3667 to 62.1167. After completion of the exercise, the department prepared the select list and placed it on record of the abovesaid LPA proceedings on 5.7.2013. In the meantime, certain applicants, who had higher merit than 62.3667, but had not appeared for scrutiny of the documents at the appropriate stage, approached this Court by filing civil

miscellaneous applications in the LPA proceedings as also in the writ petitions, alleging that they had even merit higher than 62.3667, but they were not being allowed by the department to appear in the scrutiny on the ground that they remained absent on the earlier occasion, i.e. at the time and place of their actual counselling. Hon'ble Division Bench, vide order dated 5.7.2013, directed the appellant-State to place on record the *inter se* merit list of all the candidates who had expressed their willingness to accept appointment in response to a fresh public notice in terms of the order dated 21.5.2013 (Annexure R-1/9).

She further submits that pursuant thereto, another public notice dated 14.7.2013 (Annexure R-1/10) was issued inviting all the applicants belonging to the general category who had provisional merit higher than 62.1167, to appear for the purpose of scrutiny. The scrutiny was conducted on 22.7.2013, wherein a total number of 82 candidates with provisional merit up to 62.1167 appeared and out of those, 66 candidates were found eligible. Thereafter, the revised select list for 356 posts (including the said 82 candidates) was prepared and placed before Hon'ble Division Bench. Ultimately, vide order dated 19.2.2014 (Annexure R-1/11), LPA Nos. 999 and 1000 *ibid* were allowed. The names of the petitioners did not fall in the zone of selection being lower in the revised merit list.

I have heard learned counsel for the parties and perused the case file.

The relevant portion of order dated 19.2.2014 (Annexure R-1/11) passed in LPA Nos.999 and 1000 of 2013, is reproduced as under:-

*“In view of the above, we allow both the appeals. The judgment passed by the learned Single Judge. The Appellant-State is directed to give appointments to those candidates who are higher in merit as per the merit list now prepared against the available vacant posts.*

*If any candidate is not satisfied with the merit list, so prepared, he shall have the liberty to challenge the same.*

*Before doing the exercise, grievance of the petitioners in writ petition viz. Civil Writ Petitions 978 of 2014 and the intervenors be also considered and speaking orders be passed qua their claim to the posts. Necessary exercise be done within six weeks from today.”*

A perusal of the aforesaid directions reveals that Hon'ble Division Bench directed the State to give appointments to those candidates who are higher in merit as per revised merit list, against the available vacant posts. Respondent No.2 has misread and misinterpreted the directions passed by Hon'ble Division Bench and wrongly issued notices calling upon the petitioners to show cause as to why they be not removed from service. No fraud, misrepresentation or mischief was played or attributed to the petitioners. The petitioners were appointed as per their merit determined by the departmental selection committee itself and thereafter on verification of all the documents, they were offered appointments. They are continuously working as such and have already completed their training and probation period satisfactorily. They have rendered more than three years' service.

Terminating the services of the petitioners, who are admittedly not at fault, would adversely affect their careers. Moreover, Hon'ble Division Bench has nowhere directed the State to remove the candidates, who have already been given appointments and are continuously working, as such.

Resultantly, the all the writ petitions are hereby allowed and the impugned notices dated 16.01.2015 are hereby set aside being arbitrary and violative of the decision of Hon'ble Division Bench in LPA Nos.999 and 1000 *ibid*. The petitioners are entitled to continue in service along with all consequential benefits. The claim of the persons allegedly having higher merit is liable to be considered against available vacant posts. It is, however, clarified that the *inter se* seniority shall be determined in accordance with the revised merit list.

(JITENDRA CHAUHAN)  
JUDGE

12.01.2018  
*atulsethi*

|                             |     |    |
|-----------------------------|-----|----|
| Whether speaking/reasoned : | Yes | No |
| Whether Reportable :        | Yes | No |