

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

CWP No. 27994 of 2013 (O&M)

Date of decision: 21.08.2018

Amandeep Singh

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. B.S. Sidhu, Advocate for the petitioner(s).

Ms. Kanica Sachdeva, AAG, Punjab.

Jitendra Chauhan, J. (Oral)

By way of the instant writ petition, the petitioner seeks quashing of selection list dated 04.10.2013 (Annexure P-9) declared on 07.11.2013 regarding selection of Art & Craft Instructors whereby the claim of the petitioner had been rejected by declaring her ineligible as he has not passed five years diploma in Drawing and Painting/Commercial Arts or M.A. (Fine Arts), two years diploma in Arts & Crafts Teacher.

The petitioner had applied for the post of Art & Craft Teacher in S.C. Category in response to the advertisement (Annexure P-5) issued by respondent No.2. It is asserted that the petitioner is having higher qualification of Masters in Fine Arts i.e. a two years degree course, however, he was declared ineligible as the petitioner had not passed five years diploma in Drawing and Painting/Commercial Arts or M.A. (Fine Arts), two years diploma in Arts & Crafts Teacher. which is contrary to

the law laid down in Full Bench judgment of this Court in **Manjit Singh Vs. State of Punjab and others**, 2010(3) SCT 703.

It is asserted that the petitioner was the only candidate in the reserved category against the post in question who fulfilled all the criteria as laid down by the respondents in the advertisement but despite that she was declared ineligible and was not called for interview.

On the other hand, learned State counsel states that the petitioner was not eligible for the post in question as he possessed Masters in Fine Arts, whereas as per Punjab Industrial Training (Class III) Technical Service Rules, 2001, a candidate should either possess five years diploma in drawing and painting/commercial arts with one year practical/teaching experience or a candidate should be M.A. (Fine Arts) and two years diploma in Art and Craft with one year practical/teaching experience. The petitioner does not possess the requisite qualification prescribed in the rules, therefore, he was found ineligible.

Heard.

On 18.12.2013, the following order was passed:-

“Contends that five year diploma course in Drawing and Painting/Commercial Arts available only at the Government College of Arts, Sector 10, Chandigarh was discontinued in 1988-89 and has been replaced by a three year degree/diploma course. Mr.Sidhu further contends that the five year diploma course advertised as essential qualification to fill up the post of Art and Craft Instructor is not found in any institution in Punjab or in Chandigarh. The contention is that the rule is anachronistic and deserves to be read down. This is not pleaded as a ground of challenge in the writ petition, but has been raised during the

course of arguments.

Notice of motion returnable on 18.3.2014.”

Thereafter, on 03.11.2017, the following order was passed:-

“Petitioner, who belongs to the S.C category, applied for the post of Art & Craft Teacher in pursuance to a public notice issued in March, 2013 (Annexure P-5) by the Department of Technical Education & Industrial Training, State of Punjab.

The essential qualifications prescribed for the post in question as per public notice were in the following terms:-

“i) Should possess Five Years Diploma in Drawing and Painting/Commercial Arts from a Government recognized institution; and

ii) Should possess atleast one year Practical experience in an organization registered under Factories Act, 1948 or one year teaching experience from a Government Institution or an institute recognized by the Govt.

OR

i) Should possess M.A. (Fine Arts);

ii) Should possess two years Diploma in Arts & Crafts Teacher Training from a recognized university or Institution; and

iii) Should possess atleast one year Practical/Teaching experience in an organization registered under Factories Act, 1948 or teaching experience in the line in a Government Institution or an institution recognized by the Govt.”

It is not in dispute that the qualifications stipulated in the advertisement/public notice were paramateria to the one laid down under the statutory rules governing the post.

Petitioner possesses the qualifications of Masters in Fine Arts i.e. a Two Years Degree Course.

*Counsel contends that the petitioner possesses a higher qualification and in the same line and inspite thereof has been considered ineligible and which is contrary to the dictum of the Full Bench judgement of this Court in **Manjit Singh Vs. State of Punjab & others, 2010(3) S.C.T, 703.***

In the backdrop of such contention raised by counsel for the petitioner, learned State counsel has adopted a very fair stand. State counsel submits that the issue as regards the petitioner possessing a higher qualification in the same line than the one prescribed in the advertisement would be referred to a Committee of Experts so as to elicit an expert opinion in the matter.

In the considered view of this Court such course of action would be proper and just for a fair adjudication of the controversy raised in the petition.

Hearing in the present petition is, accordingly, deferred to 20.12.2017.

In the meanwhile, in the light of the submissions and stand taken by learned State counsel, the Principal Secretary, Department of Technical Education & Industrial Training/respondent no.1 is directed to constitute a Committee of three experts forthwith, which would examine the aspect as regards the qualifications possessed by the petitioner and render an opinion as to whether such qualifications could be treated as higher qualifications in the same line and as stipulated in the advertisement at Annexure P-5.

Report of the Expert Committee be furnished positively one week prior to the adjourned date with an advance copy to the counsel for petitioner.”

In response to order dated 03.11.2017, report of Expert Committee (Annexure R-1) was filed and State was directed to place on record the proceedings of the Expert Committee. However, vide additional affidavit dated 22.05.2018 filed on behalf of respondent Nos.1 & 2, it has been stated that there are no separate proceedings except the report (Annexure R-1). As per report, the qualification of the petitioner were not found to be in the same line/specialization i.e. Drawing and

Painting/Commercial Art, however, it does not reflect whether the qualification possessed by the petitioner could be treated as higher qualifications in the same line and as stipulated in the advertisement.

As per Annexure P-7, the Deputy Registrar (General), Panjab University, Chandigarh has opined that the standard of Master of Fine Arts (MFA) examination of this university is better than that of erstwhile five year diploma in Fine Art (any specialization)/five year diploma in Fine Arts (BFA) and Master's degree in the subject of Art/Fine Arts. The petitioner had secured 50 marks in the written test. He passed B.F.A. by securing 61% marks and MFA by securing 68%. Since the petitioner had passed Master of Fine Arts (MFA) from Panjab University which is certainly better qualification than that of five years diploma in Drawing and Painting/Commercial Arts as reflected in the advertisement (Annexure P-5), therefore, the petitioner cannot be deprived of the benefit.

In view of the above, the present petition is allowed. Respondent No.1-Secretary, Department of Technical Education and Industrial Training, Government of Punjab, Civil Secretariat, Chandigarh is directed to consider and appoint the petitioner on the post of Art & Craft Instructor as per his category and fix the seniority as per merit within a period of three months from the date of receipt of certified copy of the order.

21.08.2018

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(JITENDRA CHAUHAN)

JUDGE

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No