

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.26534 of 2016

Date of Decision: 07.08.2018

Poonam Saini

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.A.K.Ghubbar, Advocate, for the petitioner.

Mr.Kiran Pal Singh, AAG, Haryana.

RITU BAHRI, J. (ORAL)

The petitioner is seeking direction for setting aside the letter dated 03.11.2016 (Annexure P-7) issued by respondent No.2 whereby directions have been given to respondent No.3 to fill the post of S.S.master by re-advertisement and further for quashing publication dated 07.12.2016 whereby the applications have been invited by respondent No.3.

The brief facts of the case are that respondent No.2 vide letter dated 07.06.2011 (Annexure P-1) directed the respondent No.3 to fill up the posts of S.S.Master/Mistress by way of direct recruitment. Forty candidates including the petitioner applied for the said post. On the basis of the interview and result (Annexure P-2), Smt.Sonia Gupta was selected at serial No.1 and petitioner was at Sr.No.2. Petitioner made a complaint dated 12.09.2011 to the Director that the selected candidates Sonia Gupta

did not possess the requisite qualifications of STET and hence she was

not eligible to be considered for the post of S.S.Master. Then, respondent No.2 vide order dated 26.03.2012 (Annexure P-3) held that said Sonia Gupta was not eligible for appointment as S.S.Mistress. However, instead of granting approval to the appointment of petitioner, respondent No.2 directed the District Education Officer, Kurukshetra that the fresh selection process be initiated by putting the advertisement in the two newspapers for a recruitment to the post of S.S.Mistress. This order was challenged by the petitioner by way of CWP No.8794 of 2012 as well as Ms.Sonia Gupta by way of CWP No.14078 of 2012. Both the writ petitioners were decided vide order dated 15.12.2014 (Annexure P-4) i.e. writ petition of petitioner was dismissed and the writ petition of Sonia Gupta was allowed. Thereafter, petitioner has filed two LPAs against the order dated 15.12.2014 passed in CWP No.14078 of 2012 and against the order dated 15.12.2014 in CWP No.8794 of 2012. During the intervening period, Sonia Gupta was given appointment by the Hon'ble High Court vide orders dated 15.12.2014 passed in CWP No.14078 of 2012 but she did not accept the offer. LPA was disposed of vide common order dated 30.08.2016 by observing that if a selection list was valid and Sonia Gupta was not interested then respondent No.2 may accord permission to the management of the school for appointment of the appellant on notional basis without any arrears etc. Thereafter, instead of granting permission to respondent No.3, a letter was written by respondent No.2 on 03.11.2016 (Annexure P-7) directed to advertise the post after giving an opportunity to the present petitioner and thereafter an advertisement was issued pursuant to the letter (Annexure P-7). Hence the present writ petition.

On notice, respondents have filed written statement. The stand taken by the respondents in the written statement is that when complaint against Sonia Gupta was received, an inquiry was conducted and after going through the record, statement of Sh.Parveen Gupta, President, Hindu High School, Ladwa, Sonia Gupta was found not eligible as she has not been passed STET examination from the State Government as per instructions dated 13.07.2011. Petitioner had 15 years experience in comparison with Ms.Sonia Gupta who had only 4 years of experience. Keeping in view the enquiry report and explanation of Sh.Zile Singh, Deputy Director and relevant record, it was found that Smt.Sonia gupta was not eligible being not STET qualified from the State of Haryana as required for selection to the post of S.S.Mistress in view of the instructions on the issue. Further no approval of the director was obtained before changing the schedule of interview on 17.08.2011 instead of 16.08.2011. Therefore, it was decided by the competent authority that the whole process of recruitment to the post of S.S.Mistress by way of direct recruitment in Hindu High School, Ladwa (Kurukshetra) should be conducted afresh by publishing an advertisement in the two leading newspaper. However, explanation of Sh.Zile Singh, Deputy Director was also called as to why he took part in interview on 17.08.2011 instead of 16.08.2011 without the orders of the competent authority as departmental nominee. Thereafter, it was held that the fresh recruitment is to be conducted afresh. Keeping in view the direction given by this Court for appointment of Sonia Gupta and fact with regard to filing of LPAs, Sonia Gupta has not joined the present post. However, it is further submitted

that waiting list was valid only for a year and the post has been rightly re-advertised.

Heard learned counsel for the parties.

Learned counsel for the petitioner has argued that the stand of the respondent that the waiting list is valid for one year, is liable to be rejected in view of the judgment of Hon'ble Supreme Court in a case of **State of J&K and others vs. Sat pal, 2013 (2) SCT 250** wherein the respondent was declined appointment on the ground that the waiting list stood expired. The respondent gave representation to the department that the petitioner be considered for the post of Junior Engineer (Civil) Grade-II , as person above him had not joined, but his representation was declined. He approached High Court by filing the writ petition which was disposed of by giving a direction the respondent-department to examine the claim of the respondent. But again the claim of the respondent rejected by the authorities by giving reasons that the waiting list has outlived its validity way back in May, 2008 and vacancies cannot be filled at a belated stage. The respondent then filed Contempt Petition, which was disposed of on 29.10.2011 by giving a direction to the appellants to consider the whole issue again and pass orders, in accordance with the judgment of this Court. The appellants then filed SLP before Hon'ble the Supreme Court against the order dated 29.10.2011, which was dismissed by observing that a waiting list would start to operate only after the posts for which the recruitment is conducted, have been completed. A waiting list would commence to operate when offers of appointment have been

the submits that this judgment is directly applicable to the facts of the present case, as in the present, CWP No.14078 of 2012 filed by on Sonia Gupta who was shown at Sr.No.1 and was not held eligible for the post was allowed by this Court on 15.12.2014 whereas CWP No.8794 of 2012 filed by the petitioner was dismissed on the same date. The order dated 15.12.2014 was challenged by the present petitioner by filing LPA No.298 and 302 of 2015 and since Sonia Gupta did not join, the LPA Bench disposed of the appeal by directing respondent No.2 to accord permission of the Management of the School to appoint the petitioner on notional basis that if the validity of the selection list has expired on the earlier selection suffered with an incurable legal infirmity, in that case the Management is directed to re-advertise the post by giving an opportunity to the appellant in response thereto and consider her along with other eligible candidates. But the Management again did not consider petitioner eligible and directed respondent No.3 to re-advertise the post as the validity of the selection is of one year.

Learned State counsel has also argued that since the validity of the selection is of one year, the petitioner has rightly been not held eligible for the post.

This argument is liable to be rejected as the waiting list would start from the date when the writ petition i.e. CWP No.14078 of 2012 filed by Sonia Gupta was allowed on 15.12.2014. After the writ petitioner was allowed, Sonia Gupta did not join and immediately, thereafter, petitioner filed LPA No.298/302 of 2015 in the month of January 2015, the period of waiting list so far as petitioner is concerned

would start from 15.12.2014 and would be valid till 15.12.2015. Since LPA was filed in January, 2015 itself, the petitioner has right to join the post which fall vacant as Sonia Gupta did not join the said post. The ratio of Supreme Court judgment in the case of **State of J&K and others vs. Sat pal (Supra)** is application in the facts and circumstances of the present case.

In view of the above, present writ petition is allowed by giving directions to the respondents to give appointment to the petitioner on the required post with all consequential benefits w.e.f. 15.12.2015.

(RITU BAHRI)
JUDGE

07.08.2018
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No