

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

**CWP-8036-2013 (O&M)
Date of decision : 27.08.2018**

Neelam

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Ms. Jyoti Sareen, Advocate,
for the petitioner(s).

Ms. Harsimrat Rai, DAG, Punjab.

Mr. Vivek Chauhan, Advocate for respondent No.5.

Mr. Arun Takhi, Advocate for respondent No.6.

JITENDRA CHAUHAN, J.

Prayer is for quashing appointment letter dated 08.02.2013 (Annexure P-6), whereby, respondent No.6 was appointed to the post of Anganwari Worker.

It is asserted that the appointment of respondent No.6 has been made in gross violation of instructions, Annexure P-3, after ignoring the merits of the petitioner who is having higher qualification and more suitable for the post in question.

Learned counsel for respondent No.6 states that the percentage of disability of respondent No.6 is higher than that of the petitioner, therefore, respondent No.6 has rightly been appointed to the post in question. He further informs that the petitioner is also working as STR

Volunteer, however, fairly acknowledges the factum of the petitioner being older in age and having higher qualification. Learned counsel for respondent No.6 further refers to ***State of Karnataka and others Vs. Ameerbi and others, 2007(1) SCT 601***, to contend that the present petition is not maintainable.

Heard.

The petitioner is M.A. (History) with B.Ed. and date of her birth is 15.05.1974 as against respondent No.6, who is matriculate and date of her birth is 08.04.1976. The consideration for ignoring the claim of the petitioner is higher percentage of handicap of respondent No.6, which is against the criteria provided in Annexure P-3. Relevant portion of Annexure P-3 reads thus:-

“4. Reservation, adjustment and priorities:-

a) *25% posts of Anganwari Worker will be kept reserve for Anganwari Helpers having 10 years experience, provided they fulfill the prescribed conditions of Educational Qualification, age and residence.*

b) *XXX*

c) *In case, no candidate is available for post reserved for helper or for adjustment, then the recruitment shall be made on the basis of priority in accordance with the following indescending order provided the candidate fulfills the prescribed qualifications regarding educational qualification, age and residence:*

i) *Candidate having training and experience as Anganwari Worker/Bal Sevika.*

ii) *Candidate having experience as Anganwari Worker/Bal Sevika, but untrained.*

iii) *Widow*

- iv) Minimum 40% handicapped (Provided she is capable of working as Anganwari Worker).
- v) Riot-affected.
- vi) Candidate deserted by her husband or separated from her husband for minimum five years due to mutual differences.
- vii) XXX

Distribution of Marks for educational qualifications:-

Sr. No.	Educational Qualification	Merit Marks	Special Comments
Xxx	Xxx	Xxx	Xxx
Xxx	Xxx	Xxx	xxx

- Note :1. In case of more than one candidate in the above said categories Sr. No.(i) & (iii), the candidate having more experience, in case the experience is same, then the candidate elder in age, and in case the age is same, then the candidate higher in merit according to the aforesaid formula shall be selected.
- 2. XXX
 - 3. XXX
 - 4. XXX
 - 5. XXX”

A perusal of the above reveals that the denial of appointment to the petitioner is absolutely contrary to the instructions/guidelines (Annexure P-3). The instructions made all candidates who are more than 40% physically handicapped eligible to be considered for appointment. However, the extent of handicap cannot be considered to be the only criteria for selection and once the candidate qualifies to be considered against the

handicapped category, the person having higher percentage of physical deficiency cannot steal a march over the other candidate who too is physically handicapped but of a lesser degree. The suitability and other qualifications are also to be seen in the light of the instructions. The petitioner is clearly more qualified as compared to respondent No.6. She is also older in age. The ratio of law laid down in Ameerbi's case (supra) is distinguishable on facts of the instant case.

In this view of the matter, the instant petition is allowed; letter of appointment issued to respondent No.6 (Annexure P-6) is quashed; and the respondents are directed to appoint the petitioner to the post in question.

However, keeping in view the fact that respondent No.6, at this stage, is fairly experienced person for the post in question, if any vacancy is available, her claim be considered on priority basis.

27.08.2018*atulsethi***(JITENDRA CHAUHAN)
JUDGE**

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No