

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.28989 of 2018

Date of Decision:-05.12.2018

Sarika.

.....Petitioner.

Versus

State of Punjab & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Kapil Kakkar, Advocate for the Petitioner.

JASWANT SINGH, J.

Petitioner has filed the instant writ petition seeking quashing of the order dated 23.10.2015 (**P-4**) passed by Director Public Relations whereby the claim of the petitioner for appointment to the post of Math Mistress has been rejected by decreasing the merit, after deducting two marks of experience on the ground that the experience certificate is not countersigned by the District Education Officer.

Learned Counsel for the petitioner has argued that the impugned order of rejection dated 23.10.2015 (**P-4**) passed by respondent-Director Public Relations, is wholly arbitrary, unjust and liable to be set aside, as the same has been passed without due application of mind. It is argued that the petitioner had secured 64.04 marks, which are higher than the last selected candidate, who had secured 62.44 marks, however, due to illegal action of respondent-Director Public Relations, whereby 2 marks for

experience were deducted, she was wrongly placed below the last selected candidate as having secured 62.04 marks. It is further contended that a similar controversy for the same post of Math Mistress came up for consideration before this Court in CWP No.10558 of 2014, which was allowed vide order dated 28.07.2017 (Annexure P-5), by holding that the said action of not considering the marks which are not countersigned by the District Education Officer, is incorrect and consequently, the action of the respondent-Director Public Relations was quashed and it was consequently ordered that petitioner-Isha Sharma be given appointment. Thus, relying upon the aforesaid judgment Annexure P-5 passed in Isha Sharma's case (Supra), petitioner has sought quashing of the impugned order dated 23.10.2015 (P-4) with a consequential relief of appointment to the post in question.

After having scrutinized the arguments raised by the Learned Counsel for petitioner and perusing the paper book with his able assistance, this Court is of the opinion that instant writ petition is without any merit and therefore deserves to be dismissed.

The facts are not much in dispute. Admittedly, petitioner had applied for the post of math Mistress in respondent-Education Department in pursuance of advertisement dated 23.09.2009 issued for 1275 posts. It is also not in dispute that the petitioner had initially come within the zone of consideration having secured 64.04 marks and thus was reflected at Sr.No.614. However, after conducting the counselling of petitioner, which took place on 08.07.2011, she was not offered any appointment letter by the Education Department. It is further evident from the paper book that petitioner alongwith other similarly situated candidates filed a CWP

No.13421 of 2011, which was disposed off vide order dated 17.02.2014 (P-3) by Co-ordinate Bench of this Court, with a direction to consider the claim of petitioners within two months. Thereafter, the State went in LPA No.898 of 2014, which was withdrawn with liberty to file a review application vide order dated 04.11.2014. However, the review application filed by the State was also dismissed on 18.03.2015. Seeing that the order dated 17.02.2014 passed in the writ petition was not being implemented, the petitioners therein preferred a COCP No.270 of 2015, in which notice was issued. However, during the pendency of the contempt petition, the respondent-Director Public Relations passed the impugned order dated 23.10.2015 Annexure P-4, petitioner took no action and accepted her fate. It is only now in November, 2018 (writ petition is filed on 14.11.2018) that she has woken out of her slumber and claims parity with one Isha Sharma who is similarly situated candidate. It is however, evident that Isha Sharma had filed CWP No.10558 of 2014 challenging a similar order dated 08.12.2013 i.e. well within time and, therefore, was able to get relief of appointment through the orders of the Writ Court. Whereas the instant writ petition has been filed after a considerable delay of more than 3 years. Consequently, the instant writ petition is barred on the ground of delay and laches, as she has allowed third party rights to settle in, by not asserting her rights within reasonable time. Admittedly, the judgment relied upon by the petitioner, in Isha Sharma's case supra (Annexure P-4) is not a judgment in *rem*, granting benefits to all similarly situated candidates, but is a judgment in *personnem*. Therefore, the said judgment is not at all binding, either upon the State or carry any persuasive value for this court to consider the case of petitioner, on similar grounds as that of Isha Sharma.

A similar issue arose before the Hon'ble Supreme Court in **State of Uttar Pradesh &Ors. Vs. Arvind Kumar Srivastava & Ors. 2015(1) SCC 347**, whereby the Hon'ble Supreme Court has held that such kind of petitioners, as the instant one, are not entitled for any benefit from the Court by seeking parity with similarly situated candidates, as they are *fence sitters* who waited for some other persons to fight their proxy litigation and once the said persons were able to secure some relief, claimed benefit on ground of being similarly situated. The Hon'ble Supreme Court has clearly held that such persons are not entitled for any benefit, as their petition is hit by delay and laches.

The aforesaid judgment of **Arvind Kumar Srivastava's case (supra)** is squarely applicable to the facts of the instant case.

Consequently, finding no merit in the instant writ petition, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

December 05, 2018
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>