

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 05.03.2019****CWP No.10281 of 1998**

Sunita Devi

...Petitioner

Vs.

State of Haryana & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Nitin Rathee, Advocate, for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

1. The claim has become a relic of the past and part of the history which is irretrievable and irreconcilable to any attempt made for appointing the petitioner as a Lecturer in Chemistry from the reserved quota of Physically Handicapped Persons (Female) by dint of a writ of mandamus. In the preliminary objections taken in the written statement, it is maintained that the advertisement was issued on 23.11.1997 to fill up 4 posts of Lecturers in Chemistry in Male cadre, but the gender was not mentioned in the terms and conditions of the advertisement, which the State says was an inadvertent mistake.

2. It is explained that out of those 4 posts, 3 were filled on the basis of interview conducted on 28.11.1997. The remaining post was again advertised in December 1998 (as stated by Mr. Nitin Rathee) and this post was filled once again by appointing a male candidate. It is obvious that the second advertisement related to the vacancy which existed on the date of the

first advertisement and there is tacit admission in the written statement where the State itself admits of a mistake committed by the office, inadvertent or not.

3. The prevailing instructions at the relevant time were of 09.12.1995 (Annexure P-6) which divided the post of Lecturer (School Cadre) in the ratio of 2:1 (Male=2, Female=1). These instructions are challenged in this petition as unconstitutional on the submission that there can be no gender discrimination in filling up posts by prescribing a ratio.

4. Without expressing any final opinion on the alleged discrimination in the instructions, this petition, all things considered, cannot bring relief to the petitioner after 21 years from a writ petition filed in the year 1998. Though rights of the parties are to be declared and settled in relation to the date of petition, but by extraordinary passage of time the prayer has lost its relevance in present day context especially dealing with the teaching line. It would thus be difficult to consider the case for an aspiring teacher to join the post of Lecturer in Chemistry today. As inevitably the petitioner may have lost touch with the subject. It is not pleaded that in the meanwhile the petitioner has in fact been teaching Chemistry in any other institution to lend continuity of skill. Therefore, the interest of students would also have to be kept in mind and which should not be jeopardized. Besides, there would result many complications in the rigid cadre of fitment, seniority, pay on par when innumerable promotions of those in service with their settled rights not open to be disturbed by court interjection. The adventure would not be worth considering embarking upon although mistake was admitted by the State which deprived a woman of her chances of consideration.

5. For these reasons, I would refrain myself from exercising discretionary writ jurisdiction under Article 226 of the Constitution for the ends of Article 15. However, the issue regarding alleged gender discrimination is left open to be decided in an appropriate case where relief can in fact be granted without disturbing 3rd party rights with obstructive issues of seniority, promotion etc. that may be involved of the settled rights of the existing cadre.

6. While parting with the order, this court cannot help, but compensate the petitioner for a litigation costs and sundry expenses that she may have incurred in pursuit of this case. Accordingly, the cost is assessed ₹50,000/- to be paid to the petitioner within a period of one month from the receipt of certified copy of this order.

7. With these observations and directions, the instant petition stands disposed of.

05.03.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes
Yes/No