

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

**CWP-14735-2016 (O&M)
Date of decision : 02.07.2019**

Vibha Mahajan and another

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Kapil Kakkar, Advocate,
for the petitioner.

Ms. Gunkirat Kaur, AAG, Punjab.

JITENDRA CHAUHAN, J.

Prayer in the instant petition is for issuance of a direction to the respondents to consider the case of the petitioners for issuing appointment order for the post of Teaching Fellow being higher in merit than the candidates selected vide order dated 16.05.2016 (Annexure P-8).

It is contended that the respondents advertised 9998 posts of Teaching Fellows vide advertisement dated 05.09.2007 (Annexure P-1). The petitioners being fully eligible for the post in question, applied for the same under the unreserved category against the posts meant for District Amritsar. As per the criteria set out, petitioner No.1 secured 61.988 marks, whereas, petitioner No.2 secured 61.531 marks.

The grouse of the petitioners is that the respondents vide order

dated 16.05.2016 (Annexure P-8), issued appointment orders to the general category candidates having lower merit i.e. 61.38, 61.33 and 61.32, whereas, the petitioners having merit of 61.988 and 61.531, were left out, which is against the settled proposition of law that there cannot be any circumstances where the rule of merit can be compromised.

On the other hand, learned State counsel submits that the candidates lower in merit than the petitioners and selected vide order (Annexure P-8), approached this Court in the year 2014 and were appointed in compliance of order dated 17.02.2016 (Annexure P-7), passed by this Court in CWP-25025-2014. It is further submitted that as many as 153 posts of various categories remained vacant on account of non-availability of either eligible candidates or non-joining of selected candidates. However, these vacant posts have already been filled up in furtherance of advertisement dated 09.11.2015 during the year 2016. The selected candidates have also joined.

Heard.

Admittedly, three candidates, namely, Sharnjeet Kaur, Kuldeep Kaur and Gurjeet Kaur, petitioners in CWP-25025-2014, who were lower in merit to the present petitioners were given appointment on 16.05.2016 (Annexure P-8). It has been asserted on behalf of the respondents that the merit of last selected candidate during the year 2009 with qualification of B.Ed. is at 62.296 marks, whereas, merit of the petitioners was 61.988 and 61.531 marks, respectively. Therefore, the appointment letters could not be issued to them in the year 2009. The petitioners attended the counselling on

13.12.2011, which was cancelled by the Department vide public notice dated 29.07.2013 (Annexure R-2). This Court cannot remain oblivious to the fact that the candidates lower in merit, namely, Sharnjeet Kaur (61.382), Kuldeep Kaur (61.33) and Gurjeet Kaur (61.324) were given appointment letters in the year 2016. In this circumstances, assertion of learned State counsel that the vacancies stand already filled up on the basis of re-advertisement cannot be accepted when the cases of the petitioners remained pending consideration for a considerable period from the date of counselling i.e. 13.12.2011 till the counselling was cancelled vide order dated 29.07.2013 (Annexure R-2).

As far as the assertion of the respondents that the vacancies stand already filled up in the year 2016, the same does not extinguish the right of the petitioners to appointment, particularly, when the posts are lying vacant as has been admitted by the respondents vide letter dated 29.06.2011 (Annexure P-11), issued in response to the RTI application which goes to prove that the stand taken by the State with regard to the availability of the posts is not as per record. Further, the petitioners cannot be made to suffer on account of the inaction or delay on the part of the respondents. The State being a model employer is expected to conduct itself in a fair manner. Even otherwise, the rule of merit cannot be compromised.

In view of the above, the instant petition is allowed; the respondents are directed to offer appointment to the petitioners within six weeks from the date of receipt of certified copy of this judgment. The petitioners shall be entitled to monetary benefits from the date of their

respective joining. However, their seniority shall relate back to the original merit list.

Allowed.

02.07.2019
atulsethi

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No