

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

CWP No. 22430 of 2013 (O&M)

Date of Decision: 24.09.2019.

Balvir Kaur and another

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Ms. Shubhpreet Kaur, Advocate for
Mr. Saurabh Arora, Advocate
for the petitioners.

Ms. Anju Sharma Kaushik, DAG Punjab.

Mr. Harshit Anand, Advocate for
Mr. Shekhar Verma, Advocate for respondent No.2.

Ms. Jyoti Sareen, Advocate,
for respondent Nos. 6 to 9.

JITENDRA CHAUHAN.J.(ORAL)

Through the instant civil writ petition, the petitioners have assailed the order dated 31.08.2013 (Annexure P-6) passed by respondent No. 2 vide which the claim of the petitioners for appointment on the post of Inclusive Education Resource Teacher was rejected.

The petitioners were appointed as Inclusive Education Volunteer under the Sarv Shiksha Abhiyan scheme, vide order dated 16.07.2009 passed by respondent No. 2. After their induction, they improved their qualification by acquiring degree of B.Ed (Special Education). Petitioner No. 1 and petitioner No.2 had obtained the

qualification of B.Ed on 08.03.2013 and 06.08.2012 respectively from Indira Gandhi National Open University, vide certificates dated 08.03.2013 and 06.08.2012 respectively (Annexures P-1 and P-2). In pursuance to the letter dated 13.03.2013 (Annexure P-3) issued by the District Education Officer, both the petitioners applied for the posts of Inclusive Education Resource Teachers. The certificates of B.A and B.Ed were annexed along with the application forms. To the utter surprise of the petitioners, respondent Nos. 6 to 9, who were juniors to the petitioners, were appointed as Education Resource Teachers while ignoring the claim of the petitioners. Two separate legal notices dated 30.07.2013 (Annexures P-4 and P-5) were served upon the department but in vain.

It is further contended that the claim of petitioners was rejected on the ground that on the cut off date i.e. 15.03.2013, they did not possess the required degree of B.Ed. It is however, contended by learned counsel for the petitioners that the approach of the department is fallacious inasmuch as the petitioners had obtained the required degree of B.Ed well before the cut off date. Learned counsel relies upon certificates (Annexure P-1 and P-2).

On the other hand, on behalf of the respondent No. 2, it is contended that the petitioners had not obtained the necessary degree of B.Ed prior to the cut off date i.e. 15.03.2013. The certificates (Annexures P-1 and P-2) had been obtained only after the cut off date.

Even the percentage of marks obtained by the petitioners was not

correctly mentioned which suggests that the degrees had been obtained by the petitioners only after the cut off date.

Heard.

It is to be noticed that while applying for the post of Inclusive Education Resource Teacher, the petitioners had attached with the application forms, the requisite certificates reflecting that they had passed out B.Ed even prior to the cut off date. Petitioner No.2 had passed the B.Ed in Hearing Impairment on 06.08.2012. Even, a corresponding entry was also reflected in their application forms that they had obtained the B.Ed degree prior to the last date of submission of the application forms. This Court is of the opinion that once the foundation was laid down in the application form and the petitioners had in fact passed B.Ed prior to the last date of submission of application forms, their candidature ought to have been considered by respondent No.2.

Learned counsel for respondent Nos. 6 to 9 states that even if the petitioners are higher in merit, they cannot be placed above respondent Nos. 6 to 9 because it is not a promotional post. However, the contention raised by the learned counsel deserves to be rejected as the appointment is to be made by the selecting agency as per the achievements of the participants.

In view of the above, the present civil writ petition is allowed. The order dated 31.08.2013 (Annexure P-6) passed by respondent No.2 is hereby set aside. It is ordered that the merit of the

petitioners be determined and they be given slot in the merit list drawn by the selecting agency as per their achievements.

24.09.2019.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No