

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

**CWP No.16915 of 2017 (O&M).
Date of Decision: 03.07.2019**

Neha Anand

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

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

Ms. Gunkirat Kaur, AAG Punjab.

JITENDRA CHAUHAN J.

The petitioner seeks direction to the respondents to consider her case for appointment to the post of Math Mistress under the General Category on account of the fact that despite being higher in merit, her claim for appointment to the post of Math Mistress was declined.

It is contended that respondent department issued an advertisement dated 09.09.2012 (Annexure P-1), inviting applications for filling up 5178 posts of Rural Associate Teachers in Master Cadre in various subjects i.e. English, Science, Punjabi, Social Studies etc. out of these, 812 posts were earmarked for Math Masters /Mistresses on contract basis on a consolidated pay of Rs. 6000/-p.m. The advertisement further laid down that the appointment will be initially

for the period of three years on contract basis and further they will be considered for regularization if their services are found to be satisfactory. The petitioner being fully eligible, applied against the said post in the General category. As per the criteria laid down, the petitioner was awarded 54.7270 marks. The petitioner had duly participated in the counseling conducted in November, 2014 and the respondent Department published main selection list of all the subjects which was uploaded on 15.10.2014, in which name of the petitioner was mentioned at Sr. No.58 for the post of Math Mistress.

It is further contended that the candidates lower in merit to the petitioner have been issued appointment letters and they have joined service. Upon making inquiries the petitioner learnt that the offer letter (Annexure P-8) for choice of station on the post of Math Mistress had been issued to the petitioner on 14.11.2014 at the following address:-

“House No.25878, Sector 66, Mohali, S.A.S. Nagar”

Learned counsel refers to Annexure P-9 to contend that the said letter was received back by the respondent authorities with an endorsement made by the postal authorities with report that “No such house number is at Sector 66 Mohali”.

He further refers to the prescribed proforma for submission of application that the petitioner had submitted online (Annexure P-2) in which the correspondence address had been furnished as House No.2878, Sector 66, Mohali, S.A.S. Nagar.

It is further contended that the petitioner cannot be denied her vested right for appointment to the post in question on account of a negligence/error committed by the respondent authorities in having sent offer/acceptance letter on a wrong address and particularly in the light of the fact that a candidate lower in merit has been selected and appointed and till date posts are still lying vacant.

On the other hand, on behalf of the respondents, it is admitted in paragraph No.4 of Preliminary Submissions of the reply as under:-

“xxx It is correct that inadvertently one digit was inserted in the address of the petitioner. Due to which the letter dated 14.11.2014 was not delivered to her. But the petitioner had the opportunity to check the progress of the selection procedure on official website of the department where time to time all notices were uploaded for the sake of information of the candidates.”

It is contended on behalf of the respondents that the application forms of the candidates were sought by registered post and the work of feeding the data of all the candidates was entrusted to a private agency but the private agency fed wrong residential address of the petitioner which could not be cross checked by the department due to lack of time and the original form of the candidate shall be produced before the Court by the Directorate recruitment. The main selection list of all the subjects was uploaded on 15.10.2014 on the official website of the department in which petitioner's name was mentioned at

Sr. No.58 for the post of Math Mistress and vide this Public Notice dated 15.10.2014 in condition No.8 it was clearly stipulated that the candidates who have been offered appointment shall submit the filled acceptance letter available at the website of the department within 15 days to the Education Recruitment Board, Punjab Government Model Senior Secondary School Microsoft Building, Phase 3-B-1, Mohali. Selection of the candidates who do not submit such acceptance letter shall be set aside and appointment shall be offered to the next candidate with highest merit. But the petitioner did not submit such offer letter to the department. Hence, her selection stood set aside as per condition No.8 of the Public Notice dated 15.10.2014 uploaded on the official website of the department.

Heard.

While issuing notice of motion, this Court had passed the following order on 02.08.2017:-

“Counsel submits that the petitioner had applied for the post of Math Mistress in response to advertisement dated 9.9.2012 (Annexure P-1), issued by the Chairman, Recruitment Cell-cum-Director General, School Education, State of Punjab. The application was pertaining to the subject of Math for which 812 posts had been advertised. In the selection process the merit of the petitioner has been determined as 54.72% marks. Petitioner had duly participated in the counseling exercise conducted in November, 2014.

Grievance raised in the instant petition is that candidates lower in merit to the petitioner have been issued

appointment letters and they have joined service. Upon making inquiries petitioner has learnt that the offer letter for choice of station on the post of Math Mistress had been issued to the petitioner on 14.11.2014 at the following address:-

“House No.25878, Sector 66, Mohali, S.A.S. Nagar” and which was received back by the respondent authorities with an endorsement made by the postal authorities that “No such house number is at Sector 66 Mohali”. To substantiate such assertion counsel has adverted to the documents placed on record at Annexure P-9.

Counsel refers to a copy of the prescribed proforma for submission of application that the petitioner had submitted online (Annexure p-2) in which the correspondence address had been furnished as House No.2878, Sector 66, Mohali, S.A.S. Nagar.

Argument raised by counsel is that the petitioner cannot be denied her vested right for appointment to the post in question on account of a mistake/error committed by the respondent authorities in having sent offer/acceptance letter on a wrong address and particularly in the light of the fact that a candidate lower in merit has been selected and appointed and till date posts are still lying vacant.

On a specific query having been put as regards the delay in approaching the Writ Court, counsel furnishes an undertaking that in the eventuality of the prayer made in the instant petition being accepted as regards appointment to the post in question, the petitioner would forego the arrears of salary for the period.

Notice of motion.

On the asking of the Court, Mr. T.P.S. Chawla, learned D.A.G., Punjab accepts notice on behalf of respondents

no.1 to 3. Requisite copies of the writ paper book be furnished to him during the course of the day.

Learned State counsel is directed to make available for perusal of this Court, on the adjourned date, the original application form that the petitioner had submitted while applying for the post in question.

List on 30.8.2017.

A copy of this order be furnished to learned State counsel under the signatures of Bench Secretary.”

It emanates from the record that the respondents have unequivocally admitted that the offer letter was delivered at a wrong address. The said fault cannot be assigned to the petitioner. The plea raised by the respondents that the mistake has been committed by a private agency cannot be accepted because the respondent department had delegated its duty to a private agency. The act done by the private agency binds the respondent-department and they cannot wash their hands off by merely taking this plea. It has also come on the record that the score of the petitioner is 54.72 % marks whereas, the last candidate appointed had scored 45.58% marks in his credit. The petitioner who is higher in merit cannot be denied her vested right for appointment to the post in question on account of mistake/error committed by the respondent authorities.

In view of the above, the present civil writ petition is allowed. The respondents are directed to appoint the petitioner to the post of Math Mistress. The necessary exercise be completed within two months from the date of receipt of certified copy of the judgment.

The petitioner shall not be entitled to any arrears of salary, in view of the undertaking given by learned counsel for the petitioner to forego the same.

03.07.2019.
SN

(JITENDRA CHAUHAN)
JUDGE

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