

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

CWP-6461-2013 (O&M)
Date of decision : 19.07.2019

Gurjit Singh

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R.K. Arora, Advocate,
for the petitioner(s).

Ms. Bhavna Gupta, DAG, Punjab,
assisted by Mr. Amarveer Singh,
Junior Assistant, BEO (EE), Amritsar.

Respondent No.4 and 5 proceeded against *ex parte*
vide order dated 09.01.2019.

JITENDRA CHAUHAN, J.

The petitioner, inter alia, seeks quashing of order dated 23.05.2012 (Annexure P-8), whereby, his claim for appointment to the post of ETT Teacher (Teaching Fellow), despite being higher in merit, had been declined.

It is contended that respondent No.3 issued an advertisement dated 05.09.2007 (Annexure P-1), inviting applications for recruitment of 9998 posts of ETT Teachers (Teaching Fellow). Out of these 9998 posts, 1073 posts were earmarked for District Amritsar. Further, as per the advertisement, the vacancies were to be divided in the ratio of 50:50

between the male and female candidates. The petitioner being fully eligible, applied against the said post in the General category. As per the criteria laid down, the petitioner was awarded to 59.111 marks. The respondent-Department published final result of successful candidates on 14.04.2008, however, the name of the petitioner did not figure in the list of selected candidates, whereas, respondent No.4 having secured 56.807 marks, from the category of the petitioner, was selected. On enquiry, it came out that 8 marks awarded for higher qualification of M.Sc. were deducted in the final merit list. Feeling aggrieved, the petitioner approached this Court vide CWP-11712-2008, seeking directions for his appointment as ETT Teacher (Teaching Fellow), on the basis of his merit 59.111, which is over and above the merit of respondent No.4, having secured 56.807 marks. The writ petition was disposed of on 23.01.2012 (Annexure P-7) with the directions to respondent Nos.2 and 3 to call for the original records to verify the petitioner's claim and if it is found that he is higher in merit than those already given appointment and he is otherwise eligible and suitable, to offer him appointment from the due date with notional benefits within four months therefrom. In response thereto, respondent No.3 by passing impugned order dated 23.05.2012 (Annexure P-8), has rejected the claim of the petitioner. Hence, the instant petition.

It is contended that even if the marks of the petitioner against his M.Sc. degree are excluded, the petitioner's merit would come at 51.111, which is higher than respondent No.5.

On the other hand, learned State counsel submits that as per the combined merit list prepared pursuant to the directions passed by this Court

in COCP-1404-2010 and COCP-77-2011, the last candidate who could figure in the merit list secured 61.170 marks, therefore, the claim of the petitioner having obtained 51.111 marks, could not be considered.

Heard.

It is not in dispute that respondent No.5 is the last selected candidate in the General category and was having merit of 50.506 marks. The respondents have tried to take a plea that respondent No.5 was given appointment on the basis of counselling held on 14.05.2010, which was prior to the decision in CWP-11712-2008, filed by the petitioner. The petitioner was not considered at that time because his writ petition was pending adjudication before this Court.

Vide order dated 29.05.2019, this Court had directed the State to file an affidavit as to whether on the date of issuance of appointment letter to respondent No.5, the claim of the petitioner was considered or not. Though, no affidavit in this regard has been filed so far, but learned State counsel, on instructions, submits that even after deduction of eight marks for higher qualification, the petitioner possessed merit of 51.111, which is higher than the merit of respondent No.5, i.e. 50.506.

In view of the above admitted position, when the petitioner possessed higher merit, the denial of appointment to the petitioner is patently wrong, arbitrary and violative of Articles 14 and 16 of the Constitution of India. Thus, the action of the respondents in denying appointment to the petitioner despite his higher merit is unsustainable.

In view of the above, the instant petition is allowed; impugned order dated 23.05.2011 (Annexure P-8), is hereby quashed; and the official

respondents are directed to appoint the petitioner on the of ETT Teacher (Teaching Fellow), according to his merit i.e. 51.111 from the date of appointment given to respondent No.5. The petitioner shall be entitled to all consequential benefits notionally, from the date of appointment given to respondent No.5, except monetary benefits. The necessary exercise be concluded within a period of six weeks from the date of receipt of a certified copy of this judgment.

Allowed.

19.07.2019
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(JITENDRA CHAUHAN)
JUDGE

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