

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

**CWP NO. 6480 of 2018(O&M)
DATE OF DECISION : 04.07.2019**

Tarun Rishi Raj

... Petitioner

versus

The State of Punjab & Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. B.S. Bajwa, Advocate,
for the petitioner.

Ms. Ambika Bedi, AAG Punjab.

ARUN MONGA, J. (ORAL)

1. The petitioner has approached this Court for issuance of a direction to the respondents to grant the same pay scale as has been granted to similarly placed persons.

2. Facts of case, though no in dispute, but relevant ones to give a background leading to filing of writ petition are, that petitioner, a Backward Class candidate, applied for the post of Vocational Master, Department of Education, Punjab, pursuant to an advertisement dated 23.09.2009 (Annexure P-1). At the time of the submitting application, the petitioner also annexed Backward Class Category Certificate dated 09.06.2003 (Annexure P-4) issued by the competent authority, but later he submitted another certificate dated 03.12.2010(Annexure P-5) before the date of scrutiny of documents. On the appointed day of scrutiny of documents, the

petitioner appeared before the Scrutiny Committee on 08.12.2010 and produced the originals of both his Backward Class Certificates. However, the Scrutiny Committee declined to consider his Backward Class Certificate dated 09.06.2003(Annexure P-4) stating that the same is quite an old one but the certificate of later date was taken on record. The petitioner was not given the benefit of his later Backward Class Certificate (Annexure P-5) and was, thus, denied appointment on the post of Vocational Master in Backward Class category. The later Backward Class certificate is of a date after the cut-off date envisaged as per the advertisement (Annexure P-1).

3. The relevant condition of the advertisement is reproduced hereinbelow:-

“6. The certificate of B.C. Category should have issued within a one year proceeding from the last date of submission of the application and the certificate should be in accordance with the Instructions dated 17.1.1994 and letter dated 17.08.2005 issued by the Welfare Department, Government of Punjab.”

4. In the premise, the petitioner earlier approached this Court vide CWP NO. 9012 of 2015, which was disposed of in following terms:-

“By considering submissions made by learned counsel for the parties, both the counsel have relied upon judgments of Single Bench and that LPA filed by respondent-State against judgment of this Court in Ram Kishore's case (supra) has been dismissed on 17.08.2016, meaning thereby the judgment of said case is to be given weight over and above other judgments, the present petition is disposed of with a direction to respondent Nos. 1 and 2 to consider the claim of the petitioner in view of the judgment of Ram Kishore's case (supra) which has been upheld by LPA Bench.”

5. Notwithstanding, the above order passed by this Court, the

petitioner was not offered the contemplated appointment as Vocational Master and he filed contempt petition bearing COCP No. 86 of 2018. Pursuant thereto, an appointment letter dated 29.01.2018(Annexure P-13) was finally issued. The petitioner states that for no fault of his, issuance of appointment letter was delayed by the respondents, yet he has been punished merely because he chose to approach this Court on earlier occasions. He is now being denied the regular pay scale on parity with other successful candidates who had applied pursuant to the same advertisement. Hence, the present writ petition seeking parity of pay.

6. In the return filed on behalf of respondents No.1 to 3, the stand taken is that the petitioner cannot seek pay parity with other successful candidates in view of specific condition No.3 contained in the advertisement. The said condition is reproduced hereinbelow:-

“3. These appointments for all the categories are to be initially made for a period of one year on contract basis and consolidated pay. The offer of appointment can be extended for next year, keeping in view the work and conduct of the candidate. After period of 3-1/2 years, on the condition of the work and conduct of the candidate being satisfactory, he will be considered for regular appointment. This recruitment is being made on priority basis to fill up the vacant posts in border, bet, kandi and rural areas.”

It is, thus, the case of the respondents that the appointment letter dated 24.01.2018 is issued in consonance with condition No.3, *ibid*, and the petitioner will be considered for regularization only after completion of three and half years of service subject to work and conduct being satisfactory, as was done in the case of other selected candidates. It is

averred that it was specifically stated in the appointment letter that if the petitioner is willing to accept the appointment on the terms and conditions mentioned therein, then he should report to concerned District Education Officer within the stipulated time. Once the petitioner has joined his duties, he cannot now *volte face* to claim regular pay scale without successfully undergoing the probation period, as stipulated in the appointment letter.

7. I have heard the rival contentions of learned counsel for the parties and have also perused the pleadings.

8. Learned counsel for the petitioner has emphatically argue that the petitioner's case is squarely covered by judgment rendered in Ram Kishore Vs. State of Punjab & Ors., CWP No. 23182 of 2012, decided on 11.03.2016(Annexure P-10) and that though the petitioner has been appointed on the post of Vocational Master, but he has not been given the benefit of pay parity with other successful candidates who were selected pursuant to same very advertisement, as envisaged in Ram Kishore's case *ibid*. Having perused the said judgment, I am of the view that reliance placed by learned counsel for the petitioner to the extent of seeking pay parity being envisaged under the said judgment is totally misplaced. In fact the judgment says to the contrary. The relevant thereof is reproduced hereinbelow:-

“Accordingly, the present writ petition is allowed. A direction is issued to the respondents to consider the case of the petitioner for appointment to the post of Senior Lab Attendant in the Backward Class category/ Ex-Serviceman, within a period of 2 months from the date of receipt of a certified copy of this order. However, it is made clear that the petitioner is responsible for not strictly complying with the directions of the

advertisement and therefore, he will not be entitled for any relief of seniority etc. in the eventuality of the letter of appointment being issued to him.”

I am in respectful agreement with above-said view of my Learned Brother G.S. Sandhawalia, J.

9. However, the other contention of learned counsel for the petitioner that while in the case of Ram Kishore, the department on its own has granted him appointment on regular basis in the regular pay scale of Rs.10300+5400 on the ground that by the time Ram Kishore was offered appointment pursuant to the orders of this Court, the posts advertised vide advertisement dated 23.09.2009(Annexure P-1) had been regularized by the Department in the interregnum and, therefore, Ram Kishore was exempted to undergo the contractual period of three years before being granted regularization.

10. Learned counsel for the petitioner submits that even in the present case all the advertised post have been regularized by way of notification by the State Government and, therefore, applying the logic of giving the benefit to Ram Kishore, the petitioner is also entitled to be given regular post with regular pay scale on the same parameters and with effect from the same date as the other successful candidates. Specific averments to this effect are contained in Para No.17 of the writ petition, which is reproduced hereinbelow:-

“17. That it is further submitted here that example has already being set by the department on its own as similarly placed person i.e Ram Kishore whose case i.e. CWP No. 23182 of 2012 was allowed by this Hon'ble Court, was given appointment on regular basis on regular pay scale of 10300+5400 as during pendency of

CWP, posts being contractual stands regularized by department and same is the case of petitioner, as contractual post for 3 years stands regularized by department and hence the petitioner can only be given regular post with regular pay scale, all the advertised posts stands regularized by notification of State Government.”

11. In the return filed on behalf of respondents No.1 to 3, it is stated, thus:-

“17. That in reply to the contents of Para No.17 of the Writ Petition, it is submitted that with regard to matter in CWP No. 23182 of 2012 titled as Ram Kishore Versus State of Punjab and others (Decision in LPA is Annexure P-10), the Hon'ble High Court in its Judgment dated 11.03.2016 has nowhere ordered that regular appointment is to be issued to the petitioner, Ram Kishore. The action of the respondents is as per law and justified.”

A perusal of the above stand of the respondents reflects that Para No.17 of the writ petition vis-a-vis response thereto in return, as reproduced above, clearly shows that while on one hand stand taken is that this Court in Ram Kishore's case nowhere ordered that regular appointment is to be issued, yet on facts it has not been adverted whether Ram Kishore was granted the benefit of regularization by the Department on its own on parity with other successful candidates, without having to undergo the contractual period of three years.

12. In the aforesaid background, I am of the opinion that there is some substance in the argument of learned counsel for the petitioner that petitioner having been made to run from pillar to post in the earlier rounds of litigation to seek his appointment and keeping in view that he has ever willing to serve but was denied the opportunity on account of not being

appointed by the respondents, cannot therefore, be put to disadvantageous position vis-a-vis other successful candidates who applied along with him. While on one hand, the petitioner was denied his livelihood due to inordinate delay entirely attributable to the respondents, on the other, he is subjected to indignity of being treated inferior qua the other successful candidates who applied along with him.

13. Leaving that debate open, to be decided in an other appropriate proceedings, suffice at this stage in view of the ambiguous stand of the respondents in the reply to para No.17 of the writ petition, they are directed to consider the case of the petitioner on the same parameters as were applied to Ram Kishore's case while granting him regularization by the department on its own. Needless to say that if in case of Ram Kishore, no such benefit was conferred as contended by the petitioner, then the petitioner would also not be entitled to seek the same on the ground of parity with other appointees in the same selection.

14. Let the appropriate orders be passed within a period of two months from the receipt of certified copy of this order.

15. Disposed of.

(ARUN MONGA)
JUDGE

July 04, 2019
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| 1. Whether speaking/ reasoned: | Yes/ No |
| 2. Whether reportable: | Yes/ No |