

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

249

CIVIL WRIT PETITION NO.10670 OF 2010
DATE OF DECISION: JANUARY 27, 2020

Liaqat Ali and Ors.

.....Petitioners

VERSUS

The State of Punjab and Ors.

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. R.K. Malik, Senior Advocate,
with Mr. Digvijay Singh, Advocate
for the petitioners.

Ms. Monica Chibber Sharma, Sr. DAG, Punjab.

Mr. M.K. Singla, Advocate
for respondent No.5.

AUGUSTINE GEORGE MASIH, J. (ORAL)

In compliance with the order passed by this Court on 23.01.2020, additional affidavit of the Director Public Instructions (Elementary Education), Punjab has been filed in Court today and taken on record. According to the said affidavit most of the petitioners, who fall in the merit have been issued appointment letters. As regards the other petitioners, who have not been issued the appointment letters, although, they have scored higher marks than the last selected candidate in the General Category, it has been stated that vacancies would not be available for them for adjustment in the selection for the year 2007 pursuant to the advertisement dated 05.09.2007 (Annexure P-1). It has further been asserted that the General Category candidates are likely to be displaced because of the adjustment of the petitioners. Prayer has further been made for rejecting the claims of the candidates who have filed writ petitions, where they are claiming the benefit of reservation against the vacancies which would now

occur because of the shifting of the Scheduled Castes candidates in the General Categories and filling them up with the petitioners as it is submitted that there may be candidates who were higher in merits than the petitioners, and have a rights of consideration.

Having considered the submissions made by the counsel for the State and on going through the affidavit, which has been additionally filed in the Court today, there can be no dispute that all the petitioners who have obtained higher marks than the last selected General Category candidate need to be accommodated and appointed to the post of ETT teacher. This is in the light of the fact that they have an additional right for consideration against the General Category seats for appointment.

That apart, keeping in view the equity and also the aspect that the General Category candidates would have been working on their selection and appointments as ETT since the year 2009-2010, the situation demand that they may not be at this belated stage dislodged as no fault can be attributed to them. It would be travesty and involve serious human tragedy where persons have settled being in service since 2009-10 for 9 to 10 years. They would have move a long way in their lives with families. Counsel for the State, on instructions from Director, Public Instructions (Elementary Education), Punjab, who is present in Court states that the posts are available in the ETT cadre. If that be so, let no candidate, who is already in service, be dislodged and removed from service for adjusting the petitioners as they have been continuing with respondents since long and they were not at fault on their part while they were issued the appointment letters. It is a matter of fact, as stated in the affidavit which has been filed, that they have completed their probation period and their services have also been regularised.

Direction is thus issued that all the petitioners who have higher merit i.e more marks than the last selected General Category candidate be issued appointment letters if not yet issued within a period of two days. The petitioners will be treated to have been appointed from the date, the last General Category candidate was appointed to the post of ETT teacher. The petitioners would be entitled to all notional benefits and actual financial benefits from the date they joined/will join service.

As regards, the petitioners who have approached this Court claiming appointment against the reserved category vacancies which would now become available because of shifting of the above referred reserve category candidates to the General Category, they would be considered against these posts and would be entitled to the same benefits as has been granted to the other petitioners.

It has been brought to the notice of the Court that some candidates were issued appointment letters as in CWP No.10670 of 2010 and they have been continuing on the said posts since 19th April 2011 and therefore, they would have been granted the financial benefits also, the same be not withdrawn from them in the light of the order as mentioned above.

At this stage, an issue have been raised by the learned counsel for the State with regard to the candidates who would be otherwise higher in merit than some of the petitioners but have not approached the Court. Those candidates who have slept over their right and are fence-sitter are not entitled to any benefit as the initial cause of action arose to them at the time of selection in the year 2009 and in any case upto 2011. Having slept over their rights and have not asserted the same, at this belated stage, they can not be given any benefit inspite of they having scored higher marks than the petitioners who have been vigilant and approached the Court pressing for their right. Merely, because the writ petitions

have been pending, the petitioners cannot be put to any disadvantage because of that. Persons, who despite knowing that there was a right available to them, having chosen not to assert the same, cannot at this belated stage be permitted to assert the same and therefore, their right is not enforceable as of now.

These writ petitions are allowed in above terms.

It may also be added here that this order has been passed in the peculiar facts and prevailing circumstances of the present case, where this Court has exercised its equitable jurisdiction. This shall not be treated and cited as a precedent.

27th January, 2020
manju

(AUGUSTINE GEORGE MASIH)
JUDGE

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