

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
CWP No. 13674 of 2011(O&M)
Date of Decision: February 4, 2020

Devinder Kaur

... Petitioners

Versus

State of Punjab and others

... Respondents

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

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

Ms. Anu Pal, DAG., Punjab.

AUGUSTINE GEORGE MASIH, J.(Oral)

The petitioner has approached this Court praying for consideration of the claim of the petitioner for appointment to the post of Science Mistress in the light of the fact that persons lower in merit have already been appointed.

2. It is the contention of the learned counsel for the petitioner that an advertisement dated 23.9.2009 inviting applications to fill up 7654 posts on contract basis in the teaching/non teaching cadre of the Department of Education was issued wherein 450 posts were kept for the Science Masters/Mistresses. The petitioner in pursuance thereto applied for the said post and obtained 62.86 marks and was placed at Merit No.43 in the backward class category. Notice for holding counselling for filling up the posts was issued qua Masters/Mistresses of Science was first held on 13.12.2009 wherein candidates upto Merit No.29 were called. Petitioner obviously could not participate in the said counselling as her Merit Number was 43. The second counselling for Science Masters/Mistresses was held

on 15.7.2010 when the petitioner did not participate. Another notice for counselling which was to be held on 27.7.2010 was issued which ultimately was postponed by another public notice.

3. As per reply which has been filed by the respondents, postponed counselling was held on 9.10.2010 (Annexure R-1) where the petitioner did not participate as per the stand of the respondents. Fourth counselling was again published to be held for Science Mistresses on 8.7.2011 (Annexure P-8) when the petitioner participated. The petitioner was not considered for appointment to the post of Science Masters/Mistresses taking a plea that she has not earlier participated in the counsellings which were held for filling up of posts. The plea which was additionally taken was that the counselling dated 9.10.2010, which was held, was the last counselling and the petitioner having failed to avail the final opportunity given to participate therein cannot be permitted to participate in the counselling dated 8.7.2011. Another plea which has been taken is that the counselling dated 8.7.2011 was meant for candidates who had obtained merit No.91 onwards. Since the petitioner is at S.No.43 and therefore could not participate in the same.

4. Counsel for the petitioner contends that these pleas are not sustainable as there is nothing mentioned in the advertisement/public notice dated 29.6.2011(Annexure P-8), which indicated the dates fixed for counselling for a particular post to be filled up, wherein 8.7.2011 was fixed for Science Masters/Mistresses. His contention is that the petitioner admittedly being higher in merit cannot be ousted merely because she could not participate in the counselling earlier and nothing has been mentioned in the advertisement which would indicate that the said counselling was meant

for candidates beyond merit No.91 nor was it mentioned that the candidates who had earlier got an opportunity to participate in the counselling and having failing to do so, would be barred from attending the said counselling. He thus, contends that the stand of the respondents is not sustainable. In support of his contentions with regard to plea which has been sought to be taken by the respondents, reliance has been placed on the judgment passed by this court in ***CWP No. 13758 of 2011 Pawanjeet kaur Vs. State of Punjab and others decided on 14.2.2013 and CWP No. 13421 of 2011 Mona Rani and others Vs. State of Punjab and others*** decided on 17.2.2014.

5. On the other hand, learned counsel for the State has asserted as per the stand as has been mentioned above with regard to the respondents, she contends that the petitioner having been granted the various opportunities to participate in the counselling and having failed to do so, especially in the light of the fact that the counselling which was postponed and thereafter held on 9.10.2010 clearly mentions that it was a final chance for reporting for counselling to the candidates who had not earlier appeared, petitioner could not have been given another chance to participate in the counselling. She contends that as per the stand taken in the reply which has been filed, the purpose for holding counselling on 8.7.2011 was to give a chance to the candidates who had earlier not participated in the counselling and were placed at Merit No.91 onwards but not for the candidates who had earlier chosen not to participate in the counselling and who were holding merit No.90 and below.

6. Counsel has also placed reliance upon the Division Bench judgment of this Court in **LPA No. 1781 of 2014 Loveleen Kaur Vs. the**

State of Punjab and others decided on 3.11.2014 where in the same selection process in which the petitioner had participated but relating to Punjabi Mistress a candidate who had failed to appear in the second counselling held on 7.7.2011 for the post of Punjabi Mistress when approached this Court for claiming participation in a counselling so that she could be considered for appointment, the Division Bench had dismissed the said appeal keeping in view the fact that the petitioner having been given an opportunity to participate in the counselling and not availing the same was not entitled to any further chance. She on this basis asserts that the petitioner cannot be permitted to claim appointment on the basis of counselling held on 7.7.2011.

7. I have considered the submissions made by the counsel for the parties and with their assistance have gone through the pleadings as well as the judgments on which reliance has been placed.

8. The facts as recorded above in the assertions made by the counsel are not in dispute.

9. The issue involved in the present case would revolve around the public notice dated 29.6.2011 (Annexure P-8) wherein vacancies which had remained unfilled were sought to be filled up on the basis of merit inviting the candidates to participate in the counselling for the various unfilled posts of different categories including that of Masters/Mistresses of Science for which 8.7.2011 was the date fixed.

10. As per the stand of the respondents, this counselling was only for the candidates who were placed at Merit No.91 onwards whereas the petitioner being at S.No.43 in the merit list could not participate in the said counselling and therefore was not entitled for appointment. This is the only

reason which would debar the petitioner from claiming appointment to the post of Science Mistress as the stand of the respondents is that as it was the postponed counselling which was held on 9.10.2010 that being a last chance for participation of the candidates who had not earlier taken part in the counselling, therefore, the said candidates were not eligible for consideration.

11. This plea is not accepted for the reason that the public notice dated 29.6.2011 does not indicate any such condition rather the said advertisement emphasis on the vacancies which had remained available to be filled up on the basis of merit from eligible candidates. The plea with regard to the candidates with merit No.91 onwards does not find mention in the advertisement. Apart from that there is no word mentioned as such that the candidates who had earlier got an opportunity to participate in the counselling would not be allowed to participate in the counselling. A plea which has been taken by the respondents with reference to the postponed counselling which was held on 9.10.2010 (Annexure R-1) where it is asserted that this would be the final chance to report for counselling to the candidates, suffice it to say, that there was no merit list number specified in the said advertisement indicating therein the candidates who could participate in the counselling, meaning thereby not only the candidates who had earlier been given opportunity to participate in the counselling i.e. 1 to 29 but all other candidates as per the merit could participate in the counselling for filling up of these posts.

12. If that be so, the reason which is being adopted by the respondents to assert and deny the petitioner to participate in the counselling which was held on 9.10.2010 that she has failed to participate

after the issuance of the postponed counselling date would stand equally applicable to the candidates who are now sought to be projected to be considered for counselling in the last counselling i.e. 8.7.2011 because they would be the candidates who were also called for counselling on 9.10.2010 but failed to participate.

13. In the light of the above as also the judgment passed by this Court in **Pawanjeet kaur's case (supra)** as also in Mona Rani's case (supra) the claim of the petitioner cannot be said to be without any basis.

14. The judgment on which reliance has been placed by learned counsel for the State i.e. **Loveleen Kaur's case (supra)** is distinguishable on facts as that was a case where there were only two counsellings which were held. The petitioner in the first counselling was not eligible but in the second she did not participate. There was no other advertisement/public notice for filling up of the posts of Punjabi Mistress and therefore the Court had proceeded to hold that the petitioner having been granted an opportunity to participate in the counselling having not availed the same cannot be now permitted to get another opportunity as a special case. The case therefore, in hand, is totally different than what was so found in **Loveleen Kaur's case (supra)**. The said judgment therefore would not be applicable to the case in hand.

15. In view of the above, the present writ petition is allowed. Direction is issued to the respondents to consider the claim of the petitioner for appointment to the post of Science Mistress. In case, she is found eligible for appointment to the said post and keeping in view the fact that persons lower in merit than her have already been appointed, she be issued the appointment letter. She is held entitled to all consequential benefits

from the date the persons lower in merit than the petitioner have been appointed except for the monetary benefits which is restricted to 38 months prior to the date of passing of this order i.e. today. This process should be completed by the respondents within one month from today.

February 4, 2020
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(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No