

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

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Civil Writ Petition No.11461 of 2016
Date of Decision: January 13th, 2020

Rajinder Kaur

...Petitioner

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, Deputy Advocate General, Punjab.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court with a grievance that despite she having been issued the appointment letter dated 23.10.2012 (Annexure P-3), no posting order was issued. Aggrieved by this, petitioner had approached this Court along with others by filing *CWP No.7401 of 2013* titled as *Kulwant Kaur and others Versus State of Punjab and others*, which was disposed of by this Court vide order dated 08.04.2013 (Annexure P-6) directing the Director Public Instructions (Elementary Education), Punjab, to consider and decide the legal notice served by the petitioners. The said legal notice was decided by the Director Public Instructions (Elementary Education) vide order dated 19.08.2013 (Annexure P-8) rejecting the claim of the petitioners. The said order of rejection was challenged by the co-petitioners of the petitioner by filing *CWP No.25025 of 2014* titled as *Sharanjit Kaur and others Versus State of Punjab and others*, which was allowed by this Court vide order dated 17.02.2016 (Annexure P-9). The said judgment has been implemented by the respondents and posting order issued to the petitioners in that writ petition on 05.05.2016 (Annexure P-10). Petitioner, therefore,

approached this Court by way of present writ petition.

2. Respondents have taken a plea that the petitioner has approached this Court after delay and it has also been asserted by the respondents that the petitioner did not appear in the counselling in the year 2009, because of which she is not entitled to appointment to the post of ETT. Plea has also been taken that the petitioner has been a fence sitter and has approached this Court after an inordinate delay, because of which she is not entitled to the benefit. Reliance in this regard has been placed upon the judgment passed by this Court in *CWP No.11597 of 2016* titled as *Parminder Kaur and others Versus State of Punjab and others* decided on 02.06.2016 (Annexure R-3), where this Court has proceeded to reject the claim of the petitioners on the ground that the petitioners have been sitting over the matter and have approached the Court after an inordinate delay and, therefore, the prayer has been made for rejection of the writ petition. Assertion has also been made that some other candidates, who are higher in merit, would be available for appointment and, therefore, the petitioner in any case would not be entitled to the relief as has been made in the present writ petition.

3. I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the records of the case including the judgment passed by this Court in *CWP No.11597 of 2016* titled as *Parminder Kaur and others Versus State of Punjab and others*, on which heavy reliance has been placed by the respondents to deny the benefit of appointment/posting to the petitioner.

4. It is not in dispute that the petitioner was duly selected and was issued the appointment letter by the respondents on 23.10.2012

(Annexure P-3). Medical and other formalities were carried out but the posting order was not issued to the petitioner and other similarly placed employees. They, therefore, approached this Court by filing CWP No.7401 of 2013 Kulwant Kaur's case (supra), where petitioner was also a party. The writ petition was disposed of and in pursuance thereto, order dated 19.08.2013 (Annexure P-8) was passed rejecting the claim of all the petitioners in the said writ petition. This order was challenged in the year 2014 by Charanjit Kaur and others, although the petitioner was not a party to the said writ petition but the said impugned order, which was a common order passed, was set aside by this Court in CWP No.25025 of 2014 on 17.02.2016 (Annexure P-9). The said judgment was implemented by the respondents by issuing posting orders to the candidates on 05.05.2016 (Annexure P-10). Petitioner being similarly placed and the impugned order being common, which was set aside by this Court in CWP No.25025 of 2014, approached this Court by filing the present writ petition on 30.05.2016, claiming for allotment of station/posting order. The grievance, therefore, of the petitioner is restricted for posting order in the light of the fact that the order dated 19.08.2013 (Annexure P-8) stands quashed without referring to or restricting it to the petitioners only. It is not disputed that one of the candidates, who was duly selected and issued appointment letter, was the petitioner but had not been issued the posting order and the said impugned order, therefore, qua all the candidates stood quashed.

5. Petitioner immediately after the passing of the order dated 17.02.2016 (Annexure P-9) and the said order having been implemented on 05.05.2016 (Annexure P-10), approached this Court by

filing the present writ petition on 30.05.2016 and, therefore, it cannot be said that the petitioner has delayed the approach to this Court inordinately. As a matter of fact at the very first instance, petitioner had approached this Court by filing CWP No.7401 of 2013. It is not a case where the petitioner can be said to be sleeping over her right or has been a fence sitter, as has been found by this Court while passing the judgment dated 02.06.2016 (Annexure R-3), where the petitioner had been sleeping over the rights and had approached this Court after an inordinate delay, which stands discussed by this Court. The said judgment was based upon the facts and circumstances of that particular case, which is distinguishable, as has been referred to above and thus, would not be applicable to the case in hand.

6. The stand of the respondents that the petitioner had not participated in the counselling in the year 2009 is outrightly to be rejected in the light of the fact that the respondents have not taken a plea that the appointment letter dated 23.10.2012 (Annexure P-3), which was issued to the petitioner, was bad or was withdrawn at any stage till date. That apart, the said plea which has been taken by the respondents, is unacceptable in the light of the fact that the respondents have accepted the factum that the petitioner and the similarly placed employees had been issued the appointment letter, which still holds the field. The plea which has been taken by the respondents is that the order dated 19.08.2013 (Annexure P-8) has not been challenged by the petitioner, which fact is unacceptable in the light of the detailed judgment passed by this Court in CWP No.25025 of 2014, where the order as such has been quashed.

7. In view of the above, the stand of the respondents is unacceptable and thus stands rejected.

8. Direction is issued to the respondents to issue the posting order to the petitioner within a period of three weeks.

9. It goes without saying that the petitioner shall be entitled to all consequential benefits from the date her juniors were issued the posting orders and had joined. However, she would not be entitled to any actual financial benefits till the date she joins duties.

10. The writ petition stands allowed/disposed of in above terms.

January 13th, 2020

Puneet

(AUGUSTINE GEORGE MASIH)

JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No