

CWP-13967-2016

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

CWP-13967-2016

Date of Decision: 16th January, 2020

Santosh Kaur & others

...Petitioners

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

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

Mr. Charanpreet Singh, Asstt. A.G., Punjab.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioners have approached this Court challenging the order dated 31.05.2016 (Annexure P-16) passed by the Director, Public Instructions (Elementary Education), Punjab, whereby, as per the direction issued by this Court in CWP No.4225 of 2016, titled as 'Santosh Kaur & others Vs. State of Punjab & others', decided on 02.03.2016 (Annexure P-15), the claim of the petitioners was duly considered and rejected on the ground of delay and latches.

2. It is the contention of the learned counsel for the petitioners that the reason assigned by respondent No.2 for rejecting the claim of the petitioners is unacceptable, as there was no delay on the part of the petitioners, as they have all through been pursuing their matters with the respondents. It is submitted that the petitioners were issued appointment letters on 16.11.2012 (Annexure P-5) after the counselling held on

13.12.2011. Thereafter, as per the mandate for first appointment in Government service, medical of the petitioners was got done. Petitioners reported for receipt of the posting orders but as per the office order dated 04.12.2012 (Annexure P-17) passed by the District Education Officer (Elementary Education), SAS Nagar, the petitioners were not issued the posting orders despite mentioning therein that they were eligible candidates and were issued appointment letters. This was done in pursuance to the directions issued by the Director Public Instructions (Elementary Education), Punjab, who had so done on the basis of the decision of this Court in CWP No.11071 of 2011, titled as 'Abhishek Rishi Vs. State of Punjab' and a ban was imposed by the Government of Punjab till further orders. Petitioners despite the said office orders approached the respondents by submitting a representation dated 08.01.2013 (Annexure P-7) for issuing them the posting orders but all in vain. These letters were sent through registered post and therefore, it is asserted by the petitioners' counsel that the respondents cannot state that the petitioners had not so approached the respondents for issuing them posting orders/allotment of stations. Not only the official respondents but the Chief Minister, Punjab, was also approached by the petitioners on 19.07.2013 (Annexure P-10) through registered post. He, therefore, asserts that it cannot be said that the petitioners had not been approaching the respondents for the relief as has been claimed by them.

3. Counsel submits that in the light of the decision taken by the Director Public Instructions (Elementary Education), Punjab, as was conveyed to the District Education Officer, SAS Nagar, dated 04.12.2012 (Annexure P-17), the posting orders were said to be kept in abeyance as the

said amendment/ban was till further orders, because of which the petitioners were not allowed to join and in the absence of posting orders/allotment of stations, they were denied the benefit of their selection.

4. Counsel for the petitioners has placed reliance upon the judgment passed by this Court in CWP No.9197 of 2014, titled as 'Mamta Thakur Vs. State of Punjab & others', decided on 09.12.2014 (Annexure P-12), wherein similar objections, as has been raised by the respondents in this case, for denying the benefit of selection have been duly considered and rejected and direction issued that the posting orders be issued. LPA No.560 of 2015 preferred by the State of Punjab has also been dismissed on 19.05.2015 (Annexure P-13). Special Leave Petition which has been preferred by the Government of Punjab has also been dismissed by the Hon'ble Supreme Court on 27.11.2015.

5. Reliance has also been placed upon another set of judgments passed by this Court in CWP No.21619 of 2013, titled as 'Jaspreet Kaur & others Vs. State of Punjab & others', where the basic ground on which the petitioners were denied posting orders i.e. Abhishek Rishi Vs. State of Punjab & others (2013 (3) RSJ 464) has been dealt with and similar impugned order quashed by this Court on 17.02.2016 (Annexure P-14). Reliance has also been placed upon the latest judgment of a Coordinate Bench of this Court in CWP No.14735 of 2016, titled as 'Vibha Mahajan & another Vs. State of Punjab & others', decided on 02.07.2019. Counsel, thus, contends that the pleas as has been raised by the petitioners deserve to be accepted and the impugned order passed by the respondents rejecting the claim of the petitioners on the ground of there being delay and latches as

attributed to them is unsustainable.

6. On the other hand, learned counsel for the State submits that the petitioners have approached this Court after an inordinate delay. The advertisement in this case is of the year 2007 and therefore, at this belated stage, granting posting orders to the petitioners would be against the interest of justice. His further contention is that the judgments on which reliance has been placed by the counsel for the petitioners is not applicable. Argument has also been raised that in the light of the judgments passed by this Court in *Abhishek rishi's* case (supra) as well as in CWP No.12275 of 2000, titled as 'Neelam Rani Vs. State of Punjab', decided on 08.01.2010, the whole process of selection has been put into jeopardy because the Court has ultimately held that there cannot be denial of benefit of merit on the basis of fixing the criteria of differentiating the posts between the males and females and meritorious females cannot be denied the benefit of appointment although being higher in merit merely because the posts had to be filled in the share of the male category. He, thus, contends that the selection process itself has been put on hold and the same has been cancelled vide Public Notice dated 29.07.2013 (Annexure P-11). Thus, the petitioners cannot be granted the benefit of posting orders as prayed.

7. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the records of the case.

8. Perusal of the impugned order dated 31.05.2016 (Annexure P-16) would show that the eligibility, suitability and selection of the petitioners have not been denied. It has also not been denied that the

petitioners had appeared in counselling held on 13.12.2011 and had been duly selected and issued appointment letters on 16.11.2012 (Annexure P-5). The only reason as to why the claim of the petitioners have been rejected is that the petitioners have not approached the respondents and agitated their claim for issuance of the posting orders/allotment of stations.

9. This plea cannot be accepted in the light of the fact that after the issuance of the appointment letters, petitioners had gone through the process of getting themselves medically examined and obtained the fitness certificate as required for entering in a Government service for the first time. Thereafter, they had been approaching the respondents by way of various requests including dated 08.01.2013, 14.02.2013 and 19.07.2013, copies of which have been appended as Annexure P-7 and P-10. The basic reason why the petitioners were not issued the posting orders turns out to be the office order issued by the District Education Officer (Elementary Education), SAS Nagar, dated 04.12.2012 (Annexure P-17), according to which, directions were issued by the Director Public Instructions (Elementary Education), Punjab, in the light of the order passed by this Court in CWP No.11071 of 2011, titled as 'Abhishek Rishi Vs. State of Punjab', which led to the imposition of a complete ban on posting orders by the State Government till further orders. In the light of the said decision of the Government of Punjab, petitioners were not issued the posting orders. Therefore, it can be safely said that the petitioners have been approaching the respondents as is apparent from the pleadings as recorded above. The petitioners had approached this Court by filing a writ petition i.e. CWP No.4225 of 2016, titled as 'Santosh Kaur Vs. State of Punjab & others',

which led to issuance of a direction dated 02.03.2016 to the respondents to consider the claim of the petitioners for issuance of posting orders, which decision has been taken by the Competent Authority by passing an order dated 31.05.2016 (Annexure P-16), which, on facts, has been found to be based upon erroneous conclusions on facts. This itself should be a ground enough to set aside the impugned order.

10. However, the pleas which have been taken by the respondents with regard to the decision which has been taken by the Government of Punjab, dated 29.07.2013 (Annexure P-11) based upon the judgment of this Court in *Abhishek Rishi's* case (supra) as well as *Neelam Rani's* case (supra), came up for consideration before this Court in CWP No.14125 of 2013, titled as '*Jagjit Singh Vs. State of Punjab & others*', decided on 17.08.2015 (Annexure P-19), which, on consideration has been found to be of no consequence or help to the decision of the respondents in the light of the fact the said judgment ultimately has been held to be prospective in operation and therefore, still have no effect whatsoever as far as the present selection is concerned. The pleas after having been dealt with in detail were found to be unacceptable. Detailed reasons have been assigned by the Court for non-accepting such a plea of the State. The said judgment has been implemented by the respondents and given effect to.

11. Reference in this regard has also been made to the judgment passed by this Court in CWP No.9197 of 2014, titled as '*Mamta Thakur Vs. State of Punjab & others*', decided on 09.12.2014 (Annexure P-12) where the similarly placed employee as the petitioners had approached this Court with the same grievance as the petitioners, where the posting orders were

not issued, the pleas as has been sought to be taken in the present case were dealt with in the said judgment dated 09.12.2014 (Annexure P-12), where it was held as follows:-

“On due consideration of the matter, I am of the view that the petitioner has been severely prejudiced. It was the fault of the respondents that posting orders were not issued to her in time. Persons similarly situated as the petitioner who faced the similar selection process have been appointed and are continuing to work. It is not the case of the respondents that the entire selection has been scrapped after the decision rendered by this Court in Abhishek Rishi's case. Merely because the posting orders of the petitioner were kept in abeyance for one reason or the other and delay partially attributed to the respondents and the petitioner would make no difference to the claim of the petitioner to get appointment considering the fact that all others who faced the selection process successfully have been appointed. The plea of the respondents that counselling held on 13.12.2011 and 20.12.2011 were cancelled by way of public notice would also be of no consequence since the petitioner has asserted that number of persons who attended the counselling on these two dates continue to function which fact has not been denied by the respondents. Consequently, instant petition is accepted. Respondents are directed to appoint the petitioner forthwith and assign her place of posting. Let needful be done positively within a period of two months from the date of receipt of the certified copy of this order. Needless to say that the petitioner would be entitled to all consequential benefits other than monetary benefits at par with those who were appointed in the same process.”

12. Letter Patent Appeal preferred against this order i.e. LPA No.560 of 2016 stands dismissed on 19.05.2015 (Annexure P-13) as also Special Leave Petition on 27.11.2015. Keeping in view these judgments as passed by this Court, this Court has no hesitation in holding that the claim of the petitioners is covered by the abovesaid judgment passed by this Court.

13. In view of the above, present writ petition is allowed and the impugned order dated 31.05.2016 (Annexure P-16) passed by the Director, Public Instructions (Elementary Education), Punjab, is hereby set aside. Direction is issued to the respondents to issue the posting orders to the petitioners within a period of four weeks. Petitioner shall be entitled to the grant of consequential benefits from the date the person lower in merit has been issued the posting order. They shall, however, be not entitled to the financial benefit except for 38 months preceding today.

(AUGUSTINE GEORGE MASIH)
JUDGE

16th January, 2020
Harish

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