

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

101

Civil Writ Petition No.16097 of 2014 (O&M)
Date of Decision: February 12th, 2020

Renu Gupta

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Sukhdev Kamboj, Advocate
for the petitioner.

Mr. Charanpreet Singh, Assistant Advocate General, Punjab.

Mr. Ravish Joshi, Advocate
for respondent No.4.

Mr. Dinesh Ghai, Hitesh Ghai and Nikhil Ghai, Advocates
for respondent No.5.

AUGUSTINE GEORGE MASI, J. (ORAL)

In pursuance to an advertisement issued in the year 2006, whereby various posts were advertised for being filled, the said selection having been finalized to a great extent in the year 2013, petitioner aggrieved had approached this Court by filing writ petition on 11.08.2014, wherein it was asserted by the petitioner that she be appointed to the post of Science Mistress against General category in pursuance to the advertisement dated 11.06.2006 as candidate lower in merit than the petitioner with merit marks 123.97, respondent No.4-Renu Bala and newly added respondent No.5-Shelly Prashar stood appointed, whereas the appointment letter had not been issued to the petitioner.

2. On the last date of hearing, on the basis of the status report which has been filed by the State, following order was passed:-

“In the light of the admitted fact that the petitioner is

higher in merit than respondents No.4 and 5, whose services were terminated in pursuance to an interim order passed by this Court, which termination has been challenged by the said respondents but the said termination order has been set aside putting back respondents No.4 and 5 in service.

Counsel for the respondents prays for an adjournment to seek instructions with regard to the claim of the petitioner for appointment to the post of Science Mistress.

List on 12.02.2020.

To be shown in the urgent list.”

3. In compliance with and in pursuance thereto, affidavit dated 11.02.2020 of the Secretary, Subordinate Service Selection Board, Punjab, has been filed in Court, wherein the factum which has been highlighted is that the recommendation of the General category candidate could not be made at that stage as all the posts which were advertised, have been filled up. The factum with regard to appointment of respondents No.4 and 5, their termination, which they had challenged by filing their respective writ petitions, whereby the said termination orders were set aside, resulting in reinstatement of these respondents, has not been disputed by the counsel for the State as well as counsel for respondents No.4 and 5. The fact with regard to the petitioner being higher in merit and still without job despite having approached this Court in the year 2014 without any delay, leaves no manner of doubt that the petitioner has been discriminated against when persons lower in merit have been appointed leaving the petitioner out of said purview of selected candidates.

4. An apprehension has been raised by the respondents with

regard to there being a floodgate of litigation in pursuance to the appointment of the petitioner, suffice it to say that the counsel for the State, on instructions from Mr. Lalit Ghai, Assistant Director, office of Director Public Instructions (Secondary Education), Punjab, states that apart from the present case, there is no other litigation pending relatable to the appointment to the post of Science Mistress (General). The selection having finalized in the year 2013 and the petitioner having approached this Court in the year 2014 cannot at this belated stage because of there being no posts available as advertised, be denied the appointment when persons admittedly lower in merit than the petitioner, are working in the department and their appointment has been upheld by this Court in the writ petitions preferred by respondents No.4 and 5.

5. It is made clear that in case fresh cases are filed or representations are submitted because of the passing of the order today, delay would be one of the major grounds for rejection of such representation as it is settled by now that non-agitation of a right by a person itself, with efflux of time, can be an impediment for exercising the powers of equity and would be a good ground for rejection of such claim.

6. In view of the above, the present writ petition is allowed.

7. Directions are issued to the respondents to appoint the petitioner against the post of Science Mistress (General) as it has been informed that there are vacancies available of Science Mistress in the department. The appointment letter be issued within a period of two weeks from today. It is made clear that the petitioner would be entitled to all consequential benefits notionally from the date private

respondents No.4 and 5 were appointed to the post of Science Mistress, whichever is earlier. Petitioner shall, however, be entitled to the consequential financial benefits restricted to 38 months prior to the passing of this order i.e. today.

8. It has been brought to the notice of the Court that the petitioner is working on the post of ETT Teacher in the Education Department. The amount already paid to the petitioner on the post of ETT Teacher for a period of 38 months, referred to above, shall be adjusted in the arrears which are to be paid to the petitioner.

9. In the light of the decision of the writ petition, pending applications, if any, stand disposed of as infructuous.

February 12th, 2020
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No