

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

CWP-4998-2012

Date of decision: 11.02.2020

SHINDER SINGH AND ANOTHER

...PETITIONERS

V/S

STATE OF PUNJAB & OTHERS

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Ms. Alka Chatrath, Advocate,
for the petitioners.

Ms. Devaki Anand Sullar, AAG, Punjab,
for the State.

AUGUSTINE GEORGE MASIH, J.

Petitioners have approached this Court challenging the action of the respondents rejecting the claim of the petitioners for appointment to the post of Teaching Fellows under the Physically Handicapped Category despite directions issued by this Court in CWP No. 13611 of 2010 titled as Pargat Singh and others vs. The State of Punjab and others on 19.05.2011 to fill up 3% Handicapped Category posts as per Section 36 of the Person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 on the ground that their name does not figure in the selection zone for appointment as per the revised merit list prepared in compliance with the judgment passed by the Division Bench of this Court in CWP No. 12275 of 2000 titled as Neelam Rani vs. State of Punjab and

others, decided on 08.01.2020 (Annexure P-9).

2. It is the contention of the learned counsel for the petitioners that an advertisement was issued by the State of Punjab for filling up 9998 posts of Teaching Fellows on 05.09.2007. Out of these, 724 posts were meant for District Moga. Initially, as per the Punjab State Education Class III (Primary School Cadre) Rules, 1997 (hereinafter referred to as '1997 Rules'), ratio of 50:50 amongst the male and female candidates were to be divided. The process of selection was initiated by the department in the year 2008 and 8865 posts were filled up during the years 2008 and 2009. Remaining posts i.e. 1133 were kept reserved in compliance with the interim orders passed by this Court in various writ petitions including CWP No. 6801 of 2008 titled as Sudesh Rani vs. State of Punjab. These writ petitions were finally decided on 20.04.2010. After the decision of these writ petitions, the process for filling up these posts was initiated.

3. In the meanwhile, a Division Bench of this Court in CWP No. 12275 of 2000 titled as Neelam Rani vs. State of Punjab came to be decided on 08.01.2010 wherein it was held that the posts meant for female candidates are required to be filled up on the basis of the merit without any classification on the basis of sex. It was further clarified that the words 'Headmaster, Lecturer (Male) and Masters' wherever they appear in the Rules would include the persons of both sexes. It was also held therein that the said judgment would be prospective. State of Punjab filed C.M. No. 5408 of 2011 for clarification of the order dated 08.01.2010 passed in Neelam Rani's case (supra). The Court, in that application, proceeded to pass an order on 26.08.2011 observing that no clarification was required in the said order. The Court had found the Rules itself illegal to the extent of

denying the appointment to the females over and above 50%. It was categorically held that the order was clear that all future appointments are to be made on the basis of merit. After the order dated 08.01.2010, all appointments shall be made only in terms of directions issued by the said Court and no new rights can be created on the basis of the selection process initiated earlier. All the appointments, which were to be made irrespective of this fact after the passing of the order dated 08.01.2010, were, therefore, to be made on the basis of the merit alone.

4. It is contended by the learned counsel for the petitioners that the Rules, which were the subject matter in Neelam Rani's case, were the Punjab Education Service Class III Rules, 1978 (hereinafter referred to as '1978 Rules') whereas the Rules applicable to the case in hand, as far as the Teaching Fellows are concerned, are the 1997 Rules and, therefore, the said judgment could not be made applicable to the case of the petitioners. She asserts, with reference to the order dated 11.01.2017 passed by this Court that out of 724 posts, which were meant for District Moga for recruitment of Teaching Fellows on a consolidated pay of ₹4,550/- for J.B.T./E.T.T. Posts, 22 posts were reserved to be filled up from the physically handicapped persons. As per the Statutory Rules governing the service, ratio of 50:50 for female and male candidates was to be maintained. Since all the posts under Deaf & Dumb and Blind category could not be filled up, they were required to be offered to the persons who were physically handicapped (Ortho), to which the petitioners belong. According to the Statutory Rules governing the service, 11 posts were required to be filled up from the male candidates and the remaining 11 posts from the female candidates. The respondents wrongly, relying upon the Division Bench

judgment of this Court in Neelam Rani's case (supra), have proceeded to prepare a joint merit list resulting in offering 13 vacant posts to female candidates and only 1 to the male physically handicapped (Ortho) category out of total 14 posts, which is in violation of the Statutory Rules governing the service as was so mentioned in the advertisement itself wherein it was laid down that the ratio of 50:50 between male and female would be maintained. She contends that it was only in the District Moga that a joint/combined merit list was prepared whereas in the rest of the districts, a separate list was prepared for both male and female candidates and given effect to, accordingly, leading to the appointments of the candidates. She, therefore, contends that the petitioners were required to be appointed on the post of Teaching Fellows to the extent of their quota i.e. 7 posts whereas only one male candidate has been appointed. By appointment of 13 female candidates, quota for the female candidates stands exceeded which is not permissible in law. Prayer has, thus, been made for setting aside the appointment of the female candidates in excess of their quota and appointing the petitioners in their place.

5. On the other hand, learned counsel for the State submits that although the judgment given by this Court in Neelam Rani's case (supra) relates to the 1978 Rules, however, the principles laid down therein are applied to the Service Rules governing the department. In the light of the clarification, which has been issued by the Division Bench of this Court in C.M. No. 5408 of 2011 on 26.08.2011, there was no scope left for the department to adhere to the quota of 50:50 as it was bound by the said order where it was categorically held that even if the selection process was initiated prior to the passing of the order dated 08.01.2010 in the main case

since the appointments were being made after the order has been passed on 08.01.2010, the appointments had to be made on the basis of the said judgment wherein it was clearly held that all future appointments were to be made on the basis of the combined merit.

6. Reference has been made by the counsel for the State to the affidavit dated 03.05.2017 filed by the District Education Officer (Elementary Education), Moga, which was filed in pursuance to the order dated 11.01.2017 passed by this Court where the operative part of the judgment dated 08.01.2010 stands reproduced in para-5 and the order dated 26.08.2011 passed in C.M. No. 5408 of 2011 which was preferred by the department for clarification of the earlier order dated 08.01.2010 stands reproduced in para-6. On this basis, the counsel for the State submits that a decision was taken by the department that a combined merit list for male and female candidates was to be prepared in all districts to conduct the counselling in order to fill up the posts of Teaching Fellows. It is also asserted that it has been categorically denied that the separate selection list in ratio of 50:50 for male and female candidates was prepared in all districts except for Moga. All selections have been carried out on the basis of the combined merit list prepared irrespective of the division of the posts amongst male and female candidates in the ratio of 50:50.

7. Referring to the affidavit dated 18.07.2019 filed by the District Education Officer (Elementary Education) Moga, counsel for the State contends that all 22 posts of physically handicapped category in District Moga have already been filled up and there is no vacant post available in the said category in District Moga. On this basis, prayer has been made for dismissal of the writ petition.

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

9. The fact, as is apparent from the pleadings, are that out of 9998 posts of Teaching Fellows advertised on 05.09.2007, 724 posts were meant for District Moga. As per the terms of advertisement as well as the 1997 Rules, these posts were to be divided in the ratio of 50:50 amongst the male and female candidates. The process of selection was initiated and 8865 posts were filled up during the year 2008-2009. The remaining 1133 posts were kept reserved because of the interim orders passed by this Court in various writ petitions. These writ petitions were finally decided on 20.04.2010 paving the way of filling up of these 1133 posts.

10. When the department proceeded to fill up the posts in the year 2010 after the disposal of CWP No. 6801 of 2008 titled as Sudesh Rani vs. State of Punjab, contempt petitions including COCP No. 1409 of 2010 titled as Ranjna Devi vs. State of Punjab and COCP No. 77 of 2011 titled as Jyoti vs. State of Punjab were filed alleging violation of the law as settled in CWP No. 12275 of 2000 titled as Neelam Rani vs. State of Punjab and others which was decided on 08.01.2010 by the Division Bench of this Court wherein the challenge was to Rule 3 of the 1978 Rules, leading to Appendix 'A' of the said rules being read down to mean that the posts, other than the posts meant for female candidates, were required to be filled up on the basis of merit without any classification on the basis of sex. The Court proceeded to hold that the said Rules prescribing separate cadre for men and women are not tenable and cannot pass the test of provisions of the constitution. The judgment was to apply prospectively and all previous appointments were not to be re-opened or could be invalid on the basis of

law laid down by the said judgment. However, it was observed that all future appointments were to be made on the basis of merit as discussed in the said judgment.

11. In the light of the pendency of the contempt petition, which has been filed in this Court, referred to above, the department filed C.M. No. 5408 of 2011 for clarification of the order dated 08.01.2010 passed in Neelam Rani's case (supra). The said application was dismissed by this Court vide order dated 26.08.2011 where it was clarified that all appointments irrespective of the selection process having been initiated earlier will have to be filled up as per the order passed by the Division Bench of this Court on 08.01.2010.

12. The respondent-State, in the above facts and circumstances, had no option but to proceed to give effect to the order dated 26.08.2011 passed by this Court in the miscellaneous application and accordingly, prepared a combined merit list of male and female candidates in all districts. The posts were filled up on the basis of the said merit list prepared irrespective of the division of the posts amongst male and female candidates in the ratio of 50:50. The action of the respondents, thus, cannot be said to be, in any manner, illegal.

13. As regards the contention of the petitioners that the Rules, which were the subject matter of consideration and interpretation in Neelam Rani's case (supra), were 1978 Rules whereas in the present case, the 1997 Rules are applicable, would not hold the field and the same would not be acceptable especially in the light of the clarification, which has been sought by the State in C.M. No. 5408 of 2011 which was so filed in the light of the pendency of COCP No. 1409 of 2010 titled as Ranjna Devi vs. State of

Punjab and COCP No. 77 of 2011 titled as Jyoti vs. State of Punjab, wherein the petitioners therein had alleged that the respondents were filling up the remaining 1133 posts which were kept reserved in compliance with the interim order passed by this Court in CWP No. 6801 of 2008 titled as Sudesh Rani vs. State of Punjab and other writ petitions which were decided on 20.04.2010 which is subsequent to the order passed in Neelam Rani's case (supra) which was dated 08.01.2010. In the light of the said order dated 26.08.2011 in the clarification application, wherein these aspects were pleaded but not accepted by the Division Bench, the respondents have rightly filled up the posts of Teaching Fellows on the basis of the combined merit list irrespective of the division of posts amongst the male and female candidates in the ratio of 50:50.

14. In view of the above, finding no merit in the present writ petition, the same stands dismissed.

February 11, 2020

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No