

(230) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.23241of 2016

Date of decision: 05.03.2020

Ms. Sangita Petitioner

Versus

State of Haryana and ors. Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Deepak Sonak, Advocate for the petitioner.
Mr. Padamkant Dwivedi, Advocate for the respondents

B.S. Walia, J. (Oral).,

[1] Prayer in the petition under Article 226 of the Constitution of India is for the issuance of a writ of certiorari for setting aside action of the respondents in appointing the petitioner as Peon i.e. Class IV post instead of Class-III post as the petitioner was fully eligible for appointment to a Class-III post in view of policy/guidelines Annexure P/1 dated 02.01.2014.

[2] Brief facts of the case leading to the filing of the petition are that an announcement was made by the Chief Minister, Haryana on 07.10.2007 that one member of each family whose minimum 2 acres of land had been acquired, would be given employment against Class-III and Class IV posts as per qualification possessed by the member of the land oustees family. In furtherance of the said announcement, the petitioner submitted application form Annexure A/1 on 20.5.2013 mentioning her qualifications as under :-

Exam Pass	Year of Passing	Board	Marks Obtained	%age of Marks	Division
10 th	2010	BSEH Bhiwani	416	69.33%	1 st
10+2 (Arts)	2012	CBSE Delhi	355	71%	1 st
BCA	Appeared 1 st year				

[3] Learned counsel contends that as per decision taken pursuant to proposal / announcement of the Chief Minister, Haryana, candidates who were matric or 10+2 were to be regularized after completing ITI training course to be sponsored by Aravali Power Company Private Limited (APCPL) whereas candidates who were graduates were to be considered for appointment as LDC and as per Policy of HPGCL, only those land oustees who were admitted in ITI but failed to complete the course within the time frame as per the instructions of the ITI Department would be considered for the post of Peon/Helper etc and Class IV category. Relevant extract of the decision in Annexure P/1 is reproduced as under:-

“i. APCPL should offer regular appointment and not contractual jobs directly or through its subsidiary i.e. UPL, to the oustees who are Martic or 10+2 with the condition that their services shall be regularized only after completing ITI training courses, which shall be sponsored by APCPL.”

“vii) The land oustees admitted into it is but fail to complete the ITI course within the time frame as per the instructions of the ITI Department would be considered for employment for the post of Peon/Helper etc. in Class-IV category by the respective utility.”

[4] The Deputy Commissioner of the concerned District prepared a list of candidates who were to be offered appointment and included the name of the petitioner in list of candidates who were to be offered appointment as LDC on account of her being a graduate i.e. BCA (Annexure R/1) whereas as per application form original of which has been shown by learned counsel for the respondents, the petitioner had entered her qualification as 10th, 10+2 and BCA appeared 1st year. On failure of the petitioner to submit proof of being a graduate, the petitioner was offered appointment as Peon vide letter Memo No.235/Ch.33/HPGCL/ENG/G-47/Vol.II dated 06.02.2014 i.e. Annexure P/2.

[5] It would be relevant to mention here that learned counsel for the respondents has conceded that in case of candidates who were 10th or 10+2 pass, all such candidates names were included in the list of candidates who were to be given appointment as Assistant Lineman with the condition that their services would be regularized only on their successful completion of ITI. Learned counsel for the respondents contends that the petitioner on being offered appointment as Peon joined service on 12.03.2014 where after she submitted an application dated 07.07.2014 requesting for permission to continue study in the BCA course as she was doing BCA before joining in the Department and wanted to continue her study as it was her final year. The request was accepted vide letter dated 18.07.2014. It would also be relevant to mention here that one of the conditions for accepting the request was that the permission would not confer any direct or indirect consent of the Department for recognition of the examination/qualification. Photocopy of the application as well as the permission granted are taken on record.

[6] Learned counsel for the respondents contends that the petitioner continued her study in the BCA course and completed the same in the year 2015 and rejoined the department after having availed study leave in July 2015 since BCA course was a whole time course. Learned counsel further contends that it is only after qualifying her BCA that the petitioner one year thereafter made a request vide Annexure P/3 dated 22.08.2016 for consideration of her name for appointment on Class-III post and that in the circumstances it was clear that the reason why the petitioner did not agitate claim for appointment on a Class-III post at the time of being offered a Class-IV appointment as Peon, was that she wanted to complete her BCA Course and would not have been able to complete the same, had she made a request for appointment on a Class III post since in that eventuality she would have been required to take admission in ITI course which is for a duration of two years and would therefore not have been able to complete her BCA Course. Learned counsel contends that a perusal of the representation, Annexure P/3 reveals beyond an iota of doubt that it is not the stand of the petitioner that she was not aware of eligibility of 10th and 10+2 class candidates to be offered appointment of Class-III post as in the application, Annexure P/3 the petitioner has stated that she was never given an opportunity for appointment against Class-III post but she never mentioned in the application, Annexure P/3 that she was not aware of the said position especially in the background of the fact that she was aware that the job was to be provided to oustees of families whose land had been acquired in terms of announcement of the Chief Minister, besides 19 members of different families of land oustees of the village of the petitioner itself who were 10th or 10+2 class pass were appointed as Assistant Lineman and were admitted in ITI Courses against stipend which was paid to them

and on successful completion of their ITI course, they were regularized in service.

[7] I have considered the submissions of learned counsel for the parties as well as the record.

[8] Admittedly, the name of the petitioner ought to have been included in the list of candidates who were 10th or 10+2 class pass and accordingly, the petitioner ought to have been offered appointment as Assistant Lineman i.e. Class-III post and regularized on completion of ITI course in which she was required to take admission on being given an offer of appointment as Assistant Lineman in terms of decision, Annexure P/1. However, facts of the case reveal that the petitioner submitted an application for appointment, Annexure A/1 for the post of Clerk while mentioning that she was 10th and 10+2 class pass and had also appeared in first year of BCA. (No doubt, the Deputy Commissioner of the concerned District prepared a list and included the name of the petitioner in list of candidates who were to be offered appointment as LDC on account of her being a graduate i.e. BCA (Annexure R/1) whereas as per application form original of which has been shown by learned counsel for the respondents, the petitioner had entered her qualification as 10th, 10+2 and BCA appeared 1st year. However, on failure of the petitioner to submit proof of being a graduate, the petitioner was offered appointment as Peon vide letter Memo No.235/Ch.33/HPGCL/ENG/G-47/Vol.II dated 06.02.2014 i.e. Annexure P/2. The petitioner joined as Peon on 12.03.2014 where after on 07.07.2014 she submitted an application for permission to continue her BCA Course. Permission was granted to the petitioner on 18.07.2014 and she proceeded on leave for a period of close to one year in order to complete the BCA Course. During this entire period, she maintained a stoic silence with

regard to her claim for appointment to the post of Class-III in view of her possessing qualification of 10th and 10+2. It is not the case of the petitioner that she was not aware of the policy or of her entitlement to be appointed to a Class-III post, although in paragraph No.9 of the writ petition, the petitioner has made a bland statement that she was shocked to know that other similar candidates were given appointment to Class III posts by giving them option of passing ITI whereas no such option was given to her at the time of her appointment. The petitioner has failed to mention as to when she came to know and the same when viewed in the context of the fact that 19 other 10th or 10+2 class pass candidates from the village of the petitioner were appointed as Assistant Lineman at the same time as the appointment of the petitioner as Peon and were admitted in ITI and paid monthly stipend during their period of study and thereafter, were regularized on successful completion of the course as also in view of the fact that the petitioner wanted to continue with her BCA course which she would not have been able to continue had she made a claim for Class-III post because in that eventuality she would have been required to take admission in ITI course and successfully complete the same and it would not have been possible for her to have simultaneously undergone the BCA course which was a whole time course.

[9] Accordingly, it is apparent that the petitioner knowingly made a choice to accept the post of Class-IV and to complete her BCA Course after obtaining permission and leave from the employer and subsequently made a claim after completing the BCA course. Not having made the claim for class III post at the time the petitioner was offered job as a peon, the petitioner could not be admitted in ITI. Even otherwise the petitioner took leave for completing her BCA course and it is only after completing said course that

she made a claim for class III post. Once having accepted the post of Peon in the circumstances as noted above, it was not open to the petitioner to have made a claim for appointment on Class III post.

[10] Accordingly, I do not find any merit in the writ petition warranting interference with the decision of the respondents refusing appointment to the petitioner against a Class III post. The writ petition is bereft of merit and is accordingly dismissed.

(B.S. Walia)
Judge

05.03.2020
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Whether speaking/reasoned: Yes/No.
Whether reportable : Yes/No.