

CWP-3206-2014

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-3206-2014

Date of Decision: 13th February, 2020

Dilpreet Singh

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

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

Ms. Devaki Anand Sullar, Asstt. A.G., Punjab.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court praying for quashing of the order dated 12.11.2013 (Annexure P-15), vide which the reason assigned for not appointing him, whose name figures in the waiting list, is that the waiting list was not made operative in the case of selection of English Master.

2. On 04.02.2020, following order was passed:-

“The argument, which carries weight as far as the petitioner(s) is concerned and requires consideration, is the plea with regard to the discrimination which has been meted out to the candidate in the waiting list pertaining to subject of English when it came to filling the post of Master. It is contended, with reference to the information supplied under the Right to

Information Act dated 04.07.2010 (Annexure P-19), that the waiting list in all other categories has been given effect to except for English while filling up of the posts. No reason whatsoever has been mentioned/given for not filling up of the posts from the waiting list against the posts which remained vacant because of non-joining of the selected candidates.

Counsel for the State prays for an adjournment to inform the Court with regard to the information as supplied in Annexure P-19 and further as to what will be the position of the petitioner(s) in case the reserved category candidates are not included in the waiting list and keeping it to 25 candidates which is 10% of the posts advertised as per the decision of the department, would include the petitioner(s) and if the name of the petitioner(s) is included, would there be a vacancy available for the petitioner(s) or not?

Adjourned to 13.02.2020.

Photocopy of this order be placed on the file of connected case.”

3. In pursuance thereto, an affidavit of the Assistant Director, Education Recruitment Directorate, Department of School Education, Punjab, dated 11.02.2020, has been filed in Court, according to which, the reason assigned for not acting upon the waiting list is the litigation which was pending in this Court. The factum of the petitioner being at Sr. No.16 in the waiting list, if reserved category candidates are not

included in the waiting list, has not been disputed. It has also been stated that no candidate lower in merit than the petitioner has been appointed on the post of English Master/Mistress. Assertion has also been made that the process of subsequent appointment to the post of English Master/Mistress, as per the advertisement issued in the year 2012, has also been concluded in the year 2015 and fresh selection process has also been initiated in the year 2017.

4. Counsel for the State, on the basis of this affidavit, submits that the petitioner is not been entitled to the claim, as has been made in the present writ petition, because mere selection does not confer any right and once it has been said that the waiting list had not be acted upon, the petitioner does not have any right. She, however, could not dispute the fact that out of 250 posts, which were advertised for filling-up the posts of English Master (male), on 32 posts the selected candidates have either not chosen to join or candidates have not been found to be eligible.

5. Assuming that be so, the waiting list candidates have right for consideration at least qua the posts relating to the candidates, who have been issued appointment letters. The factum that 250 candidates, as per the merit list in the category of English Master, were issued appointment letters and the petitioner being at Sr. No.16 in the waiting list, would, therefore, be very much in contention for appointment to the post of English Master. The plea which has been raised by the counsel for the respondents and in the affidavit is that subsequent selection processes

have been initiated and even finalized but in none of the selection processes, as per the affidavit which has been filed, it has been averred that these 32 vacant posts were included and advertised for being filled-up. It can, therefore, be said that the said 32 posts of English Masters remained unfilled.

6. The fact that the petitioner is eligible and fulfills the requisite qualification as also that his name figures in the waiting list has not been disputed. It would not be out of way to mention here that the petitioner has been agitating his right since the year 2008 with the filing of CWP No.11066 of 2008, which was decided on 04.05.2013 (Annexure P-12), wherein directions were issued to consider the claim of the petitioner as per the information which was supplied to him under the Right to Information Act. Thereafter, the litigation was pursued by the petitioner till the final decision was taken by the Division Bench of this Court in LPA No.1046 of 2012, titled as 'Dilpreet Singh Vs. State of Punjab & others', decided on 31.10.2012 (Annexure P-14). Although the decision in that case has been taken prior to the directions which had been issued by this Court, which related to a case pending in this Court since the year 2008, the petitioner all through has been putting forth his claim for appointment to the post of English Master. The plea, therefore, of the respondents relating to the finalization of the selection in the year 2009-10 would not be an impediment as far as the petitioner is concerned, because he has all through been agitating his claim but the respondents

have not accepted the same.

7. In the light of the above factual position and especially keeping in view the stand taken by the respondents for not acting upon the waiting list is unacceptable.

8. Counsel for the State has also projected another plea that there are 15 candidates, who would be above the petitioner in waiting list available for filling-up of the posts. She, however, on instructions from Mr. Ashish Jain, Senior Assistant, O/o Director Public Instructions (Secondary Education), Punjab, informs the Court that except for the present case of the petitioner, there is no other case relatable to the selection of English Master in pursuance to the advertisement dated 29.08.2007.

9. If that be the factual position, other candidates having not even approached this Court with any grievances since the year 2010 till date, would not have a right for consideration for appointment to the post, especially in the light of the fact that the petitioner has all through been agitating his claim, who are although higher in merit than the petitioner. It is well settled that by the passage of time, right if not agitated would lose its shin and cannot be pressed into service on equity while approaching this Court. Otherwise also, if a suit is now preferred, the same would be barred by limitation.

10. In view of the above, the present writ petition is allowed by quashing the impugned order dated 12.11.2013 (Annexure P-15).

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Direction is issued to the respondents to consider the claim of the petitioner for appointment to the post of English Master against the available post as per the advertisement dated 29.08.2007 within a period of one month. In case the petitioner is found eligible for appointment to the post, he be issued appointment letter within a further period of three weeks.

13th February, 2020
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

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