

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

CWP-6620-2016 (O&M)
Date of decision : 21.10.2020

Kamaldeep Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

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

Ms. Simran Grewal, AAG, Punjab.

ANIL KSHETARPAL, J.

The petitioner through writ petition filed under Article 226/227 of the Constitution of India call upon this Court to issue a writ in the nature of mandamus directing the respondents as under:-

“(ii) to issue a writ, order or direction especially in the nature of mandamus directing the respondents to consider the case of the petitioner for appointment to the post of teaching fellow against the vacant post reserved for Dependents of Freedom Fighters Category in District SBS Nagar which was earlier not issued because of the fallacious and erroneous stand of the State on the Full Bench decision of this Court in Abhishek Rishi Vs. State of Punjab 2013(3) RSJ 464. In view of the law laid down by this Hon'ble Court in CWP No.21619 of 2013 and other connected writ petitions titled as Jaspreet Kaur Vs. State of Punjab and others (Annexure P-11) wherein it has been held

that the judgment rendered by the Full Bench of this Court is prospective in nature and as such the action of the respondents denying the Right to Appointment to the petitioner is wholly unfair and unreasonable and is also against the spirit of the judgment rendered in CWP No.14125 of 2013 titled as Jagjit Singh Vs. State of Punjab & Others (Annexure P-13) wherein it has been observed that the employer being State is always expected to be a model employer welfare in a State and owes fairness in action vis-a-vis and aspirants to public posts and its employees.

(iii) It is further prayed that the petitioner may be held entitled to all the consequential benefits from the date the person similarly situated have been appointed and special cost be imposed upon the respondents for driving the petitioner to knock at the doors of this Hon'ble Court for the relief which could and should have been granted as despite submission of numerous representations till date in a bureaucratic manner the respondents have not issued the appointment order and because of which she is suffering irreparable loss.”

After having heard learned counsel for the parties at length, this Court is of the view that the writ petition filed by the petitioner is liable to be dismissed on the ground that the writ petition suffers from unexplained delay and laches and the petitioner has no right to seek direction to appoint her against the post of Teaching Fellow pursuant to Recruitment Notice dated 05.09.2007.

Some facts are required to be noticed.

Through Recruitment Notice dated 05.09.2007, applications were invited for 9998 posts of Teaching Fellows against JBT/ETT posts in the Department of School Education (Primary Wing), Punjab. The

appointment was to be made District wise and SBS Nagar was assigned 184 posts. The petitioner applied under Dependent of Freedom Fighter Category and on evaluation of merit, she was assigned 41.209 marks. The advertisement provided that the candidates who have passed middle and matriculation examination from rural areas would be granted 5 additional marks. The aforesaid condition was challenged in the High Court. Various writ petitions came to be decided by the Division Bench on 20.04.2010 upholding the decision of the Government to grant 5 additional marks referred to above. During the pendency of the writ petitions, the Government was permitted to fill up 8865 posts whereas stay on recruitment for 1133 posts continued.

After the judgment passed by Division Bench on 20.04.2010, a public notice was issued inviting the candidates to attend counseling to be held on 14.05.2010. Thereafter, another fresh public notice was issued on 30.11.2011 for filling up 1133 posts pursuant to Recruitment Notice dated 05.09.2007. The petitioner appeared for counseling on 13.12.2011. It is the case of the petitioner that she was the only candidate from the category of Dependent of Freedom Fighter. Thereafter, once again the issue of grant of additional mark was referred to a larger Bench of this Court in **Abhishek Rishi Vs. State of Punjab, 2013(3) RSJ 464**. A Full Bench vide judgment dated 03.04.2013 held that the conclusion of the Division Bench in the judgment dated 20.04.2010 was wrong and it was held that the 5 additional marks to the candidates who have passed middle and matriculation examination from the school situated in the rural areas of Punjab could not be given.

Thereafter, once again, various litigations were filed and remained pending. In between there was also litigation with regard to reservation of posts in the ratio of 50:50 for male and female candidates which was also struck down vide judgment dated 08.01.2010 in CWP-12275-2000.

Keeping in view the aforesaid facts, the State Government took a conscious decision and issued a public notice (Annexure P-7) on 29.07.2013 canceling the counseling held on 13.12.2011 and 20.12.2011.

The writ petitioner filed the present writ petition in April, 2016 claiming that she has a right to be appointed under Dependent of Freedom Fighter Category as she was the only candidate who had appeared for counseling on 13.12.2011. Pursuant to notice of writ petition, respondent has filed a detailed reply contesting the petition on the ground that it suffers from unexplained delay and laches. It has further been brought to the notice of this Court that the Government decided not to fill up 1133 posts and issued a fresh recruitment notice inviting applications for 4500 vacant posts of ETT on 09.11.2015. The Department further advertised 2005 posts of ETT vide Recruitment Notice dated 04.08.2016.

Keeping in view the aforesaid stand, the question as posed in the initial part arises for consideration. It must be noticed that it is not the case of the petitioner that anyone who has secured marks lesser than her, has been appointed in the category of Dependent of Freedom Fighter. The respondents have taken a stand that Poonam Sharma who had got 62.376 marks has been appointed. Thus, it is safe to conclude that no candidate has been appointed from the category of the petitioner with lesser marks than

the petitioner. In the present case, the Government took a conscious decision wayback on 29.07.2013 abandoning to make the appointments pursuant to the recruitment notice issued in the year 2007. The writ petition was filed in April, 2016 particularly when a fresh recruitment notice has already been issued on 09.11.2015.

In these circumstances, the writ petitioner neither has any right to seek appointment on the post which was advertised in the year 2007 nor she has filed the present petition promptly. There is unexplained delay of approximately 3 years in filing the writ petition. Therefore, the writ petition filed by the petitioner is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

21.10.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No