

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RA-CW-58-2021 in
CM-10440-CWP-2020 in
CWP-12489-2015
Date of Decision: 10.12.2021

Mamta Devi

. . . . Applicant/Petitioner

Vs.

State of Punjab and another

. . . . Respondents

(Through Video Conferencing)

CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: - Mr.Gauravjit Singh Patwalia, Advocate,
for the applicant/ petitioner.

Mr.Avinit Avasthi, Assistant Advocate General, Punjab.

M.S. RAMACHANDRA RAO, J.

This review application has been filed by the applicant-petitioner under Section 114 read with order 47 Rule 1 CPC seeking review of the judgment dt. 09.12.2020 passed in CM-10440-CWP-2020 in CWP-12489-2015.

CWP-12489-2015

The applicant herein had filed CWP-12489-2015 challenging Clause 7 (xix) of Appendix B to Rule 5 of the Punjab Industrial Training (Class III) Technical Service Rules, 2001 [for short 'the Rules] pertinent to the educational qualification for appointment to the post of Craft Instructor in the trade of Instructor-Art and Craft.

It was the contention of the applicant that the Department of Technical Education and Industrial Training, Punjab (respondent No.2) had issued an advertisement dt. 01.03.2013 for inviting applications for filling up 216 posts of Craft Instructors in various trades; as per the advertisement it was essential to have acquired 5 years diploma in Drawing and Painting/Commercial Arts qualification from a Government recognized institution with practical experience of one year or one year teaching experience; that the applicant possessed three years diploma in Commercial Arts, Masters in Political Science and B.Ed; that the applicant applied for the trade of Instructor-Art and Craft for which 13 posts were advertised out of which 2 posts were reserved for Backward Class category; after scrutiny of documents, the applicant was issued a roll number for the written examination; the applicant appeared and was placed at serial No.3 in the merit list with 48 marks; respondent No.2 had called for the verification of documents on 04.10.2013 wherein the petitioner was declared ineligible as having not fulfilled the educational qualification.

It is also contended that a public notice was issued by respondent No.2 calling on candidates below the merit seeking verification of the documents for the unfilled trades but the applicant, who claims to be eligible and qualified, was wrongfully declared ineligible because of the requirement of 5 years diploma in Commercial Arts. The applicant contended that she had sought information under the Right to Information Act, 2005 from the various Universities and also from the Technical Board, Punjab regarding the courses being conducted for 5 years diploma in Commercial Arts, and as per information received by her through RTI, such a diploma

was never started and is not being offered by any University or Technical Board.

According to the applicant, the only course being conducted in the State of Punjab was a 3 years diploma in Commercial Arts by the Punjab State Board of Technical Education and Industrial Training and is being offered in the Government Polytechnics in the State of Punjab.

Therefore, the applicant sought for quashing of Clause 7 (xix) of Appendix B to Rule 5 of the Rules or in the alternative prayed that the qualification be read down to mean 3 years diploma in Commercial Arts as that was the only course being imparted in the State of Punjab.

The applicant also sought for quashing of the final list to the extent that it declared the applicant ineligible and a direction was also sought to the respondents to consider her candidature on the basis of 3 years diploma in Commercial Arts which she possessed under the BC category for the post of Craft Instructor in the trade of Instructor-Art and Craft notified vide advertisement dt. 01.03.2013 in which selection the applicant was at Sr. No.3 in the merit list by treating her diploma as one akin to a 5 years diploma, which the rule specified.

For the sake of better understanding, we extract the said Clause 7 (xix) of Appendix B to Rule 5 of the Rules which reads as under:-

- (Part A) “(i) Should possess Five years Diploma in Drawing and Painting/Commercial Arts from Government recognized institution; and*
- (ii) Should possess at least one year practical experience in an organization registered under Factories Act, 1948 or one year teaching experience from a Government*

Institution or an institute recognized by the Government.

OR

- (Part B) “(i) Should possess M.A. (Fine Arts);*
(ii) Should possess two years Diploma in Arts and Crafts Teacher Training from a recognized university or Institution; and
(iii) Should possess at least one year Practical/Teaching in an organization registered under Factories Act, 1948 or teaching experience in the line in a Government Institution or an Institution recognized by the Government.”

The Order dt.22.01.2019 in CWP-12489-2015

After contest, the writ petition was allowed on 22.01.2019 and Clause 7 (xix) of Appendix B to Rule 5 of the Rules pertaining to the educational qualification for the appointment to the post of Craft Instructor in the trade of Instructor-Art and Craft was quashed and a direction was given to the respondents to consider the candidature of the applicant for the said post of Art and Craft Instructor.

The Division Bench accepted the plea of the applicant that there was no recognized University or College or Institution in the State of Punjab imparting 5 years diploma in Commercial Arts and so Clause 7 (xix) of Appendix B to Rule 5 of the Rules has to be quashed as it was impossible of compliance and therefore, arbitrary. A direction was given to the respondent to delete/remove the qualification of 5 years diploma for the Trade of Instructor-Art and Craft. The Division Bench also noted that there is no specific averment on behalf of the respondents that there was a 5 years

diploma in Arts conducted by a recognized Technical University or Technical College in the State of Punjab.

Report dt.24.06.2020 of Committee constituted by the State of Punjab

After the judgment was rendered on 22.01.2019 in CWP-12489-2015, a Committee was constituted by the State of Punjab to consider the issue, and the Committee, after considering the said decision of this Court took up the representation of the applicant for consideration of her case and decided on 24.06.2020 that once the entire Clause 7(xix) of Appendix B to Rule 5 of the Rules had been quashed, there was no qualification left, on the basis of which the candidature of the applicant can be checked as ordered by this Court. It also observed that the qualification possessed by the applicant is a 3 years degree in Commercial Arts which is not relevant to impart training in the subjects of Painting, Still Life, Design, Commercial Arts, Clay Modeling, Dress Designing etc. which are the contents of the Art and Craft Teacher Training Course; and that an Instructor appointed for Art and Craft has to teach all these subjects. It had also observed that the applicant can only impart training only one such subject i.e. Commercial Arts and would not be able to teach the rest of the subjects which have to be taught by Art and Craft Instructor.

CM-10440-CWP-2020 filed by State of Punjab for clarification

The State of Punjab then filed CM-10440-CWP-2020 seeking clarification of judgment dt. 22.01.2019 in CWP-12489-2015 to a limited extent contending that for appointment to the post of Instructor- Art and Craft as per Clause 7(xix) of Appendix B to Rule 5 of the Rules there were two sets of educational qualifications mentioned as 'A' & 'B'; that only the first set of qualifications in 'A' were objected to by the applicant, but not the second set

of qualification in 'B'; but in the operative portion of the judgment dt. 22.01.2019, this Court had quashed the "entire" Clause 7 (xix) of Appendix B to Rule 5 of the Rules.

The State, therefore, prayed this Court to clarify that the operative portion of the judgment dt. 22.01.2019 had quashed only the first set of Rules and first set of qualifications i.e. Part 'A' and the second set of qualifications i.e. Part 'B' was not quashed.

At that time, the counsel for the applicant also contended that the Committee constituted by the State of Punjab had tendered a report on 24.06.2020 holding that the petitioner is not qualified to be appointed to the post of Instructor-Art and Craft.

In view of the same, on 09.12.2020, CM-10440-CWP-2020 was allowed and this Court clarified that the judgment dt. 22.01.2019 should be understood as having quashed only the first set of qualifications as spelt out in Clause 7(xix) of Appendix B to Rule 5 of the Rules (indicated in Para 'A') and not the second set of qualifications as indicated in Para 'B' thereof. It was also clarified that it will be open to the applicant to seek appropriate remedy against the report of the Committee constituted in compliance with the judgment dt. 22.01.2019 of this Court, in accordance with law.

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The applicant has now filed this Review Application seeking review of the order dt. 9.12.2020 in CM-10440-CWP-2020. She contends as under: -

- a) The applicant's case had not been considered by the respondents pursuant to the judgment dt. 22.01.2019;

- b) Decision dt. 24.6.2020 of the Committee constituted by the respondents purportedly to comply with judgment dt. 22.01.2019 which rejected the claim of the applicant for appointment to the post of Instructor-Art and Craft was never communicated to the applicant;
- c) The candidature of the applicant was rejected much prior to any clarification or modification of the judgment dt. 22.01.2019 as sought by the respondent;
- d) Once the clarification/modification order dt. 09.12.2020 was issued in CM-10440-CWP-2020, only thereafter there should be consideration of the candidature of the applicant;
- e) In fact the intention of the Court was that Part 'A' of Clause 7 (xix) which mentioned the 5 years diploma in Drawing and Painting/Commercial Arts qualification should be read down as referring to 3 years diploma in Drawing and Painting/Commercial Art;

It is contended that this Court in its order dt. 22.01.2019 while allowing the writ petition of the applicant had directed respondents to consider the applicant's candidature in the light of the fact that only 3 years diploma in Commercial Art is imparted in the State of Punjab, and intention of this Court was not to render the 3 years diploma redundant/useless; and therefore, the Rule which prescribed the 5 years diploma in Drawing and Painting/Commercial Arts as a qualification should be read down as now requiring only a 3 years diploma in Commercial Arts.

Counsel for the applicant, Mr. Gauravjit Singh Patwalia, reiterated these contentions.

He also contended that the applicant had filed a fresh writ petition in the High Court challenging the decision dt. 24.06.2020 of the Committee constituted by the State of Punjab, but certain oral observations were made at the time of hearing of the said writ petition on 26.11.2021 that the constitution of such a Committee was not contemplated in the judgment dt. 22.01.2019 in CWP-12489-2015, that the Committee was not competent to take any decision on the candidature of the applicant, and that the matter was then adjourned by learned Single Judge of this Court.

Mr. Avinit Avasthi, AAG, Punjab contended that the applicant had been given liberty to question the decision of the Committee dt. 24.6.2020 in the order dated 09.12.2020 in CM-10440-CWP-2020 and the interest of the petitioner was sufficiently safeguarded by the said direction. He also contended that there is no necessity to review the order dt. 09.12.2020 in CM-10440-CWP-2020 and that the prayer of the petitioner to read down the Part 'A' of Clause 7(xix) had not been acceded to when the writ petition was decided on 22.01.2019, and it is not open to the applicant to now canvass the said point since almost three years have lapsed since then.

The Consideration by this Court

We have noted the contentions of both sides.

Firstly, we agree with the contention of the State that at this point of time, almost three years after the judgment dt. 22.01.2019 in CWP-12489-2015 was passed, it is not open to the applicant to seek review of the said order on the ground that her prayer to read down the period of 5 years mentioned in Part 'A' of the Rules be read down as 3 years was not decided.

In our view any such reading down would practically amount to this Court enacting a rule, which is not permissible to be done, in the exercise of jurisdiction conferred on this Court under Article 226 of the Constitution of India.

However, we are of the opinion that in the order dt. 22.1.2019 passed in CWP-12489-2015, this Court had not directed constitution of any Committee to consider the said judgment and its effect; and also the claim of the applicant for consideration to the post of Instructor-Art and Craft. So the Committee had no authority to take any decision on the aspect.

That apart the direction contained in the order dt. 22.1.2019 to consider the case of the applicant has to be implemented by the State after the clarification dt. 09.12.2020 was issued by this Court in CM-10440-CWP-2020 when only Part 'A' of the qualifications prescribed for the said post was quashed, and Part 'B' was left untouched.

In our view there could not have been any consideration of the case of the applicant by the State "*before*" 09.12.2020 (when the clarification was made in CM-10440-CWP-2020) and her claim cannot be rejected on the basis of any such decision taken "*prior*" to 09.12.2020, such as the one taken by the Committee on 24.06.2020.

In this regard, we are also of the view that the direction contained in the order dt. 09.12.2020 stating that it would be open to the applicant to seek appropriate remedy against the report of the Committee, constituted in compliance with the judgment dt. 22.1.2019 in CWP-12489-2015 in accordance with law, cannot be sustained because the case of the applicant has to be considered as per the clarification issued on 09.12.2020 in CM-10440-CWP-2020. Any decision taken by the State through the

Committee (report dt. 24.6.2020) would be nonest in law and the decision of the State has to be inconformity with the clarification issued by this Court on 09.12.2020.

In this view of the matter RA-CM-58-2021 is partly allowed; the following words in the order dt. 09.12.2020 are set aside i.e. *“further the Court clarifies that it will be open to the petitioner to seek appropriate remedies against the report of the Committee constituted in compliance with the aforementioned judgment of this Court, which is Annexure A-1 to the present application, in accordance with law”*; the State is directed to consider the case of the applicant for appointment to the post of Instructor-Art and Craft as per the decision dt. 22.1.2019 in CWP-12489-2015 as modified in its order dt. 09.12.2020 in CM-10440-CWP-2020 within four weeks from date of receipt of certified copy of this order and communicate its decision to the applicant. No costs.

**(M.S. RAMACHANDRA RAO)
JUDGE**

**(HARNARESH SINGH GILL)
JUDGE**

10.12.2021

Vivek

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