

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

206

CWP-102-2019 (O&M)
Date of Decision :31.10.2022

Amandeep Kaur

...Petitioner

Versus

Haryana Staff Selection Commission

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gaurav Chopra, Senior Advocate with
Mr. Mohit Giri, Advocate for the petitioner.

Mr. Rajesh Gaur, Addl. A.G. Haryana.

* * *

Harsimran Singh Sethi, J. (Oral)

CM-3449-CWP-2019

As prayed for, application is allowed.

Annexure P/12 is taken on record.

CM-3451-CWP-2019

Application is disposed off having been rendered infructuous.

CM-16482-CWP-2019

As prayed for, application is allowed.

Replication to the written statement is taken on record.

Main Case

In compliance of order dated 23.09.2022, an additional affidavit has been filed by Mr. Bharat Bhushan, Under Secretary, Haryana Staff Selection Commission, Panchkula, which is taken on record.

In the present writ petition, the grievance of the petitioner is

that though, the petitioner is fully eligible for appointment to the post of TGT (Punjabi), which post was advertised vide advertisement No.4/2016 (Annexure P/5) and the petitioner has secured more marks than the last selected candidate in the category in which she is competing and some of the advertised posts are still lying vacant in the said category, the petitioner is not being considered for the same.

The facts leading to the filing of the present writ petition are that the petitioner passed her graduation in the year 1999 from Panjab University, Chandigarh and thereafter, obtained degree in Bachelor of Education from Panjab University, Chandigarh in the year 2008. Petitioner also qualified Haryana Teacher Eligibility Test in the year 2015, which is a essential qualification for appointment to the post of TGT.

After the petitioner has completed B.Ed., she got appointed as TGT (Punjabi) in Sri Guru Teg Bahadur Senior Secondary Public School, Behar Sahib, The Patran, District Patiala on 01.09.2008, where she started working. While the petitioner was working in the said school, the respondent-State issued an advertisement No.4/2016 (Annexure P/5), by which 189 post of TGT (Punjabi) were advertised. The petitioner who fulfilled the essential qualification as required under the said advertisement applied for the same and was issued a roll number for the written examination.

The selection process which was envisaged for ascertaining the merit included written examination and thereafter interview. The petitioner appeared in the written examination on 24.07.2016 and had secured 100 marks out of the maximum 160 marks. A notice dated 06.02.2017 was published by the respondent-Commission calling the selected candidates for

scrutiny of their documents and the petitioner appeared before the Scrutiny Committee on 21.04.2017 and produced all the relevant documents along with original experience certificate issued by the school where she was working. Experience certificate of the petitioner was not accepted on the ground that the same was not countersigned by the Director Public Instructions. Later on petitioner got the said objection removed and submitted the experience certificate duly verified by the District Education Officer and countersigned by the Director Public Instructions on 09.11.2017.

Before the interview could be conducted, the respondents again issued a notice on 21.07.2018 wherein, it was mentioned that candidates who were not eligible on earlier date of scrutiny dated 21.04.2017 or were absent in the scrutiny of the documents for any other reason were again given chance to appear for scrutiny of their documents, which was to be held again on 09.08.2018. As per the petitioner, roll number of the petitioner was not mentioned in the said notice and on being enquired by the petitioner, the respondents replied that as the petitioner has already appeared for scrutiny of documents on 21.04.2017 and submitted her duly signed experience certificate dated 09.11.2017, she is treated eligible for the grant of marks for experience as well. The respondents thereafter, finalized the result, but did not grant the marks for experience to the petitioner, whereas, the petitioner had 07 years experience up to the date of advertisement and was entitled for 14 marks on account of experience. As the respondents did not accept the plea of the petitioner, the present writ petition has been filed by the petitioner with the prayer that the merit of the petitioner be ascertained again by giving her marks for experience and

thereafter, her eligibility be adjudged for selection against the advertised post.

Respondents have filed reply, wherein, it has been stated that the petitioner had not uploaded her experience certificate along with the application form while filling the same online showing her experience and subsequently the said certificate was produced on the date of scrutiny of documents on 21.04.2017, which was not countersigned by the authority concerned so as to be admissible for the grant of marks and now at this stage, the petitioner cannot claim marks for the said experience certificate.

Second objection of the respondents is that the duly countersigned experience certificate was submitted by the petitioner after the cut off date of the submission of application form therefore, even otherwise, the said certificate cannot be taken into consideration.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It may be mentioned here that the present order is being passed keeping in view the fact that 05 posts out of the total advertised, in the category in which the petitioner is competing, are still lying vacant as per the affidavit of the respondents.

The petitioner's grievance is that she was eligible for appointment to the post of TGT (Punjabi) and the marks for experience as envisaged in the advertisement itself should be extended to her while calculating her total marks, which benefit is being denied to the petitioner by the respondents on the grounds that the petitioner has not uploaded her experience certificate while submitting online application form, which fact itself debars the petitioner to claim the benefit on the basis of the said

experience certificate. The said argument/objection of the respondents is to be tested on the basis of the terms and conditions of the advertisement. As per the Clause-VI of the advertisement, under the heading 'General Instructions' the hard copy of the application form along with all the required documents was to be brought at the time of verification/scrutiny-cum-interview. Said clause is as under:-

“General Instructions:-

X X X X X X X X

X X X X X X X X

6. The hard copy of application form along with all required documents must be brought at the time of verification/scrutiny-cum-interview.

X X X X X X X

DOCUMENTS TO BE UPLOADED WITH APPLICATION FORM

- i) Scanned Copy of Essential Qualification i.e. Matric showing Date of Birth and mark sheet of 10+2/Graduation/Diploma/Degree etc.
- ii) Scanned Copy of Sport Gradation Certificate in case of Outstanding Sports Persons, duly issued by the Competent Authority.
- iii) Scanned Copy of Haryana Domicile Certificate in case of BCA/BCB/SC/PHC/EBPG/ESM/DESM/DFP and women issued by competent authority.
- iv) Copy of Challan/credit certificate issued by Treasure/e-challan as the case may be, in case of candidates who have applied earlier.
- v) Latest Scanned Photographs duly signed by the Candidate.
- vi) Scanned signatures of the candidate.

DOCUMENTS TO BE BROUGHT AT THE TIME OF INTERVIEW/VIVA

- i) All original certificates/documents/testimonials of

education qualifications and other documents mentioned in the online applications and one set of self attested copies of all these certificates.

ii) Printed Copy of online application form along with latest stamp size photograph duly attested by a gazetted officer and pasted on the application form.

iii) Original proof of earlier fee deposited i.e Treasury Challan/ Credit Certificate issued by concerned treasure etc.”

A bare perusal of the above would show that the original certificate, documents and other testimonials of qualifications were not to be uploaded along with application form and the same were only to be brought at the time of scrutiny-cum-interview. That being so, there was no requirement of uploading the experience certificate online along with the application form and the same was only required to be submitted at the time of scrutiny of documents therefore, objection being taken by the respondent-Commission that as the experience certificate was not uploaded by the petitioner along with application form, the benefit of the same was not granted to the petitioner, cannot be accepted being contrary to the terms and conditions of the advertisement.

Further objection of the respondents is that even if it is assumed for the sake of arguments that experience certificate was not be uploaded with the application form, but duly certified experience certificate should have been produced by the petitioner at the time of scrutiny of documents, failing which, no marks for the experience can be given to the petitioner hence, as a valid experience certificate was not produced at the time of scrutiny on 21.04.2017, prayer of the petitioner needs to be declined.

Though, the said objection is valid. Even if, the documents were not

required to be submitted/uploaded along with the application form online but a valid experience certificate was required to be shown to the authorities concerned on the date of scrutiny so as to become eligible to get the marks of the same. In the present case, it is a conceded position that the petitioner did not had the valid experience certificate on the date of scrutiny i.e. 21.04.2017 as the same was not countersigned by the Director Public Instructions, which was one of the requirement of valid experience certificate hence, the objection raised by the respondents is valid and needs to be accepted.

Now the question arises whether despite the said ineligibility, the petitioner can be granted marks for experience or not in view of the subsequent developments.

After scrutiny of documents, which was held on 21.04.2017, the respondents issued another notice dated 21.07.2018 i.e. before conducting interviews, to the effect that the candidates, who were called for scrutiny of documents but were absent or were not called for scrutiny being ineligible due to the non-clearance of HTET or any other reason were again called to appear for the scrutiny of documents on 09.08.2018. The candidates were directed to bring their original documents as well as self attested copy of the same. Learned counsel for the petitioner submits that once another opportunity was granted for scrutiny of the documents to the ineligible candidates or to the candidates, who did not appear for scrutiny on 21.04.2017, the benefit of the experience certificate which was submitted by the petitioner on 09.11.2017 along with all the requirements should also have been given to the petitioner as for all intent and purposes as the date of scrutiny of the documents stood extended up to 09.08.2018 by the

respondents themselves. As per the arguments of the respondents only the ineligible candidates were given chance to appear in the scrutiny to be held on 09.08.2018 but as the petitioner was already eligible on 21.04.2017, she cannot claim any benefit of the extended date of scrutiny of documents.

The said arguments of the respondent-State cannot be accepted. It is conceded position that the last date of scrutiny stood extended up to 09.08.2018. Even the candidates, who were earlier ineligible were granted opportunity to compete for the posts advertised after attaining the eligibility during the selection process, the candidate who was already eligible but was not having one or the other documents in the scrutiny held on 21.04.2017, should also have been given opportunity to rectify his/her documents so as to claim consideration as per his/her merit. In case the arguments of the respondent-State is accepted that only candidates who were ineligible earlier were to be appear on the extended scrutiny dated 09.08.2018 and not the candidates who were eligible, the same will put the candidates who were initially eligible as per advertisement on lower pedestal than that of ineligible candidates, which cannot be done in any circumstance.

Even otherwise, the argument that only ineligible candidates were called for scrutiny on 09.08.2018 is incorrect. As per the notice dated 21.07.2018, candidates who did not appear in the scrutiny held on 21.04.2017, were eligible to appear for scrutiny on 09.08.2018. Learned counsel for the respondents conceded that only the candidates who were eligible, were called for scrutiny held on 21.04.2017 hence, the said argument is factually incorrect and cannot be accepted. Even otherwise also once the candidates who were ineligible or did not appear for scrutiny of documents are being given another chance to compete for the post, denying

the said benefit to an eligible candidate for the purpose of determining the merit, will be contrary to the Article 14 of the Constitution of India hence, the said objection cannot be accepted. The petitioner, who is on much better footing and has already submitted experience certificate duly attested by the Director Public Instructions on 09.11.2017 which is much prior to the extended date of scrutiny i.e. 09.08.2018, she is entitled for the grant of benefit of the said document i.e. experience certificate so as to adjudge the rightful merit of the petitioner. Keeping in view the exceptional factual circumstance of the present case coupled with the fact that the posts in the category in which the petitioner is competing are still lying vacant due to want of eligible candidates, claim of the petitioner deserves to be accepted.

Learned counsel for the respondents submits that though, the posts are still lying vacant but it might be possible that the same are kept vacant due to one or the other pending litigation hence, the said fact may kindly be taken into consideration while granting relief to the petitioner.

Keeping in view the facts and circumstances noticed hereinbefore, respondents are directed to reascertain the merit of the petitioner by taking into consideration the experience certificate of the petitioner submitted by her on 09.11.2017 which was after due attestation by the competent authority and grant her the marks for experience which she is entitled for in pursuance to the said certificate and, thereafter, on the basis of the total marks she obtains in the written examination as well as in interview, she be considered for selection and consequential appointment. In case any candidate having lesser marks than the petitioner has been selected and appointed, the claim of the petitioner be considered against any of the vacant advertised post for selection and consequential appointment.

Respondent-Commission will be free to ascertain whether the posts which are lying vacant still involve litigation or not and in case litigation qua the said vacant posts already finalized, the same will be treated as vacant to consider the case of the petitioner.

Let appropriate consideration to the claim of the petitioner under this order be given within a period of four weeks from the date of receipt of copy of this order and in case the petitioner is found meritorious enough and the candidates having lesser marks than the petitioner have been recommended and appointed, the petitioner's name be also recommended to the respondent-State for appropriate consideration for appointment to the post of TGT (Punjabi). It is made clear that in case petitioner is found meritorious enough for appointment the petitioner be extended notional appointment from the date the candidate lower in merit was granted appointment, learned Senior counsel for the petitioner has undertaken that the petitioner will not claim any arrears of the retrospective appointment but the seniority of the petitioner be fixed according to her merit obtained by her in the examination. Ordered accordingly.

Petition stands allowed in above terms.

October 31, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

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