

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

204

CWP-10639-2022

Date of decision: 06.12.2022

SHIWANI YADAV

...Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

...Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Bhupinder Malik, Advocate for the petitioner.

Mr. Harish Nain, AAG, Haryana.

Ms. Harpriya Khaneka, Advocate for respondent No.3-HPSC.

Ms. Rajni Gupta, Advocate for respondent No.5.

HARSIMRAN SINGH SETHI, J.(ORAL)

Affidavit of Deepak Kumar, Joint Director Administration, O/o Director Higher Education Haryana, Panchkula filed on behalf of the respondents No.1 and 2, is taken on record.

In the present petition, the challenge of the petitioner is to the revised result dated 06.04.2022 whereby, the initial result dated 02.07.2019 has been revised so as to declare the petitioner unsuccessful in the reserved category of Backward Class-B while making selection/appointment to the post of Assistant Professor (College Cadre) in the subject of Mathematics.

As per the advertisement, which was issued by the respondent on 08.03.2019 posts of Assistant Professor (College Cadre) in various subjects were advertised and the petitioner who was eligible for appointment to the post of Assistant Professor (Mathematics), applied in pursuance to the said advertisement in the reserved category of BC-B. The petitioner

competed and was declared successful in the final result which was declared on 02.07.2019 and was recommended for appointment to the State Government. Acting upon the recommendation of the respondent-commission, the petitioner was duly appointed as Assistant Professor (Mathematics) in the year 2019 and since then, the petitioner is continuing in service. On 06.04.2022, the respondent-commission revised the result dated 02.07.2019 and declared that keeping in view the revised result, the petitioner is out of the zone of consideration for being selected as Assistant Professor (Mathematics) against the advertised post in BC-B category as, one Poonam Rani, who had applied in BC-B category, but was wrongly granted appointment in the general category is to be reverted back to BC-B category so as to oust the petitioner who is the last selected candidate in BC-B category and respondent No.5 was to be appointed in the resultant vacancy in the general category. In the present petition, the challenge is to the revised result dated 06.04.2022.

After notice of motion, respondents have filed the reply, wherein, the respondents have stated that certain candidates in the reserved category, had secured more marks than the last general category candidate and they were considered for appointment in general category. Later on, one of the candidate namely, Poonam who had applied in BC-B category but was appointed in the general category was not found eligible to be appointed in the general category and was reverted back to the BC-B category, which act ousted the petitioner from the zone of consideration to be selected and consequently appointed as the said Poonam Rani was more meritorious than the petitioner in the BC-B category. The resultant vacancy in the general category was offered to respondent No.5 being next in merit. As per

respondent, the selection of Poonam Rani was inadvertent in the general category, which resulted in the appointment of the petitioner, which mistake has now been rectified by respondent though after more than three and a half year after appointment of the petitioner.

Learned State counsel submits that the petitioner was appointed keeping view the recommendation made by the commission in this regard but as per the revised result, the petitioner does not find place in the BC-B category against the advertised post, hence petitioner's services are being terminated, hence no grievance can be made by the petitioner.

I have heard learned counsel for the parties. I have gone through the record and the written statement.

From the facts and circumstances which have been depicted hereinbefore it is clear that the petitioner is not at fault at any given point of time. She was duly selected by the respondent-commission in the year 2019 against the post advertised and thereafter, appointed and is working for the last more than 3 years with the respondent. It is only because of the fact that Poonam Rani, who had applied in the BC-B category in the subject of Mathematics for being considered for appointment as Assistant Professor, who was initially recommended by the respondent-Commission against a post for general category and was subsequently reverted back to BC-B category through the revised result having been not found suitable to be appointed against general category post and on her being more meritorious than the petitioner in BC-B category, petitioner's recommendation has been withdrawn and the present situation has arisen. Though, the mistake can be rectified at any given point of time but the balance of equity has to be maintained as to whether, the result of the said mistake will make a

candidate lose appointment and whether the said candidate will suffer such prejudice, which cannot be compensated at all.

The petitioner was appointed as per the recommendation of the commission and she is continuing for the last more than 4 years, the respondent-State has already conceded before this Court that there are more than 350 posts lying vacant. Though, as per the settled principle of law the post more than who has been advertised cannot be filled up but here, in order to safeguard the interest of the petitioner, who had no role to play in the initial result or in the rectified result, the petitioner needs to be accommodated against one of those posts which are lying vacant failing which petitioner will lose a job without their being any fault of her.

In some what similar circumstances, a Co-ordinate bench of this Court in CWP No.15081 of 2012 titled as “*Jaipal Vs. The Haryana Public Service Commission and others*” decided on 18.11.2015 granted the benefits to a candidate to be accommodated against the posts lying vacant when, the selection of the said candidate was found to be beyond the advertised post in the revised result. The relevant paragraph in Jai Pal's case (supra) is as under:-

“Now, the question arises so as to what relief the petitioner is entitled to. A question was posed to the counsel for the State of Haryana to apprise the Court whether any vacant sanctioned post of Assistant Professor (Physical Education) in the College Cadre was available in the State of Haryana, against which the petitioner could be appointed. The answer came in the affirmative as the Court was informed that at least three such posts in the General Category, the Category to which the petitioner belongs, are vacant.

The appointments in the case in hand were made in the year 2012. Over three years have passed since then. The Court is informed that the work and conduct of all the private respondents is unblemished. No fault can be attributed to them for non-grant of two marks to the petitioner.

In view of the above facts, which are peculiar to this case, in order to do the complete justice between the parties, the petitioner is directed to be appointed as Assistant Professor (Physical Education) against one of the three available and sanctioned vacant posts.”

Keeping in view, the settled principle of law, noticed hereinbefore as the petitioner was not in any manner at fault in getting an appointment, coupled with the fact that the petitioner is serving the respondent-commission for the last about 4 years, it will be in the interest of justice that the petitioner be accommodated against one of the 350 posts lying vacant.

Learned State counsel submits that the petitioner can only be accommodated in case, the name of the petitioner still stands recommended by the commission whereas, now the commission has withdrawn the name of the petitioner from the recommendation list, therefore, the petitioner cannot be even accommodated against the posts which are lying vacant.

The name of the petitioner has been withdrawn only on the ground that Poonam Rani, who was higher in the merit than the petitioner was due to an error of the respondent-commission, initially appointed in the general category and through the revised result was reverted back to the category of BC-B. That being so, the respondent-commission withdrew the recommendation of the petitioner after about 3 years of recommending her,

though the name of the petitioner stood recommended by the respondent-commission itself without their being any fault attributed to the petitioner. Hence, it is directed that the said recommendation be maintained by the commission in the facts and circumstances of this case, which may not be treated as precedent in any other circumstances.

Keeping in view of the above, the direction is issued to the respondent-State to accommodate the petitioner against, one of the vacant posts of Assistant Professor (College Cadre) in the subject of Mathematics.

It is made clear that the post which has become vacant in the general category be offered to the next in merit and in case respondent No.5 is next meritorious, his case be considered in accordance with law.

December 06, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No