

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

Date of decision : 15.09.2022

(1) CWP-14008-2021 (O&M)

Vandna Sidhu

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

(2) CWP-13671-2021 (O&M)

Vandna Sidhu

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

(3) CWP-13775-2021 (O&M)

Vandna Sidhu

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

(4) CWP-14080-2021 (O&M)

Vandna Sidhu

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Mandeep K. Sajjan, Advocate,
for the petitioner(s).

Ms. Anu Chatrath, Addl.A.G., Punjab.

MAHABIR SINGH SINDHU, J.

By this common order, four writ petitions are being disposed off as issue involved is common. For the sake of convenience and brevity, facts are noticed from CWP No.14008-2021.

2. Present writ petition has been filed under Article 226 of the Constitution for quashing of the impugned notice/announcement dated 28.06.2021 (P-5), whereby, application of the petitioner was rejected for the post of Member, District Consumer Disputes Redressal Commission, Barnala (for short, 'the District Commission'); further prayer is for directing the respondents to consider her application for the post in question.

3. Facts are not in dispute.

4. Petitioner claims to be an Advocate enrolled with Bar Council of Punjab and Haryana. As per Section 10 of the Consumer Protection Act, 1986 (for short, 'the Act of 1986'), District Consumer Forum was established in every District consisting of President and two Members. Petitioner was selected as a Lady Member for District Consumer Disputes Redressal Forum, on 16.02.2015 and completed her tenure as such on 14.02.2020.

5. Thereafter, applications were invited by the Government of Punjab, Department of Food, Civil Supplies & Consumer Affairs (for short, 'the State Government'), for filling up 32 (thirty-two) posts of Members in the District Consumer Commissions vide public notice dated 09.01.2021.

6. In response to the aforesaid advertisement, petitioner applied separately for the post(s) of Member, District Commissions, Sangrur, Bathinda, Barnala & Moga.

7. The application(s) of petitioner were rejected vide notice/announcement dated 28.06.2021 (P-5) and relevant part of the same reads as under:-

***“NOTICE/ANNOUNCEMENT
SELECTION FOR THE POST OF MEMBERS,
DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSIONS IN PUNJAB
APPLICANTS WHOSE APPLICATIONS HAVE BEEN
REJECTED DUE TO LACK OF DOCUMENTS***

<i>SR. NO.</i>	<i>Name of Candidate for the post of Member</i>	<i>Remarks</i>
<i>1. - 10.</i>	<i>.....</i>	<i>.....</i>
<i>11.</i>	<i>Vandana Sidhu d/o Jaswant Singh</i>	<i>ACRs awaited. Affidavit not attached NEC/NOC not attached.</i>
<i>12. – 48.</i>	<i>.....</i>	<i>.....</i>

Hence, present petition.

8. Learned counsel for the petitioner contended that objections recorded in the impugned notice are due to misreading and without verification of the documents uploaded at the time of submission of application form. Further contended that impugned order was never communicated to the petitioner; rather, it is on account

of the *mala fide* intentions of respondent No.1 as at one point of time, she had sent a contempt notice to the then Principal Secretary. Further contended that that as per advertisement, separate application(s) were to be submitted for appointment as Member in each District Commission, therefore, it was incumbent upon the respondents to prepare district-wise lists regarding the rejected candidates. However, a common list of candidates for all the Districts was uploaded regarding their rejection, which is totally illegal. While referring to para 13 of the instructions for filling online applications, contended that “Verify incomplete panels” button was provided to check whether all the mandatory fields are being filled by the candidate or not and in case, any such mandatory details are missing, it would be reflected in the pop-up message box so that the candidate can fill up those details. Thus, when the application of petitioner was duly accepted by the website of the respondent-department and receipt of acceptance thereof had also been issued, then there was no question of raising such objection at later stage. Further argued that respondents adopted an unfair manner as there was no seat reserved for a female member in District Consumer Commission which is against the object and spirit of the Consumer Protection Act, 2019 (for short, ‘the Act of 2019’) as well as the Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the Presidents and members of the State Commission and District Commission) Rules, 2020 (for short, ‘the Rules of 2020’). Also submitted that as per law laid down by Hon’ble the Supreme Court, posts of Members, Consumer Commissions, be

filled up by preparing a common merit list of the State and not district-wise merit list. However, respondents in order to accommodate their kith & kin called applications district-wise and as such the candidates from other districts were not considered.

9. On the other hand, learned State counsel, on instructions from quarter concerned, submitted that there is no need to file separate reply in CWP-13775-2021, 14080-2021 & 13671-2021 and reply already filed in CWP-14008-2021 may be read as reply to the said writ petitions. Further submitted that selection of President and Members of the District Commissions are governed by the Rules of 2020 which are promulgated by the Ministry of Consumer Affairs, Food and Public Distribution, Government of India; therefore, Union of India would be necessary party, but they have not been impleaded as respondent and as such, present writ petition is liable to be dismissed only on this ground. Also submitted that as per advertisement, the complete applications along with requisite documents were to be filled up online till 10.02.2021 (5.00 P.M.). However, as per the impugned notice/announcement dated 28.06.2021 petitioner failed to submit her ACRs, affidavit & NEC/NOC which were required to be submitted at the time of filling the application form. The rejection of application form(s) of petitioner for the post(s) in question was as per the guidelines/rules framed by the Central Government. It is further submitted that petitioner has not alleged any *mala fide* on the part of answering respondent/State and as such, this Court should not interfere in this disputed question of facts.

10. Heard learned counsel for the parties and perused the records.

11. Before dealing with the contentions of the parties, it is pertinent to recapitulate the relevant portion of the advertisement, which reads as under:-

*“Department of Food, Civil Supplies and Consumer
Affairs, Punjab*

DETAILED NOTICE

Applications are invited from suitable candidates for appointment for Thirty-two posts of Members in the District Consumer Commission in the State of Punjab on whole time basis established under the Consumer Protection Act, 2019. The number of vacancies may increase or decrease for any reason whatsoever such as resignation or relieving of Members or as ordered by the Hon'ble Punjab and Haryana High Court in various pending Court Cases. Number of vacant posts of Members are as hereunder:-

<i>Sr. No.</i>	<i>Name of District Commission</i>	<i>Total No. of Vacant posts</i>
<i>1.</i>	<i>Amritsar</i>	<i>2</i>
<i>2.</i>	<i>Barnala</i>	<i>2</i>
<i>3.</i>	<i>Bathinda</i>	<i>2</i>
<i>4.</i>	<i>Ferozepur</i>	<i>2</i>
<i>5.</i>	<i>Fatehgarh Sahib</i>	<i>1</i>
<i>6.</i>	<i>Faridkot</i>	<i>1</i>
<i>7.</i>	<i>Gurdaspur</i>	<i>2</i>
<i>8.</i>	<i>Hoshiarpur</i>	<i>2</i>
<i>9.</i>	<i>Jalandhar</i>	<i>1</i>
<i>10.</i>	<i>Kapurthala</i>	<i>2</i>

11.	<i>Ludhiana</i>	2
12.	<i>Mansa</i>	1
13.	<i>Moga</i>	2
14.	<i>Muktsar Sahib</i>	1
15.	<i>Patiala</i>	2
16.	<i>Roopnagar</i>	1
17.	<i>Sangrur</i>	1
18.	<i>S.A.S. Nagar</i>	2
19.	<i>S.B.S. Nagar</i>	2
20.	<i>Tarantaran</i>	1
	<i>Total</i>	32

Eligibility Criteria

As per rule 4(2) of the Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the Presidents and members of the State Commission and District Commission) Rules, 2020 which are made under the provisions of the Consumer Protection Act 2019 describes as hereunder:-

4(2) "A person shall not be qualified for appointment as member unless

(a) is of not less than thirty-five years of age.

(b) possesses a bachelor's degree from a recognised University; and

(c) is a person of ability, integrity and standing, and having special knowledge and professional experience of not less than fifteen years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management,

engineering, technology, public health or medicine."

Tenure

The appointment shall be on whole time basis for a period of 4 years or up to the age of 65 years, whichever is earlier.

Qualifications

1. The Applicant must have passed Matriculation with Punjabi as one of the compulsory or elective subject or any other equivalent examination in Punjabi language.

2.1 In case of serving officials:-

(i) Applicant must have obtained 'No Objection Certificate' (NOC) from his employer.

(ii) In case any departmental or any other proceedings including criminal case has been initiated, pending or decided in the past against the officer under relevant Service Rules, details of the same may be furnished.

2.2 In case of retired officers, the date of superannuation and "No Inquiry Certificate" will be necessary from the last employer.

2.3 ACR dossiers with ACRs of last 10 years of applicant.

2.4 Candidates having judicial background are required to furnish copies of their ten best judgments/other judicial orders passed by them along with their application form.

3. Selection of the Members of the District Consumer Commission will be made by the Selection Committee prescribed in the Rule 6 of the Consumer Protection (Qualification for appointment, method of recruitment, procedure of

appointment, term of office, resignation and removal of the Presidents and members of the State Commission and District Commission) Rules, 2020 which are made under the provisions of the Consumer Protection Act 2019.

4. Every appointment of a Member shall be subject to submission of a certificate of physical fitness signed by a civil surgeon or District Medical Officer to his medical fitness.

5. Before appointment, the selected candidate shall have to furnish an undertaking that he does not and will not have any such financial or other interest as is likely to affect prejudicially his functions as such Member.

Oaths of office and secrecy:- Every person appointed to be a Member, before entering upon his office make and subscribe an oath of office and secrecy in Forms I and II annexed.

Declaration of Financial and other interest:- A Member, before entering upon his office, declare his assets, and his liabilities and other interests.

Disqualifications:-

A person shall be disqualified for appointment as a member, if he:-

- (a) has been convicted and sentenced to imprisonment for an offence which involves moral turpitude; or*
- (b) has been adjudged as an insolvent; or*
- (c) is of unsound mind and stands so declared by a competent court; or*
- (d) has been removed or dismissed from the service of the State Government or Central Government or A body Corporate owned or controlled by such Government; or*

(e) has, in the opinion of the State Government, such financial or other interest as is likely to prejudicially affect his functions as the Member.

The selection of member or the president shall be regulated as per the provision of Rule 4(3) of Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the Presidents and members of the State Commission and District Commission) Rules, 2020. Meaning thereby that selection of woman member or women president shall be dependent on the constitution of the District Commission.

All other terms and conditions of the appointment of the Member shall be governed by the Consumer Protection Act, 2019 as well as the Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the Presidents and members of the State Commission and District Commission) Rules, 2020 available at website www.foodsuppb.gov.in

It is made clear only applications filled online at link available at www.foodsuppb.gov.in till the cut off date i.e 10/02/2021 till 5:00 PM and complete in all aspects with application fee of Rupees 1000/- (Rupees One Thousand Only) paid online and with requisite documents attached shall be considered. Any application found incomplete in any manner, would be rejected in scrutiny and no intimation regarding the same shall be sent to applicant.

*Principal Secretary to Govt of Punjab
Department of Food, Civil Supplies &
Consumer Affair”*

A perusal of para 2.2 of the advertisement reveals that in case of retired officers, the date of superannuation and 'No Enquiry Certificate' will be necessary from the last employer. Again, para 2.3 thereof says that candidates must submit ACRs of last 10 years and still further, as per para 3, selection of members of District Commissions will be made by the Selection Committee constituted under Rule 6 of the Rules of 2020. Besides this, clause No.17 of the format attached with the advertisement specifically says that separate applications are to be submitted for appointment in different districts and for reference, the same reads as under:-

“17. District for which application is made (separate applications to be made for appointment in separate districts): _____”

However, the advertisement does not point out anything as to whether the objection list is to be uploaded district-wise or a combined list of the entire State is to be uploaded.

12. Although, copy of the application form which was filled up online by petitioner is made part of the petition (P-3); but other documents i.e. NEC/NOC and ACRs have not been placed on record. Thus, it is not possible to accept that these documents were actually attached with the application form. Even petitioner did not file any counter to the averments made by the respondents in para 7 of their affidavit, wherein it has been specifically averred that *“petitioner has failed to submit her ACRs, Affidavit and NEC/NOC which is required to be submitted at the time of filling the application form for the post of*

Member, District Consumer Dispute Redressal Commission.”

Moreover, the advertisement clearly says that “*only applications filled online at link available at www.foodsuppb.gov.in till the cut off date i.e 10/02/2021 till 5:00 PM and complete in all aspects with application fee of Rupees 1000/- (Rupees One Thousand Only) paid online and with requisite documents attached shall be considered.*” Therefore, the argument raised by the petitioner that objections recorded in the impugned notice regarding non-availability of affidavit, NEC/NOC and ACRs is a misreading of the application form is hereby rejected.

Of course, the availability of ‘verify incomplete panels’ button to check whether all mandatory fields are being filled or not and in case any such mandatory fields are missing, it will be reflected in the pop-up box so that candidate could fill up those details, but it is nowhere discernable from the records that petitioner uploaded the documents in question along with her application form.

13. The argument that order of rejection was never communicated to the petitioner is also not helpful in view of the specific condition laid down in the advertisement to the effect that “*Any application found incomplete in any manner, would be rejected in scrutiny and no intimation regarding the same shall be sent to applicant.*” Therefore, notice/announcement dated 28.06.2021 regarding information of rejected candidates amounts to sufficient communication.

14. For allegations of *mala fide* against respondent No.1, petitioner has not produced any material; therefore, mere assertion will

not substantiate the same. Moreover, mere allegation by the petitioner cannot be read as a proof of *mala fide* in view of the facts of the present case.

15. The contention that it was incumbent upon the respondents to prepare district-wise list of rejected candidates has no substance because neither under the Act of 2019, nor as per the Rules of 2020, or even in the advertisement, there is such provision/indication for issuance of district-wise lists of rejected candidates.

16. Lastly, the contention raised by the petitioner that no seat was reserved for a female member in a District Commission and as such the same is against the object and spirit of the Act of 2019 as well as Rules of 2020 is unfounded on the premise that Section 28 of the Act of 2019 deals with the establishment of District Commissions and for reference, the same is reproduced as under:-

“28. Establishment of District Consumer Disputes Redressal Commission.--(1) The State Government shall, by notification, establish a District Consumer Disputes Redressal Commission, to be known as the District Commission, in each district of the State:

Provided that the State Government may, if it deems fit, establish more than one District Commission in a district.

(2) Each District Commission shall consist of—

(a) a President; and

(b) not less than two and not more than such number of members as may be prescribed, in consultation with the Central Government.”

Perusal of Section 28 clearly reveals that there should be a President; and not less than two and not more than such number of members as may be prescribed, in consultation with the Central Government. Therefore, the above provision does not provide any reservation for a woman member in a District Commission. However, Rule 4(3) of the Rules of 2020 provides that there should be at least one woman Member or President of the District Commission and which reads as under:-

“4. Qualifications for appointment of President and member of District Commission.-

(1)

(2)

(3) *At least one member or the President of the District Commission shall be a woman.”*

In the advertisement, it is specifically mentioned that selection of Member or the President shall be regulated as per the provision of Rule 4(3) of the Rules of 2020. It is also mentioned that selection of woman Member or President shall be dependent on the constitution of the District Commission. However, it is not the case of petitioner that no woman at all has been appointed as President or Member in the aforesaid four districts i.e. Barnala, Bathinda, Sangrur and Moga; thus, the plea of reservation for female candidates is also not acceptable.

17. Concededly, none of the appointee(s) has been impleaded as a party-respondent(s) by the petitioner for the reasons best known to her. In view of the old legal maxim i.e. *audi alteram partem*, it is quite elementary that no one should be condemned unheard. Thus, on this ground also, petitions are not maintainable.

18. In view of the above, this Court does not find any merit in the present writ petitions; hence, the same are hereby dismissed.

15.09.2022
atulsethi

(MAHABIR SINGH SINDHU)
JUDGE

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