

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

CWP-679-2014 (O&M)
Date of decision: 20.12.2022

SATYAWAN SINGH

...Petitioner

VS

STATE OF HARYANA & ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Y.P.Malik, Advocate,
For the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

Mr. Arvind Rajotia, Advocate,
For respondent No.3.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing letter dated 19.12.2013 (Annexure P-7), vide which the candidature of petitioner for the post of Primary Teacher (category No.2) was rejected.

2. Facts as pleaded in the petition. Petitioner is an aspirant for the post of Primary School Teacher. Diploma in Education (D.Ed.) was one of the qualifications prescribed for the said post. D.Ed examination result was announced on 04.10.2011 whereas the cut-off date prescribed for the post was 08.12.2012. The candidates were required to make application for the post in question through online mode. Petitioner was called for scrutiny of documents on 13.12.2013. He was given certificate of passing D.Ed. (Annexure P-10) only on 20.12.2013. Therefore, as on 13.12.2013, the date of scrutiny of documents for the purpose of interview, the petitioner did not

have the certificate relating to D.Ed. examination and thus, failed to produce the same. Consequently, candidature of the petitioner was not considered for the purpose of scrutiny of documents and interview. Hence, the instant petition.

3. The controversy involved herein has been summed up in the order dated 16.01.2014 passed by my learned Brother Augustine George Masih, J., (as he then was seized of the matter) in the following words:

“Counsel for the petitioner, while referring to the certificate dated 20.12.2013 (Annexure P-10) issued by the Principal, K.S.College, Bhind (MP) from where the petitioner has passed the D.Ed. Examination, contends that the result was declared on 6.10.2010, which is much prior to the cut-off date for receipt of the applications, which would determine the eligibility of a candidate. Petitioner applied well in time, but he is not being interviewed on the ground that the marks-sheet has been issued to the petitioner after the cut-off date.

Notice of motion for 4.2.2014.

Dasti only.

To be heard along with CWP No.336 of 2014.

Direction is issued to respondent No.2-Haryana School Teachers Selection Board to interview the petitioner provisionally. Result of the petitioner will not be declared and kept in a sealed cover till a specific order in this regard is passed. This interim arrangement shall not confer any right, equity or claim in favour of the petitioner in any manner.

Copy of the order be given dasti to the counsel for the petitioner under the signatures of the Special Secretary of this Court.”

4. *Apropos*, petitioner was provisionally interviewed and his result was also later declared which reveals that he had obtained aggregate 58 marks in the selection process carried out by the Haryana Staff Selection Commission. Subsequently matter was heard by another coordinate Bench presided over by my learned sister Lisa Gill, J., and following orders dated 22.12.2021 and 23.12.2021 were passed:

Order dated 22.12.2021

“Learned counsel for the respondent-State to clarify whether any of the candidates appointed in the year 2015 or earlier, were under the General DESM Category and to also inform regarding the vacancy status as on today. Result sheet of the petitioner produced in Court today is taken on record subject to just exceptions.

At request, adjourned to 23.12.2021.”

Order dated 23.12.2021

“Learned counsel for the State submits that though the candidature of the petitioner could not have been rejected on the ground as mentioned in Annexure P7, appointment cannot be afforded to the petitioner under DESM category, for the reason that there is no vacancy available. Reference is made to the terms and conditions in the advertisement which provide that DESM candidates who fulfill all conditions of qualifications, age etc. prescribed for posts would be considered on merit for the posts reserved for ESM to the extent of non-availability of suitable ESM candidates. All the available posts, it is submitted, have been filled up by suitable ESM candidates and vacancy for DESM category is not available.

Let a specific affidavit in this respect be filed before the next date of hearing.

List on 09.02.2022.”

5. Pursuant to the directions issued by this Court, an affidavit dated 19.05.2022 was filed by the Haryana Staff Selection Commission wherein *inter alia* following deposition has been made in para 4 and 5:

“4. That the main grievance of the petitioner in the present writ petition is to consider the candidature of the petitioner for the post in question. In this regard, it is submitted that on the basis of interview, the Haryana School Teacher Selection Board the then Board has finalized the result of Category No.1 and Category No.2 and due to lesser marks the petitioner was not selected in both the categories.

The category-wise details marks of the petitioner are as follows:

	<i>Categories in which petitioner applied</i>	<i>Roll No.</i>	<i>Marks Secured by the petitioner</i>	<i>Marks Secured by the last selected candidate in</i>	<i>Waiting Cut off</i>	<i>Status</i>
<i>Petitioner (Satyawan Singh)</i>						

<i>Category General</i>				<i>General Category</i>		
	<i>Category No.1</i>	<i>99925190</i>	<i>58.00</i>	<i>63.12</i>	<i>62.27</i>	<i>Lesser marks</i>

<i>Petitioner (Satyawar Singh)</i>	<i>Categorie s in which petitioner applied</i>	<i>Roll No.</i>	<i>Marks Secured by the petitioner</i>	<i>Marks secured by the last selected candidate in DESM category &Cut off of ESM last selected candidate</i>	<i>Marks secured by the last selecte d candid ate under parent categor y i.e. Genera l categor y & Waiting cutoff</i>	<i>Stat us</i>
<i>Category DESM- General</i>	<i>Category No.2</i>	<i>9991133 5</i>	<i>58.00</i>	<i>59.88 &40.48</i>	<i>63.12 & 62.27</i>	<i>Lesse r Marks</i>

6. The above contents have been controverted by the petitioner in the counter affidavit dated 05.07.2022 in the following terms:

“4. That Para No.4 of the Affidavit are a matter of record but it is wrong and denied that due to lesser marks, the petitioner was not selected. It is necessary to bring to the kind notice of this Hon’ble Court that one candidate namely, Bijender son of Sh. Dhan Singh Roll No. 99910591 who is DESM& had obtained 57.69 marks in Mewat Cadre (Cat. 2), has been selected in ESM category. On the other hand, the petitioner had/has obtained 58 marks in Mewat Cadre in DESM (ESM) Category is higher in merit to aforesaid Sh. Bijender. It is specifically submitted that out of 74 posts of ESM category 2-Mewat Cadre, more than 60 candidates were selected in both category 1 and category 2 and about 40 candidates had/have joined in other Distt. Category No.1 instead of Category 2 Mewat Cadre which is evident from their place of

postings recorded in MIS portal of respondent Education Department with name of School and Distt. The description of those candidates and place of posting in other Distt. Category No.1, taken out from the aforesaid portal, is as under, for kind perusal of this Hon'ble Court:-

XXX

XXX

XXX

The petitioner is claiming selection/appointment in DEMS category-2, in Mewat Cadre and ignored arbitrarily. ignored arbitrarily.

5. *That first portion of para No.5 of the Affidavit is not disputed.*

The second portion of para No.5 of the Affidavit is wrong and denied. However, it is submitted that the respondents made a false statement before this Hon'ble Court knowingly, willfully, and deliberately, with ill designed motive, in order to undone the claim of the petitioner. They have put hindrance in the administration of justice and this way, they have committed gross contempt of this Hon'ble Court. Again the respondent no.1 in this Affidavit concealing the facts (as detailed above), that about 60 candidates were selected in both the categories of other Distt. (Category.1) and Mewat Cadre (Category 2), but about 40 candidates have joined in other Distt. Consequently, many posts in question remained vacant but nothing has been disclosed in this regard.

The 3rd portion of this para of the Affidavit is wrong and denied. However, it is submitted that it was not a mistake, the statement to the effect that not even a single candidates pertaining to DEMS Category has been selected/ appointed.

The last portion of para No.5 of the Affidavit is wrong and denied. However, it is submitted that lower in merit to the petitioner has been selected/appointed i.e. one DEMS namely, Bijender son of Sh. Dhan Singh who had/has obtained 57.69 marks in Mewat Cadre (Category.2) has been selected/appointed on the post in question. Thus, again material particulars of the case, has been withheld by the respondent No.2. Not only this, a number of posts remained vacant in Mewat Cadre, due to non joining of selected candidates- who chose to joined service in other Distt. Instead of Mewat Cadre. Thus, the petitioner has not been considered for the same."

7. From the aforesaid factual narrative, what appears thus is two-fold i.e., a) the petitioner having been declared successful in the D.Ed. examination the result of which was published on 06.10.2021, was eligible as

on the cut off date to apply for the post in question even though the certificate of D.Ed. is dated 20.10.2013 for no fault of the petitioner. Further, the petitioner had also supplied the detailed marks sheet of D.Ed. showing him to have successfully passed the said examination. Therefore, the technical formality of D.Ed. certificate being dated 20.12.2013 later is of no significance. b) Petitioner has since scored 58 marks in aggregate and the same, as per the affidavit dated 19.05.2022 filed by the Commission, being lesser in merit qua the last selected candidate having both in general as well as ESM category, the petitioner could not have been selected in violation of the merit list.

7.1 To the extent that the merit list cannot be violated, I am one with the reasoning adopted by the respondents and there is no quibble about it. However, in view of the specific details given by the petitioner in his affidavit dated 05.07.2022, revealing that the candidate having lesser marks than him in the DESM category have been given advantage, it does appear that the petitioner's case also deserves to be considered in accordance with the merit, provided of course, the said factual assertion made by the petitioner is correct.

8. In the premise, writ petition is disposed of with a direction to the respondents to re-assess the case of the petitioner and in case the factual averments contained in the affidavit are correct, and the error is found to be on the part of the Commission then petitioner shall also be accorded benefit of his merit. In that case, if no vacancy is available as on today, then the petitioner's candidature shall be considered for the next available vacancy arising in future.

9. Needless to say that in the event of selection and appointment, the petitioner shall not be entitled to monetary benefits for period till joining service on the principles of ‘*no work no pay*’ but shall be entitled to notional benefits and shall be put at the bottom of the seniority list.
10. Disposed of in above terms.
11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

December 20, 2022

Vandana

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