

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

CWP-28255-2018 (O&M)

Date of decision: August 31, 2022

Vandana Chhikara

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Arvind Kashyap, Advocate for the petitioner.
Mr. R.K.S. Brar, Additional AG Haryana.
Ms. Harpriya Khaneka, Advocate for respondent-Commission.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing action of respondent No.3 in keeping the case of the petitioner under consideration of the Government vide letter dated 14.09.2018 (Annexure P-7) under Outstanding Sports category for the post of Dental Surgeon Class-II, without specifying any reason or time, when the cases of other candidates of same category have been rejected.

2. Plead case is that petitioner applied for the post of Dental Surgeon Class II in terms of advertisement No.5 of 2014 published on 26.07.2014 under category of Outstanding Sports Persons. Result dated 27.07.2018 (Annexure P-3) was declared and petitioner qualified the recruitment test. Vide letter dated 18.08.2018 (Annexure P-4), petitioner was informed that she had not attached the National Sports Certificate of Haryana State. Petitioner moved a representation dated 23.08.2018 (Annexure P-5).

Candidature of the petitioner was kept pending under the category of

Outstanding Sports Perosns. Vide letter dated 14.09.2017 (Annexure P-7), it was informed that candidature of the petiitoner under Outstanding Sports Persons of Haryana was still under consideration and will be considered as and when requisite clarification is received from the Government. However, her candidature in general category was considered and she was not found selected for interview. As per instructions dated 30.11.1993 (Annexure P-8) which were applicable on 15.12.2017, the petitioner is an Outstanidng Sports Person/ Player under Clause 4 and is fully eligible to be considered under said category for the post in question. Instructions dated 25.05.2018 (Annexure P-6) cannot be applied in the case of the petiitoner and for candidates falling in Outstanding Sports Person category as the selection process was initiated much prior to the issuance of the same.

3. I have heard rival contentions of the parties and perused the record.

4. What thus emerges is that whether or not candidature of the petiitoner under Outstanding Sports Persons was to be dealt with as per instructions of 1993 or subsequent one issued in 2018, I need not labour all over again as the question is not *res integra*. Vide judgment/ order dated 01.03.2019 rendered in **CWP-22572-2018** titled **Dr. Aashima versus State of Haryana and another**, instructions dated 25.05.2018 were not applied. Since no intra-court appeal and/ or SLP was filed and said judgment since had attained finality. Therein speaking for this Court, my learned Sister Ritu Bahri, J. opined as under:-

“In the above judgment, the matter was relating to the 2% Sports Quota reserved for the Competitive Entrance Examination for admission to M.B.B.S/B.A.M.S (Ayurveachara) Courses in the Government Medical/Dental Colleges of Punjab, as per

prospectus. Thereafter, vide notification dated 20.05.1992, the State of Punjab issued specific condition on the basis of which admissions were to be under the 2 per cent quota reserved for sportsman/sportswoman. However, vide notification dated 13.07.1992, this condition was modified. Hon'ble the Supreme Court disposed of the writ petition and held that the State Government should not change the policy every year and in one year change it many a times as has done in the present case.

The ratio of the above judgment is directly applicable to the facts of the present case.

Learned counsel for the Commission has further referred to letter dated 14.09.2018 issued by Principal Secretary of Government of Haryana, Sports and Youth Affairs Department wherein it has been intimated that the ESP posts will be governed as per Government notification dated 25.05.2018 (P-6) issued by Sports and Youth Affairs Department. The competent authority is to issue the Sports Gradation Certificate as specified in para No. 2 of the said notification. Further liberty was granted to the Commission to re-advertise the ESP posts in case the number of candidates is found to be less.

In the present case, the advertisement was issued on 27.11.2017 and the Commission had the liberty to readvertise these posts, as per above letter dated 14.09.2018 but they decided not to do so and declared the result. The petitioners were duly eligible as per policy dated 30.11.1993 (P-8) and they cannot be rejected on the ground that they do not possess the Sports Gradation Certificate as per format at Schedule I with notification dated 25.05.2018 (P-6) for ESP for jobs under Sports Quota and other purposes issued by Sports and Youth Affairs Department, Haryana. The instruction dated 25.05.2018 (P-6) cannot be applied in the present case, as during process of selection, criteria cannot be changed. The petitioner-Dr. Pratibha Dalal is outstanding sports person with "B Two" Grade Certificate under Clause (b) of instruction dated 30.11.1993 (P-8) and is fully eligible to be considered under the category of OSP.

In view of the discussion made above, CWP No. 22572-2018 stands dismissed, as the petitioner in that case secured less marks than the last candidate i.e 50.95 marks. However, CWP No. 22815-2018 stands allowed, as the petitioner has secured highest marks i.e 62.58 marks. The respondent-Commission is directed to consider Ms. Pratibha Dalal under the zone of consideration and her case be recommended for appointment to the above post within a period of fifteen days to respondent No. 2, as per merit list and respondent No. 2 shall issue appointment letter thereafter to the petitioner-Dr. Pratibha Dalal.

The result in original has been returned back to learned counsel appearing for the Commission."

5. Perusal of the above reflects that no doubt case of the petitioner was to be dealt with under 1993 instructions. However, unfortunately the relief sought by the petitioner by sheer fortuitous circumstances has become stale and infructuous, at this stage though for no fault of the petitioner. Certain candidates, who had been allowed to participate provisionally in the selection process, were though interviewed pursuant thereto, but their result was kept in a sealed cover. It transpires that the petitioner by the time had filed writ petition, the selection process had already been completed and there was no occasion for her to be interviewed provisionally.

6. In the premise, even if the case of the petitioner is now, at this stage, to be dealt with under 1993 instructions and relief of selection if at all is to be granted, and she is required to be assessed on her being competent and meritorious for the post in question. Since selection has already been completed and all the posts advertised have also been filled up, it is too belated at this stage, to now direct that a Special Selection Committee be constituted only for a solitary candidate as is the case of petitioner particularly when there is no post available.

7. In view of the aforesaid, at this stage, no grounds for interference are made out.

8. Dismissed. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

August 31, 2022

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No