

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

**CWP-34636-2019 (O&M)
Date of decision : 15.09.2022**

Dr. Sushma Garg

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Amit Jhanji, Senior Advocate,
with Abhishek K. Premi, Advocate,
for the petitioner.

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

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of the Constitution for quashing the impugned action of respondents, whereby, instead of calling all the applicants including the petitioner who is a woman, have illegally carved out a separate category for the post of “Lady Member (Non Judicial); further prayer is for quashing the interview/selection process scheduled for 30.11.2019; also prayed for directing the respondents to consider the candidature / application of the petitioner for the post of Member (Non Judicial) (including one Lady Member) and consider her against the post of Lady Member; lastly prayed for directing the respondents to conduct joint interview for the posts of Non-Judicial Member (including one reserved for Lady Member).

2. Facts are not in dispute.

3. The State Consumer Disputes Redressal Commission, Punjab (for short, 'the State Commission') invited applications for filling up of 02 posts of Judicial Member and 03 posts of Non-Judicial Member (one for lady member) vide public notice dated 14.12.2018, and relevant part of the same reads as under:-

*“STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
PUNJAB,*

DAKSHIN MARG, SECTOR 37-A, CHANDIGARH.

Applications are invited from suitable candidates for appointment as Member (Judicial and Non-Judicial) on whole time basis in State Consumer Disputes Redressal Commission, Punjab, Chandigarh established under the Consumer Protection Act, 1986 as under:-

- 1. Two posts of Judicial Member (One post is lying vacant and second post will fall vacant w.e.f. 29.05.2019)*
- 2. Three posts of Non-Judicial Member (out of which one shall be lady Member)*

Eligibility Criteria

As per Section 16(1)(b) of the Consumer Protection Act a person shall not be qualified for appointment as Member unless he is less than thirty five years of age, possesses a bachelor's degree from a recognized University and is a person of ability, integrity and standing and having adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

Provided that a person shall not be appointed as Judicial Member unless

- (i) *he is or has been or is qualified to be a judge of district level court or any Tribunal at equivalent level in the State of Punjab.*
- (ii) *has for at least ten years held a Judicial office in the State of Punjab.*

Tenure

The appointment of the Member shall be on whole time basis for a period of 5 years or up to the age of 67 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. The applicants are required to submit their applications in the prescribed form which is annexed, ensuring the following aspects:-

2.1 in case of serving officials:-

(i) applications should be sent through proper channel alongwith administrative clearance from the appropriate cadre controlling authority.

(ii) In all cases, it may also be clearly stated that the officer is clear from vigilance angle.

(iii) In case any departmental or any other proceedings including criminal 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 officers found eligible for consideration after preliminary scrutiny, will also be called for. These may kindly be made available within two weeks where requested otherwise may not be possible to consider their application form.

2.4 Candidates who are applying for the post of Member(Judicial) are required to furnish copies of their ten best judgements/other judicial orders passed by them alongwith their application form.

3. Selection of the whole time Members of the State Commission will be made by the Selection Committee prescribed in Section 16(1A) of the Consumer Protection Act, 1986 as per following procedure prescribed in Punjab Consumer Protection (appointment salary, allowances and conditions of service of President and Members of the State Commission and District Forum)Rules 2018.

The Selection Committee shall short list the applicants in the following manner, namely

(a) in the case of candidates having judicial background, on the basis of the judgements and other judicial orders passed by such candidates;

(b) in the case of candidates having experience of working under the Central Government or any State Government or an undertaking under the Central Government or the State Government, on the basis of their available Annual Confidential Reports for the last ten years and their experience relevant to the post applied for;

(a) in other cases, on the basis of a written test of two papers as per the following scheme. The qualifying marks in each paper shall be 50%.

Paper	Topics	Nature of test	Max marks	Duration
Paper -I	(a) General Knowledge and Current Affairs (b) Broad features of the Code of Civil Procedure (c) Knowledge of various Consumer related Laws	Objective Type	100	2 hours

	as indicated in the schedule (d) Knowledge of Constitution of India			
Paper -II	a. One Essay on topics chosen from issues on trade & commerce, consumer related issues or Public Affairs b. One case study of a consumer case for testing the abilities of analysis and cogent drafting of orders.	Descriptive type	100	3 hours

The Syllabus for the test shall be as under:-

1. The Consumer Protection Act, 1986
2. The Legal Metrology Act, 2009
3. The Bureau of Indian Standards Act, 2016.
4. The Competition Act, 2002
5. The FSS Act, 2006
6. The Drugs and Cosmetics Act, 1945
7. The Sale of Goods Act, 1930
8. The Real Estate (Regulation and Development) Act, 2016
9. The Electricity Act, 2003
10. The Insurance Act, 1938

4. The Selection Committee shall interview all the shortlisted candidates and award marks with due weightage to the personality, relevant past experience, quality of the judgments, knowledge of law, special achievements, aptitude and vision for the assignment to be taken up.

5. *The selection committee shall recommend a panel of names of candidates for appointment as Member from amongst the candidates in the order of merit for the consideration of the State Government.*

6. *The State Government shall, verify or cause to be verified the credentials and antecedents of the recommended candidates.*

7. *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.*

8. *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.*

9. Remuneration:- *In term of Rule 10(2) of Punjab Consumer Protection (appointment, salary, allowances and conditions of service of President and Members of the State Commission and District Forum) Rules 2018. Salaries/Remunerations/other facilities to Members and Judicial Members of the State Commission shall be as under:-*

(2) A whole-time Member of the State Commission shall be paid a remuneration equivalent to the pay at minimum of the scale of pay of an Additional Secretary in the State Government and other allowances as admissible.

Provided that serving Government servants appointed on deputation basis shall be entitled to salary and allowances under the provisions applicable to deputationists. Fixation of pay of the persons retired from Government service, appointed to the posts of President or Member on whole time basis, shall be on the basis of the pay last drawn reduced by the amount of pension.

10. Other Terms and conditions: *As per Rule 12 of Punjab Consumer Protection (appointment salary, allowances and conditions of service of President and Members of the State*

Commission and District Forum) Rules 2018. Whole-time Members shall be entitled to leave, LTC, medical treatment and hospital facilities as per the provisions applicable to Group A Government servants in the State Government.

11. Disqualifications:- *A person shall be disqualified for appointment, if he:-*

- (a) has been adjudged as an insolvent; or*
- (b) has been convicted of an offence which, in the opinion of the State Government, involves moral turpitude; or*
- (c) has become physically or mentally incapable of acting as the President or the Member; or*
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as the President or a Member; or*
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest; or*
- (f) remains absent in three consecutive sittings except without leave or for reasons beyond his control.*

12. 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.*

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

All other terms and conditions of the appointment of the Member shall be governed by the Consumer Protection Act, 1986 as well as Punjab Consumer Protection (appointment, salary, allowances and conditions of service of President and Members of the State Commission and District Forum) Rules 2018.

14. *It is made clear that interested candidates who would not enclose the documents alongwith their applications, their documents will not be considered later on.*

15. Only those candidates will be called for interview whose applications are found, complete in all respect, supported by requisite attested copies of documents relating to different columns of application format including the proof of income. Any application found incomplete in this regard, would be rejected in scrutiny.

16. The candidates shall dispatch their applications in quadruplicate such a manner so that the application complete in all respect reach in the office of Registrar, State Consumer Disputes Redressal Commission, Punjab, Dakshin Marg Sector 37-A, Chandigarh on or before 21.01.2019 upto 5.00 PM. Any application received thereafter due to postal delay or for any other reason, will be rejected and disentitle the candidate for call of interview.

17. The candidates shall submit separate applications for the post of Member or Judicial Member.

18. The detailed terms and conditions namely Punjab Consumer Protection (Appointment, Salary, allowances and conditions of Services of Presidents and Members of the State Commission and District Forum) Rules, 2018 are available at Foodsuppb.gov.in.

The interested candidates may submit their applications (alongwith three extra sets) and application fee of Rs.1000/- by way of DD in favour of Punjab State Consumer Disputes Redressal Commission, payable at Chandigarh in the format given below:-

**APPLICATION FOR THE POST OF JUDICIAL
MEMBER/MEMBER,
STATE CONSUMER DISPUTES REDRESSAL
COMMISSION, PUNJAB, CHANDIGARH.**

1. Post applied for _____
(separate applications to be made for appointment
In separate post)
2. Name _____

Passport
size
photograph

3a) *Father's Name* _____

b) *Husband's Name* _____

(in case of lady candidate)

4. *Contact No.* _____

5. *Date of Birth* _____

6. *Permanent address and Home District* _____

7. *Address of correspondence/e-mail, if any* _____

8. *Present Occupation and annual income* _____

9. *Academic Qualifications*

<i>Name of the Exam</i>	<i>Year of Passing</i>	<i>Name of the University</i>	<i>Division</i>

10 .*In case of Serving Officers.*

<i>i.</i>	<i>Date of Joining Service</i>	
<i>ii.</i>	<i>Present Designation</i>	
<i>iii.</i>	<i>Scale of Pay and Basic Pay</i>	
<i>iv.</i>	<i>Date of Superannuation</i>	

11.*In case of retired Officers*

<i>i.</i>	<i>Date of Superannuation</i>	
<i>ii.</i>	<i>Last post held</i>	
<i>iii.</i>	<i>Last Pay scale</i>	

12. *Relevant Experience (details showing adequate acknowledge or in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration in descending order of chronology (minimum 10 years)*

<i>Sr. No.</i>	<i>Position Held</i>	<i>Name and address of the Organization</i>	<i>Period</i>	<i>Nature of work handled</i>

13. Service to which the applicant belongs/belonged (with cadre, batch and name of cadre Controlling Authority), if applicable

14. Annual income from all sources _____

15. Copy of income tax return, if any : _____

16. PAN No. _____

17. Whether any criminal case has been registered against the applicant?

18. Whether applicant has been charge-sheeted/show cause notice issued by the department during his entire service or for any criminal offence, in case any civil/criminal case was registered/pending the same should be mention specifically. If yes, the details thereof. _____

19. Whether applicant has been convicted by any competent court for any criminal offence? If yes, the details thereof.

20. Any other accomplishments/information, the candidate may like to furnish: _____

21. Does the candidate have more than one living spouse?

22. Does the candidate attract any of the disqualification criteria listed in the vacancy circular. _____

23. State of Health _____

24. Are copies of best five judgments/other Judicial orders passed by the candidate enclosed? _____

(applicable in case of applicants for the post of Judicial Member)

25.Details of office in which the last 10 ACRs will be available including detail of last employer (in case of retired officials). _____

26.An affidavit be also submitted along with the application to the following effect:-

(a) That you have not been convicted/sentenced to imprisonment for an offence involving moral turpitude;

(b) That you are not an undischarged insolvent;

(c) That you were not declared at any stage by a competent court to be of unsound mind;

(d) That you were not removed/dismissed from the service of the Government or a body corporate owned or controlled by the Government;

(e) That you will not have such financial or other interest as is likely to affect prejudicial the discharge by you of your functions as a Member.

Dated:

Signature of applicant

Notes:-

i) Attested copies of the relevant documents in support of proof of age, academic qualifications, experience, income etc, be attached.

ii) Applications sent through FAX shall not be entertained.

iii) The candidate must read the instructions carefully given above and send the complete documents as given in the format.

Interview letters to the eligible candidates will be issued separately.

Sd/-

Registrar”

4. In response to aforesaid public notice, petitioner submitted an application within stipulated period. Thereafter, she received a letter dated 06.09.2019 (P-3) to the effect that petitioner was found eligible by the Selection Committee subject to furnishing 'Punjabi Pass Certificate' and which she duly supplied vide letter dated 11.09.2019 (P-4). Despite above factual position, the petitioner was not called for the interview. Upon inquiry, she came to know that certain candidates have been considered for reserved seat of Lady (Non-Judicial) Member by treating as separate post. Feeling aggrieved, petitioner represented before the State Commission vide letter dated 07.10.2019 (P-6) in the following manner:-

"To

The Registrar,
State Consumer Disputes Redressal Commission,
Punjab.

Ref: My application for the post of Non Judicial Member, State Consumer Disputes Redressal Commission, Punjab.

Respected Sir/Madam,

*In respect of my above referred to application, it is submitted that as per the advertisement, the applications were invited for "**Three posts of Non Judicial Member (out of which one shall be lady member)**". The post of Lady Non Judicial Member was not separately advertised. Even in the Performa attached with the Advertisement, the heading mentioned as "**Application For The Post Of Judicial Member/Member State Consumer Disputes Redressal Commission, Punjab, Chandigarh**". Under the circumstances, the reasonable inference was that out of the applications received for the post of 'Non Judicial*

Member', the applications of Lady candidates will be considered, firstly, for the post of Lady NonJudicial Member, then for the remaining two posts of Non Judicial Members. However, it has been gathered that certain candidates have submitted separate applications for the post of Lady Non Judicial Member and the Hon'ble State Commission, accordingly, has made a separate category of applications for the post of Lady Non Judicial Member. That since no separate post for lady Non Judicial Member was advertised, hence the applicant accordingly submitted one application. It is therefore humbly requested that my application may be considered for both the posts i.e. firstly for the post of Lady Non Judicial Member and secondly, if need be, for the post of Non Judicial Member. The applicant is ready to deposit separate fees, if so required.

Regards,

Dated : 07.10.2019

*Dr. Sushma Garg,
House No.301, Sector 7A, Chandigarh."*

5. Thereafter, on 19.11.2019 (P-7), letters were issued to some candidates, to appear for interview before the Selection Committee on 30.11.2019, but no such response was received by the petitioner.

6. Hence, present writ petition.

7. Learned Senior counsel for the petitioner argued that she being fully eligible submitted her application on 17.01.2019 along with all the relevant documents. However, certain candidates were considered separately for the reserved seat of Lady (Non-Judicial)

Member by treating it as a separate post in an arbitrary manner. Apart above, neither there was any indication in the advertisement; nor any proforma was specified to be filled up separately at the time of applying for the post; therefore, question of submitting separate application did not arise. Further submitted that even a detailed representation was made to the Registrar, State Consumer Disputes Redressal Commission on 07.10.2019, but no reply to that effect was ever received by petitioner. Also contended that on 19.11.2019, interview letters were issued to some candidates for the post of Lady Member (Non-Judicial) only on the pretext that they had applied for the same in a separate category, which is not in consonance with the advertisement. It is further contended that as per advertisement, selection against all the posts was to be made together, but interview of Lady Member was conducted separately. Further argued that respondents had called for the interview and carved out a single post for Lady Member by adopting altogether new procedure in violation of the advertisement; thus, entire exercise is illegal. Also submitted that as per advertisement, there were 03 posts of Members (Non-Judicial), but there was no indication that a separate application had to be submitted for Lady Member. Moreover, as per Section 16 of the Consumer Protection Act, 2018 (for short, the 'Act of 2018'), there should be one Lady Member, but it does not talk about separate interview. Even otherwise, conducting separate interview for general category and reserved category is totally illegal.

8. Learned State counsel submitted that petitioner never applied for the post of Lady Member; rather she applied for the post of

Non Judicial Member. Further contended that petitioner admitted this fact in her representation dated 07.10.2019, and after consideration, it was rejected by the Selection Committee in its meeting dated 18.11.2019. Also submitted that petitioner was working as a Lady Member, District Consumer Forum in the State of Haryana; therefore, she was well aware of the fact that she should apply separately against the post of Lady Member as well as Member, State Commission. Admittedly, she did not submit separate application for the post of Lady Member; therefore, her claim was considered only for the post of Member (Non-Judicial), State Commission. It is further submitted that other candidates applied separately for the post of Member (Non Judicial) as well as Lady (Non-Judicial) Member. It is also pertinent to mention here that petitioner sent separate applications for the post of Lady Member, District Commissions at Ropar and Fatehgarh Sahib, but she didn't send any separate application for the State Commission. Also submitted that in terms of order dated 28.11.2019, passed by this Court, petitioner was allowed to appear in the interview provisionally on 30.11.2019 and her result has been kept in a sealed cover. Further submitted that the Government vide letter dated 27.12.2019 decided to re-advertise the post of Lady Member in the State Commission for re-conducting the selection process from the very beginning.

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

10. During the course of hearing, learned State counsel referred to the meeting dated 27.12.2019 (R-3) and relevant part of the same reads as under:-

*“Receipt No.6394
Dated 30-12-19
S.C.D.R.C., Punjab, Chandigarh*

*Government of Punjab
Department of Food, Civil Supplies and Consumer Affairs
(Consumer Protection Act Branch)*

To

*Registrar
State Consumer Disputes Redressal
Commission, Punjab
Dakshin Marg, Sector 37-A,
Chandigarh.*

Memo No.1/46/2018-1C.P.A./158

Dated: Chandigarh, 27/12/19

*Subject: Regarding filling up the post of Lady Member
in State Consumer Disputes Redressal Commission
Punjab.*

With reference to the subject cited above.

2. *After consideration at State Government level with regard to the process of filling up the one post of Lady Member in State Consumer Disputes Redressal Commission Punjab, it has been decided that the post be re-advertised and fresh recruitment process be initiated. Compliance of the orders of the Competent Authority be assured.*

Sd/-

Deputy Secretary, Food and Supply

Endst.

A copy of the above is sent to the Personal Secretary, Food and Supply Minister for the information to the Food and Supply Minister.”

11. It is pertinent to mention here that vide order dated 07.01.2020, time was granted to petitioner with respect to averment made in reply that this petition is rendered infructuous, as the advertisement dated 14.12.2018 stood withdrawn vide memo dated 27.12.2019 in the following manner:-

“Reply by way of affidavit of the Registrar, State Consumer Disputes Redressal Commission, Punjab, on behalf of respondents No.1 and 2, has been filed in Court, which is taken on record, copy supplied to the counsel for the petitioner. According to the said affidavit, advertisement which has been issued by the respondents stands withdrawn. It has further been stated by the counsel for the State that the Government of Punjab, after reconsideration of the matter regarding filling-up the post of Lady Member in the State Consumer Disputes Redressal Commission, Punjab, has decided to re-advertise the post. A copy of letter dated 27.12.2019 has been placed on record as Annexure R-3.

Counsel for the petitioner prays for a short adjournment to go through the reply as it is asserted by the counsel for the State that the present writ petition has been rendered infructuous.

Prayer granted.

Adjourned to 13.01.2020. To be shown in the urgent list.”

Despite above factual position, no objection was raised to counter the stand of respondents.

12. Since the advertisement in question has been withdrawn by the respondents and there is no challenge to the said decision by the petitioner; therefore, as on today, no cause of action survives in favour of the petitioner. Hence, the present petition is dismissed as having been rendered infructuous.

13. Ordered accordingly.

15.09.2022
atulsethi

(MAHABIR SINGH SINDHU)
JUDGE

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