

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

LPA-421-2023 (O&M)
Date of decision:- 18.04.2023

Virpal Kaur

...Appellant(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Kapil Kakkar, Advocate,
for the appellant.

Mr. Arjun Sheoran, Deputy Advocate General, Punjab.

RAVI SHANKER JHA, C.J. (ORAL)

Heard on the question of admission.

This intra court appeal under clause X of the Letters Patent has been directed against the judgement and order dated 02.03.2023 passed by the learned Single Judge dismissing the writ petition filed by the petitioner (appellant herein) seeking a writ of certiorari for quashing the order dated 02.12.2011, whereby her claim for appointment on the post of JBT teacher under SC (Female) category pursuant to a recruitment notice dated 05.09.2007 had been rejected by the appointing authority.

2. Learned counsel for the appellant submits that the learned Single Judge had dismissed the writ petition mainly on the ground that the appellant did not participate in the second round of counselling that was held for the purpose of making appointment to the post in question and in such circumstances she could not complain that the candidates less meritorious than her were called upon for attending the counselling and consequently granted appointment.

3. Learned Single Judge has held that the appellant having absented from attending the second round of counselling had rightly been denied the appointment. Learned Single Judge has further recorded a finding that though the third round of counselling was held on 13.12.2011, however, no appointment pursuant thereto was made, as stated by the respondents on an affidavit dated 17.12.2018 and, therefore, even if the appellant had participated in the third round of counselling, she could not be granted appointment. It has

also been observed by the learned Single Judge that subsequently though the

appointments were made by the authorities, but that was only on the basis of the orders dated 17.02.2016 passed by this Court in CWP-22086-2013 titled as *Rakhi Gupta and others Vs State of Punjab and others* as well as CWP-25025-2014 titled as *Sharanjit Kaur and others Vs State of Punjab and others* and, therefore, the appellant could not claim parity.

4. Learned counsel for the appellant submits that the finding of fact recorded by the learned Single Judge is incorrect, inasmuch as the public notice asking the candidates to appear in the second round of counselling was confined only to the candidates whose names were mentioned in the list displayed on the notice board of the Chairman on 26.02.2009 and uploaded on the website of the department on 27.02.2009. He further submits that in such circumstances, the second round of counselling was confined only to those candidates whose names were mentioned in the list and there was no invitation to the appellant in the second round of counselling and, therefore, her claim to seek appointment could not be rejected on the ground that she did not participate in the second round of counselling. He further submits that the appellant was in fact permitted to participate in the third round of counselling and in such circumstances, the order dated 02.12.2011 rejecting her claim deserves to be quashed and a direction be issued to the respondent-authorities for giving her appointment on the post of JBT teacher under SC (Female) category.

5. We have carefully perused the record as well as the public notice (Annexure P-10) issued by the respondent-authorities calling upon the candidates for the second round of counselling.

6. A careful reading of the public notice (Annexure P-10) indicates that while in the initial paragraph the authorities had called upon those candidates whose names were displayed on the notice board, however, the last five lines thereof clearly mention that the candidates, who were in the merit, but could not attend the first round of counselling due to certain reason, were being given last opportunity to appear before the selection committee alongwith their original documents.

7. The public notice issued by the respondent-authorities is in the following terms:-

“In a district, where category wise vacancies still remained unfilled, the list of such candidates, 1-1/2 times of the number of vacancies, can be seen from the notice board of the concerned Chairman on 26.02.2009 and on the website of this department on 27.02.2009. In this connection the candidates should appear, alongwith their original documents, for counselling, before the selection committees on 28.02.2009 (Saturday) and on 01.03.2009

(Sunday) upto 5.00 PM. Through this public notice, it is also informed that if any candidate who come up in the merit but due to certain reason such candidates could not participate in the previous counselling, they have been given this last opportunity to get their documents checked and they are invited for the counselling.”

8. In such circumstances, we do not find any perversity or illegality in the finding recorded by the learned Single Judge to the effect that all the candidates left out in the first round of counselling were invited in the second round of counselling and that as the petitioner did not participate in the second round of counselling on 28.02.2009, she was not entitled to claim appointment on the post of JBT teacher under SC (Female) category. It is also evident and an undisputed fact that the third round of counselling was held on 13.12.2011. However, the respondent-authorities have filed a categorical affidavit dated 17.12.2018 before this Court stating that no appointment letter had been issued in pursuance of 3rd counselling held on 13.12.2011 except to six candidates who were ordered to be appointed in terms of the directions issued by this Court in CWP-25025-2014 titled as *Sharanjit Kaur and others Vs State of Punjab and others* and CWP-22086-2013 titled as *Rakhi Gupta and others Vs State of Punjab and others*.

9. In view of the aforesaid categorical statement on affidavit made by the respondents, which has not been disputed, we do not find any infirmity in the findings recorded by the learned Single Judge.

10. It is pertinent to note that in the instant case, in response to the notice issued by this Court in the writ petition, the respondents had submitted preliminary submissions clearly stating that the petitioner did not appear before the Selection Committee on 28.02.2009 at the time of second round of counselling inspite of the notice and that when the appellant filed her representation before the authorities on 25.07.2011, no vacancy under the SC (Female) category was available. The respondents in the preliminary submissions further stated that as the appellant did not appear in the counselling held by the authorities, she had lost her right to seek and claim appointment on the post in question after a long delay and the writ petition deserved to be dismissed.

11. We are of the considered opinion that the stand taken by the respondents in the preliminary submissions holds ground for the simple reason that in the instant case, the advertisement was issued on 05.09.2007. The first round of counselling took place on 20.03.2008 pursuant to the public notice that was issued on 7/08.03.2008. In the said counselling that was held on

20.03.2008, the appellant did not appear. Thereafter, the respondent-authorities issued a public notice for conducting the second round of counselling on 28.02.2009 and 01.03.2009. In this counselling, apart from the candidates mentioned in the list that was displayed on the notice board, other candidates who were left out, but were entitled to be considered in view of their merit, were also invited for participating therein and they accordingly appeared. However, the appellant did not do so. It is also evident that thereafter the appellant for the first time filed a writ petition being CWP-15962-2011 which was disposed of by this Court vide order dated 29.08.2011 directing the respondent-authorities to take a decision on her representation dated 25.07.2011. However, a second writ petition being CWP-1771-2013 was filed by the petitioner after two years. Evidently, no appointment after the second round of counselling except in respect of those candidates who had obtained orders from this Court was made by the respondent-authorities. In such circumstances, we are of the considered opinion that as the appellant did not appear in the second round of counselling inspite of the public notice issued by the respondent-authorities and as the claim of the appellant stood exhausted at that stage itself, for no post under SC (Female) category remained vacant, therefore, no fault can be found with the impugned order passed by the learned Single Judge dismissing the writ petition. The learned Single Judge has also observed this aspect in paragraph 10 of the impugned judgement, wherein it has been stated that the claim of the petitioner, who is more than 43 years old, cannot be considered after a lapse of 15 years from the date of initiation of the recruitment process,.

12. In the circumstances, we do not find any reason to interfere with the impugned order passed by the learned Single Judge.
13. The appeal being meritless, accordingly, stands dismissed.

(RAVI SHANKER JHA)

CHIEF JUSTICE

(ARUN PALLI)

JUDGE

18.04.2023

Amodh Sharma

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