

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-1037-2016

Reserved on: 02.05.2023

Date of decision: 04.05.2023

GURJEET KAUR

..Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajiv Atma Ram, Sr. Advocate
with Mr. Brijesh Khosla, Advocate
for the petitioner.

Mr. R.S. Pandher, Sr. DAG, Punjab.

ANIL KSHETARPAL, J.

1. This writ petition has been filed for grant of the following
substantive reliefs:-

“i) A writ in the nature of certiorari seeking quashing of the order dated 01.10.2012 (P/9) vide which the representation of the petitioner filed in pursuance of the order of the Hon’ble High Court has been rejected. After setting aside the order dated 01.10.2012 (P/9) for issuance of a writ in the nature of mandamus directing the respondents to issue appointment letter for the petitioner to the post of Medical Officer (Dental) keeping in view her merit position (Annexure P/5) and number of vacancies as per revised detail of posts (Annexure P/3) as upheld by this Hon’ble Court vide judgment dated 03.03.2011 (P/4).

2. In order to comprehend the controversy involved in the present writ petition, the relevant facts, in brief, are required to be noticed, which are as follows:-

On 02.05.2010, a recruitment notice was issued to invite applications for appointing 34 Medical Officers (Dental), out of which 7

posts were reserved for the Scheduled Caste (Mazhabi and Balmiki) category, whereas, 2 posts were reserved for Scheduled Caste (Mazhabi and Balmiki) (ESM) category. Vide corrigendum dated 23.09.2010, the number of reserved posts was revised and it was notified that the recruitment notice invites applications of interested candidates for 5 posts for Scheduled Caste (Mazhabi and Balmiki) category and only 1 post for Scheduled Caste (Mazhabi and Balmiki) (ESM) category. A writ petition filed previously, to challenge the correctness of the corrigendum was dismissed on 03.03.2011. The petitioner herein applied under the Scheduled Caste (Mazhabi and Balmiki) category. She was placed at serial No.5 in the merit list but no appointment letter was issued to her by the appointing authority. Her representation regarding the appointment was rejected on 01.10.2012. She took no further steps. Another candidate (Dr. Iqbal Singh) placed at serial No.4 in the merit list, filed **CWP-10298-2011, titled as "Iqbal Singh Vs. State of Punjab and another"**, which was allowed on 13.05.2016. During the pendency of the aforesaid writ petition, the petitioner also filed the writ petition on 22.12.2015 to join the bandwagon. On 23.05.2017, while passing the following order, the learned Senior counsel representing the petitioner was confronted with the question of unexplained delay of more than 3 and ½ years in filing the writ petition.

"Counsel for the respondents has pointed out that there is an objection with regard to the unexplained delay of more than 3 ½ years in approaching this Court after the passing of the impugned order dated 01.10.2012.

Learned Senior counsel for the petitioner submits that the petitioner would be ready and willing to take the appointment to the post by giving up all her claims with regard to her appointment from the date when other similarly placed employees have been appointed and she may be posted at the bottom of the seniority list as it

exists today, treating her to be a fresh appointee, which would not adversely affect the rights of any employee already in service. Counsel for the respondents prays for an adjournment to seek instructions in this regard.

It may not be out of way to mention here that factually, it is apparent from the revised detail of posts as given in Annexure P-3 that there were total five posts under SC (M&B) category, which were available to be filled up and the petitioner was selected in this category at Sr. No.5. If that be so, the petitioner had a right for consideration and appointment to the said post at her own merit.

Adjourned to 01.08.2017.”

3. Subsequently, the writ petition was ordered to be heard with CWP-10298-2011, however, the same as already noticed was allowed on 13.05.2016. The petitioner claims that she is also entitled to be appointed for the parity of reasons recorded in **Iqbal Singh's case (supra)**.

4. The State while contesting the petition has objected to the maintainability of the petition on account of unexplained delay and laches on the part of the petitioner which is nearly 4 years (to be precise 3 years 11 months and 6 days) as her representation was rejected on 13.01.2012, whereas, writ petition was filed on 22.12.2015. It has also been stated that as per the roster register only 4 posts belonging to Scheduled Caste (Mazhabi and Balmiki) category were advertised in the recruitment notice and she being at serial No.5 in the category of Scheduled Caste (Mazhabi and Balmiki) cannot be appointed for the post.

5. This Bench has heard the learned counsel representing the parties and with their able assistance perused the paperbook.

6. The learned counsel representing the parties have also filed their written submissions.

7. The operative part of the submissions read as under:-

“1. That the case of the petitioner is squarely covered by the judgment dated 13.05.2016 in CWP No. 10298 of 2011 titled as Iqbal Singh Vs State of Punjab which was filed by an identically placed person who was at serial no. 4 in the merit list (P-5) against 5 reserved posts of Medical Officer (Dental) for SC (M&B) category. Present case was ordered to be heard with CWP 10298/2011. The petitioner is at serial no. 5 of the very same merit list for the same category i.e. SC (M&B) and the same post i.e. Medical Officer (Dental) and against the very same advertisement.

*2. That the corrigendum dated 23.09.2010 (P-3) has attained finality in the CWP No. 16462 of 2010 titled as Dr. Parul Dham Vs. State of Punjab vide order dated 03.03.2011 (P-4), making it clear that 5 posts have been reserved for SC (M&B) and 1 post reserved for SC (M&B) ESM. Therefore the petitioner being at serial no.5 in the merit list (P-5) has right for consideration and appointment to the said post at her own merit. In any case, the order dated 29.03.2016 in CWP No. 10298 of 2011 titled as Iqbal Singh Vs State of Punjab, copy attached as **Annexure C**, records that roster started at No. 349 for 34 posts and notices the contention that 10 posts fall to SC quota and hence 5 posts for M&B category of SC. Further order dated 23.05.2017 in this petition, copy attached as **Annexure D**, records that there were 5 posts for SC (M&B) and that the petitioner gives up her claim to seniority.*

3. That the respondents in the reply on merit to Para no. 12 of the writ petition (Pg 66) have admitted in the chart therein that qua SC (M&B) there was 1 backlog post and 4 other vacancies. Thus, it is an admitted fact that 5 posts were there for SC (M&B) candidates including backlog post and petitioner is at no. 5 in the merit list (P-5).

4. That the action of respondent is discriminatory as identically placed candidate has been issued appointment letter. The action is in violation of Article 16 of the Constitution of India.

5. That it is further submitted that it is not in every case that mere selection would not give right to appointment. Once the post has not been consumed and a meritorious candidate in the merit list is available then the vacancy could be filled in by inviting next person in merit. Reference in this regard be made to Naresh Kumari Vs State of Punjab, 2015(2) SCT 121 and State of Jammu Kashmir Vs Sat Pal, 2013(11) SCC 737.

6. That since 1 post in question (which was duly advertised) is unfilled and the meritorious candidate i.e. petitioner (at serial no. 5 of the merit list [P-5]) is

available, the said post is requested to be filled up by the petitioner as per merit.”

8. On the other hand, the learned counsel representing the State of Punjab while filing the written arguments stated that after analysing the roster register, it has been found that there was no backlog vacancy of the Scheduled Caste (Mazhabi and Balmiki) category and according to the roster register, 4 posts were to be given to Scheduled Caste (Mazhabi and Balmiki) category. It has also been brought to the notice of the Court that pursuant to the subsequent recruitment notices issued in the year 2011 and 2015, appointment letters have been issued in the year 2012 and 2016, respectively.

9. This Court has considered the submissions of the learned counsel representing the parties. It is evident that the learned Senior counsel representing the petitioner has not furnished any plausible explanation for the colossal delay of nearly 4 years in filing the writ petition. It is also evident that the petitioner was sitting on the fence. Despite order rejecting the petitioner's claim for appointment vide order dated 13.01.2012, she failed to assert her rights within reasonable time period. In the year 2011, a fresh recruitment notice was issued and the appointment letters were issued in the year 2012. Similarly, in the year 2015 again the recruitment notice was issued. After a period of more than 3 years, she woke up from her deep slumber to file the writ petition. In these circumstances, the undertaking given by the petitioner as noticed in the order dated 23.05.2017 does not furnish any sufficient explanation.

10. A judgment passed by a Larger Bench of the Supreme Court in

State of Maharashtra Vs. Digambar (1995) 4 SCC 683, has held that the

High Court acted improperly by issuing directions in exercise of its power vested under Article 226 of the Constitution of India without taking into account the petitioner's disentitlement to such relief due to his blameworthy conduct in unreasonably delaying their claim.

11. Moreover, it is not the case of the petitioner that any candidate who is lower in merit in the category of the petitioner has been offered the appointment. The State of Punjab has taken a conscious decision to select only 4 candidates who are placed at top 4 spots in the merit list, from the petitioner's category. Moreover, the recruitment notice was issued on 02.05.2010, whereas, the writ petition has come up for hearing in the year 2023.

12. The learned Senior counsel has placed reliance on the judgment of *Naresh Kumari Vs. State of Punjab 2015 (2) SCT 121* and *State of Jammu and Kashmir Vs. Satpal, (2013) 11 SCC 737*. This Court has carefully read the judgment passed by the High Court in *Naresh Kumari's case (supra)*. In the aforesaid case, in the impugned order itself, it was admitted that 3 posts remained vacant on account of non-joining of certain candidates. Subsequently, a fresh recruitment notice was issued to fill those posts. It was in that particular situation, the Court issued the writ. Hence, the facts of this case are entirely different as compared to the present case. This Court has also read the judgment passed in *Satpal's case (supra)*. In the aforesaid case, in the first round, the writ petition filed by Satpal was allowed, directing his appointment. Even after the Court's direction, no appointment letter was issued. In the aforesaid judgment, it was clarified that

in a case where the appointing authority decides consciously not to fill up the vacant posts, the aforesaid judgment will apply to that case.

13. Hence, this judgment also does not help the cause of the petitioner as the facts are wholly different.

14. Keeping in view the enunciation of law with regard to the discretion of the Writ Court in entertaining the writ petition with respect to the delay and laches, this Court does not find it appropriate to issue any writ.

15. Dismissed.

16. All the pending miscellaneous applications, if any, are also disposed of.

May 04th, 2023

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(ANIL KSHETARPAL)
JUDGE

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