

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

CWP-1771-2013 (O&M)

Date of decision: 02.03.2023

Vir Pal Kaur

....Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Gaurav Sharma, Advocate for the petitioner
Mr. R.K. Kapoor, Addl. AG, Punjab

ANIL KSHETARPAL, J (Oral)

1. The petitioner prays for the issuance of a writ in the nature of Certiorari to quash the order dated 2nd December, 2011 whereby her claim for appointment as a JBT teacher against the reserved post meant for SC (Female) category has been rejected by the appointing authority.
2. Some relevant facts, in brief, are required to be noticed.
3. A recruitment notice was issued on 5th September, 2007 inviting applications for 9998 posts of the JBT teachers. The last date for the submission of the said applications was 30th September, 2007. This recruitment notice was issued District wise and 450 posts were earmarked for the District, Bhatinda. Out of the aforesaid 450 posts, 91 posts were earmarked marks for the SC category, which were divided into the ratio of 50:50 between the male and female category. The petitioner applied under the reserved category meant for the female candidates. On the basis of the procedure prescribed in the said recruitment notice, the marks awarded to each of the candidate were calculated. The petitioner was awarded 55.180 marks. A public notice

was issued on 7th as well as 8th March, 2008 to hold the counselling in which the candidates were required to produce their testimonials for scrutiny. As per the public notice, candidates up to one and a half times of the posts were invited for the counselling for the posts reserved for the District, Bathinda. The counselling was held on 20th March, 2008. The scrutiny was held upto the candidates securing 56.772 marks. 23 candidates in the category of SC (Female) were selected. However, only 17 candidates joined the said post. Thus, there were six vacancies that were left unfilled. Thereafter, another public notice was issued giving the details of the first counselling held. The said details were notified with the list of one and half times of the number of category wise vacancies which still remained unfilled and it was clarified that the said list will be displayed on the notice board of the office of the Chairman on 26th February, 2009 and on the website of the Department on 27th February, 2009 and the candidates were called upon to appear before the selection committees on 28th February, 2009 and 1st March, 2009. It is undisputed that the petitioner, though was eligible and entitled did not participate in the counselling.

4. In the second counselling even the absentees of the first counselling were given another opportunity. Four candidates were selected and the last candidate who joined the counselling and was selected in the SC (Female) category had secured 54.811 marks only.

5. Thereafter, the recruiting agency sent the individual letters to as many as six candidates who had secured marks immediately below the 54.811 marks in order to fill up the remaining vacancies. Thus, a

third counselling session was proposed by the appointing authority. However, the third counselling session was cancelled and the documents of only six candidates were scrutinized, in pursuance of the order of the High Court in CWP No. 25025 of 2014 and CWP-22086 of 2013. The petitioner had filed a previous writ petition, which was disposed of directing the respondents to decide her representation. In compliance thereof, the impugned order had been passed.

6. Heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

7. Learned counsel representing the petitioner contends that action of the respondents in issuing letters to the six candidates to attend the counselling, who were lower in merit than the petitioner is arbitrary as another opportunity was not given to her. He also relies upon the interim order passed in this writ petition on 30th January, 2015 and the judgment passed in CWP-23424-2013 titled as **Shailja Sharma vs State of Punjab and others** decided on 10th February, 2016.

8. This Court has considered the submission and has analyzed the arguments of the learned counsels. It is a categorical stand of the respondents in the affidavit dated 17th December, 2018 that no appointment letters, as per 3rd counselling session held on 13th December, 2011 have been issued, except those 6 candidates, who had been appointed pursuant to the order of the High Court, as already noticed. It is also not disputed by the learned counsel representing the petitioner that the petitioner failed to attend the counseling on 28th February, 2009, though, a public notice was issued. It is not her case that

the list of candidates was not displayed on the notice board of the Chairman on 26 February, 2009 and also that it was not uploaded on the website of the Department on 27 February, 2009. Once the petitioner did not come forward to attend the counseling and appear before the selection committee on the due date, she cannot claim, as a matter of right, another opportunity from the respondents. As regards the interim order passed on 30th January, 2015, it may be noticed that this is only an interim order passed by the Court during the course of hearing on a particular date. This order cannot be treated as a final order unless the writ petition is finally disposed of. The court, in order to solicit response from the various parties to the litigation, passes such interim orders while examining the case in a prime facie manner. Hence, the order dated 30th January, 2015 would not enure to the benefit of the petitioner.

9. This Court has carefully read the judgment passed in **Shailja Sharma's case (supra)**. In this particular case, in a previous writ petition filed by Shailja Sharma a direction was issued by the court to the respondents to reconsider her case. In these circumstances, the court ordered that the candidates, who were higher in merit, have a prior right of appointment. In this case, the petitioner did not have a prior right. Had the petitioner appeared before the selection committee on 28 February, 2009 during the course of second counselling, she had a prior right as she had higher merit, however, as noticed, she failed to attend the counselling session.

10. Moreover, now more than 15 years have elapsed and the petitioner is more than 43 years of age as of now. Consequently, finding no merit, the present writ petition is dismissed.

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

02.03.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE