

205 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-5974-2013

Date of Decision: 04.10.2023

Baljinder Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA.

Present Mr. Kapil Kakkar, Advocate for the petitioner.

Mr. Vishnav Gandhi, DAG, Punjab.

Mr. P.S. Jammu, Advocate for respondent No.5.

Mr. D.S. Patwalia, Sr. Advocate with
Ms. Sehar Navjeet Singh Sandhu, Advocate
for respondent No.6.

Mr. Sarthak Soni, Advocate for respondent No.7.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. Heard learned counsel for the parties at length.
2. The petitioner has come before this Court challenging the selections made pursuant to advertisement of the year 2007, wherein the select list was finally prepared on 08.01.2010, relating to the selection of teaching fellows against '45' posts of B.C. Category, earmarked for District Bathinda.
3. The petitioner claims that she secured 58.937 marks while the four appointed candidates i.e. respondents No.5 to 8 herein, had secured lesser marks than her and still were wrongfully given appointments. This Court had directed the State counsel to file an additional affidavit initially vide order dated 16.03.2017, to explain the action taken and reasons for

appointing respondents No.5 to 8. Again vide order dated 21.03.2018, the Court granted time to the respondents and thereafter on 27.04.2018, the Secretary, Education Department, Government of Punjab, was summoned to assist the Court in the matter. Thereupon, an affidavit had been filed by the concerned Secretary, Education Department, Government of Punjab, on 10.05.2018 and it has been stated that the original reply filed on behalf of the respondents reflect a different situation, wherein, it was stated that the persons lower in merit than the petitioner have been appointed. Further, the additional affidavit of one Mr. Jaspreet Singh, District Education Officer (EE), Bathinda, had been filed, who stated that the marks of private respondents were upgraded contrary to the marks awarded as per selection list dated 08.01.2010. The concerned Secretary has submitted his unconditional and unqualified apology and has further stated that an inquiry in this regard was conducted by the Director, Public Elementary Education, who submitted his report on 07.05.2018, to the Secretary School Education, wherein, Smt. Navtej Kaur, the then Public Information Officer as well as Smt. Harkamaljit Kaur, the then Public Information Officer, and Shri Jasbir Singh, Dealing Assistant, have been found guilty of providing forged and fabricated record to the petitioner under the RTI Act. These officers and officials have been proceeded as per law adopting due procedure. It has also been stated that the provisional merit list as well as final merit list were published in the leading newspaper and the same were in the knowledge of the candidates including the petitioner. It has also been stated that charge sheet has also been issued to the concerned persons for providing false information to the petitioner under the RTI Act and an FIR has also been

directed to be lodged against Shri Jasbir Singh, the concerned dealing assistant. The case has been further explained by the concerned Secretary that '45' posts were meant for the candidates who belong to BC Category. These posts were further divided in other ratio of 50:50 amongst male and female candidates. As per the terms and conditions of the advertisement, 22 posts were meant for each category of male and female and 45th post was meant for candidate, whosoever is higher in merit amongst this category. The final select list dated 15.04.2008, reveals that merit of last selected candidate i.e. Harpreet Kaur in BC (female) is 59.491, after filling all the '23' vacant posts as per the advertisement. Subsequently, one selected candidate namely, Sharanjit Kaur, did not submit her joining report within stipulated period and next available candidate, Smt. Jatwinder Kaur, having merit 59.394, was offered appointment in this category. The merit of the petitioner was 58.937 and therefore, she did not come within the zone of selection being lesser in merit than the last selected candidate in the category. The names of respondent Nos.6 and 7 were existing in the final selection list published on 15.04.2008. So far as the name of respondent No.5 is concerned, it is stated that appointment letter was issued to her during contempt proceedings in COCP No.1104 of 2009 in CWP No.12364-2008, as her merit was found to be 60.352. Merit of respondent No.6, Rajinder Kaur, was wrongly prepared by the Evaluation Committee, whereupon, she submitted a representation regarding her wrongful calculation of merit before the District Education Officer and thereafter she represented to the Director, Public Instructions, to re-calculate her merit as 60.335. Thereafter, the Director, Public Instructions, directed consideration

of her candidature for the purpose of appointment if her name falls in the zone of selection. The appointment letter was accordingly issued to respondent No.6, Rajinder Kaur. Respondent No.8, Baljeet Singh, is a male candidate, who attended the counselling during March, 2008 and he was placed in the tentative list prepared 1.5 times of the post advertised. Name of respondent No.8, Baljeet Singh was not in the select list of male category, however, one candidate namely, Mandeep Singh, resigned from the post, whereafter, he was also selected in furtherance of the advertisement, being the next available candidate for appointment. The petitioner being female candidate cannot equate herself with said Baljeet Singh. It is stated that BC (female) merit is 59.394 and merit of the petitioner is 58.937 and, therefore, she does not find place in the select list.

4. Learned counsel for the petitioner submits that the documents attached along with the affidavit do not show as to what other qualification benefit was given to Kiranjeet Kaur, respondent No.4, while calculating her merit as 60.325 and in fact her merit should be 58.325. Learned counsel submits that the private respondents have been appointed by awarding such additional benefits in a wrongful manner, while the petitioner who is otherwise higher in merit to the private respondents, should have been appointed.

5. This Court finds that the petitioner's merit is much less than the merit of respondent Nos.4 to 8. The entire basis of the petitioner's case is the information received by him under the Right to Information Act, which later on was found to have been forged and fabricated information given to the petitioner by the concerned officials, against whom,

departmental action has already been initiated. The explanation given by the Secretary, Department of Education, Punjab, relating to the method and manner in which the respondent Nos.4 to 8 have been appointed, is found to be in accordance with law. Of course, so far as the appointment of one Baljeet Singh, respondent No.8 after the resignation given by another candidate, who had initially joined and resigned subsequently is concerned, the same may not be in order keeping in view the recent judgment of the Hon'ble Supreme Court in the case of **Sudesh Kumar Goyal vs. State of Haryana and others, in Civil Appeal No.10861 of 2013, decided on 21.09.2023**, but since the process of selection and appointments was conducted long back and the respondents are performing their duties continuously, this Court does not deem it appropriate to disturb the appointment of respondent No.8. At the same time, if any, post falls vacant on account of resignation or non-joining after completion of the selection process, now it is too late in the day to direct the respondents to fill the remaining posts, which can always be considered for selection in the subsequent recruitment drive.

6. In view of the above, the selection of respondent Nos.4 to 8, do not call for any interference. The writ petition is found to be devoid of merit and is accordingly dismissed.

7. All pending misc. application(s) also stand disposed of.

04.10.2023

rajesh

**[SANJEEV PRAKASH SHARMA]
JUDGE**

<i>Whether speaking / reasoned</i>	:	<i>Yes/No.</i>
<i>Whether Reportable</i>	:	<i>Yes/No</i>