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R-796

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

CWP-8089-2009

Date of Decision: 22.08.2024

MAMTA

..... PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR JUSTICE TRIBHUVAN DAHIYA

Present: Mr. U.K.Agnihotri, Advocate,
Mr. A. K.Agnihotri, Advocate and
Mr. Anuj Attri, Advocate for the petitioner.

Mr. K. K. Chahal, Addl. A.G.,Haryana
for respondent Nos. 1 to 3.

Mr. R. K. Malik, Sr. Advocate with
Mr. Anshul Labana, Advocate for respondent Nos. 4 and 5.

TRIBHUVAN DAHIYA, J. (ORAL)

The petition has been filed, *inter-alia*, seeking a writ of *certiorari* quashing the appointment order dated 11.12.2008, Annexure P-2, whereby the fourth and fifth respondents, and some other candidates, have been appointed as Home Science Master/Mistresses in response to advertisement no. 6 of 2006; further a writ of *mandamus* has been sought

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directing first, second and third respondents/official respondents to appoint the petitioner as Home Science Mistress.

2. At the outset, learned counsel for the petitioner restricts the challenge in the petition to the appointment of fourth and fifth respondents/private respondents only, pursuant to the impugned order dated 11.12.2008.

3. Facts of the case in brief are, the third respondent issued the aforementioned advertisement inviting applications for various posts of Home Science Master/Mistresses, which included twenty-one posts under General category as well. The requisite qualifications for the same were as under:

- (i) B.Sc. Home Science with B.T./ B.Ed. Or
B.A. with Home Science as one of the elective subject.
 - (ii) Knowledge of Hindi upto Matric Standard
- Note: Preference will be given to B.Sc. Home Science.

Further, the candidates were required to be of eighteen to forty years of age for all categories. And the criteria for selection were as under:

Total Marks-75

- | | |
|--|-----------|
| 1. Essential Qualifications: | 25-Marks |
| (i) B.Sc. Home Science or
B.A. with Home Science as one
of the elective subject
0.25 of the percentage of marks obtained. | |
| (ii) B.T./B.Ed | 20- Marks |
| 0.20 of the percentage of marks obtained | |
| 3. Higher Qualifications: | 05- Marks |
| (i) Ph.D in the concerned subject | 03-Marks |
| (ii) M. Phil, M.Ed in the concerned
subject | 01-Mark |

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(iii) Post Graduation in the concerned subject 01-Mark

4. Viva voce: 25-Marks

To assess the knowledge of subject, communication, skill, general knowledge, general awareness and intelligence.

3.1. The petitioner as well as the private respondents participated in the selection process. As per the criteria, the petitioner obtained 39.91 marks out of 75, whereas the last selected candidate in General category secured 45.16 marks. On account of being lower in merit, she was not selected. The fourth and fifth respondents obtained 45.94 and 45.69 marks, respectively. After declaration of final result, the selected candidates including the fourth and fifth respondents were given appointments on merit. Thereafter, the petitioner filed the instant writ petition impugning the selection and appointment of private respondents.

4. Learned counsel for the petitioner has contended that the petitioner was more meritorious than the private respondents, as apparent from a comparison of her marks in Matriculation, Senior Secondary, B.Sc./B.A./B.Ed. and M.A. to those of the private respondents. Being more meritorious, she was entitled to more marks in viva-voce also, though only nine marks out of twenty-five marks were arbitrarily awarded to her. He further contended that the fifth respondent was born on 06.08.1961, and was more than forty-five years of age at the time of applying for the post in question in 2006. Being overage, she could not have been appointed; the appointment being in violation of the mandatory stipulation in the advertisement is liable to be set aside.

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5. Learned Senior counsel for the private respondents, on the contrary, contended that the petitioner was estopped from filing the instant petition after participating in the selection process and remaining unsuccessful. He has also contended that the fifth respondent was registered with the Employment Exchange at the relevant time, and on that basis was entitled to age relaxation in terms of instructions, Annexure R-5/2, issued by the Government. Considering this, she was given age relaxation before being appointed on the post. Besides, as of now, she has already superannuated from service on attaining fifty-eight years of age, with effect from 31.08.2019.

6. Heard.

7. The undisputed facts on record are, the petitioner duly participated in the selection process and remained unsuccessful, having secured lesser marks than the last selected candidate in her category. As per the settled law, she cannot be allowed to turn around and challenge the same selection by alleging irregularities and illegalities in the process. Besides, merely because she has done academically better as compared to the private respondents, it cannot be said that she would be entitled to more marks in the viva-voce examination on that basis. Marks of viva-voce have been awarded by the selection committee based on the candidate's performance; by assessing his/her subject knowledge, communication skills, general awareness and intelligence, etc. Better academic record does not guarantee that a candidate will perform better on these criteria as well during the interview. There is no allegation *mala fide* or wrongdoing against the members of selection committee, nor is there any material on record to even

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prima-facie establish that any irregularity or illegality was there in the selection process. Further, it also remains undisputed that the fifth respondent has already superannuated from service on 31.08.2019. Therefore, this Court is not inclined to go into the issue whether she was overage at the time of selection and entitled to age relaxation in terms of the instructions, as that would only be an academic exercise.

8. In view of the above discussions, this Court is of the view that there is no merit in this petition and it stands dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

22.08.2024
Seema

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>