

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(105)

LPA-1128-2023

Decided on : 18.04.2024

Kiran Mai

.....Appellant(s)

Versus

Haryana Staff Selection Commission, Panchkula & another

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI**

Present: Mr.Arvind Seth, Advocate for the appellant (s).

Mr.Deepak Balyan, Addl.A.G., Haryana.

G.S. Sandhawalia, Acting Chief Justice (Oral)

1. Consideration in the present appeal is to the judgment passed by the Learned Single Judge in CWP-22638-2018 whereby the writ petition had been dismissed on 09.05.2023 by coming to the conclusion that no post in the category of the appellant was lying vacant.

2. The appellant had filed the writ petition seeking direction to correct the records and process her candidature as a Handicapped/OH (Locomotor Disability) for the post of Post Graduate Teacher (PGT) under category no.13 in terms of advertisement no.1/2014. The said selection process could not be finalized and a fresh advertisement no.4/2015 had been issued for filling up the posts. The appellant had applied again on time and in pursuance of Note-1 of the advertisement dated 21.09.2015 (Annexure P-10) as she was required to apply for the re-advertised posts but was exempted from payment of application fee. She was required to upload the e-challan along with the application form and to produce the original e-challan at the time of interview/test/verification.

3. The appellant, in pursuance of the first advertisement, had specifically filled up the category of BCB/PH (Locomotor Disability) which would be clear from Annexure P-9. However, at the time of filling up the second application, apparently, she left out the column under Physically

Handicapped Category for which 5 posts had been advertised. It is in such circumstances she had approached the Writ Court and an interim order was passed on 06.09.2018 that she would be provisionally interviewed subject to the decision of the writ petition and her result would be kept in sealed cover.

4. The stand of the respondent-Commission was that 13 candidates had been called for interview against the 5 posts of the OH Category and 2 were filled up out of the 5 posts advertised and 3 posts had been kept vacant in view of the various litigations which were pending. The result was thereafter revised in view of the decision in SLP No.25184-25214 of 2018 titled *HSSC Vs. Priyanka & others*, decided on 01.09.2021 and 3 more candidates were selected against the OH Category and there was no post lying vacant in the OH Category.

5. The Learned Single Judge, thus, accepted the stand of the State and dismissed the writ petition, as noticed above.

6. On 07.02.2024, we noticed this fact that whether any vacancy was available in the Physically Handicapped Category of the Orthopedics and out of the 5 candidates selected, who had actually joined and an affidavit was accordingly directed to be filed. The necessary affidavit has now been filed by Shri Neeraj Sharma, Deputy Secretary to Government of Haryana, School Education Department whereby it has come on record that out of the 5 candidates selected, 2 candidates had actually not joined against the post. The relevant portion of the affidavit reads as under:

“5. That it is pertinent to mention here that out of 5 candidates 2 candidates had not joined against the post of PGT Hindi in the category of PH (Orthopedics). That candidature of these two has not been cancelled by the department. In regard to the waiting list, it is germane to mention here that the Chief Secretary to Government of Haryana, vide its letter No.42/02/2017-2GSI dated 18.09.2018 clarified that the waiting list would be prepared only for the posts pertaining to Group-B (Non-Gazetted).”

7. It is thus apparent that the reason for the dismissal of the writ petition was solely on account of the fact that the posts were not available but the 2 candidates had never joined though selected as per the affidavit filed. In such circumstances, we are of the considered opinion that the appellant had applied in the first advertisement under the BCB (PH) (Locomotor Disability)

and the second advertisement was in pursuance of the first advertisement which would be clear from Note 1. Same reads as under:

“Note 1. The posts indicated at category No.1 to 34 (except Cat. No.11 & 27) were advertised earlier by the Haryana School Teacher Selection Board, Panchkula vide advertisement No.1/2014 but against these posts no recruitment process could be initiated and thereafter on the withdrawal of requisition by the Education Department, Haryana, the same were Cancelled by the Haryana Staff Selection Commission, Panchkula vide Public Notice dated 12.05.2015. The candidates who had earlier applied against the above categories and whose detail is available on the web site of HSSC i.e. www.bssc.gov.in will also be eligible against the re-advetised posts and such candidates will be exempted from the payment of application fee. However, such candidates will have to apply online afresh alongwith proof of depositing the application fee. They are required to upload the e-Challan alongwith the fresh application form and will produce the original e-challan at the time of interview/test/verification.”

8. The State cannot now turn around and say that the appellant is trying to change her category on account of the fault which had occurred while filling up the second form. The appellant has been prejudiced being a Handicapped Candidate and the posts being lying vacant, we are of the considered opinion that her name is liable to be considered for appointment. It has also come on record that she is more meritorious having secured 129 marks whereas the last candidate has got 124 marks and thus falls within the zone of consideration.

9. In LPA-320-2019 titled *Haryana Staff Selection Commission through its Secretary Vs. Sarla & others*, decided on 22.02.2019, change of category of Anganwari Worker was upheld while noticing that the dependence upon the operator of the Cyber Café to fill up the application form was the reason for which the mistake had occurred and being a human error, a poor candidate could not be allowed to suffer for no fault. Even otherwise, it is not disputed that for the earlier advertisement, application was under the Handicapped quota and even in the subsequent recruitment process, as noticed below, she has been selected in the Mewat cadre under the BC(B)/PwBD(OH).

10. It has also been brought to our notice that in the subsequent recruitment process of 24.06.2023 qua Advertisement No.41 of 2023, the appellant has made the grade for the Post Graduate Teacher in Hindi for Mewat cadre.

11. Counsel for the appellant has stated that he has instructions that in case the appellant is given the relief of appointment in the present appeal, she will not be interested to take up the post in the Mewat cadre.

12. Resultantly, we protect her interest to the extent that the State shall consider her case for the earlier advertisement, as directed above and issue the necessary appointment letter. The apprehension of the appellant is that in case the State further seeks remedy of appeal, then she will be prejudiced as such to take up the post for which she has now been selected.

13. Accordingly, we direct the respondent-Commission to forward her name to the Department concerned for being appointed against the said post. Needless to say that the delay in the appointment had occurred on account of fault of the appellant and she will not be entitled for any financial benefits on the principle of 'No Work, No Pay' and the only benefit which she is entitled is the notional benefits. Needful be done within a period of 2 months.

14. The present appeal is allowed in the above-said terms.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

18.04.2024
Sailesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No