

2024:PHHC:095676-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

LPA-1413-2023 (O & M)
Reserved on: 16.07.2024
Pronounced on: 26.07.2024

JYOTSNA BHASKERAppellant
Versus

STATE OF PUNJAB & ORS.Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: None for the appellant.

Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

CM-3588-LPA-2023

1. Considering the valid, and, good reasons, as meted in the application, explaining the apposite delay of 21 days, therefore, the application is allowed.

2. Delay of 21 days in re-filing the appeal, is condoned.

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3. Considering the valid, and, good reasons, as meted in the application, explaining the apposite delay of 35 days, therefore, the application is allowed.

4. Delay of 35 days in filing the appeal, is condoned.

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5. The application is allowed subject to all just exceptions and the documents annexed with the application are taken on record as

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Annexures A-1 and A-2.

Main Case.

6. Through the filing of the instant Letters Patent Appeal, the appellant herein prays for quashing of the order dated 26.04.2023, as passed by the learned Single Judge upon CWP No. 14634 of 2012, whereby the said writ petition became dismissed.

7. In the said writ petition, a prayer was made for setting aside the order of appointment of respondent No. 15 as Vocational Mistress (Garment Making), as issued by respondent No. 3 and further a direction was sought to be issued upon respondents No. 1 and 3, to appoint the petitioner as Vocational Mistress (Garment Making), as per her merit at Serial No. 28, and, to grant her all the benefits to her from the due date of appointment.

Brief facts of the case.

8. The Department of School Education Punjab advertised 78 posts of Vocational Masters (Garment Making) vide advertisement dated 23.09.2009. The essential conditions for the said posts are extracted hereinafter.

“Three years Diploma in concerned trade from Punjab State Technical Education Board alongwith three years experience of teaching or practical working from Govt. or Govt recognized institution or from reputed institution, which must be countersigned by competent authority.”

9. Pursuant to the said advertisement, the appellant applied for the post of Vocational Mistress (Garment Making) in the General category vide registration No. 30012057. In furtherance of the said

advertisement, the selection process was carried out by the

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Departmental Selection Committee (Teaching). The selection committee recommended the names of 39 candidates in the General category for the post of Vocational Master/Mistress (Garment Making). However, the name of the petitioner did not figure in the final selection list (Annexure R-2). The reason as given by the respondent for not reflecting the name of the appellant in the selection list, is that, the petitioner at the time of scrutiny of her original documents submitted her experience certificate (Annexure R-1). The said experience certificate was not considered to be a valid document as the same was not countersigned by the '*competent authority*' which was rather mandatory, as per the terms and conditions of the advertisement (*supra*).

Grounds of Appeal.

10. The sole stand put forth by the State in their reply, is that, the experience certificate was not countersigned by the '*competent authority*'. In this regard, it is submitted that the respondent has not specified any particular official nor described the term '*competent authority*'. The experience certificates submitted by the appellant-petitioner alongwith her application form were duly signed by the Centre Head and Principal of the concerned institutions, and, were also got attested from a Government Official. The officials/officers involved in the selection process never highlighted or informed the appellant-petitioner with regard to any discrepancy existing in the experience certificates, as submitted by her alongwith the application form.

11. The learned Single Judge failed to appreciate the fact that even no objection was raised by the scrutiny officer at the time of his

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making scrutiny of the original documents/experience certificates. Therefore, had there been any objection raised by the Scrutiny Committee, the petitioner-appellant could have obtained the counter signatures from the authority concerned, but the non raising of the objections by the scrutiny officer, per-se exemplifies that, then there existed no objection vis-a-vis the documents submitted by the appellant. The basic purpose of scrutiny is to check the documents and to provide an opportunity to the candidate to rectify the shortcomings. In the present case, no such objections were raised. Therefore, no opportunity was granted to the appellant-petitioner to rectify the defect, if any, in the experience certificate(s).

12. The candidate selected and appointed at serial No. 1 of the merit list got 65.24% marks, whereas, the candidate selected and appointed at serial No. 39 of the merit list obtained 45.25 % marks. Therefore, the act and conduct of the official respondents by leaving the appellant out of the merit list, who secured 54.5 % marks, thus cannot be held to be legitimate and just in the eyes of law.

Inference of this Court.

13. The evident non raising of the said objections during the course of scrutiny of the relevant documents, is per-se manufactory that, the respondent construed that the experience certificates, as furnished by the appellant-petitioner, thus were valid. The purpose of making scrutiny of the documents furnished by any aspirant, to the advertised posts, is to ensure the makings of detection(s) of any faults therein, so that, such noticed shortcomings may become rectified or

cured, but if the said short comings are as a matter of fact amenable for

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rectification or are curable, besides only if the said experience certificates are not fictitious or forged.

14. Since in the instant case there is no evidence qua the experience certificates, as became furnished by the appellant rather being forged. Contrarily, when the scrutiny official after making scrutiny of the said documents failed to raise an objection qua the experience certificate(s) omitting to carrying thereons the counter signatures of the authority concerned. Moreover, when therebys no opportunity became granted to the appellant-petitioner to rectify the above rectifiable shortcoming.

15. In sequel, when the omission (supra) of the scrutiny official but reiteratedly precluded the appellant-petitioner from overcoming the said purported snag or deficiency in the experience certificates, which but retiteratedly otherwise for reason (supra), is *prima facie* taint free, thereupons, the present appellant-petitioner was not required to be denied the appointment letter. Contrarily, the issuance of an appointment letter to the present appellant-petitioner, may have been deferred till the said defect became permitted to be overcome by her.

16. For failure on the part of the respondent to afford the said opportunity to the appellant-petitioner, thus to rectify or remedy but the above rectifiable error, thus has resulted in the appellant-petitioner becoming arbitrarily denied the appointment letter vis-à-vis the advertised post.

17. An aggravated momentum to the above conclusion, thus

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palpably emerges from the factum that the appellant-petitioner, did

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secure, the relevant selectable notch in the merit list. The above fact is manifested from the present petitioner-appellant securing 55.4% marks, whereas, the candidate occurring at serial No. 39 despite securing 45.25 % marks rather not only becoming selected but also becoming appointed. The fact (supra) per se smacks of arbitrariness and discrimination becoming perpetrated by the respondent vis-a-vis the present appellant-petitioner besides tantamounts to an untenable denial of an appointment letter to the present appellant, despite hers being a meritorious candidate.

Final Order of this Court.

18. The impugned judgment passed by the learned Single Judge is quashed and set aside. However, subject to the rider that if the experience certificate(s), as submitted by the appellant-petitioner are authentic and require only counter signatures becoming made thereons, thereupon, the designated authority to be forthwith specified as such by the respondent, may consider counter signing the experience certificates. Subsequently, in terms of the merit of the appellant-petitioner the respondent is directed to forthwith issue an appointment letter to the appellant-petitioner but on completion of all codal formalities.

19. In sequel, with the observation(s) aforesaid, the appeal is allowed with costs of Rs. 50,000/- upon the respondent-State to be forthwith deposited with the Treasurer of the **“Punjab and Haryana High Court Employees Welfare Association”**.

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20. All the above stated formalities be ensured to be completed within one month from today.
21. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

26.07.2024

kavneet singh

Whether speaking/reasoned

Whether reportable

:

:

Yes/No

Yes/No