

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

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CWP-13179-2018 (O&M)

Date of decision: 02.04.2024

Sukhnandan Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. RK Arora, Advocate for the petitioner.

Mr. Satnam Preet Singh, DAG, Punjab.

AMAN CHAUDHARY, J.

1. The prayer made in this present petition is to quash the letter dated 07.11.2017 rejecting her claim for regularization, Annexure P-15 and directing the respondents to grant her deemed date of appointment to the petitioner on the post of Art & Craft Teacher from the date persons of appointment of those lower in merit.

2. Learned counsel contends that the petitioner applied for the post of Art & Craft Teacher pursuant to the advertisement dated 23.09.2009 but the candidate lower to her in the merit list had been selected. Her claim, directed to be decided upon in CWP-272-2012, disposed of on 05.01.2012, was rejected on the ground that she had not produced the Backward Class Category Certificate. This led her to file CWP-22006-2012, which was allowed on 30.11.2015, by observing her case to be on a firmer ground, inasmuch as Naib Tehsildar, Tanda had certified her to be a Backward Class (Lohar) on 05.10.2009 i.e., four days before the cut-off date. Consequently, she having 62.4645 marks, had been appointed on 27.05.2016, but her claim for regularization was denied via the impugned order, whereas

services of a candidate, who secured 62.3676 marks and joined in 2011, were

regularized w.e.f. 06.04.2014. Reliance has been placed on the judgments of this Court in **Seema Rani vs. State of Punjab and another**, CWP-16772-2010 decided on 07.08.2012 and a batch of petitions, with lead CWP-18275-2013, **Maghar Singh and another vs. State of Punjab and others**, dated 15.07.2015 wherein the claim of the petitioners for regularisation from the date of joining, had been rendered infructuous, as the Department had granted the same to them *albeit* without any arrears.

3. Learned State counsel opposed by submitting that the petitioner has been granted benefits in terms of her appointment letter and is not entitled to the relief as claimed for, she having been appointed belatedly.

4. Heard learned counsel on either side.

5. Notably, the petitioner was denied appointment on the premise of her failure to produce a valid Backward Class Category Certificate, however, the Department, in compliance with the directions of this Court to consider her case, granted her appointment from 27.05.2016.

6. In **Seema Rani** (supra), the petitioner was granted appointment to the post of Science Mistress in the Sports Female (General) Category vide letter dated 16.02.2009, during the pendency of the writ petition filed in that regard which stood disposed on 05.10.2009 as having been rendered infructuous. However her claim for appointment w.e.f. 08.12.2006, the date when other candidates had been appointed pursuant to the same advertisement on the ground that consideration for selection in her category had taken place in February 2008, was rejected. This Court allowed the petition by holding that, “The State Government cannot be permitted to take advantage for its own wrong. The petitioner was not to blame for the in-action of the respondents. The action of delaying the appointment of the petitioner was clearly arbitrary and violative of Article 14 of the Constitution of

above, the present petition is allowed. The petitioner shall be deemed to be appointed to the post of Science Mistress in the Sports Female (General) category w.e.f. 8.12.2006 i.e. when the other candidates/applicants in pursuance to the same very advertisement/selection process had been appointed. Accordingly the petitioner is also held entitled to all other service benefits in pursuance to such notional ante-dated appointment to the post in question w.e.f. 8.12.2006, but she shall not be paid any arrears for the period 8.12.2006 to 16.2.2009 i.e. the period when she did not actually work against such post.”

7. This Court in the previous *lis* at the hands of the petitioner found the new backward class certificate to be of a date four days prior to that of the cut-off, while her candidature was rejected on account of the earlier certificate having been issued more than a year before the relevant date, while appointment had been given to even a candidate, whose certificate was issued after the cut-off date, directed to consider the petitioner for appointment, to prevent unfair discrimination, which would result in violation of the mandate of Article 14 of the Constitution.

8. This Court in **Sandeep Kaur vs. State of Punjab and others**, CWP-17939-2013 decided on 08.02.2016, dealt with a matter where candidature of the petitioner was rejected on the premise that she failed to produce the domicile certificate at the time of scrutiny of documents, though the same was not required under the advertisement. The writ petition was thus allowed and it stands implemented as per affidavit dated 02.09.2019 filed in the contempt proceedings initiated in the case; relevant paras whereof read thus:

“The only reason for rejecting the candidature of the petitioner in the recruitment process for filling up vacancies of Vocational Masters [Electronic] in School Education Department, Punjab is that the petitioner failed to produce domicile certificate at the time of scrutiny during the process of counselling.

Mr.Arora submits that a domicile certificate was produced on 9.12.2010 after it was called by the Scrutiny Committee. Therefore, the domicile certificate will relate back to achieve

its purpose.

The further submission is that the matter is concluded by the Full Bench decision of this Court in *Abhishek Rishi v. State of Punjab and others*; 2013 (3) RCR (Civil) 239.

Mr.Arora further submits that the domicile certificate was not required under the advertisement and when produced would come within the doctrine of relation back as broadly explained by the Supreme Court in *Charles K. Skaria and others v. Dr.C.Mathew and others*; AIR 1980 SC 1230 : (1980) 2 SCC 752.

As a result, the reason assigned in the impugned order dated 27.8.2013 [P-21] is erroneous. It is well settled that if the operating reason in an administrative order is faulted by the Court, the entire order has to go. On merits, Mr.Arora submits that the petitioner has secured 64.9714 marks whereas marks of the last candidate selected and appointed is 55.943 marks. Of the 78 posts advertised, only 53 remained unfilled as admitted in para. 8 of the written statement.

In view of the above, the writ petition is allowed. A writ of certiorari is issued quashing the impugned order dated 27.8.2013 [P-21]. The petitioner is declared eligible for the post. A mandamus is issued to the respondents to consider appointing the petitioner as per merit determined by the Departmental Selection Committee. On appointment, the petitioner would take her seniority from the date her batch mates were appointed. There will be notional fixation of increments etc. but the monetary benefits would accrue from the date of filing of the petition. In case of appointment, it will be subject to completion of formalities including character verification and medical. Let the entire exercise be carried out within six weeks from the date of receipt of a certified copy of this order.”

9. Insofar as the claim of deemed date of appointment and subsequent notional seniority is concerned, a gainful insight can be drawn from **C. Jayachandran vs. State of Kerala**, (2020) 5 SCC 230, wherein, the appellant who was wrongfully excluded from the process of appointment on account of an illegal and arbitrary grant of moderation of marks but later appointed, was granted notional seniority from the date the other candidates were appointed in pursuance of the same select list prepared on the basis of the common appointment process. It was observed by Hon’ble the Supreme Court that, “Still further, the Division Bench of the High Court has completely erred in law in holding that the appellant has delayed the challenge of his appointment, vide order dated 22-12-2010. The

appellant was appointed pursuant to a direction issued earlier by the Division

Bench. The Division Bench has directed to re-cast the select list and in such select list, the name of the appellant appears at Sl. No. 3 and that of Badharudeen at Sl. No. 4. The appellant has submitted the representation on 11-4-2012 i.e. within 1 year and 2 months of his joining and submitted reminder on 18-9-2014. It is the High Court which has taken time to take a final call on the representation of the appellant and other direct recruits. The appellant was prosecuting his grievances in a legitimate manner of redressal of grievances. Therefore, it cannot be said that the claim of the appellant was delayed as he has not claimed the date of appointment as 30-3-2009. The appellant having been factually appointed vide communication dated 22-12-2010, he could not assume or claim to assume charge prior to such offer of appointment. The appellant has to be granted notional seniority from the date the other candidates were appointed in pursuance of the same select list prepared on the basis of the common appointment process.”

10. In **Sadhana Singh Dangi & Others vs. Pinki Asati & Others**, (2022) 12 SCC 401, an anomaly had arisen as a result of late appointments of candidates who though placed at a higher position in the select list, were unfortunately not given appointments along with those at lower level, for which it was observed that they could not be held responsible. It was directed that in order to do complete justice, they shall be deemed to have been appointed on the earliest of the dates when their juniors or candidates at lower levels were appointed and their seniority shall be reckoned from such deemed date of appointment and not from their actual date of appointments.

11. Hon’ble the Supreme Court in **Sanjay Dhar vs. J&K Public Service Commission**, (2000) 8 SCC 182, had held that certificate filed by the appellant before the J&K PSC satisfied the requirement of Rule 9 of the J&K Civil Service (Judicial) Recruitment Rules, 1967, thus rejection of his application holding him ineligible was not justified. He, having participated under interim orders of the

High Court and secured third position, was held fully entitled to the relief of appointment w.e.f. the same date on which other candidates were appointed from the select list of 1992-93 and deserving to be assigned notionally a place in seniority consistently with the order of merit assigned by the J&K PSC.

12. On a conspectus analysis of the facts and circumstances of the case and keeping in mind the comprehensive judicial pronouncements, the appointment of the petitioner would necessarily have to relate back to the date as that of those lower in merit and the benefits therefrom must enure to her.

13. In wake of the above, the present petition is disposed of granting deemed date of appointment to the petitioner, with notional consequential benefits, except arrears of pay from the said date till 27.05.2016, during which period she did not perform the duties.

(AMAN CHAUDHARY)
JUDGE

02.04.2024
Hemant

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No