

231 (2 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-4378-2013 (O&M)
Date of Decision: 09.01.2024

GURNAM SINGH AND ANOTHERPetitioners
V/s.
STATE OF PUNJAB AND OTHERSRespondents

CWP-3200-2019 (O&M)

KANWALJEET KAUR AND ANOTHERPetitioners
V/s.
STATE OF PUNJAB AND OTHERSRespondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. J.S. Gill, Advocate for the petitioners
in CWP-4378-2013.

Mr. Kapil Kakkar, Advocate for the petitioners
in CWP-3200-2019.

Mr. Vishnav Gandhi, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. This order shall dispose of two connected Writ Petitions as the issue involved in both the Writ Petitions is common.
2. Learned counsel for the petitioner(s) appearing in CWP-4378-2013 does not press the Writ Petition as regards petitioner No.2- Gurmit Kaur. In view thereof, the name of petitioner No.2 is deleted.
3. The petitioner by way of CWP-4378-2013 prays for quashing of order dated 23.11.2012 (Annexure P-7) whereby the claim of the petitioner was rejected and further prays for setting aside the appointment of respondents No.5 to 10. Later on, the petitioner did not pressed the claim with regard to respondents No.5 to 10 and their names were deleted from the

array of respondents. However, learned counsel for the petitioner(s) presses with regard to the quashing of order dated 23.11.2012 whereby claim of the petitioner was rejected for appointment as against the post which was left vacant from the Scheduled Caste (M&B) category.

4. Learned counsel for the petitioner(s) submits that the petitioner No.1 is from the Scheduled Caste (R&O) category and out of the total posts meant for Scheduled Caste (M&B) category, six vacant posts now ought to be filled from the Scheduled Caste (R&O) category and thus, the same should be offered to the petitioner No.1.

5. Learned counsel for the petitioner(s) submits that the posts of Teaching Fellows are still lying vacant and on account of no fault on his part, he had been denied selection on the said post. Similar prayer has also been raised by Mr. Kapil Kakkar, learned counsel for the petitioners in the second Writ Petition i.e. CWP-3200-2019. The petitioners therein also belong to the Scheduled Caste (M&B) category but were left out from consideration. Learned counsel for the petitioner(s) has stated in the said Writ Petition that the petitioners had participated in the selection process initiated in respect of advertisement dated 30.11.2011 whereby out of 1133 posts, 67 posts went to the District Sri Muktsar Sahib. Learned counsel for the petitioners stated that as the posts were lying vacant, the petitioners' candidatures ought to have been considered against the said posts.

6. In CWP-4378-2013, it is noticed that merit of the petitioner No.1 is 47.19 while the posts of Scheduled Caste (R&O) category were completely filled. Since six posts of Scheduled Caste (M&B) category were lying vacant, petitioner No.1, who is from Scheduled Caste (M&B) category,

could be offered the said post. However, the same was not done nor any cogent reasons were coming forward in this regard.

7. *Per contra*, learned State counsel submits that the posts of Teaching Fellow were bifurcated into different categories. Counseling for the said posts was conducted on 13.12.2011 and out of 67 posts, there were 6 posts of Teaching Fellows in the Scheduled Caste (M&B) category, which were lying vacant. However, the same could not be made available to the petitioner who was from Scheduled Caste (M&B) category.

8. I have carefully considered the submissions of the learned counsel for the parties and find that all the three petitioners in both the Writ Petitions belong to the Scheduled Caste (M&B) category and Scheduled Caste (R&O) category, respectively. It is now a settled law that if the post of Scheduled Caste (M&B) category could not be filled from the said category the same would be filled from the other categories of Scheduled Caste (R&O) category and *vice versa*.

9. In this case, there were two persons available from Scheduled Caste (M&B) category with the Department, but the posts were not offered to them in spite of they being in merit of Scheduled Caste (M&B) category. No reasons have come forward even in the additional affidavit filed by the respondents with regard to not offering them the said posts. Although this Court notices that the selection was done in 2011 by conducting counseling on 13.12.2011 and the Writ Petition has remained pending since long, the relief to the petitioners cannot be denied as law is well settled that no one should be made to suffer on account of the pendency of a case in the Court.

However, at the same time the State exchequer should also not be made to suffer.

10. In view of the above, these Writ Petitions are partly allowed to the extent directing the respondents to consider the case of all the three petitioners for appointment on the said posts if they are otherwise suitable. They shall not be made non-suitable on account of the age criteria or any other reason(s) due to the pendency of these Writ Petitions. The appointment shall be given to the petitioners notionally w.e.f. 13.12.2011 or the date on which the appointment orders have been issued to the other persons.

11. Learned counsel for the petitioners in both the Writ Petitions have frankly stated that the petitioners would not press for actual salary for the intervening period and accordingly, it is directed that the petitioners would be entitled to actual salary from the date of passing of this order. However, their fixation of salary shall be made by counting the entire w.e.f. the date of their notional appointment till date.

12. The petitioners would be also entitled to their effective seniority as per their merits in the selection conducted under the advertisement under reference.

13. The exercise shall be made within three months henceforth.

14. All pending applications filed in these Writ Petitions shall stand disposed of accordingly.

January 9, 2024

Ess Kay

[SANJEEV PRAKASH SHARMA]
JUDGE

Whether speaking / reasoned	:	Yes	/	No
Whether Reportable	:	Yes	/	No