



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

LPA No.1090 of 2017
Date of Decision: 21.01.2025

Baljit Kumar

...Appellant

Versus

Sarita and others

...Respondents

COCP No.2039 of 2017

Sarita

...Petitioner

Versus

Depinder Singh Dhesi & another

...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present:- Mr. Viren Nehra, Advocate for
Mr. Sunil S. Nehra, Advocate,
for the appellant (in *LPA No1090 of 2017*).

Mr. Anil Ghanghas, Advocate and
Mr. Sahib Singh, Advocate
for the respondent (in *LPA No.1090 of 2017*)
and for petitioner (in *COCP No.2039 of 2017*).

Mr. Vivek Chauhan, Addl. AG, Haryana.

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SANJEEV PRAKASH SHARMA J.(Oral)

The appellant was respondent No.12 in the writ petition preferred by the respondent-writ petitioner Sarita wherein she claimed her rightful claim for appointment under the 33% reservation for women in terms of Rule 19(2) of the Haryana State Education School Cadre (Group-B)



Service Rules, 2012. The writ petition was accordingly allowed and it was directed that the selection of the appellant who was the last candidate under ESM category is liable to be set-aside and the writ petitioner named for selection and appointment to the post of PGT English under DESM women category would be considered if she is otherwise eligible in accordance with law. The exercise was to be completed within a period of three months with further direction to give such appointment notionally along-with seniority as per her appropriate place in merit. The order was challenged by the appellant and the appeal was admitted on 25.10.2018 with observations that respondent No.1 has stated that some posts are still available. The relevant part of the said order dated 25.10.2018 reads as under:-

“CM No.2310-LPA of 2017

For the reasons mentioned in the application, delay of 52 days in filing the appeal is hereby condoned. CM stands allowed.

Main case

Admitted.

To be heard within six months.

Interim order to continue.

At this stage, learned counsel for respondent No.1 states that some posts are still available.

Learned State counsel contends that he has no such instructions.

Learned counsel for the respondent No.1 then contends that in the eventuality of post being available, State can consider her claim for appointment.

We have absolutely no objection to such a course being adopted by the State in case they want to consider respondent No.1.”



2. Learned counsel appearing for the appellant submits that in due course during the pendency of this appeal, the appellant has attained superannuation and therefore, his appointment was not to be disturbed. Learned counsel appearing for the original writ petitioner, submits that the order passed by the learned Single Judge had not been stayed and by interim order dated 03.07.2017, status-quo regarding the service of the appellant was maintained. Thus, the original writ petitioner was required to be given the benefits of the judgment passed by the learned Single Judge which was not challenged by the State authorities. He submits that he filed the contempt petition and has been now offered appointment vide order dated 09.08.2024. Learned counsel submits that the writ petitioner deserves to be given the benefits of the order passed by the learned Single Judge in its true spirit. Counsel appearing for the appellant states that since the appellant cannot be said to be at fault there was no occasion to set-aside his appointment more so as he has already joined in 2014 and now he has also attained superannuation. He submits that if the relief is given to the writ petitioner, the same can be independently without disturbing the appointment of the appellant as there were posts lying available with the department which has been admitted by respondent No.1 and noticed by this Court while admitting the present appeal. Since the appellant has already attained superannuation he may be given all consequential benefits of retirement.

3. Learned counsel appearing for the State submits that so far as the appellant is concerned, he has been paid fixed salary for the work he has already done. So far as the writ petitioner is concerned, she has already been given appointment and no other benefits are required to be given to her.



4. We have considered the submissions. A look at the order passed by the learned Single Judge reflects that considering the reservation policy for providing 33% reservation to the women and considering that there was no other woman available in the category of ex-servicemen and the category of ex-servicemen includes dependents of ex-servicemen, the writ petitioner was held entitled for consideration. It also took into consideration the judgment passed by Hon'ble the Supreme Court in ***Rajesh Kumar Daria vs. Rajasthan Public Service Commission and others, 2007(8) SCC 985***. The view taken by the learned Single Judge therefore cannot be said in any manner to be unjustified nor can we say that the relief granted to respondent No.1 herein (original writ petitioner) was wrongful and unjustified. She was entitled for consideration and the appointment on the post more so as there was no other candidate available from the women category and there being 33% reservation available for women category even in ESM category. The respondent-State was, therefore obliged to have offered her appointment after considering her candidature in terms of the orders passed by learned Single Judge which does not warrant interference.

5. We notice that she has been however appointed in August, 2024 and her appointment therefore has to be deemed from the date within three months from the date of passing of the judgment of the learned Single Judge and would relate back from the date the other persons were given appointment notionally. She would get the additional benefit from the date of the judgment passed by the learned Single Judge including seniority would have been assigned to her, in terms of the place in the merit as has been observed by the learned Single Judge.



6. The contention of the appellant, therefore, in view of above, would not be sustainable. As far as the case of the appellant is concerned, we however find that the view taken by the learned Single Judge for setting aside the selection and appointment of respondent No.12 (appellant herein) was not warranted as he had already joined his services in 2014. More so has come on record during the pendency of this appeal, posts were available with the department and such a statement was recorded at bar by the Court while admitting the present appeal. The respondent No.12 could have been allowed to continue on the said post as it is a case where there has been error in calculating the post and denied 33% reservation to the women. We, therefore, save the appointment of respondent No.12-appellant herein and as he has already attained superannuation, we need not say anything further except to direct respondent No.1 to give him all consequential benefits of retirement.

7. With the aforesaid observations, we dispose of this appeal.

8. No costs.

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In view of above, the contempt proceedings are dropped. We expect the State to comply our directions in true letter and spirit within one month henceforth.

(SANJEEV PRAKASH SHARMA)
JUDGE

January 21, 2025
seema

(MEENAKSHI I. MEHTA)
JUDGE

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