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Aradhana Vs. Unknown

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Court : Punjab and Haryana

Decided On : Feb-05-2014

Appellant : Aradhana

Respondent : Unknown

Judgement :

CWP No.22184 of 2011 [1].IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH C.W.P.No.22184 of 2011 (O&M) Date of decision: 5.2.2014 Aradhana .Petitioner v.

State of Punjab and others CORAM: HON'BLE Mr.JUSTICE RAJESH BINDAL Present: Mr.Kapil Kakkar, Advocate for the petitioner.

Mr.Inder Pal Goyat, Addl.

Advocate General, Punjab.

Mr.Bhupender Singh, Advocate for respondent No.5..Rajesh Bindal, J.

The petitioner, who was a candidate for the post of Math Mistress in B.C.(Female) Category, has filed the present petition seeking a direction to the respondents to offer her appointment, as candidates lower in merit in her category have been appointed.

Learned counsel for the petitioner submitted that 7654 posts of teachers in different subjects were advertised on 23.9.2009.

This included 1275 posts of Math Mistress.

As per the advertisement issued, the applications were to be submitted upto 9.10.2009.

Out of the total posts, 50% were reserved for male, whereas 50% were reserved for female.

Subsequent to the advertisement, a corrigendum was issued in the newspaper on 27.9.2009 amending condition No.6 of the advertisement, which required filing of a certificate of B.C.category.

Now the same was required to be filed in terms of the latest instructions issued by the Government as against the earlier instructions issued.

The candidates were given further opportunity to make correction in their applications already filed on-line upto 23.10.2009.

Within the time permitted in the fiRs.advertisement issued, the petitioner submitted his application vide Kumar Manoj 2014.02.12 09:07 I attest to the accuracy and integrity of this document CWP No.22184 of 2011 [2].registration No.20034640.

The petitioner secured 58.592% marks in the provisional merit list in B.C.Category.

She was placed at Sr.No.254.

In the initial counselling, the candidates upto the merit of the petitioner were not called, however, in the counselling held on 8.7.2011, the petitioner was also called.

When she appeared, her candidature was rejected on the ground that B.C.certificate is in the name of the husband and was issued after the cut- off date, namely, 9.10.2009.

Learned counsel for the petitioner further submitted that immediately after the advertisement for the posts of Math Mistress appeared in the newspaper, the petitioner applied for issuance of B.C.Certificate.

The report was made by the Patwari on 7.10.2009.

However, thereafter the same remained pending with Tehsildar, who signed the same only on 22.10.2009.

On account of this delay, the petitioner cannot be made to suffer.

Even otherwise in the corrigendum, as published in the newspaper on 27.9.2009, the candidates were given liberty to submit fresh certificates in terms of the latest instructions issued by the government.

The correction could be made in the application submitted on-line upto 23.10.2009.

The certificate had been issued prior thereto.

In the light of the aforesaid facts, the candidature of the petitioner could not be rejected on that ground.

Still further, the submission was that persons lower in merit than the petitioner have already been appointed, namely, respondent No.5 secured 57.846% marks, whereas respondent No.6 secured 57.513% marks.

They were below in merit as compared to the petitioner.

In support of the plea that the certificate even if produced on the date of counselling should have been considered and the candidature of the petitioner could not be rejected on the ground, reliance was placed upon a judgment of this court in C.W.P.14796 of 2011- Parminder Kaur v.

State of Punjab and otheRs.decided on 15.2.2013.

He further submitted that 67 posts of Math Mistress are still lying vacant in B.C.Category in terms of the information furnished by the office of the Director,

Education Department (Senior Secondary).Punjab dated 14.11.2013.

On the other hand, learned counsel for the respondents submitted that the present petition deserves to be dismissed on account of Kumar Manoj 2014.02.12 09:07 I attest to the accuracy and integrity of this document CWP No.22184 of 2011 [3].delay and laches as the appointment is sought with reference to the advertisement issued for appointment of Math Mistress in September, 2009.

The petitioner applied for issuance of certificate of B.C.category only on 7.10.2009, i.e., two days prior to the last date fixed for submission of application, hence, she is responsible for delay, as some time is required for verification and issuance of the certificate, for which fault cannot be found with the authorities.

In any case, it was the duty of the petitioner to have got the certificate before the last date fixed for submission of application.

She should have applied well within time.

It was further submitted that after the selections in question, fresh selections have been made in the year 2013, hence, it would not be appropriate to consider the case of the petitioner for appointment pertaining to the posts, which were advertised in the year 2009.

That will create anomalous position.

There are numerous candidates like the petitioner.

Granting relief to the petitioner at this stage will open a Pandora's box, hence, the petition deserves to be dismissed.

In response to the submissions made by learned counsel for the respondents, learned counsel for the petitioner submitted that in case this court finds merit in the case of the petitioner, she is ready and willing to accept the appointment from the date letter is issued to her without claiming any benefit for the past period, including seniority, pay or even notional fixation etc.The petitioner was alive of her rights and was agitating her claim before the court, hence, the plea of the State that the present petition is belated cannot be accepted.

Immediately after the candidature of the petitioner was rejected in the counselling, which was held on 8.7.2011, the petitioner approached this court.

Any order passed in the present petition will not affect any similarly situated person, as they were not aggrieved of the action of the authorities.

Heard learned counsel for the parties and perused the paper book.

In the case in hand, vide advertisement issued on 23.9.2009, 7654 posts of teaching/non-teaching cadre in the Department of Education were advertised, which included 1275 posts of Math Mistress.

There was reservation of male and female in the ratio of 50:50.

As per the Kumar Manoj 2014.02.12 09:07 I attest to the accuracy and integrity of this document CWP No.22184 of 2011 [4].advertisement initially issued, the candidates applying in the category of B.C.were required to submit a certificate in terms of letters dated 17.1.1994 and 17.8.2005 issued by the Department of Social Welfare, Punjab.

The certificate should have been issued within one year of the last date for submission of application, which was 9.10.2009.

Immediately after issuance of the advertisement, a corrigendum was issued on 27.9.2009 amending condition No.6 of the advertisement along with some other conditions.

The amendment provided that the certificate should be as per the government letter dated 24.2.2009 instead of earlier letters mentioned.

The last date for correction of the application submitted on-line was extended upto 23.10.2009.

The petitioner, in the present case, applied for issuance of a certificate to the effect that she belongs to Backward Class category well before the last date fixed for filing the applications.

The same was issued on 22.10.2009 on the basis of report of the Halqa Patwari dated 7.10.2009.

The report of Halqa Patwari was before the last date fixed for submission of application in terms of the advertisement initially issued, i.e., 9.10.2009 and the certificate had been issued before the last date fixed for up-loading corrected application on the website, which was 23.10.2009.

The petitioner secured 58.592% marks in B.C.Category.

It is not in dispute that the candidates securing 57.846% and 57.513% marks have been given appointment.

The case of the petitioner is that in terms of the information supplied to her vide letter dated 14.11.2013, there are still 67 posts of Math Mistress lying vacant in B.C.category.

In Parminder Kaur's case (supra).a similar issue came up for consideration before this court.

It was pertaining to the selection of Teachers in the selection process in question in the present petition.

In that case, the certificate annexed by the candidate initially was dated 25.4.2008, which was more than one year old.

Though the name of the petitioner therein was in the merit list on the basis of marks obtained, however, she was not selected.

The B.C.Certificate dated 29.10.2009 produced by her at the time of counselling was not considered, as the same was dated after the last date fixed for submission of application.

The plea of the petitioner therein was that the moment she came to know that in the advertisement Kumar Manoj 2014.02.12 09:07 I attest to the accuracy and integrity of this document CWP No.22184 of 2011 [5].dated 23.9.2009, the requirement is to produce a certificate which is not more than one year old, she

applied for issuance of a fresh certificate on 1.10.2009.

After the Halqa Patwari verified the contents, the certificate was issued by Tehsildar on 29.10.2009.

The time, which was taken in the process for issuance of the certificate, was not within the control of the petitioner, hence, she could not be penalised on that account.

The court, while accepting the contention raised by the petitioner therein, opined that since the petitioner had applied for issuance of B.C.certificate to the authorities before the last date fixed for submission of application and there was delay in the process, even if the same was issued after the cut-off date, and finding that the petitioner earlier also had a certificate, which was more than one year old, and the fact is clearly established that the petitioner belongs to B.C.category, a direction was issued to the respondents to consider the candidature of the petitioner for appointment as Punjabi Mistress in Backward Class category.

In the case in hand as well, the petitioner up-loaded her application well within time.

She was placed at Sr.No.254 in the combined merit list in B.C.Category having secured 58.592% marks.

However, considering the corrigendum issued, the petitioner applied for issuance of a fresh certificate on which the Patwari submitted his report on 7.10.2009 and thereafter Tehsildar issued the same on 22.10.2009.

The same was not only before the last date fixed for making correction in the application already up-loaded, which was 23.10.2009, but even before the date when the petitioner was called for counselling on 8.7.2011.

In the circumstances, rejection of the candidature of the petitioner for appointment as Math Mistress was erroneous, as admittedly the candidates lower in merit than the petitioner were given appointment.

As far as the plea of the State regarding the petition being belated, the same is to be noticed and rejected.

Considering the fact that the petitioner appeared in the counselling on 8.7.2011 when her candidature was rejected, immediately thereafter the writ petition was filed in this court in November, 2011, the same cannot be said to be belated.

However, I find merit in the contention raised by learned counsel for the State that in case Kumar Manoj 2014.02.12 09:07 I attest to the accuracy and integrity of this document CWP No.22184 of 2011 [6].the petitioner is given appointment at this stage with reference to the advertisement issued in the year 2009, the same may create anomalous position for the reason that thereafter in the year 2013, fresh selections had been made.

To this, the submission of learned counsel for the petitioner was that the petitioner will not claim any benefit for the past period, as she is ready and willing to accept the appointment from the date the letter is issued to her without claiming seniority, pay fixation etc.from the date persons lower in merit to her were appointed.

For the reasons mentioned above, the writ petition is allowed.

The respondents are directed to offer appointment to the petitioner as Math Mistress in B.C.category as still 67 posts in that category are stated to be lying vacant.

It is made clear that in view of the statement made by learned counsel for the petitioner, the petitioner shall get all the benefits accruing in terms of the appointment on the date of her joining service.

She will not claim any benefit for the period prior thereto on the plea that persons lower in merit in the same selection process were appointed.

(Rajesh Bindal) Judge 5.2.2014 mk (Refer to Reporter) Kumar Manoj 2014.02.12 09:07 I attest to the accuracy and integrity of this document

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