

CWP No. 5854 of 2014 2024:PHHC:022865

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

Reserved on : 16.01.2024

Date of Decision : 16.02.2024

1. **CWP No. 5854 of 2014 (O&M)**

Neetu Sharma ...Petitioner

Versus

State of Punjab and others ...Respondents

2. **CWP No. 10879 of 2023 (O&M)**

Rukhsana and others ...Petitioners

Versus

State of Punjab and others ...Respondents

3. **CWP No. 24399 of 2023 (O&M)**

Navneet Kaur ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Chanchal K. Singla, Advocate and
Mr. Aditya Partap, Advocate, for the petitioner
in CWP No. 5854 of 2014.

Mr. D. S. Patwalia, Senior Advocate assisted by
Mr. Gaurav Rana, Advocate, for the petitioners
in CWP No. 10879 of 2023.

Mr. Ritesh Aggarwal, Advocate, for the petitioner
in CWP No. 24399 of 2023 and for respondent no.8
in CWP No. 5854 of 2014.

Mr. Charanpreet Singh, Assistant Advocate General, Punjab.

Mr. G. S. Bal, Senior Advocate assisted by
Mr. J. S. Randhawa and Mr. A. D. S. Bal, Advocates,
for respondent nos. 3, 4, 6 and 7 in CWP No. 5854 of 2014.

Ms. Deepika Bagri, Advocate for
Mr. Anupam Singla, Advocate, for respondent no. 3
in CWP No. 10879 of 2023.

SANJEEV PRAKASH SHARMA, J.

In CWP No. 5854 of 2014, Neetu Sharma is the petitioner and Rukhsana, Prabhjeet Kaur, Amandeep Kaur, Mandeep Kaur, Kawaljit Kaur and Navneet Kaur are respondent nos. 3 to 8, respectively. Respondent no. 5 Amandeep Kaur was deleted from the array of respondents vide order dated 10.08.2018 at the request of petitioner Neetu Sharma.

2. The other two writ petitions, namely, CWP No. 10879 of 2023 has been filed by Rukhsana, Kawaljit Kaur, Prabhjeet Kaur and Mandeep Kaur, and CWP No. 24399 of 2023 has been filed by Navneet Kaur, who are Respondent Nos. 3, 4 and 6 to 8 in CWP No. 5854 of 2014.

3. As the points of determination are in relation to the same selection process under the advertisement, all the three cases have been heard together and are being decided together. With a view to adjudicate facts of the case as mentioned by the respective parties in the writ petition of Neetu Sharma are being referred to, however, facts of other two writ petitions would also be referred to at the appropriate stage hereinafter.

4. Petitioner Neetu Sharma has approached this Court with a grievance that she had applied for the post of Punjabi Language Mistress (the word mistress is although inappropriate but is a term being used by the State Government and therefore this Court would not delete it, however, would refer to it as 'Teacher' hereinafter keeping in view the observations of the Supreme Court with regard to use of appropriate terminology while addressing the female gender).

5. The petitioner, *inter alia*, prays for quashing of appointments of respondent nos. 3 to 8 and also further prays for considering her case for appointment in their place on the ground that she possesses higher merit than the said respondents, although they were lower in merit while excluding the petitioner.

It is her case that the appointment offered to respondent nos. 3 to 8 was wrongful. They could not have been appointed over and above the persons higher in merit by treating them in a different category to which they did not belong.

6. Briefly stated, the posts were advertised wherein there were 12 posts available for Punjabi Language Teachers (male and female) under the Freedom Fighter category. As per the earlier circular issued by the department, the selection for filling up the Freedom Fighter category posts would be conducted by first taking into consideration the instructions dated 19.06.1961. The wards of Freedom Fighter category, who are son/ daughter, paternal grand-son/ grand-daughter and maternal grand-son/ grand-daughter of Freedom Fighters would be considered for appointment with 2% reservation in Class-1 and Class-2 and 1% reservation in Class-3 and Class-4 services of the State Government. Later on, vide another circular dated 27.11.2000, it was uniformly resolved that only 1% posts would be reserved for all class posts. As per circular dated 28.07.2011, the sons and daughters of the Freedom Fighters will be given first preference/ priority before paternal grand-son/ grand-daughter and maternal grand-son/grand-daughter. It was further provided that in case of absence of sons/ daughters, this facility will be given to paternal grand-sons/ grand-daughters and maternal grand-sons/ grand-daughters.

7. At this stage, it would also be necessary to notice that in a case decided by this Court on 06.07.2009 **Jaspreet Kaur vs State of Punjab and others** 2010 (3) SCT 416, the Court took into consideration the earlier circulars and held that the earlier circular does not anywhere provide that the son's son and son's daughter shall be given preference over daughter's son and daughter's daughter, and therefore, the merit was to be considered inter-se amongst the candidates and

accordingly it allowed the writ petition filed by the daughter's daughter of a freedom fighter to be offered appointment as she was higher in merit.

8. Keeping in view the aforesaid law, the circulars and the facts of the present case which have been culled out from the writ petition filed by petitioner herein Neetu Sharma as well as the writ petitions filed by the petitioners/ respondents individually, it is noticed that in pursuance to notification / advertisement published on 23.09.2009, petitioner Neetu Sharma in her application form has mentioned herself to be in the category of Freedom Fighter Grandchildren. While from perusal of the original forms of the respondents, it is noticed that they all have applied as Freedom Fighter son/ daughter. However, the documents which have been filed along with the application forms, all of them have filed certificate to be the grandsons/ granddaughters of the freedom fighter.

9. From the reply, which has been filed by the State Government, it is apparent that relying upon the application form the respondents were offered appointments over and above rest of the candidates, giving them first preference, treating them as sons/ daughters of the freedom fighter. The respondents were appointed, giving them first preference whereas petitioner Neetu Sharma was denied the appointment as she was treated the grandchild, although she was higher in merit than the respondents. The said preference given to the respondents was on the premise that they were the sons and daughters of a freedom fighter although they were actually grandchildren. As pointed out hereinabove, the circular of 2011 allowed Appointing Authority to give preference to son/daughter of freedom fighter over paternal grandson/ granddaughter or maternal grandson/ granddaughter.

10. Learned counsel for the petitioner has vehemently argued that the respondents are guilty of misrepresentation and the authorities have wrongly

appointed them by-passing the inter-se merit and thereby denying Neetu Sharma petitioner her rightful claim. She has submitted that she has secured 28th rank. It is submitted that had the respondents been treated as grandchildren of the freedom fighter, no preference could have been given to them and in this way, they have taken away the rightful claim of petitioner Neetu Sharma for appointment. It is stated that all 19 candidates were present during counseling and by giving preference to the respondents, the posts were filled even though higher meritorious candidates were available including the petitioner, and therefore, she prays for quashing of their appointment and also further prays that she should be given appointment on the said post.

11. The State has filed its reply and it is submitted that against the advertisement issued on 28.09.2009, selection process was finalized in the year 2012 and subsequently again Department of Education advertised 5078 posts including 443 posts of Punjabi Language Teacher (male and female). The persons were appointed initially on contract basis and so far as respondents are concerned, their services were regularized with effect from 06.04.2014. They have been working on regular posts. The writ petition has been filed in the year 2014 with the sole purpose to obtain the benefit of regular pay scale as earlier the post was only contractual in nature. They have, therefore, taken the objection of the writ petition suffering from delay and laches. It is also submitted that the petitioner never raised objection at the time of counseling and thereafter.

12. Respondent Nos. 3, 4 and 6 to 8 in their reply submitted that they have not given any false information and their documents were scrutinized. In the certificates it is specifically mentioned that they are grand children of the Freedom Fighter. Mentioning in the form son and daughter is a general mentioning relating to the category. There is no different category relating to son or daughter and

grandson or granddaughter. Learned counsel for the respondents argued that merely mentioning of son and daughter instead of grandson and granddaughter of the freedom fighter would not be presumed to be a case of misrepresentation, more so as the original certificate of ward of Freedom Fighter specifically mentions each and every case of the respondents that they are grandson/ granddaughter of the freedom fighter. It is further argued that if the respondents have erroneously given the appointment leaving out higher meritorious candidates, it cannot be said to be their fault.

13. So far as the other two writ petitions, namely, CWP No. 10879 of 2023 filed by Rukhsana, Kawaljit Kaur, Prabhjeet Kaur and Mandeep Kaur, and CWP No. 24399 of 2023 filed by Navneet Kaur, are concerned, they have assailed the subsequent notices of termination of their services on the ground that they have wrongfully obtained appointments. It is submitted that it was not on account of their fault as they have appended the documents specifically mentioning that they are the grandchildren of the freedom fighters and after nine years there is no occasion to terminate their services. Learned counsel for the respondents also pointed out that so far as the respondent State is concerned, it was already party to the writ petition filed by Neetu Sharma (supra) and supported the appointment of the respondent-petitioners at that stage and has turned around and now seeks to set aside their appointments solely on that basis.

14. Learned counsel for Respondent Nos. 3, 4 and 6 to 8 submitted that it is not a case where the grandsons/ granddaughters are not entitled for consideration under the Freedom Fighter quota. It is only on account of non-availability of the son/ daughter of the Freedom Fighter that grandchildren of the Freedom Fighter are considered and the respondent-State has not come out with a case that there was any son or daughter available for appointment in whose place Respondent

Nos. 3, 4 and 6 to 8 were appointed. If merit has not been followed, the fault would not lie on Respondent Nos. 3, 4 and 6 to 8 and they are not supposed to know the merit of other candidates.

15. Learned counsel for Respondent Nos. 3, 4 and 6 to 8 further submitted that even if the appointment is offered to the more meritorious candidates, it should not result in depriving Respondent Nos. 3, 4 and 6 to 8 for continuing in service as they have already put up more than nine years of service and they were working on substantive basis. They have become overaged and have no other post where they can be appointed.

16. I have considered the submissions.

17. The approach adopted by the State Government while conducting the selection appears to be very casual. The documents/ certificates relating to the petitioner and respondents were with the State Government that they are the children/ grand children of the Freedom Fighters. Still the Selection Committee, which was admittedly a team formed by the respondent-State, proceeded to give preferential treatment to them resulting in depriving petitioner Neetu Sharma from her rightful claim for appointment. Her writ petition, therefore, deserves to be allowed to the extent of directing the respondent-State to consider her case for appointment from the date other persons were so appointed treating her higher in merit to the persons, who were appointed in the year 2012.

18. So far as the impugned notice of termination dated 03.05.2023 issued to the petitioners in CWP No. 10879 and 24399 of 2023 is concerned, this Court finds that the respondent-State in its reply has stated that they have also taken departmental action against the concerned official for delaying the notice. However, that would not take away Respondent Nos. 3, 4 and 6 to 8 factually functioning for more than nine years. The said aspect cannot be ignored more so

that now they have become overaged and would not be entitled for any other employment.

19. It is also noticed that apart from petitioner Neetu Sharma, no other person has approached this Court for claiming appointment over and above Respondent Nos. 3, 4 and 6 to 8. One post had fallen vacant on account of respondent no.5 Ms. Amandeep Kaur in CWP No. 5854 of 2014 having left. Thus, it would also not be a case where after giving appointment to petitioner Neetu Sharma, the post would be in excess of the total number of posts filled.

20. This Court has also taken into consideration the law laid down by the Apex Court in similar circumstances where the selection process subsequently held to be based on wrongful merit and the same was revised. See Tejinder Kaur and others vs Lady Constable Raj Kumari and others 2009 (1) SCC 177, Rajesh Kumar and others vs State of Bihar and others 2013 (4) SCC 690 and Vikas Pratap Singh and others vs State of Chhattishgarh and others 2013 (14) SCC 494.

21. In view of the aforesaid, the persons who were appointed, though lower in merit, are allowed to continue and their appointments are saved. This Court following the verdict of Hon'ble the Supreme Court and considering the fact that the petitioners in CWP No. 10879 and 24399 of 2023 (Respondent Nos. 3, 4 and 6 to 8 in CWP No. 5854 of 2014) have continued for ten years and the proposed action is highly belated i.e. after nine years, deem it appropriate to allow them to continue. Their appointments cannot be said to be illegal or based on misleading facts. This Court is satisfied from the perusal of original record, made available to this Court, that all Respondent Nos. 3, 4 and 6 to 8 had submitted their duly certified certificates being grand children of the Freedom Fighters. Thus, it

cannot be said to be misrepresentation on the part of Respondent Nos. 3, 4 and 6 to 8.

22. In view of the above, the action proposed against Respondent Nos. 3, 4 and 6 to 8 is held to be without basis and is unjustified. Therefore, they would be allowed to continue on the said posts. However, their seniority would fall below petitioner Neetu Sharma, who is higher in merit to them. Petitioner Neetu Sharma would be entitled to all consequential benefits viz. seniority, confirmation from the date others were confirmed and also her actual pay fixation. However, the arrears shall be paid notionally. Neetu Sharma petitioner would be entitled for actual benefits from the date of passing of this order after fixation of her salary.

23. The writ petition of Neetu Sharma is partly allowed to the extent of considering her for appointment on the post of Punjabi Language Teacher. As regards the other prayer of quashing of the appointments of respondent nos. 3 to 8 is concerned, the same is rejected.

24. The writ petitions, namely, CWP No. 10879 of 2023 filed by Rukhsana, Kawaljit Kaur, Prabhjeet Kaur and Mandeep Kaur, and CWP No. 24399 of 2023 filed by Navneet Kaur are allowed. They shall be allowed to continue without break in the terms, referred above.

25. All pending applications shall stand disposed of.

26. No costs.

16.02.2024
VS

(SANJEEV PRAKASH SHARMA)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No