

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O. A. No.60/66/2016

Date of decision: 13.09.2018

Reserved on 28.08.2018

...
**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A).**
...

Sonika Sharma, aged 35 years, wife of Sh. Sachin Sharma, R/o H.
No.326/1, Sector 38-A, Chandigarh.

... **APPLICANT**

VERSUS

1. Union Territory of Chandigarh through Secretary to Education, U.T. Civil Secretariat, Sector-9, Chandigarh.
2. Director Public Instructions (Schools) Chandigarh, Additional Deluxe Building, Sector-9, Chandigarh.

... **RESPONDENTS**

PRESENT: Sh. R.C. Sharma, counsel for the applicant.
Sh. Arvind Moudgil, counsel for the respondents.

ORDER (Oral)

...
SANJEEV KAUSHIK, MEMBER (J):-

1. Present O.A. has been filed by the applicant seeking issuance of direction to the respondents to offer her appointment against post of Mistress Social Studies, in view of the fact that the last candidate, who had been offered the appointment on the basis of final merit list has refused the offer and applicant being in waiting list acquires right for appointment.
2. Facts which led to filing of the O.A. are that that Education Department of Chandigarh Administration issued advertisement on

05.08.2007 notifying 536 posts of teachers in different categories i.e. NTT/JBT/Master/Mistress in various disciplines including Social Studies. The applicant being eligible and already working as TGT (Social Studies) under Serva Sikhsha Abhiyan on contract basis since 2005 applied and was subjected to selection result of which was declared on 10.02.2015. The name of the applicant finds mention at serial no.55 and candidates up to 54 have been offered appointment. It is the case of the applicant that one Ms. Savita Devi Shehrawat who was at serial no.53 did not join and person at serial no.54 has already joined, therefore, applicant being at no.55 has right to be appointed against post which fell vacant due to non-joining of person at serial no.53, for which the applicant submitted a representation which could not evoke any response. Hence this O.A.

3. Respondents initially filed short written statement wherein they contradicted the averments made in the O.A. and submitted that selection commenced in the year 2007 when notification was issued and finalized by offering appointment to eligible candidates. Since applicant is in waiting list and there is no vacancy, therefore, she cannot be offered appointment. Based upon the available pleadings, respondents were asked to file a specific affidavit and clarify if Ms. Savita Devi Shehrawat did not join, then how they have filled up that post. Pursuant to that Director, School Education has filed additional affidavit wherein he has clarified that change in selection criteria was challenged before this Court by filing O.A. No.1000/CH/2010, which was allowed and ultimately it became subject matter before the Hon'ble jurisdictional High Court in CWP No.16336 of 2013, which was decided vide judgment dated 24.06.2014 directing the respondents to

revise merit list in the subjects of Social Studies and Maths. Thereafter, respondents have recast the merit list and in revised merit list though applicants' name stood at serial no.55 as in earlier list but one Ms. Deepinder Bhatia who secured 54.9 marks was offered appointment. While filing the written statement, respondents had over-looked that Smt. Savita Devi Sherawat who had secured 51.05 marks was offered appointment due to over sight while Ms. Deepinder Bhatia could not be given offer though she had secured higher marks. Therefore, since vacancy offered to Ms. Savita Devi Sherawat has already been offered to Ms. Deepinder Bhatia, therefore, applicant who secured 50.96 marks and stood at serial no.55 cannot be offered appointment. One Ms. Arpana Mahajan who was at serial no.54 has already been given appointment. Averment made in the affidavit reads as under:

- "1. That the applicants have filed an O.A. No.060/00066/2016 and the Hon'ble Central Administrative Tribunal, Chandigarh Bench, Chandigarh, for considering her candidature to the post of Social Studies Mistress against the recruitment notice issued in the year 2007.
2. That the true facts are that the respondent no.2 advertised 536 posts of Masters/Mistresses/JBT/NTT and selection to this advertisement was subject wise finalized during the year 2009 to 2012 in different phases.
3. That the applicant applied for the post of Social Studies under general category for which 50 posts were advertised. However, due to non-joining of 4 candidates in the selection process, candidates upto Sr.no.54 in the merit list were considered for selection process.
4. That this selection process was put to litigation on the ground of change in selection criteria in the midway by different candidates. A number of Court cases were also filed before this Hon'ble Tribunal such as O.A. No.1000/CH/2010 titled as Shalu Chawla vs. UOI & others, Harminder Kaur vs. UOI and finally the selection criteria was finalized by the order of the Hon'ble Punjab and Haryana High Court in CWP No.16336 of 2013 titled as Secretary Education and Ors. Vs. Arpana Mahajan. As per the

said order merit list was revised (Annexure A-5) on 24.06.2014 in the subjects of Social Studies and Maths.

5. That in the revised merit list in the subject of Social Studies only two changes/replacements occurred i.e. Smt. Isha Garg (Sr. no.53) and Shalu Chawla (Sr. no.54) were replaced with new candidates Smt. Savita Devi Sherawat (Sr. no.53) and Smt. Arpana Mahajan (Sr. no.54) respectively. Accordingly, Smt. Savita Devi Sherawat vide memo dated 01.07.2014 was issued offer of appointment to the post of Social Studies Mistress with the direction to submit her medical fitness certificate within specified period but she did not respond. Final notice was also issued to her. At this stage only one post under General category out of 50 posts was vacant.

6. That Mrs. Deepinder Bhatia (Sr. no.82) of the merit list filed O.A. No.147/PB/2013 titled as Deepinder Bhatia vs. U.T. Chandigarh and others and the same was decided on 25.07.2014. Review application filed by Education Department vide RA no.060/00003/2015 in M.A. No.060/00059/2015 in O.A. No.147/PB/2013 was dismissed vide order dated 19.03.2015. In compliance with the order of Hon'ble Tribunal, merit of Mrs. Deepinder Bhatia was re-calculated and she was offered appointment as her score was higher than the cut of score of the last selected candidate (Sr. no.54). Last vacancy available was filled up with the appointment of Mrs. Deepinder Bhatia.

7. That all 50 posts of TGT Social Studies under General Category advertisement in 2007 have already been filled up. Accordingly, offer of appointment for the post of TGT Social Studies under General category cannot be issued to next candidate i.e. Mrs. Sonika Sharma (sr. no.55)."

Therefore, it is prayed that since there is no vacancy, therefore, applicant cannot be offered appointment.

4. We have heard learned counsel for the parties.
5. Sh. R.C. Sharma, learned counsel for the applicant vehemently argued that that at the first instance when applicant filed present O.A. at that time there was a clear vacancy against non-joining of Smt. Savita Devi Sherawat, who was at serial no.53 but pending O.A. since result was revised, therefore, though the name of the applicant stood at 55 but some more candidates who were earlier lower in merit than

the applicant were shown senior due to recalculation of marks. He submitted that since applicant acquired her right before revision of result as per direction of this Court, therefore, she cannot be put into disadvantageous position. To buttress his submission, he placed reliance on judgment dated 26.04.2014 in CWP No.12835 of 2012 (O&M) titled **Sahil Aggarwal vs. State of Punjab and others** and prayed that the O.A. be allowed and respondents be directed to offer her appointment against available vacancy.

6. Per contra, Sh. Moudgil, learned counsel for the respondents reiterated what has been stated in the written statement and affidavit. However, he submitted that judgment relied upon by the applicant in the case of Sahil Aggarwal (supra) does not help the applicant.
7. We have given our thoughtful consideration to the entire matter.
8. A conjunctive perusal of pleadings makes it clear that on facts, there is no dispute between the parties. While declaring result on 10.02.2015, the name of the applicant stood at serial no.55. Subsequently, the entire result was revised and a revised merit list was prepared in terms of direction of the Hon'ble High Court and based upon that, candidates, who were earlier not in merit list, were included in the list and offered appointment. Though as per averment in affidavit, Ms. Savita Devi Sherawat whose name stood at serial no.53 with 51.05 marks was offered appointment but did not join but against that vacancy respondents have already given appointment to Ms. Deepinder Bhatia on 29.12.2015 i.e. much prior to offering appointment to Ms. Savita Devi Sherawat. The respondents have clarified that these facts could not be considered at earlier point of

time while filing written statement. Considering that Ms. Deepinder Bhatia who secured 54.90 marks i.e. more than the applicant, who secured 50.96 marks, has now been appointed consuming the vacancy and there being no vacancy, the applicant could not be given offer. The applicant has not been able to rebut averment made in the affidavit in that relevant connection. She could not prove that any vacancy is left where she should be adjusted. Considering that there is no vacancy, we cannot issue any direction on her claim. The judgment relied upon by the applicant in the case of Sahil Aggarwal (supra) also does not help her because in that case the applicant therein was offered appointment based upon first select list, which was subsequently revised and between that period, he had served the respondent department for a period of 7 years. Considering the equity only, Court came to the conclusion that for no fault of a person, who was offered appointment and served respondent department for 7 years, he could not be thrown out at that stage, therefore, he was allowed to continue in service whereas in the present case, applicant has not even been offered appointment. Therefore, we find no merit in the O.A. The same is accordingly dismissed. No costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 13.09.2018.
Place: Chandigarh.

`KR'