

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

...  
**ORIGINAL APPLICATION NO.060/000218/2016**

**Chandigarh, this the day 12<sup>th</sup>September, 2018  
(Reserved on 31.08.2018)**

...  
**CORAM:HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &  
HON'BLE MS. P. GOPINATH, MEMBER (A)**

...  
Shalu Chawla, aged 44 years, d/o Late Shri Virender Chawla,  
social Studies Mistress, Govt. Model High School, Sector 38 (West),  
Chandigarh Group 'B'

**....Applicant**  
**(Present: Mr. Gaurav Sharma, Advocate)**

**Versus**

1. Union of India through the Secretary Education, Chandigarh Administration, Union Territory, Civil Secretariat, Deluxe Building, Sector 9, Chandigarh.
2. The Director of Public Instructions (Schools) Union Territory, Chandigarh Administration, Sector 9, Chandigarh.

**Respondents**

**(Present: Mr. Aseem Rai, Advocate)**

**ORDER**

**P.GOPINATH, MEMBER (A)**

1. Applicant was appointed as Lecturer in Political Science, on contract basis in the Union Territory, Chandigarh, in the year 1999. Subsequently, he was appointed, and joined as TGT (Social Studies) again on contract basis in the U.T. Chandigarh w.e.f. 04.07.2002 and continued as such.

2. In the year 2007, the applicant applied for the post of Social Studies Mistress (on regular basis), in response to an advertisement inviting applications for 536 posts of Master/Mistress in various subjects, out of which 273 posts were for Social Studies/Mistress in the pay scale of Rs. 5480-8925. She qualified the written test and was called for interview, but her name did not figure in the final merit list. Similarly placed one Ms.

Raminderjeet, approached this Tribunal, by filing O.A. No. 212/CH/2010, which was allowed while holding that the marks obtained by a candidate at the screening test shall not be added to the ultimate merit, as announced in the advertisement also. The view held by this Tribunal attained finality, with the dismissal of the Writ Petition No. 16747/2011 filed by the Chandigarh Administration. The Review Petition No. 55/2013 filed by the respondents was disposed of while observing that the dismissal of the RA by the Tribunal gives rise to a fresh cause of action to the Chandigarh Administration for filing an independent petition. Accordingly, the Chandigarh Administration filed another Writ Petition No. 9474 of 2013 challenging the view of this Tribunal that the marks obtained in the written test shall not be added to the final merit list, which was dismissed. The SLP No. 27041/2013 filed by the Chandigarh Administration, against the order of the Hon'ble High Court, was also dismissed by the Hon'ble Supreme Court.

3. In the meantime, the present applicant also filed O.A. NO. 1000/CH/2010, which was allowed, while granting her similar benefits as given to Raminderjeet, being similarly situated, vide order dated 15.02.2012, which was further upheld by the Jurisdictional High Court, while dismissing the CWP No. 17566 of 2012, filed by the respondents. The applicant was then offered appointment letter dated 16.11.2012, in pursuance of which she joined the Chandigarh Administration as Mistress (Social Studies).

4. While implementing the directions of this Tribunal, as upheld by the High Court in favour of the applicant, the services of one Arpana Mahajan were terminated, to make place for the applicant.

She approached this Tribunal pleading that she was not the least meritorious candidate and her termination is bad in law. The O.A. was allowed vide order dated 28.03.2013. The Writ Petition No. 16336/2013 filed at the instance of the respondents was dismissed vide order dated 31.01.2014 by the High Court while observing that, the revised merit list has to be prepared by taking into consideration the educational qualification, objective test and the marks obtained in the interview. On revising the merit list, following the criterion as directed in the judgment dated 31.01.2014 by the Hon'ble High Court, the applicant was placed at Sr. No. 76 in the revised merit list. As there were only 50 vacancies of Master/Mistress (Social Studies), her services were terminated w.e.f. 07.10.2014.

5. Aggrieved thereby, the applicant filed O.A. No. 060/00932/2014 on a plea that one similarly situated Isha Garg, Mistress (Social Studies), who also could not make it to the merit list, had been allowed to continue, in view of the hardships being faced by her and the fact that she had resigned from her earlier job to join the new post under Chandigarh Administration. Applicant prayed for similar treatment as given to Ms. Isha Garg, as she was similarly circumstanced. The O.A. was disposed of with a direction to the respondents to consider the representation of the applicant to give her similar treatment to continue in service, as has been given to Isha Garg. In compliance of the directions of this Court, the representation of the applicant has been considered and rejected vide order dated 16.02.2016, stating that the case of the applicant is distinguishable from that of Isha Garg. Hence this O.A. It would be appropriate to highlight here that the applicant

was continuing in the regular appointment on the basis of stay given by the High Court in CWP NO. 5559/2016 and subsequently by this Tribunal in this O.A.

6. Respondents have filed written statement, wherein they submit that the claim of the applicant to allow her to continue in service on the ground of parity with another candidate i.e. Isha Garg was not sustainable, for the reason that Isha Garg made her grade in the final merit list at Sr. No. 58 whereas the applicant was at Sr. No. 76, which is far beyond the cut off mark of Sr. No. 54, last selected candidate in the merit list. It is averred that the applicant was offered appointment inadvertently in pursuance of selection criteria which has ultimately not withstood judicial scrutiny, therefore, she cannot claim any vested legal right arising from such erroneous appointment.

7. Heard learned counsel for the parties.

8. Learned counsel for the applicant vehemently raised the argument of discrimination by the respondents, stating that the applicant has been discriminated vis-à-vis another similarly placed candidate Isha Garg, which is in violation of Article 14 of the Constitution of India. He argued that the applicant has been in service of the Chandigarh Administration since 1999 firstly as Lecturer in Political Science and then as TGT (Social Studies), both on contract basis, and she had to resign from her earlier job to join on the present regular post, therefore, the loss of job, at this point of time, when she is over-aged for applying elsewhere, would cause irreparable loss to her.

9. Learned counsel for the respondents reiterated the averments, pleaded in the written statement.

10. We have given our thoughtful consideration to the matter and perused the pleadings available on record.

11. Admittedly, the applicant was selected and appointed to the post of Mistress (Social Studies) in the year 2012, at the first instance, on the basis of merit-list prepared by the Chandigarh Administration. She has continued serving the respondents as such since then. However, on preparing a revised merit list, on the basis of directions of the Hon'ble High Court in the case of Arpana Mahajan (supra), the applicant could not make the grade, and therefore, the respondents ordered to terminate her services. There was no mis-representation or fraud, attributable to the applicant in the erroneous evaluation by the respondents and for no fault on her part, she cannot be made to suffer, facing termination of her services. She has been in service, on contract basis, of the Chandigarh Administration since 1999 and resigned from her earlier job to join the present post offered to her on regular basis, in the year 2012. As of today, she has become over-aged, to apply for any fresh recruitment by the Govt., leaving no hope for getting an alternate job to earn her livelihood.

12. In the above circumstances, when there was no malpractice in the examination and no misrepresentation or fraud at the hands of the applicant, who has been serving the department since 1999 diligently and with full satisfaction of the department, she cannot be ousted all of a sudden, for the faulty criteria adopted by the respondents in preparing the merit list, duly corrected by the High Court. The loss of job, at this juncture, would put her in economic crisis and hardship. She, genuinely deserves compassion, as has been shown by the respondents in the case of Ms. Isha Garg, who

was placed in similar circumstance. In holding this view, we are fortified by the judgment of the Hon'ble Supreme Court in the case of **Vikas Partap Singh and Ors. Vs. State of Chhattisgarh and Ors.** (Civil Appeal No. 5218-5319 of 2013 dated 09.07.2013), wherein it has been held as under:-

“Admittedly, in the instant case the error committed by the respondent-Board in the matter of evaluation of the answer scripts could not be attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit list nor has the preparation of the erroneous model answer key or the specious result contributed to them. Had the contrary been the case, it would have justified their ouster upon re-evaluation and deprived them of any sympathy from this Court irrespective of their length of service.

In our considered view, the appellants have successfully undergone training and are efficiently serving the respondent-State for more than three years and undoubtedly their termination would not only impinge upon the economic security of the appellants and their dependants but also adversely affect their careers. This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the revised merit list.”

13. In another identical case of **Rajesh Kumar & Others Vs. State of Bihar & Others etc.** (SLP (C) NO. 5752-53 of 2008 decided on 13.03.2013), the Hon'ble Supreme Court came to the rescue of the persons, who were appointed in pursuance of erroneous evaluation and had been working for years, observing as under:-

“It goes without saying that the appellants were innocent parties who have not, in any manner, contributed to the preparation of the erroneous key or the distorted result. There is no mention of any fraud or malpractice against the appellants who have served the State for nearly seven years now. In the circumstances, while inter-se merit position may be relevant for the appellants, **the ouster of the latter need not be an inevitable and inexorable consequence of such a re-evaluation.** The re-evaluation process may additionally benefit those who have lost the hope of an appointment on the basis of a wrong key applied for evaluating the answer scripts. Such of those candidates as may be ultimately found to be entitled to issue of appointment letter on the basis of their merit shall benefit by such re-evaluation and shall pick up their appointments on that basis according to their inter se position on the merit list.” (emphasis provided)

14. Moreover, when one Isha Garg, who does not figure in the merit list, has been allowed by the respondents to continue in the post, the applicant has been discriminated against by the respondents, despite the fact that she is similarly situated. The contention of the respondents that since Isha Garg earned higher inter-se position in the merit list, which is nearer to the cut off marks and hence has been shown compassion, keeping in view her adverse circumstances, does not hold merit. While considering merit, those near cut-off marks or far away from the cut-off are similarly placed i.e. both are beyond the select merit list cut-off mark.

15. The fact remains that both the applicant and Ms. Isha Garg, were offered appointment on the basis of merit list, initially drawn-up by the respondents, and could not make the grade in the re-drawn merit list. Therefore, such discrimination on the basis of the inter-se position of two candidates, who are placed beyond the cut-off for selection now, and had both been appointed earlier and whose services have been under the threat of termination subsequently, on the basis of a revised merit list, is not permissible under law. The applicant, who is in similarly circumstanced as Ms. Isha Garg, also deserves compassion and be given similar treatment. Respondents do not have an indefeasible right to act in an arbitrary manner. The discretion used by respondents to offer appointment to Isha Garg is not one given by the employment notice, nor has the respondent produced any rule to support their action.

16. The Apex Court in the case of **M. Nagraj Vs. Union of India & Others**, (2006) 8 SCC 212 had drawn up a composite definition

of equality. Equality was defined in the judgment as having two facets – formal equality and proportional equality. Formal equality exists in rule of law – a facet not exercised by the respondents in Isha Garg or applicant's case. The second facet of equality is proportional equality or egalitarian equality which when applied to Isha Garg would apply to applicant also.

17. In view of the above discussion, the O.A. is allowed. Impugned order dated 16.02.2016 (Annexure A-1) is hereby quashed. The respondents are directed to allow the applicant to continue in service. She shall, however, be placed at the bottom in the seniority list of selected candidates. This relief given is not to be quoted as a precedent in any other case. MA No. 060/00450/2018 also stands disposed of accordingly.

**(P. GOPINATH)**  
**MEMBER (A)**

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

**Dated: 12.09.2018**

'mw'