

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

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**CWP No.17309 of 2009 (O&M)**

**Date of Decision: 30.08.2011**

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Jaspinder Kaur

. . . . Petitioner

VS.

State of Punjab & Anr.

. . . . Respondents

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**CORAM : HON'BLE MR.JUSTICE SURYA KANT**

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*1. Whether Reporters of local papers may be allowed to see the judgment?*

*2. To be referred to the Reporters or not?*

*3. Whether the judgment should be reported in the Digest?*

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Present: Ms. Maninder, Advocate for the petitioner

Ms. Sudeepti Sharma, DAG Punjab

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**SURYA KANT, J. (ORAL)**

(1). The petitioner belongs to the reserved category of Scheduled Caste (Balmiki & Mazbi) Sikh. She competed for the post of Math Mistress and got 59.025% merit points. The petitioner having denied appointment has approached this Court seeking a mandamus for her appointment on the plea that the candidates lower in merit have been appointed.

(2). The respondents in their very first reply/affidavit dated 9<sup>th</sup>/12<sup>th</sup> July, 2010 came up with the following plea:-

*“1. That the petitioner has filed the present petition in this Hon’ble Court with the prayer to quash the impugned order dated 16.2.2009 (Annexure P10) vide which the claim of the petitioner for the*

*appointment as Math Mistress against the reserved post meant for Scheduled Caste Mazbi has been rejected. In this regard, it is submitted that as per the advertisement dated 27.10.2006 given by C-DAC there were in all 25 posts of Math Mistresses in respect of the Scheduled Cast (Mazbi Balmiki) category. In the first round of scrutiny for candidates belonging to Scheduled Caste (Mazbi Balmiki) category for the post of Math Mistress, the cut off merit of the candidates was upto 64.275 and they were called for scrutiny of their documents, but since the merit of the petitioner was lower, she was not covered therein. In the first round of scrutiny the candidates belonging to the category of the petitioner, 5 posts were filled up by appointing suitable candidates against the 25 posts. For the remaining 20 vacant posts a public notice dated 17.02.2008 was issued and the candidates belonging to the petitioner category upto 45.00 merit were called. The petitioner whose merit was 59.025, as per her own version could press her claim for the second round of scrutiny held on 25.02.2008. As stated by the petitioner she could not appear for second round of scrutiny due to her ill health. She was, however,*

*required to take exemption from the department for this purpose or she could authorize someone else to appear along with her medical certificate.*

2. *That after the second round of scrutiny 11 posts of Scheduled Casts (Mazbi Balmiki) category remained vacant. The department issued advertisement on 20.08.2008 for third round of scrutiny and as per her statement, the petitioner appeared along with her medical certificate. In the note No.4 given in the advertisement for the third round wherein it was made clear that:-*

*If any candidate is covered in the cut merit indicated in any of the scrutinizes so far conducted by the C-DAC and this department but could not appear in the scrutinies, the claim of such candidate will not now be considered and this call is not meant for such candidates.*

*As per the above note petitioner could not base her claim for the third scrutiny. On this account the claim of the petitioner was not considered by the High Level Committee during the third scrutiny and the remaining 11 posts of Math Mistresses belonging to Scheduled Casts (Mazbi Balmiki) category were filled up from the Women Candidates belonging to*

*Scheduled Casts (Ramdasia) category, as per the Government instructions.”*

(Emphasis applied)

- (3). It thus appears that the petitioner did not attend the second counseling held on 25.2.2008 though appeared at the time of third counseling when the High Level Committee refused to consider her claim.
- (4). The subsequent pleadings by the petitioner or the respondents are of denial mode and leads nowhere.
- (5). Two issues thus arise for consideration. Firstly, whether the petitioner could not appear for second counseling held on 28.2.2008 for the reasons beyond her control? Secondly whether any candidate lower in merit has been appointed? If the first question is answered in affirmative on finding that the petitioner could not appear for second counseling for the *bona fide* reason of her ailment, the High Level Committee can sympathetically consider her for appointment as per merit. Instead of holding a roving enquiry as to whether or not any candidate lower in merit has been given appointment, it appears that the petitioner has to cross the first hurdle.
- (6). The writ petition is accordingly disposed of with a direction that the petitioner may submit another

representation along with relevant documents to prove that she could not appear for counseling on 25.2.2008 due to her ailment. The competent authority shall ascertain the correctness of the said claim and if satisfied, shall sympathetically consider to condone the delay and exempt the petitioner from appearance in the second counseling. The resultant effect would thereafter be to consider the petitioner for appointment as per her merit.

(7). Ordered accordingly.

(8). The needful shall be done within a period of three months from the date of receipt of a certified copy of this order.

(9). **Dasti.**

**30.08.2011**  
vishal shonkar

**(S u r y a K a n t)**  
**Judge**