

**IN THE HON'BLE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH.**

CIVIL WRIT PETITION NO.

20283
OF 2010

Malkit Singh S/o Sh. Hoshiar Singh,
V.P.O. Dandrala Dhindsa, Tehsil Nabha
DISTT. PATIALA.

..... PETITIONER

VERSUS

- Rep* {
1. State of Punjab through Secretary,
Department of Education, Chandigarh.
 2. Director Public Instructions (EE), Punjab,
Sector 17, Chandigarh.
 3. District Education Officer, (EE), Patiala.

.... RESPONDENTS

Petition under Article 226/227 of the Constitution of India for issuance of writ, order or direction especially in the nature of Mandamus directing the respondents to allot the station to the petitioner forthwith to enable him to join as teaching fellow in pursuance of appointment order dated 26.10.2010 **(Annexure P-8)** as he had already completed all the required formalities i.e. submission of medical certificate, affidavit and verification of antecedents, but even then in illegal and arbitrary manner, he is not being allowed to join and therefore the action of the respondents is not tenable

being violative of the settled proposition of law as enumerated in a catena of decisions.

It is further prayed that the petitioner may be held entitled to all the consequential benefits from the date the person similarly situated have been appointed and special cost be imposed upon the respondents for driving the petitioner to knock at the doors of this Hon'ble Court for the relief which could and should have been granted and this Hon'ble Court may grant any other relief, which it may deem fit and proper in the facts and circumstances of the case.

RESPECTFULLY SHOWETH:

1. That the petitioner is citizen of India and resident of State of Punjab and as such is entitled to invoke the extraordinary jurisdiction of the Hon'ble Court under Article 226/227 of the Constitution of India.
2. That the Respondent No. 2 issued advertisement which was published in the Newspapers on September 5, 2007 inviting applications for appointment of 9998 Teaching Fellows for 3-1/2 years on a consolidated pay against JBT / ETT posts in the Department of School Education (Primary Wing), Punjab which included 485 posts for District Patiala out of which 121 posts were reserved for General (Male) candidates and the last date of submission of applications was 30.09.2007. The advertisement in addition to prescribing the number of posts in each District and the qualification required further laid down the other terms and conditions. Copy of the advertisement dated 05.09.2007, is annexed as **ANNEXURE P-1**.

3. That a perusal of the advertisement Annexure P-1 would show that while making the selection, it was decided to give 5 marks to the candidates who have passed their Middle and Matric examination from the Rural schools. The grant of these 5 marks to the Rural area candidates was challenged by the candidates belonging to Urban Areas by way of filing CWP 6801 of 2008 titled as Sudesh Rani Vs. State of Punjab and 26 other writ petitions in this Hon'ble Court, which are however dismissed by a Division Bench on 20.04.2010. As due to litigation and the various interim orders passed by this Hon'ble Court in these writ petitions, a number of vacancies had remained vacant, therefore, after the dismissal of the cases, the respondents on 11.05.2010 issued public notice to fill-up the vacant posts and the candidates were called to appear for counseling on 14.05.2010. True translated copy of the said public notice dated 11.05.2010 is annexed as **ANNEXURE P-2**.

4. That it would not be out of place to mention here that there was one vacant post in the category of General (Male) in the District Patiala and as such accordingly against the available vacancy 2 candidates namely Sushil Kumar (Registration No. 1016) and the petitioner (Registration No. 1348) having merit marks 53.69 and 53.58 respectively were called for counseling. For the perusal of this Hon'ble Court, true translated copy of the chart giving the details of vacant vacancies in District Patiala is annexed as **Annexure P-3** and photocopy of the list of the candidates available for counseling is annexed as **Annexure P-4**.

5. That as per the public notice Annexure P-2, on the day of counseling, for filling up vacant posts, in the category of general male for

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one seat, only the petitioner appeared as the person at No.1 i.e. Sushil Kumar had already expired. After counseling the petitioner was asked to visit of the office of Respondent No.3 on 19.05.2010 and when he attended the office, he was told that he will be informed telephonically. Thereafter, the petitioner visited the office of Respondent No.3 many times but when no satisfactory reply was given to him, he submitted representation to Respondent No. 3 through registered post on 15.06.2010. True translated copy of the representation dated 15.06.2010 is annexed as **Annexure P-5**.

6. That later on, the petitioner came to know that his name was included at serial No. 121 in the list of selected candidates against the 121 posts of General (Male) Category and even then he was not being issued the appointment order and to be more authenticated, he sought information from the office of Respondent No.3, under Right To Information Act but when the same was not supplied he filed a complaint before the State Information Commission and only thereafter the information was supplied to him vide letter dated 14.09.2010 alongwith the list of the selected candidates and as per his belief, he found his name at Serial No.121 in the list. Copy of the information supplied vide letter dated 14.09.2010 alongwith the list is annexed as **Annexure P-6**.

7. That when despite the information provided under RTI, he was not given the reasons for not appointing him despite his merit, the fact was brought to the notice of State Information Commission and notice was issued to the Public Information Officer, Office of District Education Officer, (Elementary) Patiala to appear on 01.11.2010. Photocopy of the

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notice dated 14.10.2010 issued by State Information Commission in this regard is annexed as **Annexure P-7**.

8. That on receipt of notice Annexure P-7, Respondent No.3 issued appointment order dated 26.10.2010 appointing the petitioner as Teaching Fellow was issued and he was asked to get his medical done and to also submit an affidavit. True translated copy of the appointment order dated 26.10.2010 is annexed as **Annexure P-8**.

9. That as per the terms and conditions of appointment order, the petitioner submitted duly sworn affidavit and also his medical was done by the Civil Surgeon, Patiala. Photocopy of the affidavit dated 27.10.2010 and true translated copy of the medical fitness dated 28.10.2010 are annexed as **Annexure P-9 & P-10**.

10. That after completing all the formalities, i.e. submission of affidavit, agreement, medical fitness report etc. he approached Respondent No.3 to allow him to join as Teaching Fellow. However, the officials working in the office of Respondent No.3, orally told him that unless and until he withdraws the complaint filed by him before the State Information Commission, which was fixed for 01.11.2010, he will not be allowed to join. True translated copy of the representation dated 29.10.2010 submitted by the petitioner in this regard is annexed **Annexure P-11**.

11. That on 01.11.2010, the petitioner hired a taxi at his own expense and brought the officials working in the office of Respondent No.3 to the office of State Information Commission and made a statement regarding

withdrawal of the complaint, so that he may be allowed to join, but even after making the statement and disposal of the case by the State Information Commission, he has not been allowed to join his duty which exemplifies typical bureaucratic attitude of the Respondents.

12. That the action of the respondents not allotting the station to the petitioner to enable him to join after issuance of appointment order is not only illegal and arbitrary but also unjust and unfair and is not sustainable in the eyes of law inter-alia on the following grounds:-

- (i) Because the petitioner is fully eligible for appointment to the post of Teaching fellow and also fulfills all the other conditions for consideration of his case in the General (Male) category and it was on this basis that he was selected and appointed, though after a lot of harassment, but not allowing him to join on extraneous considerations even after completion of all the formalities required, is totally unjust and unfair and is not sustainable in the eyes of law.
- (ii) Because the action of the respondents is arbitrary and arbitrariness has been held to be violative of Article 14 of the Constitution of India. The Hon'ble Supreme Court in the matter of R.D. Shetty Vs. The International Airport Authority of India and others reported as AIR 1979 SC 1628, E.P. Royappa Vs. State of Tamil Nadu reported as AIR 1974 SC 555 and Maneka Gandhi Vs. Union of India reported as AIR 1978 SC 597 has held that Article 14 strikes at

arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory, it must not be guided by any extraneous or irrelevant consideration, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterize every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore, act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory.

- (iii) Because a Government elected by a democratic process believing in the Rule of Law, must observe all democratic norms. The right to run the government does not create a field of freedom in favour of the persons who are doing so nor does it give them a licence to make any order by an executive fiat. The right to be considered for appointment against a public office is a matter which is guaranteed to all citizens under Article 16 of the Constitution and any attempt to

circumvent that right would be struck down by the Courts.

- (iv) Because where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily as its sweet will and, like a private individual, deal with any person in any manner it pleases, but its action must be in conformity with standard of norms which is not arbitrary, irrational or irrelevant.
- (v) Because though mere selection does not give any indefeasible right to appointment but still as has been held in a catena of decisions rendered by Hon'ble Supreme Court and this Hon'ble Court in the cases such as **Shankarsan Dash Vs. Union of India, 1991 (2) SCT 555, R.S. Mittal Vs. Union of India, 1995 (3) SCT 284, Girish Arora and others Vs. State of Haryana and others, 1997 (3) SCT 240 and Pardeep Kumar Vs. State of Haryana, 2003 (4) SCT 570**, the state has no licence of acting in arbitrary manner and the authorities cannot ignore the recommendations of selecting agency.
- (vi) Because it is undisputed that after the selection and appointment petitioner has been medically examined and antecedent got verified and in such a situation as

has been held by a Division Bench of this Hon'ble Court in matter of "Mrs. Asha Rani and others Versus State of Haryana and others" reported as 1999(3) RSJ 136, the authorities cannot refuse to appoint except for a good and valid reasons.

- (vii) Because as has been held by the Hon'ble Supreme Court a letter of Shridhar Vs. Nagar Palika, Jaunpur and others reported as 1990(1) RSJ 30, appointment order confers a vested right to hold the post and this right could not be taken away and therefore, the action of the respondent No.3 is not sustainable in the eyes of law.

13. That the main law points which arise in the present writ petition for the kind consideration of this Hon'ble Court are as under :-

- i) Whether the action of the respondents is legal and valid?
- ii) Whether the petitioner is entitled for allotment of station after his appointment as Teaching Fellow in General (Male) category?
- iii) Whether the action of the respondents is arbitrary, unjust and violative of Article 14 and 16 of the Constitution of India?

14. That the petitioner has not filed any other writ petition in this Hon'ble Court or any other Court or the Hon'ble Supreme Court of India on similar points.

15. That the petitioner has been left with no other alternative remedy except to approach this Hon'ble High Court by way of filing the present writ petition. There is no remedy or appeal/revision under the rules/status governing the petitioner.

On the grounds submitted above and more to be stated later on, if necessary, it is respectfully prayed to issue a suitable writ, order or direction especially in the nature of Mandamus directing the respondents:-

- i) to produce the complete records of the case;
- ii) issuance of writ, order or direction especially in the nature of Mandamus directing the respondents to allot the station to the petitioner forthwith to enable him to join as teaching fellow in pursuance of appointment order dated 26.10.2010 **(Annexure P-8)** as he had already completed all the required formalities i.e. submission of medical certificate, affidavit and verification of antecedents, but even then in illegal and arbitrary manner, he is not being allowed to join and therefore the action of the respondents is not tenable being violative of the settled proposition of law as enumerated in a catena of decisions.
- iii) It is further prayed that the petitioner may be held entitled to all the consequential benefits from the date the person similarly situated have been appointed and special cost be imposed upon the respondents for driving the petitioner to knock at the doors of this Hon'ble Court for the relief which could and should have been granted and this Hon'ble Court

may grant any other relief, which it may deem fit and proper in the facts and circumstances of the case.

- iv) requirement of filing of the certified copies of annexures and advance notice on the respondents may kindly be dispensed with;
- v) Permission may be granted to file photocopies of the Annexures

Kaljit Singh
PETITIONER

**CHANDIGARH,
Dated: 22.11.2010**

Kapil Kakkar *Hema Kakkar*
(KAPIL KAKKAR) & (HEMA KAKKAR)
ADVOCATES
COUNSEL FOR THE PETITIONER

VERIFICATION:

Verified that the contents of the above writ petition from paras 1 to 11 and 14 & 15 are true and correct to my knowledge and legal submissions made in para Nos. 12 & 13 on the advice of my counsel. No part of it is false and nothing material has been kept concealed there from.

**CHANDIGARH,
Dated: 22.11.2010**

Kaljit Singh
PETITIONER

CWP 20883 of 2010
(Malkiat Singh v. State of Punjab and ors.)

Mr. Kapil Kakkar, Advocate, for the petitioner(s).

It has been specifically pleaded that the respondents started pressurising the petitioner to withdraw the application before the State Information Commission and only thereafter the petitioner would be given a place of posting, though the petitioner has been selected to the post of Teaching Fellow. Attention of the court has been drawn towards Annexure P-8, which indicates that on recommendation of the District Selection Committee (Teaching) Primary District, Patiala, the petitioner has been selected as Teaching Fellow vide order dated 26.10.2010. The place of posting has not been given although all the formalities required to be completed before joining have been completed.

Notice of motion.

On the asking of the Court, Shri B.S. Chahal, Deputy Advocate General, Punjab, accepts notice on behalf of the respondents. Requisite number of copies of the writ petition have been handed over to Shri Chahal.

Adjourned to 14.12.2010.

Respondent No.2 is directed to file his para-wise reply to the petition, by way of affidavit, in court, within a period of 2 weeks from today.

Copy of the order be given dasti under the signatures of the Court Reader.

November 23, 2010
Kang

(AJAI LAMBA)
JUDGE

S. P. Singh
29/11/2010

CWP 20883 of 2010
(Malkit Singh v. State of Punjab and ors.)

Mr. Kapil Kakkar, Advocate, for the petitioner(s).
Mr. B.S. Chahal, DAG, Punjab.

Despite observations made in order dated 23.11.2010, learned counsel for the petitioner contends that the place of posting has not been given to the petitioner.

Adjourned to 21.12.2010.

Let District Education Officer (EE), Patiala, remain present in court on the next date of hearing with reasons for not giving orders of posting to the petitioner although the petitioner has been selected as Teaching Fellow vide order dated 26.10.2010.

Copy of the order be given dasti to Shri Chahal under the signatures of the Court Reader.

December 14, 2010
Kang

(~~AK~~ LAMBA)
JUDGE

PUNJAB & HARYANA HIGH COURT

Recd
14/12/10

FA added

K

17/12

S. Singh

18/12/2010

17/12/2010

C.W.P. No. 20883 of 2010 ✓

Present: Mr. Kapil Kakkar, Advocate, ✓
for the petitioner.

Mr. S.K. Bhanot, Addl. A.G., Punjab, ✓
for the respondents.

Ms. Varsha Shukla, District Education Officer
(EE), Patiala, is present in person before this Court.

Learned Additional Advocate General, Punjab,
states that she will file affidavit assigning reason therein for
not giving orders of posting to the petitioner.

Let affidavit be filed within three days from today.

List on 13.01.2011.

On that day, Ms. Varsha Shukla, District
Education Officer (EE), shall remain present in person
before this Court.

✓ **December 21, 2010**
vkd

(Alok Singh)
Judge

PUNJAB & HARYANA HIGH COURT

DFA Gokul

5/1/2011

S.K. Bhanot
5/1/2011

CWP No. 20883 of 2010

Present: Mr. Kapil Kakkar, Advocate
for the petitioner.

Mr. Puneet Gupta,
Additional Advocate General, Punjab
for the respondents.

Learned counsel for the petitioner submits that Jai Bhagwan, who is said to have joined the service, is in fact not in service and the petitioner was given appointment after the termination of the Jai Bhagwan.

Let the State file an affidavit giving details of the appointment of Jai Bhagwan as to when he came to join the service and when he was relieved ~~the service~~.

The said affidavit be filed within a period of two weeks.

List on 17.2.2011.

(PERMOD KOHLI)
JUDGE

13.01.2011
Poonam (II) ✓

CWP NO. 20883 of 2010

Present: Mr. Kapil Kakkar, Advocate

Mr. Puneet Gupta, Addl. A.G., Punjab

On request, list on 22.3.2011.

**(PERMOD KOHLI)
JUDGE**

**17.2.2011
MFK**

PUNJAB AND HARYANA HIGH COURT

CWP NO.20883 of 2010

Present: Mr.Kapil Kakkar, Advocate
Mr.Puneet Gupta, Addl.A.G., Punjab

On request, list on 26.4.2011.

(PERMOD KOHLI)
JUDGE

22.3.2011
MFK

PUNJAB AND HARYANA HIGH COURT

AS to 4/7/11
Bo
B 26/4

CWP No. 20883 of 2010

Present:- Ms. Maninder, Advocate for
Mr. Kapil Kakkar, Advocate
for the petitioner.

Mr. Puneet Gupta, Addl.A.G, Punjab

On request, adjourned to 11.07.2011 for arguments.

(RITU BAHRI)
JUDGE

July 04, 2011
G.Arora

PUNJAB AND HARYANA HIGH COURT

C.W.P.No. 20883 . of 2010.

Present:- Mr.Naveen Bawa, Advocate, for
Mr. Kapil Kakkar, Advocate,
for the petitioner.

Ms. Anu Pal,
Assistant Advocate General,Punjab

On the request of learned counsel for the
petitioner, adjourned to 19.09.2011 for arguments.

11.07.2011
Anoop /

(RITU BAHRI)
JUDGE

PUNJAB AND HARYANA HIGH COURT

CWP No. 20883 of 2010

744

Present : Mr. Kapil Kakkar, Advocate
for the petitioner

Mr. B.S.Chahal, DAG, Punjab.

Admit.

To be listed for hearing after one year.

19.09.2011

'ravinder'

/

(~~SURYA~~ KANT)
JUDGE

Civil Writ Petition No.20883 of 2010

. . .

Present:- Mr. Kapil Kakkar, Advocate, for the
petitioner(s).

|

Mr. K.D.S. Sachdeva, Additional
Advocate General, Punjab.

. . .

Be listed as per Roster at its own turn.

(Surya Kant)
Judge

February 29, 2012
avin

PUNJAB AND HARYANA HIGH COURT

W/S
2/3/12