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**(2004) 09 P&H CK 0105**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Writ Petition No. 4701 of 2003

Raj Kumari

APPELLANT

Vs

State of Punjab and  
Others

RESPONDENT

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**Date of Decision:** Sept. 23, 2004

**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227

**Citation:** (2009) 104 FLR 621 : (2004) 138 PLR 891

**Hon'ble Judges:** S.S. Nijjar, J; J.S. Narang, J

**Bench:** Division Bench

**Advocate:** N.S. Boparai,A.A.G, for the Appellant;

**Final Decision:** Allowed

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**Judgement**

J.S. Narang, J.

The petitioner has invoked the extra ordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to appoint her on the post of Assistant Librarian pursuant to her selection made by the Subordinate Services Selection Board, Punjab (hereinafter referred to as "the Board").

2. The petitioner belongs to Scheduled Caste category and to support that fact, a certificate dated 1.7.1980 issued by the competent authority has been appended as Annexure P-4. She has acquired the qualifications for the purposes of being considered for the post of Assistant Librarian. The Board advertised such six posts to be filled in the Technical Education and Industrial Training Department, vide Advertisement dated 7.1.1994. Later on 3 more posts were added and that out of the total nine posts one was reserved for the Scheduled Caste candidate. Pursuant to this advertisement, the petitioner applied to be considered against the post reserved for the aforesaid category. She had also disclosed that she has the experience as a Librarian and to substantiate this fact, a

certificate dated 20.7.1996 has been appended as Annexure P-5 issued by the Principal M.D.K.Arya Public School, Siali Road, Pathankot. She was called for the interview and after being found successful was recommended to be appointed accordingly. She reported to the Director, Technical Education and Industrial Training (Technical Education Wing)-respondent No. 2 on 16.1.2002 alongwith her testimonials for the purpose of verification of the qualification/experience. Upon verification, respondent No. 2 sent a letter dated 1.3.2002 for the purpose of filling proforma for character verification within seven days. The compliance was made and her option regarding her choice for place of posting was also taken. Despite the aforestated compliance, the petitioner has not been given the letter of appointment though similarly situated selected candidate have already been given such letters. A representation dated 13.9.2002, copy Annexure P-10 was made to the competent authority. When nothing was heard, yet another representation dated 22.10.2002 was submitted. It has been averred that one such candidate namely Tarsem Lal who had been selected in the same process as the petitioner, had been appointed and is working under respondent No. 2 in some Polytechnic College.

3. It was after about 3 months from the date of submission of the representation, the letter dated 28.11.2002 was received by the petitioner indicating that the letter of appointment cannot be issued to the petitioner because of the ban imposed by the Government of Punjab, copy thereof has been appended as Annexure P-12. Thereafter, a legal notice dated 26.12.2002 had been served upon the respondents by the petitioner through her counsel but no response thereto has been received. The petitioner being dissatisfied with the stand of the Government, has filed the present petition seeking the relief as aforestated. Notice of motion was issued vide order dated 27.3.2003 by a Division Bench of this Court.

4. The stand of the Government is that a clarification had been sought from the concerned quarters as to what action has to be taken in such cases where the recommendation of the Board had been received and the process has been initiated prior to the issuance of the order of ban by the Government. It has been informed vide letter dated 26.9.2002, by making a reference to Demi-official letter dated 10/13-5-2002 issued by the Chief Secretary to Government of Punjab, no letter of appointment could be issued to any one including the persons like the petitioner. So far as the other factual status is concerned, the same has been admitted.

5. We have heard learned counsel for the parties. We have also perused the paper book and the record appended as Annexures. We are of the considered opinion that the respondents have erred in declining to issue the letter of appointment when admittedly, the petitioner stood selected much earlier to the imposition of such ban and that to pursuant to the posts advertised in the year 1994. She had been recommended by the Board much earlier to the ban and the petitioner had been required to obtain the certification/verification of her character vide communication dated 1.3.2002 i.e. much prior to the imposition of ban as. the same had been issued by the Chief Secretary on 10/13.5.2002 as is evident from Annexure R-2 appended by the respondents.

6. It is the settled law that in a case where the recommendation has been made and the letter of appointment has been issued, the imposition of ban by the Government shall not stall the process of joining by such appointees. In the present case, the recommendation had already been made prior to the imposition of the ban and that the character verification has also been asked for much prior to the said date. The verification of the character of the petitioner was not in the hands of the petitioner and that the agency of the Government was required to submit such certification. If, in the meanwhile, the ban has been imposed, the case of the petitioner shall not be affected to her detriment in any manner. If any delay has occurred at the end of the Government agency, the same cannot make the person suffer pursuant thereto. Additionally these posts related to the year 1994 and it took almost 7 years for considering the candidates for appointments. In such a situation, the petitioner should not be made to suffer on account of hypertechnicalities adopted by the Government.

7. In view of the above, the petition is allowed and the respondents are directed to give appointment to the petitioner against the post for which she has been selected in accordance with law and that the ban imposed by the Government shall not come in the way of the petitioner. It is further clarified that so far as her appointment is concerned her claim vis-a-vis such other similarly situated persons be considered in accordance with the rules applicable and that if such relief is grantable, the same should also be granted accordingly within a period of two months from the date of receipt of a certified copy of the order. No order as to costs.