

(2012) 10 P&H CK 0188

High Court Of Punjab And Haryana At Chandigarh

Case No: C.M. No. 14156 of 2012 and CWP No. 19341 of 2012

Parveen Kumar

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: Oct. 3, 2012

Acts Referred:

- Constitution of India, 1950 - Article 14, 16

Hon'ble Judges: Augustine George Masih, J

Bench: Single Bench

Advocate: Shalender Mohan, for the Appellant;

Final Decision: Dismissed

Judgement

Augustine George Masih, J.

C.M. No. 14156 of 2012

1. Prayer in this application is for impleading the Director, School Education, Sector-4, Panchkula, Haryana as respondent No. 7. For the reasons mentioned in the application, the same is allowed.

2. Director, School Education, Sector-4, Panchkula, Haryana is ordered to be impleaded as respondent No. 7.

3. Registry is directed to make additions in the Memo of Parties.

CWP No. 19341 of 2012

4. Petitioner has approached this Court putting forth a grievance that experience certificates issued to him, which were issued in the year 2005 (Annexure P-4) and the experience certificate dated 10.08.2012 (Annexure P-5) issued to the petitioner, have not been countersigned by the Director, School Education, Haryana.

5. It is the contention of the counsel for the petitioner that the experience certificate issued to the petitioner required to be countersigned by the Director, School Education, Haryana, which has not been done on the ground that the last date for submission of such experience certificate for its countersigning was 16.07.2012. He contends that the candidature of the petitioner, who was called for interview on 24.09.2012, has been rejected on this ground alone. He, accordingly, contends that the action of respondent No. 7 cannot sustain.

6. On a question put by this Court as to how the experience, which the petitioner gained prior to possessing the minimum educational qualifications for appointment to the post of Post Graduate Teacher (Physical Education), would add up to the minimum four years experience, which is required as per the advertisement issued by the respondents, counsel has referred to and has produced a copy of the corrigendum dated 03.07.2012 issued by the Haryana School Teachers Selection Board-respondent No. 2. He, on this basis, contends that the exemption has been granted from qualifying the Haryana Teachers Eligibility Test till 01.04.2015 and for that, the experience required is minimum of four years as a teacher till 11.04.2012, which the petitioner would fulfill and thus, the petitioner would be entitled to the appointment to the post of Post Graduate Teacher (Physical Education).

7. I have considered the submissions made by the counsel for the petitioner and have gone through the records of the case.

8. As per the qualifications prescribed for appointment to the post of Post Graduate Teacher (Physical Education), the minimum qualification is Master in Physical Education with at least 50% marks. Petitioner acquired the said qualification in the year 2007. As per the admitted stand of the petitioner, he is working as a Lecturer (DPE) w.e.f. 01.10.2008 to 10.08.2012 which does not fulfil the mandate of four years experience as required under the corrigendum dated 03.07.2012.

9. The experience certificate, which was issued to him in the year 2005 (Annexure P-4) is one, which was issued to him when he was holding the post of a Physical Training Instructor and possesses the educational qualification as B.A., B.PEd. The said experience cannot be counted towards Post Graduate Teacher's experience which would entitle him the exemption as per the corrigendum dated 03.07.2012.

10. At this stage, counsel for the petitioner has asserted that as per the corrigendum, the experience certificate required is that of four years as a teacher, which the petitioner fulfills. This contention of the counsel for the petitioner cannot be accepted in the light of the decision taken by this Court in a similar matter i.e. CWP No. 14666 of 2012 titled as Kamlesh Versus State of Haryana and another, decided on 2.8.2012 where it was held as follows :-

Counsel for the petitioner submits that as per the requirement of the advertisement, petitioner fulfills the requirement as note 2 thereof only states that for exemption of passing HTET/STET, experience required is as a teacher in the

school and it is not mentioned that it should be against Post Graduate Teacher's post. Petitioner has an experience of primary teacher from 1.9.1997 to 30.6.2011 and from 1.7.2011 till date as a Trained Graduate Teacher (Social Studies). The action of the respondents in not interviewing the petitioner and rejecting her candidature is not sustainable and therefore, press for direction to the respondents to consider the petitioner as an eligible candidate and interview her for the post of Post Graduate Teacher (Sociology).

A perusal of the eligibility conditions Clause (b) thereof, the certificate of having qualified HTET/STET was to be of the respective subject for the post applied. The exemption as per Note 2 for possessing the certificate of having qualified HTET/STET was also to be granted to the candidates who have worked for minimum of four years till 11.4.2012, which obviously means on the post for which they have applied for. Experience on a post on the basis of which exemption is being sought in the basic eligibility condition cannot be of some other post although may be as a teacher. It has thus got to be on the post of a Post Graduate Teacher and that too in the respective subject for the post applied. Note 2 cannot be read in isolation and has to be read in conjunction with Clause (b) of eligibility condition common to all posts. The contention thus raised by the counsel for the petitioner cannot be accepted.

11. The next contention which has been raised by the counsel for the petitioner that the petitioner fulfils the eligibility criteria as per rules and the corrigendum issued therein and in the light of the transitional provision, petitioner should be held eligible for appointment to the post of PGT (Physical Education) has been considered in a similar case by this Court in CWP No. 12914 of 2012 titled as Rakesh Makol and others Versus State of Haryana and another, decided on 13.7.2012, wherein it was held as follows :-

Prior to notification dated 11.04.2012, vide which Government of Haryana notified the Haryana State Education School Cadre (Group B) Service Rules, 2012 (hereinafter referred to as "2012 Rules"), the Rules governing the field were the Haryana State Education Lecturer School Cadre (Group C) Service Rules, 1998 (hereinafter referred to as "1998 Rules"), according to which, qualifications prescribed for the post of Lecturer were as follows:-

- i) M.A./M.Sc. (in relevant subject) with at least 50% marks from a recognized University.
- ii) Knowledge of Hindi Up to Metric standard.

With the coming into force of the 2012 Rules, now the post of Lecturer (School Cadre) is known as Post Graduate Teacher in the respective subject. The qualification prescribed is mentioned in Column No. (3) of Appendix-B under Rule 7 of 2012 Rules, which reads as follows :-

- i) M.Sc. Physics/Applied Physics/Nuclear Physics/Electronics Physics with at least 50% marks and B.Ed. from a recognized University And
- ii) Matric with Hindi/Sanskrit or 10+2/BA/MA with Hindi as one of the subject And
- iii) Certificate of having qualified Haryana Teacher Eligibility Test (HTET) School Teachers Eligibility Test (STET).
- iv) Consistent good academic record.

While comparing the two sets of Rules i.e. 1998 Rules and 2012 Rules, it comes out that now under the applicable Rules, B.Ed., Matric with Hindi/Sanskrit or 10+2/BA/MA with Hindi as one of the subjects from a recognized university and certificate of having qualified HTET/STET as also consistent good academic record basically stand added. Thus, there is a change in the qualifications now, although the basic qualification of Post Graduate degree in relevant subject has been retained but additions have been made thereto. Advertisement dated 07.06.2012 was issued by the Board, wherein on-line applications were invited for recruitment for the PGT in various subjects. Some conditions were kept common for all posts, which read as follows :-

COMMON TO ALL POSTS

Eligibility (a) Matric with Hindi/Sanskrit or 10+2/B.A./M.A. with Hindi as one of the subject.

(b) Certificate of having qualified Haryana Teacher Eligibility Test (HTET)/School Teachers Eligibility Test (STET) of respective subject for the post applied, conducted by Board of School Education Haryana, Bhiwani/One time exemption of HTET.

(c) Consistent good academic record.

(d) Essential qualification (EQ) is given with each post.

Age :- 18-40 years, relaxation as given in special instructions. For Teachers upper age relaxation.

Pay Scale :- Rs. 9300-34800 plus grade pay Rs. 4800

Fee :- The rate of fee is Rs. 500/- for General candidates and Rs. 125/- for SC/BC/ESM/PHC candidates of Haryana State. The fee should be deposited in any branch of State Bank of India under code/account number 32307173537 for reserved category of Haryana State and 32306718279 for General Category.

Notes 1 and 2 at the end of the advertisement, which relate to clause (b) and (c) under the heading "eligibility", read as follows :-

Note 1 : Consistent good academic record implying that out of the lower qualification i.e. Matric/10+2/Graduation than requisite minimum qualification, one must secure at least 50% marks in two lower exams and 45% marks in third lower

exam. If there are only two lower exams, than one must secure at least 50% marks in one exam and 45% marks in another.

Note 2 : A one time exemption of HTET/STET has been granted to the candidates who have worked for minimum 4 years till 11.04.2012 in privately managed Govt. Aided Schools, Recognized Schools and Govt. Schools. Candidate must be in service on 11.04.2012 in addition to being in position on the date of applying for the said post. They will have to qualify HTET not later than 1st April 2015 otherwise their services will be terminated automatically. Qualification/eligibility conditions and certificates will be determined with regard to last date fixed for submission of online applications also called as closing date given in the advertisement.

Corrigendum dated 03.07.2012 (Annexure P-5) was issued consequent upon amendment of the 2012 Rules and the Mewat District School Education (Group-B) Service Rules, 2012 vide notification dated 02.07.2012 which modified the advertisement partially, which reads as follows :-

2. Under heading "COMMON TO ALL POSTS Eligibility" point (c) Consistent good academic record and Note-1 shall be omitted.

3. Under heading "COMMON TO ALL POSTS Eligibility" after point (b) the following point C (i) and (ii) shall be inserted, namely :-

(c) (i) The candidates who have worked as teachers for a minimum four years till 11.04.2012 in privately managed Government aided schools, Recognized Schools and Government Schools and must be in service on 11.04.2012, in addition to being in position on the date of applying for the said post, are exempted to acquire qualifications of passing HTET/STET and B.Ed. as one time measure.

(c) (ii) A person who has passed STET/HTET without the qualification of B.Ed. before the date i.e. 11.04.2012 of notification of Service Rules concerned, shall also be considered eligible for the post of PGT as one time measure in the first recruitment.

4. Transitional provision :-Person fulfilling conditions of qualifications as per old Rules of Haryana State Education Lecturer School Cadre (Group-C) Service Rules, 1998 shall also eligible for recruitment as a one time measure. Provided that such person shall have to qualify the Haryana Teachers Eligibility Test (HTET) and B.Ed. by 1st April, 2015 and if he fails to do so, his appointment shall stand terminated automatically without giving any further notice.

The relevant subject combinations in relevant posts are as under :-

Under heading "POSTS EXCEPT DISTRICT MEWAT" and POSTS FOR DISTRICT MEWAT ONLY (MWT), Essential Qualification (E.Q.) for PGT mentioned at Category No. 1, 4, 14, 17, 19, 22, 32 and 35 of the above said Advt. may be read as under, as one time measure :-

Cat. No. 1 & 19 : PGT Mathematics

E.Q. M.A./ M.Sc. Math/Mathematics Statistics with at least 50% marks from a recognized university.

Cat. No. 4 & 22 : PGT Biology

E.Q. M.Sc. Biology or Zoology or Botany or Bio-Science or Bio-Chemistry or Genetics or Micro-Biology or Plant Psychology or Bio-Technology with at least 50% marks from a recognized University.

Cat. No. 14 & 32 : PGT Political Science

E.Q. M.A. Political Science or Public Administration with at least 50% marks from a recognized University.

Cat. No. 17 & 35 : PGT History

E.Q. M.A. History or Ancient Indian History and Culture or Culture and Archaeology with at least 50% marks from a recognized University.

5. xxx xxx xxx

6. xxx xxx xxx

7. All other terms and conditions of the Advertisement No. 1/2012 dated 6.6.2012 for the post of PGT will remain same.

8. xxx xxx xxx

9. xxx xxx xxx

In the light of para-4 of the Transitional Provision, petitioners pray their eligibility for competing for the post of PGT as per the advertisement published on 07.06.2012. A perusal of the above para-4 "Transitional Provision" would show that it has to be read as a whole and this Transitional Provision is limited to only four categories of PGT posts i.e. Mathematics, Biology, Political Science and History as in Clause 7, it is clearly mentioned that all other terms and conditions of the advertisement for the PGT will remain the same. The same clarification has been issued which has been termed as "interpretation of transitional provision" dated 05.07.2012 (Annexure P-6). Thus, for a candidate to be eligible for applying to the post of PGT in pursuance to the advertisement dated 06.06.2012 published on 07.06.2012, the conditions, as provided for under the heading "Common to all posts", will have to be fulfilled and this Transitional provision is only applicable in the category of posts, as specified in corrigendum dated 03.07.2012. As is apparent from the corrigendum dated 03.07.2012, the same has been brought about and has been necessitated in the light of amendment in the statutory Rules governing the service, which came into force vide notification dated 02.07.2012. Since corrigendum incorporates the provisions as contained in the amended statutory Rules, in the absence of challenge to the statutory Rules, the claim of the petitioners, as made in the present writ petition, cannot sustain.

A contention has been raised by the counsel for the petitioners that relaxation has been granted by the respondents in exercise of Rule 17, which is unjust, unreasonable and violative of Articles 14 and 16 of the Constitution of India. This contention of the counsel for the petitioners may have some force when it is seen in the light of the initially notified 2012 Rules, on the basis of which, advertisement was published on 07.06.2012 as vide this advertisement in Notes 1 and 2, such relaxation was granted but with the amendment of the statutory Rules vide notification dated 02.07.2012 and thereafter, issuance of the corrigendum dated 03.07.2012, the sting of the argument of the counsel for the petitioners stands blunted. It appears that there has been no relaxation granted by the respondents, as the corrigendum, which has been issued on 03.07.2012, is in accordance with the amendment brought about in the statutory Rules and the exemption, so granted, being a part of the statutory Rules cannot be said to be a relaxation granted by the Government under Rule 17 of the 2012 Rules.

12. In view of the above, the rejection of the candidature of the petitioner being in accordance with the terms and conditions of advertisement cannot be said to be not in accordance with law. Finding no merit in the present writ petition, the same stands dismissed.