

CWP-14513-2020

2024:PHHC:035549

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

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CWP-14513-2020

Date of Decision:12.03.2024

Jyoti Bala

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. B.S. Bajwa, Advocate for the petitioner.

Mr. Manipal Singh Atwal, DAG, Punjab

AMAN CHAUDHARY. J.

1. The prayers in the present petition under Articles 226/ 227 of the Constitution of India are, to quash the rejection list, Annexure P-4, denying appointment to the petitioner and further issue directions to the respondents to consider her claim for the post of Head Teacher.

2. Learned counsel would submit that the State of Punjab issued an advertisement dated 08.03.2019 for appointing 1558 Head Teachers and 375 Centre Head Teachers. In response thereto the petitioner, who had the educational and professional qualifications, applied for appointment on the post of Head Teacher, in General Category. She cleared the written examination as also the interview. Despite her merit having been determined at Sr. No. 151, the appointment was denied to her with remarks, "*Experience from Haryana as a Guest Teacher*". The Punjab State Elementary Education (Teaching Cadre) Group C Service Rules, 2018 (hereinafter referred to '2018 Rules') and the advertisement, both do not state, the experience should be only from a school in the State of Punjab and on regular basis. The experience certificates of the petitioner demonstrate that she has worked as a Guest Teacher (J.B.T) for almost 6

long years w.e.f 16.10.2006 to 30.04.2012, regarding which, the Head Teacher, Govt. Primary School, Dhobarian (Sirsa), certified that the subjects of regular teacher and guest teacher working as JBT were the same.

3. On the other hand, learned State counsel opposed the petition by referring to Minutes of Meetings dated 16.09.2019 and 03.10.2019, Annexure R-1 and R-2, held under the Chairmanship of the Secretary, School Education Board, Punjab, wherein based on the definition of the word 'Government' as per Rule 2.24 of the Punjab Civil Services Vol.I, Part-I, which means, 'Punjab Government in the Administrative Department' and as such, the word 'State Government schools' would mean, Punjab Government Schools, it was decided that the teaching experience acquired from another State, is not to be considered and further clarified that candidates, who had worked as 'Guest Teacher' were not eligible for recruitment. Reliance is placed on **Satya Dev Bhagaur & Ors vs. State of Rajasthan And Ors**, 2022 (5) SCC 314.

4. Having heard the learned counsel on either side, the questions that arise for consideration would be:

- i. Whether only the experience that was gained from a service rendered in a government school of State of Punjab was to be taken into consideration ?
- ii. Can by way of a decision taken in a meeting of the administrative authorities, the Statutory Rules be clarified/ over-ridden/ amended?
- iii. Whether the required experience has to be whilst working on regular basis?

5. Apropos the main pivot of resistance offered on behalf of the State, it would be apposite to refer to the qualifications and experience required as per the

2018 Rules, in accordance with which, the advertisement was taken out, which read thus:

“(i) should possess Bachelor’s Degree from a recognised university or institution with atleast 50% marks as per guidelines of the University Grants Commission.

(ii) Should possess two years Elementary Teachers Training course from a recognized university or institution or two years Diploma in Elementary Education (D. El. Ed.) as per guidelines of the National Council for Teachers Education or Bachelor Degree in Education (B. Ed) from a recognised university or institution as per guidelines of the University Grants Commission and

(iii) should possess teaching experience of working as Primary School Teacher for a minimum period of three years in a Central/State Government School. However, a prospective candidate must have acquired such experience after acquiring the minimum educational and professional qualifications specified for the posts under these rules.”

6. Notably from the above, it transpires that the Rule making authority had in its wisdom sought to enlarge the scope and ambit of the participation by opening the doors of candidacy to those employed in the Central Government schools, that would *ipso facto* imply to those spread across the nation. Reading in conjunction with the above, the word ‘State’ incorporated therewith, would *expressis verbis* reveal that the Rule envisaged that the service for the experience to be taken into consideration of those desirous of being appointed can be from the government schools beyond the territory of its own State. Thought behind it, apparently was to give a wider competition base and to choose the best.

7. The submission of the learned State counsel that the meaning of service in the ‘State’ as per 2018 Rules, of which the experience is required, is liable to be construed as acquired only from the Government schools of the respondent-State, is on the anvil of the clarification given by an administrative authority, being in teeth with the fundamental proposition of service jurisprudence, that administrative instructions cannot supplant the statutory rules, as held in **State of Haryana vs. Shamsheer Jang Bahadur**, (1972) 2 SCC 188,

reiterated on numerous occasions including **S. Sivaguru vs. State of Tamil Nadu**, 2013 (7) SCC 335. The power to issue these is even otherwise, vested only in the authority that is competent to frame the statutory rules under proviso to Article 309 of the Constitution of India, in absence of rules. [See **Ajay Kumar Bhuyan vs. State of Orissa**, (2003) 1 SCC 707]

8. Limiting the scope of the advertisement to a particular State is a way of fostering and strengthening narrow parochial loyalties to that State, or in other words the ‘sons of the soil’ policy, which was explained in and cautioned against by Hon’ble the Supreme Court in the case of **Dr. Pardeep Jain and others vs Union of India and others**, (1984) 3 SCC 654. Appointments to public posts should be strictly in accordance with Articles 14 and 16 of the Constitution of India. Eligibility criteria should be uniform and there cannot be scope of arbitrary selections by unfettered discretion being vested in the authorities, as was held by Hon’ble the Supreme Court whilst approving the conclusion arrived at by the Division of the High Court. (See **State of Jammu and Kashmir vs. Shaheena Masarat**, (2021) 13 SCC 304).

9. On a panoramic evaluation, *firstly*, there can be no restrictive interpretation as sought to be projected, that would result in the infringement of the rights of citizens for the purpose of appointment; *secondly*, the professional qualifications required for the post by the 2018 Rules, are as per guidelines of the NCTE/UGC, that have a uniform application across board; *thirdly*, it is not a case set up that the post of a teacher in a government school in the State of Haryana, is not equivalent in terms of duties and responsibilities in any manner, to that in the respondent-State; and the above, when coupled with the usage of the word ‘Central’ in the Rules/Advertisement, would necessarily include all those candidates, who work in schools run under the aegis of the Central Government

and its instrumentalities, in the entire country, as eligible to apply, this Court is impelled to answer the first two questions against the respondent-State. As a sequitur, the cancellation of the candidature of the petitioner on the premise of, she having worked in a government school, beyond the territorial boundaries of the respondent-State, is hereby declared to be perverse and illegal, having in it, no nexus with the object sought to be achieved.

10. Moving ahead, to the third question, of teaching experience required of working in primary schools, the word 'regular', is conspicuous by its absence, in the Rules *ibid*.

11. To proceed further to determine the aforesaid, it would be profitable to refer to **Dr. Ravinder Pal Kaur vs. State of Punjab and others**, (1979) 2 SLR 645, wherein it had been observed and held that, there is hardly any difference insofar as teaching experience is concerned whether gained on ad hoc appointment or on regular, since the Statutory Rules do not confine it to regular appointment, thus that of the petitioner as Assistant Professor Radiology on ad hoc basis from May 11, 1973 to February 19, 1976, cannot be ignored to determine her eligibility for appointment as Professor in Medical College, Patiala. Further, in CWP-2246-2008 titled as **Rai Singh vs. Kurukshetra University, Kurukshetra**, decided on 18.08.2008, it was held that appointment on contract basis is also a type of adhoc service. Even the mere fact that nominal breaks are given or lesser pay is given or increments are not granted, is no ground to treat the said service differently. Denial of benefit to those working on contract basis, cannot be held to be any rational basis, as they stand on same footing as employees appointed on adhoc basis.

12. This Court in **Baljit Kaur vs. State of Punjab**, CWP-421-2008 decided on 21.04.2009, observed and held that, "...It is now admitted position on

record that the petitioner secured the highest marks on the basis of laid down criteria in Female B.C. Category. The certificate issued in favour of the petitioner indicates that the petitioner had the requisite experience though the certificate indicates that the petitioner was a part-time Lecturer. The statutory rule only prescribes seven years teaching experience. It is not provided under the Rules that the experience should be as a whole timer or in a particular institution. Only teaching experience is required which the petitioner had to her credit at the time of making application for selection/ appointment.”

13. The Division Bench of this Court in **D.P. Mehta (Dr.) vs. P.G.I. and its Governing Body**, 1997 (1) RSJ 501, had observed that in ordinary parlance, experience means "an actual living through something and coming to know it first hand rather than through hearsay or report". According to Webster 3rd New International Dictionary, 'experience' means "being engaged in a particular activity; direct observation of or participation in events, encountering, undergoing or living through things in general as take place in the course of time." The post of Joint Medical Superintendent could be filled up "from amongst Deputy Medical Superintendents having five years experience". Since the rule did not postulate that the incumbent should have worked on the post for five years on regular basis but only required that he should have an experience as a Deputy Medical Superintendent, the plea raised that petitioner is not eligible, having worked on grant of additional duties of the post, it was held cannot, thus, be sustained.

14. In **Sec., Eng. Department, U.T. Adm., Chandigarh vs. Vipin Gupta and another**, CWP-12679-2010 decided on 25.10.2010, the Division Bench noticed that, a perusal of Rule 6 and Appendix 'B', made it clear that for becoming eligible for promotion to the post of Executive Engineer, a Sub Divisional Engineer must have experience of working for minimum period of

eight years. It was thus held that the expression 'working experience' cannot be construed to mean that he must have gained the experience while working on a permanent substantive post on which he has been appointed on regular basis. In other words, long term regular promotion would not be necessary to gain experience of working because whether a person works on a post in his capacity as ad hoc/current duty charge holder/temporarily his nature of duties continues to be the same which any regularly promoted person would require to discharge. Reinforcing the above, in **Chief Engineer, UT. vs. Ram Sarup Walia and others**, CWP-77-2012, decided on 06.01.2012, it was observed that by virtue of the absence of the word 'regular', the current duty charged is to be treated as qualifying work experience for the purpose of promotion and held that, "...In our view, 'the working experience' cannot be construed to mean that he must have gained the regular experience while working on a permanent substantive post on which he has been appointed on regular basis."

15. The irresistible conclusion arrived at is that the term 'Guest faculty' is a misnomer, as an employee working in a stopgap arrangement, be it as part time, contractual, guest etc, are all in effect 'ad hoc'. The aspect to be seen is the sphere of their duties, responsibilities and the quantum of work in terms of classes taken and subjects taught, regarding which evidently, a certificate in this case, of the Head Teacher, Govt. Primary School, Budhi Medi (Sirsa) had been produced, which remained unrefuted, stating therein that as a J.B.T. Teacher, the subjects of regular teacher and guest teacher remained same.

16. In a comprehensive yet concise consideration of the abounding judicial pronouncements, that this Court has implored itself with, which are found to be intrinsically in favour of the proposition, in view thereof, the second plank of argument, as sought to be canvassed by the State can equally not be countenanced.

As a fall out of the above, the right of the petitioner has been wrongly eclipsed, on her being a guest faculty.

17. Though there is no dispute as regards the legal proposition laid down in the judgement relied upon by the learned State Counsel, but its ratio does not apply to the facts of the present case, inasmuch as, it is not the plea taken that employees serving in the respondent-State possess special skills and knowledge by virtue of having been trained under specific State run schemes, as was the premise of the said case, nor do any of the peculiarities as referred to therein, exist.

18. Conspectus analysis of the interwoven issues, renders the action of the respondent-State, on both counts, to be palpably arbitrary and violative of Articles 14 and 16 of the Constitution. As a corollary, there being left no impediment in consideration of the petitioner, the respondents are directed to appoint her, subject to the merit position in the selection. She will be entitled to notional seniority, pay fixation etc, but not actual monetary benefits.

19. The present petition stands allowed.

(AMAN CHAUDHARY)
JUDGE

12.03.2024
G Arora

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No