

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

Date of Decision: 26.02.2015

CWP No.10727 of 2014 (O&M)

Suresh Kumar & others

.... Petitioners

Versus

State of Punjab & another

.... Respondents

CWP No.3782 of 2014 (O&M)

Amrinder Singh & ors.

.... Petitioners

Versus

State of Punjab & others

.... Respondents

CWP No.6095 of 2014 (O&M)

Sukhchain Singh

.... Petitioner

Versus

State of Punjab & others

.... Respondents

CORAM: HON'BLE MR. JUSTICE MAHESH GROVER

1. Whether reporters of local newspapers 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?

Present: Mr. Ajay Kumar Advocate
for the petitioners in CWP No.10727 of 2014.

Mr. Namit Kumar, Advocate
for the petitioners in CWP No.3782 of 2014.

Mr. Vivek Salathia, Advocate
for the petitioner in CWP No.6095 of 2014.

Mr. Nilesh Bhardwaj, DAG, Punjab.

Mr. Amandeep Singh, Advocate
for respondent No.3.

Mahesh Grover, J. (Oral)

This order will dispose of abovesaid three writ petitions bearing CWP Nos.10727, 3782 and 6095 of 2014 as the same question of law is involved in these writ petitions. The facts of the case are taken up from CWP No.10727 of 2014.

In this writ petition, the petitioners have questioned the advertisement Annexure P-2 and the conditions given in the material loaded on the website regarding cut off date of acquisition of qualification for the post of D.P.E. which was restricted to 30.05.2011.

The facts need to be noticed in brief. 645 posts for DPE and 25 lecturers of Physical Education were sought to be filled up pursuant to an advertisement dated 07.05.2011. One of the eligibility conditions prescribed was compulsory acquisition of Teacher Eligibility Test. When the process was under way a clarification came on 29.07.2011 dispensing with the compulsory acquisition of Teacher Eligibility Test.

Some writ petitions also came to be filed before this Court questioning the prescription of TET exam as a pre-requisite.

The cumulative effect of this and the clarification of July, 2011 was that the respondents were unable to complete that process of selection initiated on 07.05.2011.

A fresh public notice was given, which needs to be extracted here below:

Public Notice

An advertisement for appointment of 645 DPE and 25 lecturers of Physical Education on contract basis was published in Punjabi news paper Rojana Ajit and English newspaper on 07.05.2011 by Punjab Education

Department. In this advertisement, a condition to pass T.E.T. Exam (Teachers eligibility test) was imposed, but later due to N.C.T.E. exempts condition to pass T.E.T. Exam for the post of D.P.E. and Lecturer of Physical Education through letter dt. 29.04.2011 and criteria was not given in advertisement, the recruitment procedure to appoint 645 posts of D.P.E. Teacher and 25 posts of Lecturer Physical Education cannot be completed. On line application is demanded on website www.educationrecruitmentboard.com from 27.01.2014 to 10.02.2014 from those candidates who has completed their academic qualification till 30.05.2011. The terms and conditions regarding these posts are provided on the department's website www.educationrecruitmentboard.com. Those applicants who have applied earlier have to apply online again and their earlier deposited processing fees will be returned later. We regret for the inconvenience caused due to that.

Sd/-

*Director, Education Department Punjab
24.01.2014*

The grievance of the petitioners is that they were better qualified even though the same was acquired subsequent to 2011. They would, thus, contend that restriction of the date of acquiring the essential qualification to 30.05.2011 would be arbitrary as it would exclude them from the zone of consideration.

The respondents on the other hand contended that the public notice Annexure P-2 is merely in continuation of process initiated on 07.05.2011 and thus, any person who had acquired the qualification after 30.05.2011 could not be considered for appointment.

In view of the above contentions, the Court would first

have to evaluate the status of the process of selection initiated in 2014 as being in continuation of earlier process or a de novo one.

A perusal of the public notice reveals that the respondents have conceded their inability to conclude the process initiated on 07.05.2011 and have further stated that persons, who had applied earlier would have to apply online again and their earlier deposited processing fees would be remitted to them subsequently.

To the mind of this Court, this process can be termed to be de novo and cannot by any stretch of imagination be termed as in continuation of earlier process of 07.05.2011. Had it been so, then the persons, who had applied earlier would not have been required to apply afresh and their amounts against the processing fees also did not warrant any return. Evidently the intention of the respondents was to do fresh selection process, which they undertook in 2014 and if that is so pegging the date of acquisition of qualification of date on 30.05.2011 would be clearly arbitrary as it would effect all eligible candidates, who have acquired the qualification upto 2014 when the public notice Annexure P-2 was given out. The respondents by placing an interpretation of the process being a continuation of 2011 public notice would oust the incumbents who acquired the qualification subsequently after 2011, which in the opinion of this Court is not permissible in law.

Consequently, the writ petitions are accepted and the respondents are directed to initiate the fresh process of selection by inserting a public notice and taking into consideration the eligible candidates, who have acquired the qualification upto the date which is

close approximately to the intended public notice. The aforesaid observation would result in cancellation of entire process so far undertaken by the respondents.

26.02.2015
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(Mahesh Grover)
Judge