

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.18529 of 2015

Date of decision: 3.9.2015

Yatin Goyal and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Harinder Sharma, Advocate for the petitioners.

G.S.SANDHAWALIA, J. (Oral)

The petitioners in the present writ petition seek quashing of order dated 20.3.2015 (Annexure P/8) whereby their request for appointments/promotions as Master/Mistress have been declined they being alleged eligible employees in the ministerial staff/non-teaching cadre. Accordingly, a writ petition of Mandamus is sought to consider the case of the petitioners for promotion as per prescribed quota of 1% earmarked for the above said ministerial cadre/non-teaching staff against the availability of posts prior to the date of withdrawal of such quota vide letter dated 6.3.2014 (Annexure P/7).

The petitioners' case is based on the letter dated 26.9.2001 (Annexure P/3) vide which a decision was taken to fill up 1% quota out of Classical and Vernacular Cadre for making promotions in the Master Cadre from 10% quota and in the case of C & V cadre, it was reduced to 9% and 1% posts were to be filled up from the ministerial cadre/non-teaching staff. It is apparent that no rule was amended and only a formal approval was given which would be clear from the contents of the letter dated 26.9.2001 which reads as under:-

"Your memo No.15/15-2001 E-2(6) dated 25.01.2001 and 01.8.2001 on the subject cited above.

2. The Govt. has decided that instead of 10% quota from C & V cadre for making promotions in the Master Cadre, it be made from 9% and 1% posts be filled amongst Ministerial Cadre Non-teaching Staff. Since it will take some time in making amendment in the Service Rules therefore, formal approval is being given for the time being. 1% posts while filling up posts against 1% from Ministerial cadre Non teaching staff, it be ensured that the employee fulfills the requisite qualifications for

the concerned post.”

It is the case of the petitioners that a large number of promotions were made on the strength of said instructions and directions were issued in various writ petitions by this Court to decide the claims of similarly situated persons and benefits were granted. The said letter now stands withdrawn on 6.3.2014 (Annexure P/7) with immediate effect. Similarly situated persons issued legal notices and thereafter they had approached this Court whereby directions were issued to decide the claim of the petitioners vide which impugned order now had been passed by respondent no.2. Respondent no.2 has relied upon the withdrawal of the said instructions on 6.3.2014 to hold that now no relief can be granted and rejected the claim of the petitioners.

Counsel for the petitioners has submitted that the vacant posts prior to the issuance of letter dated 6.3.2014 should be filled up on the basis of instructions dated 26.9.2001 as the letter dated 6.3.2014 would have effect from the date it was issued and the petitioners would have a vested right to the vacancies which had occurred earlier.

The said contention cannot be accepted for the sole reason that right of promotion is to be on the strength of some statutory rules. Admittedly, as per letter dated 26.9.2001 itself, the rules had never been amended nor sought to be amended and nothing has been brought on record to show that any such amendment in the rules was carried out. Rather in **Civil Writ Petition No.3191 of 2009-Rajinder Singh Mahi and others Vs. State of Punjab and others** similar relief was sought for, which was dismissed on 16.5.2014 by holding as under:-

“After hearing learned counsel for the parties and considering the fact that the circular, on which the petitioners, placed reliance for seeking promotion to the posts of Master from that of Clerk, has been withdrawn by the State considering the fact that the same was contrary to the provisions of the service Rules applicable for the post of Master, no case for interference in the present petition is made out.

Accordingly, the present petition is dismissed.”

It is also to be noticed that in another **Civil Writ Petition No.4274 of 2011-Nanak Chand Vs. State of Punjab and others**, promotion was sought to the post of Social Studies Master on the strength of instructions dated 26.9.2001 by a Workshop Attendant. It was noticed that in terms of the Punjab State Education Class III (School Cadre)

Service Rules, 1978, the Workshop Attendant was not a feeder cadre to the promotion to the post of the Master and in the absence thereof no direction could be issued to consider and promote the petitioner to the post of Master. The letter dated 6.3.2014 vide which the instructions have been withdrawn was also been taken into consideration and explanation had also been called from the State as to why the State had issued instructions which ran contrary to the Rules and the law laid down by this Court. Relevant portion of the order dated 24.4.2014 reads as under:-

“The claim made by the petitioners in the present cases is regarding their promotion from Workshop Attendants to that of Masters. It is not in dispute that the Punjab State Education Class-III (School Cadre) Service Rules, 1978, do not provide for Workshop Attendants as a feeder cadre for the promotion to the post of Masters. Learned counsel for the petitioners have placed reliance upon instructions issued by the Government on 25.4.1972, 26.9.2001, 17.04.2003 and 02.05.2003. In fact, all these instructions have been issued in contravention to the statutory rules governing the post of Masters. An identical issue has already considered by this Court in CWP No.4208 of 1996, decided on 21.3.1996, Gurdeep Singh Gill v. State of Punjab and others, wherein it was opined that where the Government has decided to frame rules in exercise of its power under the Constitution of India or an Act for recruitment to the post of teachers that field must be deemed to have been occupied by those rules. If the rules do not provide for promotion to the post of teachers from Class IV post, it is not open to the Government to issue administrative instructions to create any source of recruitment/promotion. Instructions issued on 25.4.1972 were under consideration in the aforesaid judgment.

In view of the aforesaid Division Bench judgment of this Court, prima facie, the instructions issued subsequently providing for additional sources for promotion to the post of Masters, which is not provided for in the statutory rules, are clearly violative of law laid down by this Court.

Let Ms. Anjali Bhawra, Principal Secretary, Education, appear in person in Court, on the next date of hearing and explain why the State has issued instructions which run contrary to Rules and the law laid down by this Court.”

Thereafter, the case was listed for further direction for the purpose of getting explanation from the State and eventually was consigned on 16.5.2014 by noticing that the officials who had issued

instructions have now retired from service and it was specifically directed that no such instructions pertaining to service matters will be issued unless the same have been got vetted from the Legal Remembrancer. The relevant portion of the order reads as under:-

“Be that as it may, even though affidavit has been filed by DPI(SE) that the aforesaid instructions have already been withdrawn including the instructions, which have earlier been issued which are contrary to the service rules, further affidavit of Principal Secretary to Govt. of Punjab, Department of School Education dated 8/9.5.2014 had also been filed stating that instructions have been issued to all the departments concerned that the instructions/circulars, which are contrary to the statutory rules, should not be implemented and the aforesaid affidavit would have taken care of the issues, which are involved in the present petition, but still as the experience shows, despite judgments of this court and especially in the case itself, the State had been issuing instructions, which are contrary to the service rules, it is directed that no instructions issued by any department pertaining to service matters shall be followed unless the same have been got vetted from the Legal Remembrancer, who will specifically opine that the instructions being issued are not contrary to the service rules. In case any officer is found to be following any of the instructions issued earlier or later in time, which have not been vetted by the Legal Remembrancer and found to be contrary to the service Rules, he may be guilty of contempt.

As the main petition has already been disposed of, file be consigned to record room.”

Thus the right of promotion can only be claimed on the basis of Statute and in the absence of any such provision in the aforesaid Rules, no mandate for promotion can be issued as argued by the counsel against the alleged vacancies prior to the issuance of letter dated 6.3.2014 (Annexure P/7).

Accordingly, the present writ petition is dismissed.

September 03, 2015
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(G.S.SANDHAWALIA)
Judge