

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 19965 of 2013

Date of Decision : November 27, 2015

Charanjeet Kaur Petitioner

Vs.

State of Haryana and others Respondents

Case No. : C. W. P.No. 22491 of 2013

Date of Decision : November 27, 2015

Sarika Petitioner

Vs.

State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

* * *

Present : Ms. Anu Chatrath, Senior Advocate
with Mr. Rakesh Sobti, Advocate
for the petitioner (in both cases).

Ms. Shruti Jain Goyal, AAG, Haryana.

* * *

DEEPAK SIBAL, J. :

The present judgment adjudicates upon two writ petitions being **C. W. P. No. 19965 of 2013** and **C. W. P. No. 22491 of 2013**, as the facts and issues of law raised in both of them are similar. However, for the

sake of convenience, facts are being extracted from **C. W. P. No. 19965 of 2013 – Charanjeet Kaur vs. State of Haryana and others.**

Shorn of unnecessary details, the necessary facts, which are borne out from the record of the case and which have emerged from the arguments raised at the bar are that the petitioner, who was a Guest Faculty Lecturer, made an application in response to an advertisement dated 07.06.2012 (Annexure P-7) for consideration of her candidature for appointment as a Post Graduate Teacher (PGT), Punjabi. The petitioner had not qualified the Haryana Teachers' Eligibility Test (HTET), which was an essential qualification and for such candidates, the aforementioned advertisement provided that in case, the applicants had four years of certified service, then he/she would be exempted from having passed the HTET. The petitioner's candidature was rejected as according to the respondents, she did not have the requisite four years' service. Since the petitioner was a Guest Faculty Lecturer, for calculating the period of her service, the respondents had applied a formula, which was as per the policy decision/instructions of the Government dated 12.12.2008. Such a formula had been applied after considering the number of periods, per day, being taught by a Guest Faculty Lecturer as they were considerably less than being taught by a regular teacher. The rejection of her candidature for want of requisite service and the policy/instructions of the Government dated 12.12.2008 are challenged through the present petition.

Identically placed Guest Faculty Lecturers like the petitioner, raising similar issues, had earlier approached this Court through a bunch of

petitions, the lead case in which was **C. W. P. No. 21576 of 2012 – Karpal Singh vs. State of Haryana and others.** A learned Single Judge, after considering the issue in much detail, dismissed those petitions vide his order dated 18.12.2013, by holding as under :-

“A closer look at the memos dated 12.12.2008 and 27.10.2010 bare out that the only purpose of the first instructions was to devise the method of calculation of experience in issuing certificates to GFTs in terms of weeks. The object of issuing experience certificates was only for the purpose of adjustment of displaced GFTs who may be interested in continuing to serve as such. The experience certificates were to be issued in the prescribed proforma. All the experience certificates so issued in the present and connected cases fall short of 4 years experience by application of the formula adopted.

The next memo dated 27.10.2010 of which much has been made at the bar is save and limited to the issue of enhancement of remuneration of teachers engaged on guest faculty basis. It was only for purposes of giving GFTs a better deal on fixed salary payable every month that occasioned working out and adopting the fictional method of 220 days and to link it with the requisite days in a year that all teachers normally discharge duties. At the

end of the day, when Government equated 220 days to be counted and reckoned as a year of service it was not meant for anything more than 'adjustment' and 'enhancement of remuneration' only to improve their lot and give a certain stability of tenure till they were replaced by regularly recruited teachers or found their way to direct recruitment on merit. The petitioners have not qualified the HTET/STET as required under the prescribed rules of service. The one time exemption granted by the State from the operation of the rules and in substitution thereof by a relaxation awarded, the experience of 4 years introduced as an equalizer only to equate experience with qualifications and the prescribed Tests which were mandatory requirements under the unamended rules. As an exemption, the provision works as a concession granted by the State. It is well settled that concessions have to be strictly construed only to further the cause or object sought to be achieved by them. It is not enough to say that the formula adopted by the Government is irrational so long as it is not arbitrary or whimsical and operates uniformly on all the competing interests or the range of selection through reasonable classification. It cannot be said that the provision is illegal, unconstitutional or arbitrary. It is no more than a workable

solution to a problem arising out of operation of the guest faculty system introduced to meet an extraordinary situation arising from failure of the State in timely filling up substantive posts of teachers through direct recruitment consistent with Articles 14 and 16 of the Constitution. The Government may have been remiss in not appointing teachers through direct recruitment on regular basis and letting a GFT system infest the educational field but that does not mean that the formula adopted is absurd as no reasonably prudent person would not adopt as an alternative measure to meet emergent situation in relaxation of rule by laying down a prescribed format for calculating experience as the rule making thought fit as substitute qualification brought about by statutory amendment to the rules. There is also no direct challenge laid or reason given as to why experience of GFTs cannot be counted in weeks and therefore the attack appears to be blunted on this score. It is not for the Court to dissect the formula of working out experience in the prescribed format as it is a matter which rests in the domain of policy making. Laying down policy is the prerogative of Government and only if such policy is perverse or irrational or discriminatory then alone judicial review can be entertained. What the policy is and

what it ought to be are distant relatives and it is not for the Court to bridge the gap, if any. It has not been argued before this Court that the experience certificates in the prescribed format are not based on the method adopted in the policy instructions. [Emphasis supplied]”

A perusal of the judgment quoted above clearly shows that the petitioners therein and the petitioner herein were identically placed. The learned Single Judge rejected the writ petitions filed by the identically placed persons after holding that the exemption from passing of the HTET was by way of a concession and for the grant of a concession, the formula adopted by the Government was legal, constitutional and not arbitrary. According to the learned Single Judge, it was no more than a workable solution to a problem arising out of operation of the Guest Faculty system in order to meet an extra-ordinary situation arising from the failure of the State in timely filling up of substantive posts of teachers through recruitment consistent with Articles 14 and 16 of the Constitution of India. The learned Single Judge was further of the view that laying down of policy, which is impugned in the present writ petition, was the prerogative of the Government and declined to interfere, as according to him, the policy was not perverse or irrational or discriminatory.

Once the learned Single Judge has held the application of the formula through the impugned policy to be legal, constitutional and not arbitrary, rational, not perverse or discriminatory, the findings with which I

concur, then the challenge made to it through the present petition must fail.

No law to the contrary has been cited.

In view of the position of facts and law, as discussed above, finding no merit in both these petitions i.e. **C. W. P. No. 19965 of 2013** and **C. W. P. No. 22491 of 2013**, the same are hereby ordered to be dismissed, with no order as to costs.

A photocopy of this judgment be placed on the file of other connected case.

**(DEEPAK SIBAL)
JUDGE**

November 20, 2015

monika