

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

1. LPA No.1193 of 2014(O&M)

Harpreet Kaur and others -----Appellants

Versus

State of Punjab and ors. ----- Respondents

and

2. LPA No.1194 of 2014(O&M)

Manish and others -----Appellants

Versus

State of Punjab and ors. ----- Respondents

Date of decision: May 01, 2015

**CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLE MR.JUSTICE HARNDER SINGH SIDHU**

Present:- Ms.Jagdeep Bains, Advocate
for the appellants.

Mr.K.K.Gupta, Addl. A.G., Punjab.

HARINDER SINGH SIDHU, J.

This judgment shall dispose of two appeals i.e. LPA Nos.1193 and 1194 of 2014.

These intra-Court appeals under Clause X of the Letters Patent have been filed against the common judgment dated 16.05.2014, passed by Learned Single Judge, whereby, CWP Nos.28754 of 2013 and 833 of 2014 filed by the appellants praying for quashing clause 9(4) of the general conditions in the

advertisement dated 3.10.2013, to the extent it prescribed that for the post of Headmaster, teaching experience from Class VI to XII as master/ mistress or Lecturer(School Cadre) is required and consequently seeking their consideration for appointment to the post of Head Masters/Head Mistresses in the selection process being conducted by the Department of School Education, Punjab, were dismissed.

For disposal of the appeals, facts are being taken from LPA No.1193 of 2014.

Advertisement dated 3.10.2013 (Annexure P-6) was issued by the Recruitment Board of Punjab School Education Department, wherein, applications were invited for filling up of 264 posts of Headmasters/ Headmistresses. In the advertisement, under the 'General conditions' at Sr.No.9, it was mentioned that for the post of Headmaster, the teaching experience from Class VI to XII as master/mistress or Lecturer (School Cadre) shall be considered valid.

The appellants have the requisite number of years of teaching experience. But their experience is of teaching in colleges and not for the classes as prescribed in the advertisement. They applied in pursuance to the advertisement and were also called to attend the counselling on different dates. The names of the appellants also appeared in the provisional merit-list of the candidates, but they were not interviewed as they were having teaching experience from colleges and not of school level as

prescribed in the advertisement.

Aggrieved they filed the civil writ petition which has been dismissed.

The qualifications for recruitment of Headmaster are prescribed in Punjab State Education Class III (School Cadre) Service (First Amendment) Rules, 1995, (for short 'the Rules'), as under:-

“APPENDIX- 'B' (See Rule 5)

Sr.No.	Designation of Posts	Minimum qualifications and teaching experience	Method of recruitment - Direct Appointment	Promotion
1	2	3	4	5
	(1) Head Master or Headmistress	Degree of recognised University with B.T. Or B.Ed. Or Senior Basic Traiing with the following experience:- (i) In case of M.A. Or M.Sc. With M.Ed.- six years. (ii)In case of M.A. Or M.Sc. With B.T./ B.Ed.- Seven Years (iii)In case of B.A. Or B.Sc. Or B.Com with B.T. Or B.Ed. - Eight years (iv)In case of D.P.Ed. Or B.P.Ed. - Eight years from the date physical Education was introduced compulsory in the Schools (v) In case B.A. Or B.Sc. Or B.Com with M.Ed. - Seven years	Twenty-five per cent	Seventy-five per cent from masters and mistresses

The qualifications as prescribed in the advertisement were as under:-

“4. Educational and Professional Qualifications

(a) Head Masters -

Degree of recognized University with B.T. or B.Ed. or Senior Basic Training with the following experience:

- i) In case of M.A. or M.Sc. with M.Ed.- Six years.*
- ii) In case of M.A. or M.Sc. with B.T./B.Ed. -Seven years.*
- iii) In case of B.A. or B.Sc. or B.Com with B.T. or B.Ed.- Eight*

years.

iv) *In case of D. P. Ed. or B. P. Ed.- Eight years from the date Physical Education was introduced compulsory in the schools.*

v) *In case of B.A. or B.Sc. or B.Com with M.Ed.- Seven years.*

xxx xxx xxx

9. General Conditions :

(1) to (3) xxx xxx xxx

(4) *For the post of Headmaster The teaching experience from Class VI to XII as master/mistress or Lecturer (School Cadre) of Government, Government Aided, recognized or affiliated by CBSE/ICSE/ PSEB or other School Education Boards having equal standard shall be considered valid. The original experience certificate shall have to be brought at the time of counselling.”*

The case of the appellants in the writ petition was that the condition 9 in the advertisement was contrary to the Punjab State Education Class III (School Cadre) Service (First Amendment) Rules, 1995. It was contended that the Rules only prescribe an experience of 8 years, but do not specify the teaching level at which the said experience should have been acquired. Hence it was argued that the advertisement, in so much as it prescribes, that for the post of Headmaster the teaching experience from Class VI to XII as Master/ Mistress or Lecturer (School Cadre) would be considered valid, imposes a condition which is not envisaged in the Rules and is thus ultra vires the Rules. It was argued that the appellants have teaching experience at college level, which being of a higher level could not have been left out of consideration.

On behalf of the respondent- State it was contended that the advertisement was not contrary to the Rules but only had the effect

of supplementing the Rules with a view to achieve the object of recruiting the most suited persons with proper qualifications and experience as was required for the posts advertised. It was stated that the Rules only specified the number of years of experience required, and if a literal interpretation were to be given, then experience in any field even unrelated with education and teaching should suffice, which proposition would be evidently absurd. Further it was argued that the appellants had participated in the process of selection, being fully aware of the condition of experience, hence they could not later be permitted to turn around and challenge the advertisement.

Ld. Single Judge formulated the following two questions as requiring consideration:

“(1) Whether in the case in hand, the condition laid down in the advertisement for recruitment to the post of Headmaster regarding experience of teaching from Classes VI to XII as Master/Mistress or Lecturer (School Cadre) is required to be struck down, once there is no such provision in the Rules ?

(2) Whether the petitioners are estopped from challenging the aforesaid condition after having participated in the process of selection?”

On both issues, the Ld. Single Judge held against the appellants. Rejecting the contentions of the Ld. Counsel for the appellants on the first issue regarding experience it was observed:

“... .. We have to see the spirit of the Rules. The post, which is required to be filled up, the experience has certainly to be in the same line. The post in question

is of Headmaster. The service Rules provide 25% posts to be filled up by way of direct recruitment, whereas 75% posts are to be filled up by promotion from amongst Masters/Mistresses. The qualifications and teaching experience required, which is common to direct recruitment and promotion quota posts, has also been provided in the Rules.

The only issue, which is required to be considered is as to whether the condition prescribed in the advertisement that teaching experience for direct recruitment of Headmaster has to be to teach classes from VI to XII, is something which is beyond the Rules and could not be provided for. I do not find any merit in the contention of learned counsel for the petitioners. The qualifications and experience required for direct recruitment and promotion are same. Promotion to the post of Headmaster is from the post of Master. The Rules in question are applicable to the teachers working in secondary schools. Meaning thereby, the Masters, from which the promotion is to be made to Headmasters, are teaching classes from VI onwards. The same analogy has to be applied in the case of direct recruitment of Headmaster. The clause provided in the advertisement to that extent cannot be said to be contrary to the spirit of the Rules, even if the same has not been specifically so mentioned. The same is in line with the spirit of the Rules for the post to be filled up. Any person having experience of teaching either lower classes or higher classes cannot be said to be fit for the job, as it is not merely a question of a candidate possessing higher educational qualifications, the issue is regarding teaching experience. Teaching experience has to be in same line and at the relevant level. The condition of experience so laid down

in the advertisement cannot be said to be contrary to the Rules.”

Regarding the second issue of estoppel, the Ld. Single Judge noted that the advertisement was issued on 3.10.2013. The last date fixed for receiving applications online was 18.10.2013. The appellants submitted their applications in time. The interviews were scheduled for 16.12.2013 and 17.12.2013 and when the appellants appeared for interview they were informed that they could not be considered as they did not possess the required experience. Thereby, the Ld. Single Judge concluded that once they had participated in the selection process, being fully aware of the conditions of the advertisement, on being unsuccessful, they could not turn around and challenge the advertisement.

Ld. Counsel for the appellant has reiterated the same arguments before us. We find ourselves unable to agree with her. The reasoning of the Ld. Single Judge in rejecting both the grounds is unexceptionable and we agree with the same.

Accordingly, there is no merit in the appeals and the same are dismissed.

(SATISH KUMAR MITTAL) (HARINDER SINGH SIDHU)
JUDGE JUDGE

May 01, 2015
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