

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: September 15th, 2015

1. RA-CW-320 of 2015 (O&M) in CWP No.12689 of 2015

Sunil Kumar & others

...Applicant-petitioners

Versus

State of Haryana & others

...Non-applicant/respondents

2. RA-CW-322 of 2015 (O&M) in CWP No.12526 of 2015

Rohtash Kundu & others

...Applicant-petitioners

Versus

State of Haryana & others

...Non-applicant/respondents

3. RA-CW-360 of 2015 (O&M) in CWP No.12589 of 2015

Sant Kumar & others

...Applicant-petitioners

Versus

State of Haryana & others

...Non-applicant/respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers 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.Narender Hooda, Senior Advocate with
Mr.Jasbir Mor, Advocate,
for the applicant-petitioners (in RA No.320 of 2015).

Mr.S.K.Garg Narwana, Senior Advocate with
Mr.Teevar Sharma, Advocate,
for the applicant-petitioners (in RA No.322 of 2015).

Mr.Anil Rana, Advocate,
for Mr.Puneet Gupta, Advocate,
for the applicant-petitioners (in RA No.360 of 2015).

Mr.Jagbir Malik, Advocate.

Mr.B.R.Mahajan, Advocate General, Haryana with
Mr.D.S.Nalwa, Addl.Advocate General, Haryana,
for the State.

AMIT RAWAL, J.

By this order, I intend to dispose of three Review Application Nos.320 of 2015 in CWP No.12689 of 2015, 322 of 2015 in CWP No.12526 of 2015 and 360 of 2015 in CWP No.12589 of 2015 as the grievance of the review petitioners is common.

The review petitioners sought the review of the order dated 6.7.2015 passed in CWP No.12689 of 2015, whereby the said writ petition along with others filed by the surplus Guest Faculty Teachers teaching the subjects of Social Studies, Mathematics and Hindi, was dismissed.

Against the order dated 6.7.2015, aforementioned, the petitioners preferred Intra Court Appeal No.1101 of 2015 (Sunil Kumar and others Versus State of Haryana and others) and the Intra Appeal Bench, vide order dated 30.7.2015, granted liberty to the petitioners to file review on the ground that the documents (Annexures 'A' and 'B') attached along with the Letters Patent Appeal, were not placed for consideration, before this Court. The operative part of the order reads thus:-

“Since the documents [Annexures 'A' and 'B'] were not placed

for consideration of learned Single Judge, learned Senior Counsel submit and rightly so that they may be permitted to approach learned Single Judge by way of appropriate application[s] for review/modification of the judgment under appeal, dated 06.07.2015.

Ordered accordingly.

Needless to say that the appellants through their applications may show that the TGTs in the subjects of Social Study, Hindi and Mathematics are not surplus.

The filing of the instant appeal shall not be an impediment before the learned Single Judge to entertain the applications proposed to be filed by the appellants.

Disposed of. Dasti.

It is in these circumstances, the aforementioned review applications have been filed.

This Court, while noticing the contentions of the review petitioners, issued notice to the State vide order dated 11.8.2015, which reads thus:-

“Mr.Narender Hooda, Sr.Advocate assisted by Mr.Jasbir Mor, Advocate for the petitioners inter-alia submits that letter dated 30.05.2015 relied upon by this Court in the order sought to be reviewed was not in consonance with Rules promulgated on 11.04.2012, much less, Appendix A and B.

Notice of motion for 01.09.2015 to the State.

Mr.Jagbir Malik, Advocate accepts notice on behalf of respondents.”

The pith and substance of the review petitioners is that the State has wrongly branded them as “surplus”, whereas, in fact number of posts manned by Post Graduate Teachers (PGTs) had become short and, therefore, the petitioners-Guest Faculty Teachers/Trained Graduate Teachers (TGT)/

Masters, who were imparting the education in the aforementioned subjects, i.e., Social Studies, Mathematics and Hindi, were in fact teaching English.

It has been vehemently argued by the learned counsel appearing for the review petitioners that the affidavit furnished by the State declaring the petitioners as surplus was/is not in consonance with the Haryana School Education (Group C) State Cadre Service Rules, 2012 (for short “2012 Rules”), where statutory sanctioned strength has been prescribed, but data given/shown to the Court was not in consonance with the aforesaid rules. The statement given by the Officers of the State with respect to 4073 Guest Faculty Teachers, being surplus, was totally against the record but a ground reality is that it being fictional number, inasmuch as that as per the information available on the website, there are 21,672 sanctioned posts of C&V (Classical and Vernacular) teachers against which 14,189 teachers were working and remaining 7,483 posts are lying vacant and thereafter 26,169 sanctioned posts of the Masters against which 15,214 masters were working and remaining 10,955 posts are vacant and so on and so forth.

It has been strenuously argued that the Haryana Staff Selection Commission advertised the posts of PGT Political Science, Geography, Physiology, Sociology and History in place of Social Studies Master and there are certain schools where only Guest Faculty Teachers are working and in 40 schools, there are no teachers available for classes 6th to 8th. Even the data noticed by this Court in the proceedings filed in contempt petition was, as per the statutory rules, not correct and, therefore, there is an error apparent on the face of the record and, thus, the order, aforementioned, dismissing the writ petitions is liable to be reviewed.

The State, in response to the notice, has filed a short affidavit of Additional Director Administration, Office of Director Elementary Education, Haryana, Panchkula and the relevant portion of the same reads thus:-

12. *That from the perusal of the above, it is clear that due to shortage of Post Graduate Teachers (PGTs), 3303 posts of PGTs remained vacant out of a total of 5280 posts sanctioned in Government High Schools. At present, there are 15890 vacant posts of PGTs in the Government Schools of the State. It is pertinent to mention here that the Guest Teachers were declared surplus due to decision of the Government taken on 19.09.2012 to the effect that the classes from 9th to 12th shall be taught by PGTs/Lecturers. Prior to 19.09.2012, the classes 9th and 10th were used to be taught by TGTs. However, after 19.09.2012, though a decision was taken that the classes 9th to 12th shall be taught by Post Graduate Teachers (PGTs) and requisite number of posts have been sanctioned by the Government, but the same could not be filled up due to various reasons. As such, the surplus Trained Graduate Teachers (TGTs) in the subjects of Social Studies, Mathematics and Hindi whose services have been dispensed with, till recently, majority of them were actually teaching the classes of 9th and 10th in lieu of Post Graduate Teachers (PGTs). This position was also highlighted by the Chief Secretary Haryana in his affidavit dated 10.05.2015 filed in CWP No.2968 of 2015 titled as Seema Devi v/s State of Haryana.*

13. *That it is submitted that in the Government schools of the State the Social Studies Masters used to teach English and Social Studies subjects to classes 6th to 10th. Consequent upon the decision of the State Government that the PGTs will teach the classes 9th to 12th, the Social Studies Masters are supposed to teach the English and Social Studies subjects to the classes*

6th to 8th. The State Government on 11.04.2012 has notified the new Service Rules namely 'Haryana School Education (Group C) State Cadre Service Rules, 2012' and 'Mewat District School Education (Group C) Service Rules, 2012'. In these Service Rules a separate post of Trained Graduate Teacher (TGT) English has been created. At present, 5815 posts of TGT English are sanctioned in the Department but the recruitment to these posts are yet to be made and at present these posts are vacant. The Department has sent a requisition of 1035 posts of TGT English to the Haryana Staff Selection Commission on 20.07.2015. Presently, the subject of English and Social Studies are taught by the Social Studies Masters/TGT Social Studies as usual in the Government schools and once the recruitment is made, the subject of English will be taught by the TGT English."

On perusal of the averments culled out in the affidavit, it is borne out that 5815 posts of TGT English are sanctioned in the department, but the requisition of only 1035 posts of TGT English has been sent to the Haryana Staff Selection Commission, that too on 20.7.2015 after the order dated 6.7.2015 has been passed. It is further borne out that before the order, the services of the petitioners, though surplus TGTs in the subjects of Social Studies, Mathematics and Hindi, were being utilised for teaching classes 9th and 10th in lieu of PGT and this position was also reflected in the affidavit dated 10.5.2015.

As per affidavit, *ibid*, there are about 15,890 vacant posts of PGTs in the Government Schools of the State on promulgation of the Right of Children to Free and Compulsory Education Act, 2009 (for short "2009 Act"). Prior to the enforcement of the aforementioned Act, students of

classes 9th and 10th were being taught by the TGT/Master category, but after the enforcement of the Act, the workload for the TGT in the Haryana State, thus, decreased and the posts in question were declared surplus, though their services were utilised temporarily against PGT, wherever it was so required and even the chart showing rationalisation exercise conducted in 2012 was also carved out, whereby it has been shown that additional posts of Masters required for English are 5815 for classes 6th and 8th, whereas the requirement of Lecturers/PGT/surplus posts of Masters and C&V Cadre were sought to be converted into Lecturer Cadre.

I have heard the learned counsel for the parties and appraised the aforementioned contentions.

There is no dispute to the settled law that for interference in the review, there has to be a serious error apparent on the record. The review petitions, aforementioned, are based upon certain facts, which, according to the petitioners were not taken into consideration by this Court, particularly Annexures 'A' and 'B', i.e., notifications, aforementioned, whereby the statutory sanctioned posts are more than the one shown by the State to be surplus, but the fact remains that the State has not sent any requisition to the Commission for filling up the posts of Social Students Mathematics and Hindi for the reason that on account of the promulgation of 2009 Act, the students of classes 9th and 10th are to be taught by the PGT and not by TGT and by virtue of the decision, services of the TGT (surplus) before the order dated 6.7.2015 upholding the order of termination are temporarily used for imparting English subject, i.e., against the posts of PGT.

This Court can not remain oblivious of the fact that all the

Guest Faculty Teachers are back door entries and the grievance is being sought to be raised in the present review petitions, that till the State undertakes the exercise of filling up the vacant posts of English Teachers, i.e., 5815 and the requisition of only 1035 has been sent, the petitioners be allowed to continue as an ameliorative measure till such time, but in my view such contention is not tenable, as it would be not in consonance with the judgment dated 31.3.2011 passed in **Tilak Raj Versus The State of Haryana and others** upheld by the Hon'ble Supreme Court.

There is another aspect of the matter that an application seeking extension of time for completion of the recruitment process had been filed in SLP(C) No.10818 of 2012 and the same, vide order dated 28.5.2015, has been dismissed. The order reads thus:-

“ SLP(C) No.10818 of 2012

An application for seeking extension of time to implement the order dated 30.3.2012, was passed by this Hon'ble Court has been filed by Dr.Monika Gusain, Advocate for the applicant interalia praying for:-

(a) extend the time for completion of recruitment process in the terms of order dated 30.3.2012 passed by this Hon'ble Court for 6 months;

(b) grant any other or such relief which this Hon'ble Court deem fit and proper, in the interest of justice.

The application is perused and also the order dated 30.3.2012 is perused. The relevant para is as follows:-

“Having heard the learned Attorney General for India, Mr.Subramaniam and Mr.Vishwanathan, learned senior advocates, for the parties and also keeping in mind the submissions made by Mr.Vishwanathan, that the intention of the Division Bench of the High Court was

that no further appointments of 'Guest Teachers' should be made after 1st April, 2012, and that the vacancies should be filled up by posting and reposting teachers in the different institutions, we feel that the two things should really be kept separate, notwithstanding the apprehension voiced by Mr.Vishwanathan, that this could lead to continuance of appointment of 'Guest Teachers'.

We make it very clear that as directed by the Division Bench of the High Court, no fresh appointments of 'Guest Teachers' will be made from 1st April, 2012. However, since students also cannot be made to suffer on account of the delay in the appointment of regular teachers, we direct that the exercise indicated in the scheme, must be completed within the time specified in the scheme and no further extension of deviation therefrom will be permitted.”

Further perusal of the order shows that before the disposal of petition also the time extension was requested. But the Court directed State of Haryana to initiate the compliance and take serious action in terms of their affidavit dated 19.3.2012 as furnished by Financial Commissioner and Deputy Secretary to Government of Haryana School Education Department and to adhere to the time schedule mentioned in the said affidavit. It is also apparent from the record that the prayer on the part of the State for expeditious disposal of the writ before the High Court whose judgment was challenged in the impugned SLP were also made.

The selection of regular teachers in place of practice of appointing guest faculty teachers is in process since 2011, but the Government has failed to complete the same despite these strict direction of maintaining the time limit. Now the plea of the Government in view of a notification of Haryana

Government of February, 2015 withdrawing the previous vacancies cannot be a ground to not to comply with the direction of this Hon'ble Court. In view of the clear intention of the court to maintain the time limit of selection procedure, the prayer vide the present application is nothing but the review of those directions. Applicant cannot be allowed an indirect hearing in open Court by circumventing the precise prescribed procedure of review. Vide order of the then Ld.Registrar dated 14.5.2015 the application was asked to be redrafted as it being poorly drafted. No compliance has been made in furtherance of the said order also. The application is not only unreasonable but is also not sustainable. Hence, it is refused to be received in view of the Order 15 Rule 5, Supreme Court Rules, 2013.

Applicant/Petitioner be accordingly informed.”

Be that as it may, the petitioners cannot be permitted to work even for a “second” as an ameliorative measure, i.e., to teach the subject of English to the students studying in classes 9th and 10th, whereas, actually the role is that of the PGT.

In my view, there is no error apparent on the record, whereby the order sought to be review should be recalled/reviewed.

There is no merit in the review petitions. The same are accordingly dismissed.

As a necessary corollary, I am pained to issue following direction to the State to perform their administrative role which they failed to do:-

“It has been borne out from the affidavit filed by the Additional Director that the State has not yet made any effort to fill up the posts without giving any reasons and 5815 posts of TGT

English have been created after 2012 Rules and only requisition of 1035 posts has been sent on 20.7.2015. The State is directed to take immediate steps to fill up the remaining vacant posts of the TGT English, 178 TGT Punjabi, 43 TGT Urdu and 436 DPE subjects, so that the students are not deprived of their right to education by Trained Graduate and duly selected Teachers.

September 15th, 2015
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(AMIT RAWAL)
JUDGE