

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14597 of 2012
Reserved on:23.02.2016
Decided on :16.03.2016

Harpreet Kaur

... Petitioner

Versus

State of Punjab & others

... Respondents

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

Present: Mr. Vikas Kuthiala, Advocate for the petitioner.

Mr.Avinit Avasthi, AAG, Punjab.

G.S. Sandhawalia , J.

Petitioner seeks consideration in the counselling, which was to be held on 02.08.2012, in pursuance of the advertisement dated 07.05.2011 (Annexure P1), for the post of Master Cadre. Prayer has also been made for quashing the public notice dated 24.07.2012 (Annexure P2), clarifying the earlier advertisement that only candidates who had cleared the Punjab State Teachers Eligibility Test, (for short, 'PSTET') were eligible.

The case of the petitioner is that he is a bright student of his stream-Mathematics and had applied in pursuance of the advertisement dated 07.05.2011 whereby 3442 posts of Master Cadre had been advertised. As per the advertisement, the cut-off date was 30.05.2011 and it was mandatory to have passed the Teachers Eligibility Test, as per the guidelines of the National

Council for Teachers Education (for short, the 'NCTE'). It is pleaded that the State of Punjab itself was conducting the said PSTET for the first time, on 03.07.2011, after the cut-off date and therefore, candidates who had passed the Central Teachers Eligibility Test (for short, the 'CTET') were eligible to apply, the petitioner, being one such candidate. It was further averred that this Court in CWP-21301-2011 titled *Gurjinder Singh Vs. State of Punjab & others*, decided on 13.02.2012, had directed that since the cut-off date was 30.05.2011 and the Test was being conducted on 03.07.2011 and the result was to be declared on 30.07.2011, the authorities should look into the matter and take appropriate decision, within 2 months. The petitioner had cleared the CTET held on 05.05.2012, the result of which was declared on 29.05.2012 (Annexure P3), but was not called for counselling. The subsequent advertisement dated 24.07.2012, giving last chance to candidates who had applied and restricting the chance only to those who had passed the PSTET-2, was not correct.

It is pertinent to mention that the petitioner, vide the interim orders of this Court dated 01.08.2012, in view of the above facts, had been allowed to apply for the post of Math Mistress and permitted to participate in the process of counselling. However, the result of the petitioner was not to be declared, without the leave of the Court. The said order was further modified on 05.12.2012 that one post of Math Mistress shall not be filled up.

State, in its written statement, has defended the action on the ground that the CTET is to apply to the private schools which are under the domain of the U.T. Administration and where the State is conducting the TET, the candidate has to possess the said certificate. The guidelines of the NCTE were only clarificatory and not mandatory. One of the eligibility conditions was that the students who had passed the TET held on 03.07.2011, the result of which was declared on 30.07.2011, were eligible to apply. The petitioner having passed the TET from CBSE was ineligible candidate. The additional affidavit also came to be filed that the appointment letter had been issued to the petitioner, which was as per the interim orders of this Court and charge-sheets had been issued to the delinquent officers and that corrective measures would be taken. Permission was also sought to withdraw the appointment letter issued to the petitioner.

Counsel for the petitioner has, thus, argued that the State had itself not held the Test and fixed the cut-off date and the clause was not clear regarding the instructions whether the Test had to be passed, which had to be held by the State or by the CTET and therefore, the petitioner is entitled for the benefit of the CTET, having passed the said Test on 29.05.2012. It is further submitted that even the appointment letter dated 22.11.2012 had been issued, in pursuance of the interim orders and therefore, the petitioner, having worked for more than last 3 years, is entitled to

continue with the job.

State Counsel, on the other hand, opposed the said prayer and submitted that the State Test had been held and placed reliance upon the Division Bench judgment in CWP-346-2013 titled *Antim Kumari Vs. State of Haryana & others*, decided on 29.04.2015, wherein it has been held that candidates who had cleared the CTET were not eligible to claim eligibility for the posts advertised, since they had not qualified the State Test held.

The Division Bench has categorically held that candidates who had passed the CTET were not entitled to claim eligibility for the advertised posts when no such Teachers Eligibility Test was held. Relevant portion of the reasoning reads as under:

“We have already noticed above that as per Section 23 of the RTE , a person to be appointed as a teacher in an elementary school is required to possess such minimum qualification as is prescribed by the academic authority to be notified by the Central Government. The National Council for Teachers Education has been notified as such authority by the Central Government. Vide notification dated 23.08.2010 issued in accordance with Section 23(1) of the RTE Act, the National Council for Teachers Education specified that passing of a teachers eligibility test to be conducted by the appropriate Government would be one of the essential qualifications for a person to be eligible for appointment as a teacher in classes I to VIII.

As per Section 2 of the RTE Act, the State Government is the appropriate Government in relation to a school established within the territory of the State Government other than a school established, owned or controlled by the Central Government. Thus, for

recruitment of Primary Teachers for State Government Schools, the State Government is the appropriate Government. And as prescribed by the NCTE, which is the academic authority in terms of the mandate of the RTE Act, passing of a teachers eligibility test to be conducted by the State Government is one of the essential qualifications for eligibility for appointment as Primary Teacher. The NCTE has in its affidavit referred to above clarified that the guidelines relied upon by the Ld. Counsel for the petitioners are directory in nature.

Thus, there is no force in the argument of the Ld. Counsel for the petitioners that as HTET test was not conducted in the year 2012, the petitioners should be held eligible on the basis of their having qualified the CTET. The petitions in this set are thus dismissed.”

Resultantly, it does not lie in the mouth of the petitioner to submit that she was entitled to claim any eligibility on the basis of having passed the CTET.

However, one issue remains as, admittedly, the State itself had not specified whether the passing of the State Test was mandatory or whether the Central Test would also be a good criteria. Relevant clause in the advertisement reads as under:

“COMMON ELIGIBILITY – TEST

For the abovementioned posts, the candidates should have passed T.E.T. Test as per N.C.T.E. guide lines under R.T.I. Act.”

It is not disputed that in pursuance of the directions issued by this Court on 13.02.2012, to re-look into the issue, the State, thereafter, gave a chance to those candidates who had passed the PSTET, 2011, result of which was declared on

30.07.2011, after the cut-off date. Counsel for the petitioner is, thus, well justified in pointing out that once such an appointment had been made, under the interim orders of this Court, it should be protected and the petitioner should be allowed to continue in the post on humanitarian ground. Reliance has been placed upon the judgment of the Apex Court in **H.C.Puttaswamy & others Vs. The Hon'ble Chief Justice of Karnataka High Court, Bangalore & others 1990 (Supplementary 2) SCR 552**. In the said case, the appellants were in service for the last 10 years and had become overage and were protected by the Apex Court. Relevant portion of the judgment reads as under:

“12. Having reached the conclusion about the invalidity of the impugned appointments made by the Chief Justice, we cannot, however, refuse to recognise the consequence that involves on uprooting the appellants. Mr. Gopala Subramanayam, counsel for the appellants while highlighting the human problems involved in the case pleaded for sympathetic approach and made an impassioned appeal for allowing the appellants to continue in their respective posts. He has also referred to us several decisions of this Court where equitable directions were issued in the interests of justice even though the selection and appointments of candidates were held to be illegal and unsupportable.

13. There is good sense in the plea put forward for the appellants. The human problem stands at the outset in these cases and it is that problem that motivated us in allowing the review petitions. It may be recalled that the appellants are in service for the past 10 years. They are either graduates or double graduates or post graduates as against the minimum qualification of S.S.L.C. required for

Second Division Clerks in which cadre they were originally recruited. Some of them seem to have earned higher qualification by hard work during their service. Some of them in the normal course have been promoted to higher cadre. They are now overaged for entry into any other service. It seems that most of them cannot get the benefit of age relaxation under Rule 6 of the Karnataka Civil Services (General Recruitment) Rules, 1977. One could only imagine their untold miseries and of their family if they are left at the mid stream. Indeed, it would be an act of cruelty at this stage to ask them to appear for written test and viva voce to be conducted by the Public Service Commission for fresh selection. (See : Lila Dhar v. State of Rajasthan, 1981 (1) SCR 320 at 326.”

In similar circumstances, in **Mohinder Sain Garg Vs. State of Punjab & others 1991 (1) SCC 662** and **Vikram Singh & another Vs. The Subordinate Services Selection Board, Haryana & others 1991 (1) SCC 686**, the selection made was not set aside as the said candidates had joined the posts long time back. In **Inder Parkash Gupta Vs. State of Jammu & Kashmir & others 2004 (6) SCC 786**, a period of 10 years had elapsed and the Apex Court held that it would be appropriate that the appointments are sustained. Similarly, in **Krishan Gopal & others Vs. State of Haryana & others 2010 (1) RSJ 658**, where persons had been working for 14 years, it was held by this Court that it would not be appropriate to interfere, at that stage.

Resultantly, this Court is of the opinion that since the petitioner has been working for a period of over 3 years, now, and

on account of the lack of clarity in the advertisement by the State and the petitioner having been issued an appointment order, in pursuance of having qualified the CTET, it would not be fair to disturb the appointment letter already issued to her.

At the time of pronouncement, counsel for the petitioner submits that after the arguments of both sides were heard and the judgment was reserved on 23.02.2016, the petitioner has also been regularized in service on 29.02.2016. Copy of the said order has been placed on record as Annexure P-C.

Accordingly, the present writ petition is disposed of, by confirming the interim orders passed by this Court and allowing the petitioner to continue, on the strength of the appointment letter dated 28.01.2013, which had been issued to her on the strength of being eligible and having qualified the CTET.

MARCH 16, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE