

CWP No.18642 of 2016

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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.18642 of 2016
Date of decision: 15.9.2016

Visakha Singh

....Petitioner

Vs.

State of Punjab and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. S.K. Sharma Budhladawale, Advocate
for the petitioner.

Jaswant Singh, J

Petitioner, who was an aspirant for the post of Educational Service Provider (PTI), has sought a writ of Certiorari for quashing the impugned Corrigendum **(P.10)** dated Nil in continuation of Advertisement dated 13.4.2008 **(P.5)** as well provisional merit list **(P.16)** pertaining to 244 posts of Educational Service Provider (PTI) ; with a further writ of Mandamus directing respondent Nos.1 to 3 to consider the claim of the petitioner against the said post and also thereby restraining respondent Nos.1 to 3 from making fresh appointment on the basis of said provisional merit list.

It is submitted by learned counsel for the petitioner that the petitioner is duly qualified for the post advertised as he has passed his 10+2 examination from Punjab School Education Board in March 2002 as well as successfully secured two years' Certificate course in Physical Education from Kurukshetra

University, Kurukshetra in July 2004. It is argued that without amending the Service Rules applicable to the posts in question, namely, Punjab State Education Class III Service Rules 1955 (hereinafter to be referred as “1955 Rules”), the respondents are following the judgment rendered by a Full Bench of this Court in CWP No.451 of 2008 decided on 5.2.2010 titled Manjit Singh Vs. State of Punjab and Ors and have granted the additional weighage for higher qualification. It is further argued that instead of considering the candidates with higher qualification, the respondents should insert a corrigendum to the effect that the candidates like the petitioner alone, who fulfils the qualification of being 10+2 along with C.PEd, be considered at the first instance and in the absence of such candidates only the candidates with higher qualification can be considered against 244 posts.

Heard learned counsel for the petitioner and perused the paper book with his able assistance.

The arguments, on first blush, seem to be attractive but the same are fallacious in view of the fact that a Full Bench of this Court has already decided the issue in CWP No.451 of 2008 (P.6) while coming to the conclusion that **“the candidates possessing higher qualification in the same line would be eligible and cannot be excluded from consideration for selection”**, therefore, the argument that the candidates like the petitioner should only be considered at first instance and in the absence thereof only the candidates with higher qualification be considered for selection for the post in question is devoid of merit

and the same deserves to be rejected.

The further contention that without amendment of Rules of 1955, the issuance of impugned Corrigendum by respondent Nos.1 to 3 is invalid and unjustified, is also not acceptable and liable to be rejected in view of the fact that after decision of the reference by the Hon'ble Full Bench, the matter was placed before the learned Single Bench and the writ petition was allowed vide order dated 27.7.2010 holding that the candidates possessing the higher qualification i.e B.P.E, B.P.Ed, D.P.Ed and M.P.Ed be considered eligible for appointment as PTI. Consequently, a public notice dated 18.1.2013 was issued by the respondents to the effect that the candidates with higher qualification, who had not passed C.PEd, but had possessed higher qualification referred above had been directed to be considered eligible and they were called to attend re-counselling against 244 posts as per schedule given in the public notice.

It is also necessary to mention here that two notes were also appended in the public notice, which again became the subject matter of challenge in CWP No.1572 of 2013 along with other connected cases and they were allowed by a coordinate Bench of this Court on 30.1.2013 **(P.9)** thereby setting aside the impugned two notes as appended to the public notice and directions were issued to the respondents to again call for applications from interested candidates, by way of public notice, possessing the higher qualification prior to 29.4.2008 within a period of 30 days from the date of issuance of such public notice. The respondents were further directed to finalize the selection as

per criteria which was advertised on 13.4.2008 and now, the same very criteria is part of the impugned Advertisement **(P.5)**, which is again being questioned by the petitioner *de hors* the directions of this Court issued on 30.1.2013 (P.9), which cannot be countenanced and deserves to be rejected once the issue has already attained finality by this Court.

Still further, it is not in dispute that the petitioner has challenged the impugned merit list **(P.16)**, without even impleading such candidates as party respondents, who are likely to be affected and on this ground also, the writ petition deserves dismissal.

As a corollary of what has been discussed hereinabove, this Court finds no merit in the present petition and accordingly the same is dismissed.

September 15, 2016
manoj

(JASWANT SINGH)
JUDGE