

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.3297 of 2012(O&M)

Date of decision: 2.2.2016

Baljit Singh

...Petitioner

Versus

The Director General School Education and State Project Director

...Respondent

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

Present: Ms. Alka Chatrath, Advocate for the petitioner.

Mr. Anupam Singla, Addl. Advocate General, Punjab.

G.S.SANDHAWALIA, J. (Oral)

The petitioner challenges the order dated 9.2.2012 (Annexure P/16) whereby the respondents have rejected his case for consideration for appointment to the post of Trained Graduate Teacher (TGT) English on account of not possessing qualification as prescribed in the advertisement.

The dispute pertains as to whether the petitioner is eligible for consideration for appointment as TGT English since the petitioner has not done graduation in Elective English subject but is only a graduate and had English as one of the subject. As per advertisement dated 7.1.2010 the respondents invited applications for filling up the posts for Model Schools and Adarsh Schools in various Districts on contract basis. The basic qualification prescribed for Trained Graduate Teacher (TGT) English reads as under:-

“Bachelor's Degree with 50% marks in the subject of Elective English with B.Ed.”

Vide corrigendum dated 10.1.2010 (Annexure P/8) it was clarified that the Trained Graduate Teacher in Science, Math, English, Social Studies, Punjabi and Hindi should have 50% marks in the

Graduation degree i.e. B.A./B.Sc. with the requirement of B.Ed. remained intact. Thus, a clarification was issued that the candidate applying for the said posts should have 50% marks in the combined marks of graduation and not 50% marks in the subject of Elective English as advertised earlier. This is obviously done as per the requirement of the Kendriya Vidyalaya Sangathan (Appointment, Promotion, seniority etc.) Rules, 1971 which are applicable to the said posts.

It is case of the respondents that the said Rules were further approved by the Government of Punjab and made applicable for the recruitment of teachers for Adarsh Schools i.e. for the appointment under the advertisement dated 7.1.2010. The decision of the Government dated 29.12.2009 (Annexure R/3) has also been appended with the reply. As per Schedule I, Clause 7(c) of the said Rules, the requirement for the TGT (English) is English as an elective subject at degree level and also to have 50% marks in the Bachelor's degree in the concerned subject and in aggregate including elective and languages in the combination of subjects. The relevant rule reads as under:-

- “7 Educational and **Essential** other qualifications required for direct recruits.
- i) Four years integrated degree course of Regional Colleges of Education of NCERT in the concerned subject with at least 50% marks in aggregate; or
- Second class Bachelor's degree with at least 50% marks in the concerned subject(s) and in aggregate including elective and Languages in the combination of subject as under:
- a) XX XX
- b) XX XX
- c) For TGT (English) : English as an elective subject at Degree level.
- d) XX XX”

Thus, from the above it would be clear that the Rules itself

provided that the candidate was required to have Elective English subject and merely because the petitioner has studied English in graduation would not make the petitioner eligible.

The submission of the counsel that corrigendum dated 10.1.2010 (Annexure P/8) would prevail and be binding upon the respondents is without any basis. It is settled principle that advertisement cannot go and run contrary to the statutory rules under which the appointments are to be made. Reference can be made to the Division Bench in **Kamaljeet Kaur Vs. State of Punjab 2000(1) RSJ 292.** The relevant observations read as under:-

“It is, thus, clear that the qualifications incorporated in the advertisement are inconsistent with those prescribed under the Rules. A candidate who has passed B.Sc. with any two of the four subjects i.e. Physics, Chemistry, Botany and Zoology is eligible to be appointed as Science Mistress (Medical). However, as per the requirement of the advertisement, he/she cannot be treated eligible. In our opinion, the qualifications prescribed under the statutory rules must prevail over those specified in the advertisement because the Government and its functionaries are not entitled to make recruitment *de hors* the qualifications prescribed under the statutory rules. As a logical corollary, it must be held that the rejection of the petitioner's candidature, notwithstanding the fact that she possesses the qualifications prescribed under the Rules, will have to be declared as nullity.”

Once the Rules itself provided that requirement is Elective English for the TGT English teacher who has to teach in the school it is not for this Court to substitute the requirement and come to an opinion that the same would be equivalent to the Elective English subject at degree level merely because the petitioner has studied English as compulsory subject. Reference can be made to the Full Bench decision of this Court in **Som Dutt Vs. State of Haryana and another 1984(1) ILR (Punjab) 400** wherein it has been held that the employer can insist on strict adherence to

the prescribed minimum qualification and the applicant cannot insist for being considered for the post. The relevant observations read as under:-

“15. To conclude, the answer to the question posed at the out-set is rendered in the affirmative and it is held that where the qualifications for a post are spelt out by a statute, or precisely prescribed by the employer-State, it can insist on a literal adherence thereto irrespective of either an unprescribed equivalent or a higher academic qualification therefrom possessed by applicants seeking appointments to those posts.”

In the replication nothing has been said as to whether the said Rules are not applicable and some other Rules would be applicable.

Accordingly, keeping in view the above, this Court is of the opinion that action of the respondents in not considering the case of the petitioner on the ground that the petitioner has not fulfilled prescribed qualification does not suffer from any infirmity which would require interference by this Court.

Accordingly, the present writ petition is dismissed.

February 02, 2016
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(G.S.SANDHAWALIA)
Judge