

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

CWP No.2479 of 2013 (O&M)

Date of decision : 01.08.2016

Parvesh Kumar and others

... Petitioners

Vs.

State of Haryana & others

... Respondents

2. CWP No.5350 of 2013 (O&M)

Parvesh Kumar

... Petitioner

Vs.

State of Haryana & others

... Respondents

3. CWP No.5887 of 2013 (O&M)

Rajesh Kumar & others

... Petitioners

Vs.

State of Haryana & others

... Respondents

4. CWP No.13534 of 2013 (O&M)

Rajesh Kumar and another

... Petitioners

Vs.

State of Haryana & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Rajesh K. Kataria, Advocate for the petitioner(s).

Mr. Hitesh Pandit, Additional Advocate General, Haryana.

...

TEJINDER SINGH DHINDSA, J.

This order shall dispose of CWP Nos.2479 of 2013 (Parvesh Kumar and others Versus State of Haryana and others), 5350 of 2013 (Parvesh Kumar Versus State of Haryana and others), 5887 of 2013

(Rajesh Kumar and others Versus State of Haryana and others) and 13534 of 2013 (Rajesh Kumar and another Versus State of Haryana and others) as common issue is involved in these petitions.

Petitioners in these four connected petitions are aggrieved of the action of the respondent/Haryana School Teachers Selection Board in having rejected their candidature for the post of PGT on the ground that they do not possess the requisite four years experience to claim exemption from qualifying the HTET/STET examination.

Brief facts are that the Haryana School Teachers Selection Board, Haryana (hereinafter to be referred to as 'the Board') advertised the posts of Post Graduate Teachers (PGT-H.E.S.-II) Group 'B' service for various subjects under the Department of Education Haryana vide advertisement dated 07.06.2012. The closing date for submission of applications was 29.06.2012 and thereafter extended upto 15.07.2012 by way of issuance of a corrigendum. The eligibility conditions which were common to all posts were:

(a) Matric with Hindi/Sanskrit or 10+2/B.A./M.A. with Hindi as one of the subject.

(b) Certificate of having qualified Haryana Teachers Eligibility Test (HTET)/School Teachers Eligibility Test (STET) of respective subject for the Post applied conducted by the Board of School Education Haryana, Bhiwani/one time exemption from HTET (see Note-2).

(c) Consistent good academic record (see Note-1) and

(d) essential qualifications (e.q.) is given with each post.

Note-2 appearing in the advertisement and which would be relevant for the controversy raised in the instant petition read as follows:

“Note 2. A one time exemption of HTET/STET has been granted to the candidates who have worked for minimum 4

years till 11.04.2012 in privately managed Govt. Aided Schools, Recognized Schools and Govt. Schools. Candidate must be in service on 11.04.2012 in addition to being in position on the date of applying for the said post. They will have to qualify HTET not later than 1st April 2015 otherwise their services will be terminated automatically. Qualification/eligibility conditions and certificates will be determined with regard to last date fixed for submission of online applications also called as closing date given in the advertisement.”

Counsel would submit that each one of the petitioners possessed the essential qualifications prescribed for the post and had experience of having worked in excess of four years till 11.04.2012 and as such were vested with a right to be exempted from qualifying HTET/STET examination. Grievance raised is that the selection criteria stipulated in the advertisement has been changed by applying a subsequent clarification issued vide letter dated 22.11.2012 issued by the Director General of Education, Haryana and the experience possessed by the petitioners has been reckoned to be less than the requisite period of four years as on the cut of date i.e. 11.04.2012. Counsel would vehemently argue that it was not permissible for the respondent/Board to have changed the selection criteria midway through the process of selection. It is argued that the terms and conditions contained in the advertisement have to be strictly adhered to and in the present case, the action is wholly arbitrary and illegal inasmuch as the respondent/Board had not even issued any corrigendum bringing to the notice of the participating candidates including the petitioners as regards change in criteria for claiming exemption from HTET/STET examination. Reliance has been placed upon judgment of the Hon'ble Supreme Court of India in ***B. Ramakichenin @ Balagandhi Versus Union of India and***

others, 2008 (1) SCT 17.

It has further been argued that even as per clarification dated 22.11.2012 issued by the Director General Education Haryana, a reference has been made to an earlier Memo dated 12.12.2008, which was in continuation of guidelines dated 02.12.2008 issued by the School Education Department, Haryana and which held the field only towards temporary adjustment of displaced Guest Teachers. Counsel submits that such clarification dated 22.11.2012 could not be made applicable for issuance of experience certificate in relation to a Guest Teacher who was seeking regular appointment to the post of PGT having applied in response to the advertisement dated 07.06.2012 issued by the respondent/Board.

Per contra, learned State counsel would submit that all the petitioners in these four petitions had worked as Guest Faculty Teachers and their experience has been reckoned and calculated as per clarification issued vide Memo dated 22.11.2012 appended as Annexure R-7/1 along with the reply filed on behalf of respondent/Board. The clarification in Memo dated 22.11.2012 reads as follows:

“Subject:- Clarification regarding Guest Teachers experience.

.....

Kindly refer to your office Memo. No. 1/1-2012-HSTSB-1SR/690, dated 5.10.2012 on the subject cited above.

It is intimated that the department has issued instructions regarding issuance of teaching experience to the guest teachers vide Memo. No. 15/59-2005 Co (4) dated 12.12.2008 (copy enclosed). Earlier the guest faculty teachers were engaged per period basis hence, as per this letter the experience of JBT Teachers is to be calculated/worked-out by dividing the number of days taught by a JBT Guest teacher by

7 (seven). In case of Masters, C &V Teachers and Lecturers the experience in number of weeks is to be calculated by dividing the number of periods taught by that guest teacher by 30 in case of Lecturer, 36 in case of Master and 39 in case of C & V Teachers. However, w.e.f. 1.4.2009 the teaching experience of all the guest teachers is to be calculated/worked out on the basis of number of years as the guest teachers have been engaged on contract basis w.e.f. 1.4.2009 on a fixed remuneration.”

Stand taken on behalf of the State is that the condition contained in advertisement as regards possessing four years teaching experience for claiming exemption from HTET/STET has not been altered and it is only as regards calculating such experience possessed by Guest Faculty Teachers that the clarification dated 22.11.2012 has been applied and made operative.

Counsel for the parties have been heard at length and the pleadings on record have been perused.

In the considered view of this Court, the submission as regards there being a change of criteria after issuance of advertisement in relation to four years teaching experience for claiming exemption from HTET/STET is without merit. In the advertisement dated 07.06.2012, one of the essential eligibility condition was for a candidate to have qualified HTET/STET of the respective subject for the post applied. Note-2 envisaged a one time exemption from qualifying HTET/STET and in favour of such candidates who have worked for a minimum four years till 11.04.2012 in privately managed government aided schools, recognized schools and government schools. Note-2 was silent insofar as the methodology to be adopted while calculating the teaching experience that may be possessed by a Guest

Faculty Teacher. Under such circumstances, it was open for the respondent/Board to have resorted to an objective and rational criteria to calculate the experience possessed by the Guest Faculty Teacher. In the clarification issued vide memo dated 22.11.2012 at Annexure R-7/1 by the Director General, Secondary Education, Haryana, it has been stated that earlier in point of time, Guest Faculty Teachers were engaged on per period basis and accordingly, in case of Masters, C&V Teachers and Lecturers working as Guest Faculty, the experience in number of weeks is to be calculated by dividing the number of periods taught by such Guest Teacher by 30 in the case of Lecturer, 36 in case of Masters and 39 in case of C&V Teachers. However, subsequent to 01.04.2009, since Guest Teachers had been engaged on contractual basis on a fixed remuneration, their experience was to be calculated/worked out on the basis of number of years taught. Insofar as JBT Teachers were concerned, since they were being released their remuneration on per day basis, therefore, their experience was to be calculated/worked out by dividing the number of days taught by such JBT teacher by seven.

Counsel appearing for the petitioners does not controvert the factual position that prior to 01.04.2009, the Guest Teachers were engaged on per period basis and it is only after 01.04.2009 that they were engaged on contractual basis and on a fixed remuneration. Such situation would necessarily entail some rational criteria to be adopted by the respondent/Board as regards computing and calculating teaching experience of Guest Faculty Teachers. This is precisely what has been done in the light of issuance of Memo dated 22.11.2012 at Annexure R-7/1. It is not the case of the petitioners that the advertisement dated 07.06.2012 had stipulated a

particular methodology/yardstick for calculation of experience of Guest Faculty Teachers and the same has been deviated from and changed. The clarification vide memo dated 22.11.2012 at Annexure R-7/1 only ensures strict adherence with regard to exemption clause contained in Note-2 i.e. possessing four years teaching experience upto the cut of date of 11.04.2012 for claiming exemption from HTET/STET. By applying the methodology contained in the clarification issued vide Memo dated 22.11.2012 at Annexure R-7/1, none of the petitioners possess the requisite four years teaching experience. No infirmity, as such, can be found in the decision and action of the respondent/Board in having rejected the candidature of the petitioners as they did not fulfill one of the essential eligibility conditions of having qualified HTET/STET examination and neither did they possess the requisite four years teaching experience to claim exemption there from.

In ***B. Ramakichenin @ Balagandhi's case (supra)***, applications had been invited for the post of Deputy Director (Agriculture) in the Agriculture Department, Government of Pondicherry by way of an advertisement issued by Union Public Service Commission. The essential qualifications prescribed under the advertisement were:

(A) Educational : M.Sc. Degree in Agriculture from a recognized University/Institution

(B) Experience : Two years experience in extension work/soil/Input Analysis.

UPSC resorted to an exercise of short listing and did not call the appellant for the interview as his two years experience was not after obtaining the M.Sc. Degree in Agriculture. Such action was not approved and frowned upon by observing that in paragraph 3.1 of the advertisement issued by the UPSC dated 23.05.1998, a particular method of short listing

had been stipulated and as such, it was not open for the UPSC to resort to any other method. Relevant observations in this regard are contained in para 20 of the judgment and are as follows:

“20. However, in this case we have noticed that in paragraph 3.1 of the advertisement of the UPSC dated 23.5.1998, the method of short-listing has been given. Hence the UPSC cannot resort to any other method of short-listing other than that which has been prescribed in paragraph 3.1. In the said paragraph of the advertisement, it is mentioned that the Commission may restrict the number of candidates on the basis of either qualifications and experience higher than the minimum prescribed in the advertisement or on the basis of the experience higher than the minimum prescribed in the advertisement or on the basis of experience in the relevant field. In other words, it was open to the UPSC to do short-listing by stating that it will call only those who have Ph.D. degree in Agriculture (although the essential degree was only M.Sc. degree in Agriculture). Similarly, the UPSC could have said that it would only call for interview those candidates who have, say, five years experience, although the essential requirement was only two years experience. However, experience after getting the M.Sc. degree cannot be said to be higher than the experience before getting the M.Sc degree. Also, the advertisement dated 23.5.1998 does not mention that two years experience must be after getting the M.Sc. degree.”

The facts of the present case are clearly distinguishable. In the advertisement dated 07.06.2012 issued by the respondent/Board, there was no indication whatsoever with regard to the method of calculating the teaching experience possessed by the Guest Faculty Teachers. Since Guest Faculty Teachers including the present petitioners were claiming exemption from qualifying the HTET/STET examination such exemption could be granted only upon determining that they possessed four years teaching

experience. A cogent and rational criteria for such determination had to be formed. Such formula has emanated by way of clarification in memo dated 22.11.2012 at Annexure R-7/1. Such course of action adopted by the State/respondent/ Board would rather find support from the following observations made by the Hon'ble Supreme Court in **B. Ramakichenin @ Balagandhi's case (supra)** and which are in the following terms:

*“18. In the present case, no doubt, the UPSC had resorted to an objective and rational criteria that only those who have two years experience after getting the M.Sc. degree will be considered, while those who have got such experience but only before getting the M.Sc. degree will not be called for the interview. Ordinarily we would not have taken exception to this procedure since it is based on an objective criteria, and ordinarily this Court does not interfere with administrative decisions vide **Tata Cellular vs. Union of India AIR 1996 SC 11**. As observed in the said decision, the modern approach is for courts to observe restraint in administrative matters.*

19. Hence, if the method of short-listing had not been prescribed by the UPSC or in a statutory rule, it is possible that the argument of learned counsel for the respondents may have been accepted and we may not have interfered with the method of short-listing adopted by the UPSC since it appears to be based on a rational and objective criteria.”

Counsel has not raised any submissions as to why experience of Guest Faculty Teachers cannot be counted in weeks. No attempt has been made to show that such formula adopted by the respondent/Board is irrational or whimsical. The clarification contained in memo dated 22.11.2012 at Annexure R-7/1 has been applied uniformly across the Board and to all the Guest Faculty Teachers who were claiming exemption from HTET/STET. The plea of discrimination as such, is not available to the

petitioners.

Even otherwise, it would not be for this Court to dissect such formula and to take a different view as regards reckoning experience of Guest Faculty Teachers. These are matters which are within the domain of policy decision making and would be open to intervention only after it is shown that the decision is perverse or irrational. No such case has been made out.

For the reasons recorded above, the writ petitions are found lacking in merit and are dismissed.

01.08.2016

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether reasoned/speaking? | Yes |
| ii) | Whether reportable? | Yes |