

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

**Civil Writ Petition No. 26019 of 2016 (O&M)
Date of Decision: 16.12.2016**

Roshan Lal Khera and others

..... Petitioners

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Ashok Sharma Nabhewala, Advocate
for the petitioners.

JASWANT SINGH, J. (ORAL)

The petitioners, fourteen in number, possess the qualification of Bachelors Degree of Physical Education/Master Degree of Physical Education. They are working as Lecturer in Physical Education, a Class-II post in the Department of Education (Senior Secondary), Punjab and stated to be teaching '10+2' classes.

The posts of Masters/Mistresses in Physical Education, termed as DPE with Diploma in Physical Education or Bachelors Degree in Physical Education teach Physical Education from 'Class-6 to 10'. The post of DPE is a feeder cadre for the promotional post of Lecturer in Physical Education subject to acquiring of Post Graduate qualifications.

It is not in dispute that the post of Lecturer in Physical Education, Class-II, carries a higher pay scale than the post of DPE, a Class-III post governed by the Punjab State Education Class-III (School Cadre Service Rules), 1978 (for short 'the 1978 Rules').

The posts of Assistant Education Officers (Physical Training) were created and encadred by virtue of the First Amendment Rule 1995 to the aforesaid 1978 Rules. As per the Appendix-B of the Rules, the method of recruitment to these posts is hundred (100) per cent by way of direct appointment. Concededly, the posts of Assistant Education Officers (for short 'AEOs') is equivalent to the Master Cadre/DPE in terms of prescribed essential qualifications and pay scale as per the 1978 Rules as amended in 1995. The function of the posts of Assistant Education Officers is to organize Game Events at the district level. Since no direct recruitment was made to these created posts of AEO's for a long time, an administrative arrangement was made by posting the DPEs based on seniority-cum-merit to be chosen by a Committee constituted for that purpose.

It is a matter of record that in previous litigation regarding posts of Assistant Education Officers from amongst DPEs, an LPA Bench of this Court had permitted the arrangement based on the said criteria of seniority-cum-merit to continue till regular appointments were made. A copy of said order dated 17.09.2010 passed in LPA No. 18 of 2010 is annexed as **Annexure P-2**.

The petitioners were ordered to be promoted as Assistant Education Officers (Games) vide order dated 06.09.2016 (**Annexure P-7**) and have filed the present writ petition directed against the order dated 05.12.2016 (**Annexure P-12**) and order dated 13.12.2016 (**Annexure P-14**) whereby the promotion orders at **P-7** have been withdrawn.

Learned counsel for the petitioners by relying on Clause-26 of a policy notified on 02.08.2012 (**Annexure P-3**) submits that the posts of

Assistant Education Officers (Games) were upgraded and only members of the Lecturer Cadre were to be appointed to such posts instead of the lower cadre of DPEs. He, thus, submits that by passing of the impugned order dated 05.12.2016 (**P-12**), a decision appears to have taken to appoint only DPEs to man the post of Assistant Education Officers, resulting into passing of the impugned order dated 13.12.2016 (**P-14**) withdrawing the previous promotion order dated 06.09.2016 (**P-7**).

After hearing learned counsel for the petitioners at length and perusing the paper book, no case for interference is made out.

It is a conceded case that the post of Lecturer in Physical Education is a Class-II Post and carries a higher pay scale than the post of Assistant Education Officers (Games), which is a Class-III post and equivalent to the post of DPEs governed by the aforesaid 1978 Rules as amended in the year 1995. There is no material on record to show that these statutory governed posts of Assistant Education Officers have been upgraded to be Class-II posts with equivalent pay scale that of Lecturers in Physical Education. The wording of Clause-26 of Policy at **P-3** is not sufficient to sustain an inference that the post of AEOs can only be manned by Lecturer in Physical Education and they both carry an equivalent pay scale. Also, no specific policy decision has been shown which is contrary to the policy decision taken by the Department as furnished while disposing of aforesaid LPA (**P-2**) wherein it was stated on affidavit that the DPEs based on the criteria of seniority-cum-merit and based on performance in organizing the games were to be appointed to man the post of Assistant Education Officers. It is precisely this reason which has been adopted while deciding the *inter se* claim of two DPEs vide the impugned order dated

05.12.2016 (**P-12**) qua which the petitioners can possibly have no locus to challenge. It is a matter of record that another *CWP No. 19316 of 2016*, titled *Amrit Pal Singh and Others Versus State of Punjab and Others* was filed by Lectures in Physical Education assailing the promotion orders dated 06.09.2016 (**P-7**) on the ground that junior Lecturers in Physical Education had been appointed to man some of the Assistant Education Officers in some districts.

Upon reconsideration, perhaps in the light of the aforesaid facts, promotion orders dated 06.09.2016 was withdrawn vide order dated 13.12.2016 (**P-14**) and the said writ petition was disposed of as infructuous vide order dated 14.09.2016. Therefore, the challenge to both the impugned orders dated 05.12.2016 & 13.12.2016 (**P-12 & P-14, respectively**) of the petitioners is untenable and hence rejected.

In view of above, finding no merit in the instant writ petition and the same stands dismissed.

December 16, 2016

'dk kamra'

**(JASWANT SINGH)
JUDGE**

Whether Speaking/reasoned	Yes
Whether Reportable	No