

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

Sr. No. 210

CWP-6477-2013

Decided on : 16.05.2016

Kiran Bala

..... Petitioner

VERSUS

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

To be referred to Reporters or not?

Whether the judgment should be reported in the digest?

Present: Mr.H.P.S.Ishar, Advocate, for the petitioner.

Mr.Harish Rathee, Senior DAG, Haryana.

DEEPAK SIBAL, J. (ORAL)

Through the present petition, the petitioner seeks quashing of order dated 05.12.2012 (Annexure P-7) through which she has been declared ineligible to be appointed as PGT (Mathematics). A prayer for issuance of a direction to the respondents to appoint her as PGT (Mathematics) has also been made.

After hearing learned counsel for the parties and perusal of the record with their able assistance, the relevant facts which have emerged are that through advertisement dated 07.06.2012, the respondents invited applications for appointment to several posts including PGT (Mathematics). As per the advertisement, one of the

essential qualification was that a candidate should have passed the Haryana Teacher Eligibility Test (HTET)/School Teachers Eligibility Test (STET). However, as per Note 2, a one time exemption from passing HTET/STET has been granted to candidates who had teaching experience of 4 years in privately managed Govt. Aided Schools, Recognised Schools and Govt. Schools. As per Note 3, the certificate to claim one time exemption from passing HTET/STET was to be verified by the concerned District Education Officer and counter-signed by the Director of Secondary Education of the concerned State. Claiming to have the requisite 4 years' teaching experience, the petitioner made an application to the respondent-authorities for consideration of her candidature after granting her exemption from passing of HTET/STET. Since the petitioner had acquired her teaching experience while serving as a Guest Faculty Teacher, after applying the formula given in the instructions dated 12.12.2008, the experience certificate as given to her by the respondent-authorities certified that the petitioner had teaching experience of 203.56 weeks as against the required 208 weeks. As noticed earlier, the teaching experience of the petitioner gathered as a Guest Faculty Teacher was certified to be 203.56 weeks after applying the formula to calculate teaching experience of Guest Faculty Teachers as per the afore-referred instructions dated 12.12.2008.

It is the admitted position that if the formula for calculation of teaching experience for Guest Faculty Teachers as contained in the

instructions dated 12.12.2008 is applied in the case of the petitioner, since she has not passed HTET/STET, she would not be eligible for the consideration of her candidature for appointment as PGT (Mathematics).

In view of the facts as noticed above, the question that arises, is whether the formula as contained in instructions dated 12.12.2008 can be applied in the petitioner's case?

This issue is no longer res-integra as the same stands conclusively decided by this Court against the petitioner in a bunch of cases, the lead case in which was CWP-21576-2012 **Karpal Singh vs. State of Haryana and others**, decided on 18.12.2013, wherein it has been held as under: -

“It was the principal submission of the learned counsel for the petitioners that the formula of working out teaching experience in terms of weeks or by calculating one year as 220 days is irrational for working out the experience of GFTs. In this petition, the petitioner prays for a writ of certiorari quashing the action of the Board in not considering his claim for the post advertised and to be part of the regular recruitment process. They claim that they fulfill the eligibility conditions of experience provided in Note 2 of the advertisement read with Clause 1 of the corrigendum dated 03.07.2012 inasmuch as the period spent teaching as GFTs from 15.11.2007 to 31.03.2009 (mutatis mutandis) and such experience deserves to be counted at the rate of 220 teaching days per year in terms of the Government instructions dated 27.10.2010. The petitioner has not challenged the policy instructions as being ultra vires or unconstitutional but have only challenged denial of consideration to compete for the posts in regular selection. He has woven his case in and around the instructions and that they should be interpreted in favour of the petitioner/s. In CWP No.4725 of 2013 the petitioners have questioned the rejection letters (P-5) and have also questioned the format of experience certificates issued by the authorities as 'wrong'. They urge that with the change in terms and conditions of engagement and enhancement of remuneration fixed per month their experience should be calculated in a manner which achieves the purpose of qualifying the requisite experience. They submit that the teaching experience should be counted as per memo dated 27.10.2010 instead of on the basis of teaching experience certificate issued to them by the competent authority in terms of years spent as GFTs. Thus they assert that they have the requisite 4 years past teaching experience to their credit as on 11.04.2012.

A closer look at the memos dated 12.12.2008 and 27.10.2010 bare out that the only purpose of the first instructions was to devise the method of calculation of experience in issuing certificates to GFTs in terms of weeks. The object of issuing experience certificates was only for the purpose of adjustment of displaced GFTs who may be interested in continuing to serve

as such. The experience certificates were to be issued in the prescribed proforma. All the experience certificates so issued in the present and connected cases fall short of 4 years experience by application of the formula adopted.

The next memo dated 27.10.2010 of which much has been made at the bar is save and limited to the issue of enhancement of remuneration of teachers engaged on guest faculty basis. It was only for purposes of giving GFTs a better deal on fixed salary payable every month that occasioned working out and adopting the fictional method of 220 days and to link it with the requisite days in a year that all teachers normally discharge duties. At the end of the day, when Government equated 220 days to be counted and reckoned as a year of service it was not meant for anything more than 'adjustment' and 'enhancement of remuneration' only to improve their lot and give a certain stability of tenure till they were replaced by regularly recruited teachers or found their way to direct recruitment on merit. The petitioners have not qualified the HTET/STET as required under the prescribed rules of service. The one time exemption granted by the State from the operation of the rules and in substitution thereof by a relaxation awarded, the experience of 4 years introduced as an equalizer only to equate experience with qualifications and the prescribed Tests which were mandatory requirements under the unamended rules. As an exemption, the provision works as a concession granted by the State. It is well settled that concessions have to be strictly construed only to further the cause or object sought to be achieved by them. It is not enough to say that the formula adopted by the Government is irrational so long as it is not arbitrary or whimsical and operates uniformly on all the competing interests or the range of selection through reasonable classification. It cannot be said that the provision is illegal, unconstitutional or arbitrary. It is no more than a workable solution to a problem arising out of operation of the guest faculty system introduced to meet an extraordinary situation arising from failure of the State in timely filling up substantive posts of teachers through direct recruitment consistent with Articles 14 and 16 of the Constitution." (emphasis supplied)

In **Karpal Singh's** case (supra) as quoted above, the petitioners therein were identically placed as the petitioner as they were also Guest Faculty Teachers who had not passed the HTET/STET and in their cases also after applying the formula as per the instructions dated 12.12.2008 since their teaching experience worked out to be less than four years, they had been declared ineligible. Karpal Singh had filed the petition on the ground that instructions dated 12.12.2008 and other similar instructions could not apply and irrespective of them, he should be declared eligible as in the case in hand. On the ground that the petitioners therein had not challenged the policy/instructions and holding the same to be within the framework of law, the writ petition

alongwith a bunch of other petitions was dismissed.

The petitioner's case is fully covered against her by the afore-quoted judgment and no law to the contrary has been cited by learned counsel for the petitioner.

In view of the above, finding no merit in the petition, the same is ordered to be dismissed.

No costs.

16.05.2016
shamsher

[DEEPAK SIBAL]
JUDGE