

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

CIVIL WRIT PETITION NO. 7060 of 2013(O&M)

DATE OF DECISION: JULY 08, 2016

Victor Kumar son of Sardara Ram

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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

Present: Mr.Ravinder Malik, Advocate for the petitioner.

Mr.Rajesh Gaur, Additional Advocate General, Haryana.



TEJINDER SINGH DHINDSA, J.

The petitioner has questioned the action of the Haryana School Teachers Selection Board in not having considered his candidature for the post of PGT (Punjabi) against the Scheduled Caste/Physically Handicapped Category. Further prayer is for the issuance of a writ of mandamus directing the respondents to consider the petitioner as eligible and to appoint him to the post of PGT Punjabi against such Scheduled Caste/Physically Handicapped Category.

2. Learned counsel appearing for the petitioner has submitted that the respondent-Board issued an advertisement bearing No.1/2012 dated 7.6.2012 inviting applications for recruitment to various posts of PGT-HES-II (Group-B Services) in the Education Department, Haryana. Under

Category No.9, 502 posts of PGT Punjabi were advertised. Case made out on behalf of the petitioner is that he had applied for the post of PGT Punjabi, Category No. 9 in the Scheduled Caste/Physically Handicapped (Locomotor disability) Category being fully eligible in terms of the qualifications and eligibility criteria stipulated in the advertisement and the application had been submitted well in time. It has been submitted that even an interview letter dated 16.7.2012 had been issued to the petitioner calling upon him to appear for verification/scrutiny of documents on 1.10.2012. Grievance, in a nut-shell, put forth is that in spite of possessing more than four years teaching experience i.e. from 1.7.2006 to 31.7.2007 and from 7.8.2008 to 31.5.2012 to claim a one-time exemption from qualifying the HTET/STET examination, his candidature was rejected orally by raising an objection that he does not possess the requisite experience certificate. Learned counsel argues that the objection with regard to experience had been raised in spite of the experience certificate dated 18.6.2012 being duly countersigned by the District Education Officer as well as the Director, Secondary Education Haryana.

3. Upon notice of motion having been issued, a short reply of the Secretary (Legal) Haryana Staff Selection Commission has been filed and placed on record. It has been averred that the Haryana School Teachers Selection Board has since been disbanded vide notification dated 3.12.2014 and all proceedings pending before the erstwhile Board have now been transferred to Haryana Staff Selection Commission, Panchkula.

4. Even though there was no order passed and conveyed to the

petitioner as regards the rejection of his candidature for appointment to the post of PGT Punjabi, yet the written statement discloses the basis of rejection. The stand taken by the respondents is that under the advertisement dated 7.6.2012 a one-time exemption for qualifying HTET/STET had been granted to the candidates who have worked for a minimum of four years till 11.4.2012 in privately managed Government aided schools/recognized schools and Government schools. The petitioner is stated to have acquired the essential qualification for the post i.e. M.A. in Punjabi on 24.8.2005 by securing 377 out of 800 marks i.e. 47.1% which was below the required percentage. Thereafter, on 21.10.2008, petitioner passed the post-Graduate examination obtaining 406 marks out of 800 i.e. 50.7% marks. As per respondents, the petitioner acquired the essential qualification of M.A. in Punjabi, and that too, with the required percentage only on 21.10.2008 and, as such, the teaching experience acquired prior to 21.10.2008 i.e. from 1.7.2006 to 31.7.2007 and from 7.8.2008 to 20.10.2008 would not be considered valid. Learned State counsel would justify the rejection of the candidature of the petitioner by contending that the teaching experience for claiming exemption for qualifying HTET/STET would be reckoned only after a candidate had acquired the essential qualification, and that too, with the requisite percentage. It is argued that after 21.10.2008 and upto 11.4.2012, the petitioner possesses a total teaching experience of three years five months only and as such, can not claim exemption from qualifying HTET/STET examination and thereby could not have been appointed to the post of PGT Punjabi.

5. Learned counsel for the parties have been heard and pleadings on record have been perused.

6. The stand taken on behalf of the State would require to be examined against the relevant conditions of eligibility/qualifications stipulated in the advertisement dated 7.6.2012. The conditions of eligibility and which were common to all posts of PGT/HES-II, Group B services were as follows:

***“POST GRADUATE TEACHERS (PGT) – H.E.S.-II
(GROUP-B SERVICES)***

***DEPARTMENT OF SECONDARY EDUCATION,
HARYANA***

***DETAILS OF POSTS AND QUALIFICATIONS
COMMON TO ALL POSTS***

Eligibility:-

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 Teacher Eligibility Test (HTET)/School Teachers Eligibility test (STET) of respective subject for the post applied, conducted by Board of School Education Haryana, Bhiwani/One time exemption of HTET (See Note-2).

c) Consistent good academic record (See Note-1).

d) Essential qualification (EQ) is given with each post.”

7. Category No.9 governed PGT Punjabi and as per advertisement, 502 posts were advertised i.e. General-312, SC-100, BC-50, ESM-25 and PHC-15. Essential qualification for the post of PGT Punjabi prescribed was **“M.A. Punjabi with at least 50% marks and B.Ed. from a recognized University”**. Note 2 in the advertisement provided a one-time

exemption from qualifying HTET/STET examination and was worded 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 terminated with regard to last date fixed for submission of online applications also called as closing date given in the advertisement.”

8. The closing date for submission of applications was 28.6.2012.

9. It stands settled that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking employment is the date appointed by the rules and if not, then, such date as may be appointed for the purpose in the advertisement calling for applications and even if there be no such date fixed in the advertisement, then, the eligibility would be with reference to the last date by which the applications have to be received by the recruitment authority/agency. A reference in this regard may be made to the judgment of the Hon'ble Supreme Court rendered in the case of **Bhupinderpal Singh & Ors. v. State of Punjab, 2000(2) SCT 826.**

10. Clearly, eligibility of the petitioner for the post of PGT Punjabi

had to be seen as per the closing date for submission of application forms i.e. 28.6.2012.

11. The essential qualification prescribed for the post of PGT Punjabi was M.A. Punjabi with at least 50% marks and B.Ed. from recognized University.

12. There is no dispute on the factual aspect that the petitioner qualified M.A. in Punjabi in the year 2005 by securing 377 out of 800 marks i.e. 47.1% and thereafter improved upon the same on 21.10.2008 by obtaining 406 out of 800 marks i.e. 50.7% marks. Petitioner also possesses the B.Ed. degree. It clearly emerges that prior to 28.6.2012 i.e. the last date for reckoning the eligibility criteria i.e. the closing date of submission of application forms, the petitioner had acquired essential qualifications of MA Punjabi with at least 50% marks and B.Ed. from recognized University.

13. Perusal of Note 2 reveals that a one-time exemption of HTET/STET is to be granted to candidates who have worked for a minimum of four years till 11.4.2012 in privately managed Government aided schools, recognized schools and Government schools.

14. In the considered view of this Court, the respondents are clearly mis-reading the conditions of eligibility/qualifications contained in the advertisement while denying to the petitioner the benefit of teaching experience that he possesses from 1.7.2006 to 31.7.2007 and 7.8.2008 to 20.10.2008.

15. The essential qualification prescribed for the post of PGT Punjabi was M.A. Punjabi with at least 50% marks and B.Ed. from a

recognized University. Undisputedly, the petitioner possesses such qualifications and acquired the same prior to the cut-off date i.e. the last date for submission of application forms stipulated in the advertisement. Note 2 provided in the advertisement is in relation to grant of one-time exemption of HTET/STET. The requirement of possessing a minimum four years teaching experience till 11.4.2012 was for the purpose of claiming exemption from HTET/STET examination and was independent of the requirement of possessing the essential education qualification and that too with the required percentage. The respondents have clearly erred in reading such requirement of M.A. Punjabi with at least 50% marks in Note 2 so as to reckon the period of experience only thereafter. This would amount to reading something alien to Note 2 and which would not be permissible in law.

16. Even on first principle, it would be unreasonable to distinguish between the teaching experience gained by the petitioner having qualified M.A. in Punjabi with 47.1% marks as opposed to teaching experience possessed after having improved such qualification on 21.10.2008 having secured 50.7% marks. In any case, no such distinction has been made out on behalf of the State.

17. This Court would have no hesitation in holding that the petitioner was eligible to be considered for appointment to the post of PGT Punjabi in terms of the eligibility criteria/qualifications and Note 2 contained in the advertisement dated 7.6.2012.

18. It would be apposite to take note that the assertion on behalf of

the petitioner that against the total advertised posts, 41 posts from SC category and 8 posts from Physically Handicapped Category have remained vacant on account of non-availability of eligible candidates as per result dated 11.3.2013 declared by the respondent-Board, has gone uncontroverted.

19. In view of the above, as also for the reasons recorded holding the petitioner to be eligible, the writ petition is allowed. It is directed that the petitioner be appointed to the post of PGT Punjabi against the Scheduled Caste/Physically Handicapped Category against which he had applied. Such appointment would relate back to a date when similarly situated candidates and who had applied in response to advertisement dated 7.6.2012 have been appointed. The petitioner would be entitled to consequential benefits in the nature of seniority, notional pay fixation etc. The concession made by learned counsel appearing for the petitioner is being recorded that no claim for arrears of salary would be raised.

20. Petition allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

JULY 08, 2016
SRM

Note: Whether referred to Reporter? (Yes/No)