

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

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**CWP-11026-2017 (O&M)
Date of decision:19.05.2017**

Yogesh Kumar and others

....Petitioners

Versus

Union of India and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Sharnav Katyal, Advocate for the petitioners.

P.B. Bajanthri, J. (Oral)

Petitioners are stated to have been working in the National Vocational Educational Qualification Framework (NVEQF) Project, which is a Central Government sponsored programme. The petitioners have questioned the validity of order dated 09.11.2015 (Annexure P15) by which Centrally Sponsored Programmes (Scheme) under the administrative control of Directorate of Secondary Education, was transferred to Haryana School Shiksha Pariyojna Parishad and further sought for framing of bye-laws for the post held by the petitioners to regulate their service rules including probation, seniority, pay, increment, leave and other related service benefits.

2. Learned counsel for the petitioner submitted that petitioners, who are working under the administrative control of Directorate of Secondary

Education Scheme, cannot be transferred to Haryana School Shiksha Pariyojna Parishad. It was further submitted that petitioners have not been extended the benefits of equal pay for equal work and also submitted that in not framing the regulations in respect of petitioners' post by framing Rules or Bye-laws, there is discrimination at par with the Guest Teachers in the State Government. Therefore, Annexure P-15, is liable to be set aside and consequently, they are entitled for seeking a direction to the respondents to frame regulation or Bye-laws in respect of the service conditions of the petitioners.

3. Heard learned counsel for the petitioners.

4. Having regard to the nature of scheme and appointment under which the petitioners are working on contract basis for a limited period and which has been extended from time to time on yearly basis, the petitioners have no right to seek quashing of Annexure P15. It is only an internal administrative decision taken by the State Government to transfer the scheme under the administrative control of Haryana School Shiksha Pariyojna Parishad. The petitioners have no right to question the validity of Annexure P15 as it is a policy decision. Further in respect of framing regulations/bye-laws/rules to govern the post held by the petitioners are concerned, it is entirely a policy decision of the State government. Court cannot interfere in respect of the policy decision in respect of service conditions of its employees. In the present case, the petitioners case cannot be compared with the Guest Teachers so as to point out that there is discrimination for the reasons that Guest Teachers were appointed against

sanctioned regular post in the Education Department. Therefore, petitioners do not fit into the same footings so as to point out that there is discrimination. The Supreme Court in the case of ***PU Joshi, and others versus The Accountant General, Ahmedabad and others***, reported in 2003 (2) SCC 632 held as under:-

“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as

reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

Supreme Court in the case of ***Union of India versus Pushpa Rani*** reported in 2008(9) SCC 242 held as under:-

“35. A careful reading of the policy contained in Letter dated 9.10.2003 shows that with a view to strengthen and rationalize the staffing pattern, the Ministry of Railways had undertaken review of certain cadres. The basis of the review was functional, operational and administrative requirement of the Railways. This exercise was intended to improve the efficiency of administration by providing incentives to the existing employees in the form of better promotional avenues and at the same time requiring the promotees to discharge more onerous duties. The policy envisaged that additional posts becoming available in the higher grades as a sequel to restructuring of some of the cadres should be filled by promotion by considering such of the employees who satisfy the conditions of eligibility including the minimum period of service and who are

adjudged suitable by the process of selection. This cannot be equated with upgradation of posts which are required to be filled by placing the existing incumbents in the higher grade without subjecting them to the rigor of selection.

36. *In view of the above discussion, we hold that the Railway Board did not commit any illegality by directing that the existing instructions with regard to the policy of reservation of posts for Scheduled Castes and Scheduled Tribes will apply at the stage of effecting promotion against the additional posts and the Tribunal committed serious illegality by striking down para 14 of letter dated 9.10.2003.*

37. *Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The Court has no role in determining the methodology of recruitment*

or laying down the criteria of selection. It is also not open the Court to make comparative evaluation of the merit of the candidates. The Court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration.”

5. In view of the principle laid down by the Supreme Court that court cannot interfere in respect of regulation of service conditions and petitioners have not made out a case so as to interfere with Annexure P15 and sought for framing of bye-laws for the post held by the petitioners to regulate their service rules is hereby rejected.

6. At this stage, learned counsel for the petitioner submitted that the petitioners are working against sanctioned posts. When the petitioners nature of appointment itself is on contract basis that too for a limited period of one year therefore, the contention of the petitioners that they were working against sanctioned post is hereby rejected for the reasons that Central Government Sponsored Scheme do not reveal any permanent post so as to seek all service benefits on par with permanent post holder. At the best petitioners are entitled to continue as long as scheme is existing.

19.05.2017

pooja saini

(P.B. BAJANTHRI)
JUDGE

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No