

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

CWP No. 1633 of 2014

Date of Decision:23.05.2017

Suman Rani Sharma

.....PETITIONER

V/S

STATE OF HARYANA AND ANR

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE P.B.BAJANTHRI

Present: Mr.P.S.Saini, Advocate for the petitioner.

Mr.R.K.Doon, AAG, Haryana.

P.B.BAJANTHRI J. (ORAL)

Petitioner is working as JBT Teacher. Her grievance is that she is entitled to the post of Social Studies Mistress, as she was fulfilling qualification for the said post. She is governed by the Haryana State Education School Cadre (Group 'C') Service Rules, 1998 (for brevity "Service Rules, 1998), in which the candidate to be promoted for the post of Social Studies Mistrss should possess following qualifications.

"1. B.A. with B.T./B.Ed from a recognized university.

Or

B.A. Education (4 years course) from a recognized university.

2. In addition to English in B.A. or B.A. Education a combination of at least two subject out of the following:-

I. History

II. Political Science,

III. Economics

IV. Geography

V. Sociology

VI. Public Administration."

The petitioner's name was not considered for the promotion to the post of Social Studies Mistress. Consequently, she approached this Court by filing a writ petition bearing CWP No.15263 of 2013 in which a direction was

issued to concerned respondent to consider the legal notice dated 09.06.2013 within a period of two months from the date of receipt of copy of the order. While considering direction of this Court passed in CWP No.15263 of 2013 read with legal notice dated 09.06.2013, Office of Director Elementary Education, Haryana, Panchkula passed an order on 23.12.2013, stating that the petitioner is not entitled for promotion since she do not possess the requisite qualification for the promotion to the post of Social Studies Mistress like B.A. or B.A. Education with a combination of at least two subjects like History, Political Science, Economics, Geography, Sociology and Public Administration. For want of qualification by the petitioner's claim for promotion has been rejected vide order dated 23.12.2013 (Annexure P-7). Hence the present writ petition.

Learned counsel for the petitioner submits that petitioner possessed B.A. qualification passed in 1980, M.A. (Political Science) passed in 1983 and M.A. (History) in 1989. Having regard to the qualification of post graduation in Political Science and History that be equated with two subjects under B.A. degree, thus, petitioner is eligible to be promoted.

Petitioner relied upon the decision of this Court passed in **Sanjeev Arora Vs. State of Punjab and others, reported in 2015(2) RSJ 23**, this Court has held that post graduation qualification are to be considered with reference to bachelor degree qualification. In other words, a candidate who possess masters degree in particular subject and if the rule requires that bachelor of degree in particular subject are required to be taken into consideration. In that event, masters degree qualification is required to be considered. Therefore, impugned decision dated 23.12.2013 is liable to be set aside and the petitioner in the said case is entitled for promotion to the post of Assistant.

Per contra, learned counsel for the respondent submitted that there is no infirmity in the order dated 23.12.2013, as the petitioner's claim has been rejected with reference to the qualification possessed by her read with Service Rules, 1998. Since the petitioner do not possess two subjects with reference to B.A. degree qualification and merely petitioner possesses two subjects in post graduation qualification that cannot be equated to the B.A. degree qualification. It was further contended that there is no equivalency declared in the Service Rules 1998, so as to consider the petitioner's case. Thus, petitioner has not made out case, so as to interfere with order dated 23.12.2013.

Heard learned counsel for the parties.

Crux of the matter in the present writ petition is whether petitioner possesses the requisite qualification for the post of Social Studies Mistress by promotion mode or not?

Perusal of the qualification prescribed for the Master Mistress i.e. B.A. or B.A. Education combination of at least two subjects like History, Political Science, Economics, Geography, Sociology and Public Administration. Undisputedly, petitioner do not fulfill the requisite qualification, as per Service Rules, 1998. She possesses masters degree in Political science and History and not in History & Political Science in B.A degree. Question of equation of various education qualifications in the present case are that M.A. Political Science and M.A., History to B.A., History and B.A., Political Science is a matter of legislature. Therefore, Court cannot equate various educational qualifications as requisite qualification for particular post. Court would have to interpret the relevant service rules prescribed for the post of promotion or appointment.

In the present case, reliance on the **Sanjeev Arora's case (supra)**, this Court has directed to consider master degree with reference to B.A. qualification etc. The said decision is distinguishable for the reasons that Supreme Court in the case of Supreme Court in the case of **Nair Service Society vs T. Beermasthan (2009) 5 SCC 545** held that before considering any decision of the Court relevant rule is required to be examined. Para 48 reads as under:-

“48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.”

In view of the principles laid down by Hon'ble the Supreme Court that before deciding a case with reference to any judgment one must examine the relevant rules of recruitment. In the present case relevant rules of recruitment specifically provides for qualification of History, Political Science in B.A. degree and not masters in History and Political Science. Thus, there is no ambiguity in the rules. Unless and until, relevant rules is/are amended to the extent of equivalent to History and Political Science in B.A. degree to that of History & M.A. Political Science in post graduate degree, one cannot equate the qualification. It is the obligation on the part of rule making authority and not vested with Court, as held by the Supreme Court in case of **Union of India Vs. Namit Sharma (2013) 10 SCC 359**. Para Nos. 31 and 33 of the said judgment read as under:-

“Perhaps for this reason, Parliament has not provided in Sections 12(5) and 15(5) of the Act for appointment of persons with judicial experience and acumen and retired Judges of the High Court as Information Commissioners and retired Judges of the Supreme Court and Chief Justice of the High Court as Chief Information Commissioner and any direction by this Court for appointment of persons with judicial experience, training and acumen and Judges as Information Commissioners and Chief Information Commissioner would amount to encroachment in the field of legislation. To quote from the judgment of the seven-Judge Bench in P. Ramachandra Rao v. State of Karnataka (supra):&

27. *“Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature.”*

33. *In Union of India and Another v. Deoki Nandan Aggarwal (supra) this Court has held that the court could not correct or make up for any deficiencies or omissions in the language of the statute. V. Ramaswami, J. writing the judgment on behalf of a three Judge Bench says:(SCC P 332 Para 14)*

“It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry

out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities.

Supreme Court in the case of **Union of India and another Vs. National Federation of the Blind and others (2013) 10 SCC 772,** has also observed as under:-

45. *“It is clear that when the provision is plainly worded and unambiguous, it has to be interpreted in such a way that the Court must avoid the danger of a prior determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. While interpreting the provisions, the Court only interprets the law and cannot legislate it. It is the function of the Legislature to amend, modify or repeal it, if deemed necessary”*

Thus, there is no infirmity in the impugned order passed by Office of Director Elementary Education, Haryana, Panchkula on 23.12.2013 (Annexure P-7) and the same is upheld.

The instant petition stands dismissed.

**(P.B.BAJANTHRI)
JUDGE**

23.05.2017
Anjal

Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No