

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 11.08.2017

1.

CWP-17370-2016

Nirbhay Singh and others

State of Punjab and others

Versus

...Petitioners

...Respondents
2.

CWP-17451-2016

Rajwant Kaur

State of Punjab and another

Versus

...Petitioner

...Respondents
3.

CWP-17508-2016

Priyanka

State of Punjab and others

Versus

...Petitioner

...Respondents
4.

CWP-17510-2016

Parwinder Kaur

State of Punjab and others

Versus

...Petitioner

...Respondents
5.

CWP-18305-2016

Ravinder Singh and others

State of Punjab and others

Versus

...Petitioners

...Respondents
6.

CWP-18306-2016

Parbhjot Kaur and others

State of Punjab and others

Versus

...Petitioners

...Respondents

CWP-17370-2016 and 20 other connected matters
-2-

7. CWP-18420-2016		
Baljinder Singh and others		...Petitioners
	Versus	
State of Punjab and others		...Respondents

8. CWP-18605-2016		
Jasvir Kaur and others		...Petitioners
	Versus	
State of Punjab and others		...Respondents

9. CWP-19863-2016		
Parveen Kumar and others		...Petitioners
	Versus	
State of Punjab and others		...Respondents

10. CWP-19175-2016		
Gourav Kumar and others		...Petitioners
	Versus	
State of Punjab and others		...Respondents

11. CWP-19756-2016		
Sunil and others		...Petitioners
	Versus	
State of Punjab and others		...Respondents

12. CWP-19944-2016		
Jagseer Singh and others		...Petitioners
	Versus	
State of Punjab and others		...Respondents

CWP-17370-2016 and 20 other connected matters
-3-

13. CWP-20499-2016

Meenu Rani and others		...Petitioners
	Versus	
State of Punjab and others		...Respondents

14. CWP-21555-2016

Keddeep Singh and others		...Petitioners
	Versus	
State of Punjab and others		...Respondents

15. CWP-21578-2016

Sanjeev Kumar and others		...Petitioners
	Versus	
State of Punjab and others		...Respondents

16. CWP-22007-2016

Balwinder Singh and others		...Petitioners
	Versus	
State of Punjab and others		...Respondents

17. CWP-22205-2016

Mandeep Singh and others		...Petitioners
	Versus	
State of Punjab and others		...Respondents

18. CWP-22375-2016

Gurpreet Singh and others		...Petitioners
	Versus	
State of Punjab and others		...Respondents

CWP-17370-2016 and 20 other connected matters

~~-4-~~

19. CWP-25779-2016

Rajneesh Sharma

...Petitioner

Versus

State of Punjab and others

...Respondents

20. CWP-3542-2017

Sahil Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

21. CWP-5083-2017

Charanjit Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Parvesh Kumar Saini, Advocate,
for the petitioner(s) in CWP No. 17370, 18306, 20499, 21555,
22375, 25779 of 2016.

Mr. Sukhdev Kamboj, Advocate,
for the petitioner(s) in CWP Nos. 17510 of 2016 and 5083 of
2017.

Mr. Jitenderpal Singh, Advocate,
for the petitioner(s) in CWP No. 19175, 21578 of 2016.

Ms. Jyoti, Advocate for
Mr. Anurag Goyal, Advocate,
for the petitioner(s) in CWP No. 19756 of 2016.

Mr. Kapil Kakkar, Advocate,
for the petitioner(s) in CWP Nos. 18605, 19944 of 2016.

Mr. Manish Kumar Singla, Advocate
for the petitioner(s) in CWP No. 19863 of 2016.

Mr. Gaurav Sharma, Advocate,
for the petitioner(s) in CWP No. 22205 of 2016.

Mr. Shailendra Kashyap, Advocate
for the petitioner(s) in CWP No. 22007 of 2016.

Mr. J.P.S. Sidhu, Advocate,
for the petitioner(s) in CWP No. 18305 of 2016.

Mr. B.B.S. Randhawa, Advocate,
for the petitioner(s) in CWP No. 18420 of 2016.

Mr. Amit Shukla, Advocate,
for the petitioner(s) in CWP No. 17451 of 2016.

Mr. Rajinder Mathur, Advocate,
for the petitioner(s) in CWP No. 18306 of 2016.

Mr. S.S. Grewal, Advocate,
for the petitioner(s) in CWP No. 17508 of 2016.

Mr. J.K. Singla, Advocate,
for the petitioner in CWP No. 3542 of 2017.

Mr. Vikas Chatrath, Advocate,
Mr. Khushkaran Kumar, Advocate
Mr. Jatinder Pal Singh, Advocate &
Ms. Neeru Thakur, Advocate
for the intervenors.

Mr. Avinit Avasthi, AAG, Punjab.

Mr. Mandeep Singh, Advocate
for respondents No. 4 & 5 in CWP No. 17370 of 2016.

JAISHREE THAKUR, J.

1. This order will dispose of above noted 21 cases, as common questions of law and facts are involved in them, which can conveniently be decided by a common order. The facts are being taken from ***CWP No. 17370 of 2016.***

2. The petitioners herein are seeking :

- (i) A writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction for quashing the impugned advertisement dated 30.07.2016 (Annexure P-5) issued in undue haste by respondent No.2 prescribing therein the qualification of “Pass in Teacher Eligibility Test (TET) conducted by the State Government of Punjab” and fixing the cut off date as 28.08.2016 without prior conducting the “PSTET – 2016” Examination and declaring its result, being illegal, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India;
- (ii) Issue a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction for quashing the impugned Corrigendum dated 06.08.2016 vide which the date of conducting the PSTET-2106 test has been postponed to 25.09.2016 with mala fide intention in unfair, unjust and illegal manner in order to deprive of the petitioner from applying for the posts in question;
- (iii) issue a writ in the nature of mandamus or any other appropriate writ, order or direction for directing the respondents to allow the petitioners to apply online for the posts of ETT Teacher notified vide advertisement dated 30.07.2016 (Annexure P-5) by refixing the cut off date after declaration of the result of PSTET-2016 now

rescheduled to be held on 25.09.2016 and further to consider the candidatures of the petitioners for selection and appointment as ETT Teacher provisionally subject to their having qualified the PSTET-2016 examination; and

(iv) To grant any other relief to the petitioners, to which they may be found entitled by this Court in the facts and circumstances of the instant case.

3. In brief, the facts leading to filing of the instant writ petition are required to be noted. Under the “Right of Children to Free and Compulsory Education Act, 2009” (RTE Act, 2009) minimum qualification to be possessed by any person for appointment as a Teacher is covered under Section 23, which requires a person to have clear the Teachers Eligibility Test (TET under RTE Act, 2009) test. Pursuant to the guidelines issued by the National Council for Teachers Education respondent No.3 issued a public notice in the newspaper “Ajit” on 02.07.2016 and notified the date for holding of PSTET 2016 and invited online applications from eligible candidates. The petitioners who were eligible, applied for PSTET-I and their online applications were accepted and they were issued registration numbers. Prior to the test being held, an advertisement was also issued inviting applications from eligible candidates to fill up 2005 posts of E.T.T. Teachers on or before 28.08.2016 with an essential qualification prescribed that a candidate should have passed the TET conducted by the Punjab Government, in other words, should have cleared the PSTET test. The PSTET-2016 which was scheduled to be held on 21.08.2016, was postponed by a public notice issued from 21.08.2016 to 25.09.2016. On account of

postponement, the petitioners herein alleged that they would be deprived of applying for 2005 posts of ETT Teachers advertised, which requires a candidate to have qualified the TET test or PSTET test. The prayer made that on account of the postponement of the test, petitioners herein, who have the other qualifications, have been deprived of getting a job. The petitioners approached the respondent-department with a request to allow them to submit their applications and to participate in the recruitment of the ETT posts in question but the request was declined.

4. Learned counsel appearing on behalf of the petitioners urge that by postponing the PSTET scheduled to be held on 21.08.2016 to 25.09.2016 and, by inviting applications to fill up 2005 ETT posts with an eligibility criteria of having PSTET qualification, the petitioners have been deprived of an opportunity of seeking employment which is detrimental to them. It is argued that similarly situated 19 JBT had approached this Court by way of filing ***CWP No. 5984 of 2012***, titled as “***Manpreet Kaur vs. Chandigarh Administration and others***” in which the High Court had directed respondent No.2 to consider the candidature of the petitioners till they show themselves as having qualified in the CTET Test, which was scheduled to be held in the month of May, 2012. It is argued that in a similar situation, in 2011, public notices were on receipt of applications for filling up of Master Cadre in the Education Department had been issued and it was one of the conditions that concerned candidates must have passed the TET test. The last date for receipt of applications was 30.05.2011, though the respondent-State had not conducted the test till then the TET test was conducted on 03.07.2011 and result declared on 13.07.2011. It was under these

circumstances that a Writ No. 21301 of 2011, titled as “***Gurjinder Singh vs. State of Punjab and others***” was filed seeking extension of the last date of receipt of application from 30.05.2011 so that the candidates who had qualified TET test held on 03.07.2011 may also become eligible. The High Court disposed of the writ petition with directions to the respondents to consider extending the cut off date prescribed in the advertisement which was considered and the last date of submission of applications was extended to 01.08.2012 i.e. after the result had been declared. Learned counsel for the petitioners further submit that the case of the petitioners is similar to the petitioners in ***Writ No. 21301 of 2011***, titled as “***Gurjinder Singh vs. State of Punjab and others***” (supra) as without taking the PSTET test 2016, posts have been advertised to be filled up which would necessarily mean that the petitioners are deprived of an opportunity of employment.

5. Per contra, learned counsel appearing on behalf of the respondents-State would submit that Punjab State Teachers Eligibility Test is necessary qualification for a person to be eligible to be appointed as ETT Teacher in the Education Department and it is the qualification which has to be considered as on the last date of submission of application forms i.e. 28.08.2016. It is also argued that 4935 candidates had applied till the last date of submission of applications i.e. 28.08.2016, meaning thereby, sufficient number of candidates were available for scrutiny of documents and appointment for 2005 ETT posts. It is also argued that the Punjab State Teachers Eligibility Test was conducted in the year 2011, twice in the year 2013, in 2014 and 2015 also prior to issuance of the recruitment notice dated 30.07.2016 and as such sufficient number of candidates were

available.

6. Civil Misc Application No 11024 of 2016 has been preferred under Order 1 Rule 10 CPC for impleading applicants as interveners. The applicants are such people who have already acquired the PSTET qualification, having undertaken the test on previous years. This application was allowed by order dated 16.12.2016.

7. Mr. Vikas Chatrath, learned counsel appearing on their behalf argued that an advertisement was issued on 30.07.2016 in which it had clearly been mentioned that only those candidates who have passed the Punjab State Teachers Eligibility Test conducted by the Punjab Government would be eligible. It is argued that the cut off date prescribed in the advertisement has not been challenged and in case the writ petition filed by the petitioners succeeds, the rights of the applicants would be affected since they were eligible in terms of the advertisement issued. It is also argued that it is within the domain of the executive of the Legislature to establish or fix a cut off date and the Courts cannot assume such powers by placing reliance on judgment rendered in ***Divisional Manager, Arvali Golf Club vs Chanderhas and another, 2008(1) SCT 275 (SC)***. It is also argued that the petitioners have not been able to establish any mala fides in the cut off date being prescribed or in the postponement of the PSTET eligibility test. Further reliance has been placed upon ***LPA No. 745 of 2016***, titled ***Bharat Bhushan and others vs. State of Punjab and others***, decided on 11.05.2016 whereby the appellants had sought extension of the last date of submission of forms which argument came to be rejected holding that the cut off date could not be extended.

8. I have heard learned counsel for the parties and have perused the pleadings in the case.

9. In CWP No. 17478 of 2016, this Court passed the following order on 27.08.2016.

“In the meantime, the respondents are directed to accept the petitioners' applications/admit forms manually through hard copy (outside the online system) and to permit them to participate in the selection process through counseling etc. However, this order is provisional and will confer no equities on the petitioners whose rights will be determined in this petition and would await its result. The result of the process of counselling qua the petitioners be kept in sealed cover to be presented to the Court as and when directed.”

10. As per Section 23 of the RTE Act, a person can be appointed as a Teacher in Elementary School who possesses the minimum qualification and has passed the Teachers' Eligibility Test to be conducted by the appropriate Government. As per the guidelines for conducting Teachers' Eligibility Test under the Right of Children to Free and Compulsory Education Act, 2009, it has been stipulated that *“appropriate Government should conduct a TET at least once every year. The validity Period of TET qualifying certificate for appointment will be decided by the appropriate Government subject to a maximum of seven years for all categories. But there will be no restriction on the number of attempts a person can take for acquiring a TET certificate. A person who has qualified TET may also*

appear again for improving his/her score.”

11. In the instant case, applications were invited for the test to be conducted on 21.08.2016 which came to be postponed, to be held on 25.09.2016. This corrigendum was issued on 06.08.2016. An advertisement was issued on 30.07.2016, inviting applications of eligible candidates to fill up 2005 posts of ETT teachers and the last date of submission of online forms was to be 28.08.2016. The only questions that arises for consideration for this Court is *“whether the petitioners have been deprived of their right to apply for the post of ETT Teachers as the test scheduled to be held on 21.08.2016 stood postponed to 25.09.2016.?”*

12. The law as laid down in ***Ashok Kumar Sonkar vs Union of India and others reported in (2007) 4 SCC 54*** is clear that the eligibility of a candidate has to be seen as on the last date fixed for submitting the application form, which in the instant case is 28.08.2016. It is also an admitted fact that the petitioners were not qualified since they had not cleared the PSTET test as on the last date of submission of the application form. Would the postponement of their test give them an indefeasible right to challenge the postponement of the exam citing mala fide's ? A similar issue arose before the LPA Bench in ***Bharat Bhushan & Ors. vs. State of Punjab and others, LPA No. 745 of 2016***, decided on 11.05.2016 where the academic session for the ETT Course was to commence from 15.11.2013 and to conclude in November, 2015 but the same was delayed and examinations conducted only in April, 2016, whereas posts of ETT Teachers had been advertised with the last date for submission of online applications to be 02.12.2015. It was argued on account of the delay in

holding of the examination in April 2016, the applicants had been deprived of an opportunity to submit their online applications in December 2015. It was argued that no harm would be caused if the petitioners would be allowed to appear provisionally subject to their clearing the ETT examination. The LPA Bench confirmed the orders passed by the Single Bench holding that cut off date is sacrosanct and only those persons who were eligible on the date of submission of application form would be entitled to be considered. In the case of ***Antim Kumari vs. State of Haryana and others, CWP No. 346 of 2013*** decided on 29.04.2015, a Division Bench of this Court while dealing with a similar issue pertaining to appointment in the State Of Haryana formulated three questions:

- (i) *Whether the candidates who have qualified JBT/ETT after 30.07.2011 and were in possession of allother eligibility conditions as on the cut-off date mentioned in the advertisement except the certificate of STET, which they could not obtain as no examination was held after they acquired the minimum eligibility, can be deprived of their right to compete?*
- (ii) *Whether the candidates who have qualified CTET during the year 2012 when no STET was held , are entitled to claim eligibility for the advertised posts in terms of guidelines issued by NCTE?*
- (iii) *What would the fate of candidates who acquired JBT/ETT diploma after 30.07.2011, i.e. the date of advertisement to appear for the STET and who have CWP-346-2013 and others connected cases -31-qualified such test in the very first opportunity given to them on 26.06.2013 vide the*

advertisement dated 28.04.2013? ”.

The first set of candidates were given a concession by the Government and were offered appointment, but the Learned Division Bench held that if there is no eligibility as on the last cut of date, the petitioners would not be entitled to any relief. In the case of **Antim Kumari** (supra) an affidavit filed by the NCET in CWP No.CWP-346-2013 was also noticed wherein NCET specifically stated that the guidelines contained in clauses 10 and 11 of the NCTE guidelines dated 11.02.2011 are directory in nature. While noticing the guidelines it was held that *“Education being a subject in the concurrent list, the power to frame appropriate legislation/regulation /rule vests with the appropriate legislature and the State Government is well within its rights to prescribe the qualification of eligibility that candidates applying for the post must necessarily qualify the Teachers Eligibility Test of the said State. There would be no illegality in the same and merely because a State Government has failed to conduct a STET in a given year would not amount to taking a decision not to hold the exam and to hold the candidates who have qualified Central Teachers Eligibility Test as eligible.”* A reading of the said guidelines would show that test is to be held every year, but nowhere does it stipulate that the recruitment process is to be initiated only *after* the TET test has been conducted. In the case decided by a single Bench of this court in **Priyanka vs State of Punjab and others, CWP No. 17508 of 2016, decided on 26.08.2016**, it has been held that *“firstly, as per guidelines (P-3), direction is mandatory for the appropriate Government to conduct a Teacher Eligibility Test at least once every year and concededly the TET Test has been notified to be conducted in September 2016. It is also*

conceded position that in December 2015, the required TET Test was also held and the petitioner had full opportunity to appear in the same but she either failed in the test or did not take chance to become eligible. Therefore, in the facts of the present case, no case for interference is made out. Moreover, it is nowhere provided that TET Test has to be first held and thereafter recruitment is to be made.”

13. Further, as noticed in the argument raised by respondents, TET test have been conducted in the years 2011, twice in 2013, 2014 and 2015 and, therefore, candidates have already acquired a right to be considered for appointment. The argument raised that the TET has been postponed with mala fide intentions would not be sustainable. Merely because the test stands postponed would not be a justifiable reason to raise such an argument. The plea of mala fides has to be proved by positive evidence and not mere allegation as has been done in the instant case. In the case in hand , the petitioners have not been able to establish that the postponement has taken place to benefit only a few chosen ones. There are more than 4500 candidates readily available who have already cleared the test, against 2005 posts advertised, who now have a vested right to be considered for appointment. The petitioners could have a reason to raise an issue for not being considered if they had the necessary eligibility as per the cut off date, however this eligibility is lacking.

14. The judgments as relied upon by learned counsel for the petitioners are distinguishable, since in those cases posts had been advertised without conducting the PSTET test. The PSTET test was conducted for the first time on 03.07.2012 and result was declared on

13.07.2012. It was in this situation that the advertisement dated 07.05.2011 came to be challenged which is not the situation herein since PSTET test has been conducted in the years 2011, twice in 2013 and then in 2014 and 2015, which certificates are valid for a period of seven years.

15. Looked at from another angle, the petitioners who have not been able to establish mala fides, would have to establish infringement of their fundamental right to approach the High Court. Admittedly, they do not have the necessary qualification to apply for the post of the ETT as on the last day of submission of the application form and the eligibility will have to be seen accordingly. The cut off date is sacrosanct which can not be changed at the mere asking of the petitioners. In ***Ramrao v. All India Backward Class Bank Employees Welfare Assn., (2004) 2 SCC 76*** it has been held:

“32. If a cut-off date can be fixed, indisputably those who fall within the purview thereof would form a separate class. Such a classification has a reasonable nexus with the object which the decision of the Bank to promote its employees seeks to achieve. Such classifications would neither fall within the category of creating a class within a class or an artificial classification so as to offend Article 14 of the Constitution of India.

33. Whenever such a cut-off date is fixed, a question may arise as to why a person would suffer only because he comes within the wrong side of the cut-off date, but, the fact that some persons or a section of society would face hardship, by itself cannot be a ground for holding that the cut-off date so fixed is

ultra vires Article 14 of the Constitution.”

16. In view of the above, I do not find any merit in the writ petitions and the same are hereby dismissed.

17. A photocopy of this order be placed on the file of each connected case.

11.08.2017

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No.