

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

(1)

**CWP No.23969 of 2013 (O&M)
Date of Decision: March 31, 2017**

Manjit Kaur and others

...Petitioners

Versus

State of Punjab and others

...Respondents

(2)

CWP No.24789 of 2013 (O&M)

Shashi Bala

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. R.K. Arora, Advocate
for the petitioner(s).

Mr. Rupam Aggarwal, DAG Punjab.

Mr. Surmukh Singh, Advocate
for respondent No.5 (in both cases).

JAISHREE THAKUR, J. (Oral)

By this common order, this court proposes to dispose of above

captioned two writ petitions, since the same law point is involved. For the sake of brevity, facts are being taken from Civil Writ Petition No. 23969 of 2013 titled as '**Manjit Kaur and others vs. State of Punjab and others.**'

2. The petitioners were initially appointed in Punjab Education Department as Clerk/Senior Lab Attendant and while in service the petitioners acquired qualifications of B.A./B.Ed, after getting due permission from the Department. On 26.09.2001, a policy decision was taken by the Government of Punjab wherein 1% out of 10% quota meant for Craft and Vocational Teachers were reserved for promotion of non-teaching staff of Education Department to the Master/Mistress Cadre. By order dated 09.07.2008 cases from eligible members of the non-teaching staff of the Education Department were called for promotion to the post of Master/Mistress Cadre under the 1% post reserved for them. By order dated 27.05.2010 promotions were given to a number of juniors, whereas the same was denied to the petitioners. Thereafter, respondent No. 3, the District Education Officer Patiala, recommended the case of the petitioners for promotion, however the same was returned with the remark that only cases up to cut-off date of 27.05.2010 are to be considered. Aggrieved against promotion being denied to the petitioners from the post of Clerk to the post of Master/Mistress Cadre, as has been granted to others, the instant writ petitions have been filed.

3. Mr. R.K. Arora, learned counsel appearing on behalf of the petitioners alleges discrimination, contending that juniors had been considered and granted promotion, while denying the claim of the petitioners.

4. Per contra, Mr. Rupam Aggarwal, learned counsel appearing on behalf of the respondents-State submits that Department had issued instructions by the letter dated 26.09.2001 for fixing 1% quota for promotion to Master/Mistress Cadre from the non-teaching ministerial cadre. It was further contended that the Department had considered the cases of similarly situated persons for promotion to Master/Mistress Cadre from the no- teaching staff, who fulfilled the requisite qualification for promotional post upto 27.05.2010, that is the cut-off date fixed by the Department as per the Punjab State Education Class III (School Cadre) Service Rules 1978, amended vide Service Rules in 1995. The academic qualification for Master/Mistress Cadre in Punjabi is B.A in Punjabi from a recognised University along with B.Ed. with teaching subject as Punjabi and similarly for Master/Mistress Cadre in Hindi is B.A in Hindi from a recognised University along with B.Ed. with teaching subject as Hindi from a recognised University. Since the petitioners acquired the qualification for Master/Mistress Cadre after the cut-off period expired, the petitioners could not be considered. Moreover the Department has withdrawn the earlier instructions issued dated 26.09.2001 for promotion to Master/Mistress Cadre from the ministerial staff vide letter dated 06.03.2014 and therefore, the petitioners cannot claim any benefit under the earlier instructions.

5. I have heard the both counsel for the parties and with their assistance have gone through the record of the case.

6. The petitioners herein, who were appointed as Clerk/Lab Attendant, working on non-teaching staff, acquired the qualification of BA/B.Ed. while in service of the Department. A policy decision was taken

wherein 1% out of the 10% quota meant for C&V teachers were reserved for promotion of non-teaching staff of Education Department in the Master/Mistress Cadre . As per Rules namely Punjab State Education Class III (School Cadre) Service Rules 1978, amended vide Service Rule, 1995, the academic and professional qualification for the post of Punjabi Master/Mistress Cadre is B.A in Punjabi from a recognised University and B.Ed. with teaching subject as Punjabi. Similarly for Hindi Master/Mistress Cadre it was B.A with Hindi from a recognised University and B.Ed. with teaching subject as Hindi. The petitioners had acquired the eligibility qualification of B.Ed. after 27.05.2010, the cut-off date as fixed by the Department and it was on this account that their cases could not be considered for promotion. In the meantime a CWP No.4274 of 2011 titled as '**Nanak Chand vs. State of Punjab and others**' came to be filed in the High Court. Petitioner Nanak Chand, who was working as Workshop Attendant, sought promotion to the post of Social Study Master/Mistress Cadre by placing reliance upon instructions dated 26.09.2001. The Single Bench of this Court came to hold that the case of the petitioner could be considered for promotion to the promotional post as per the amended Rules which provided for promotional avenues to Workshop Attendants. However, while disposing of the said writ petition, it was held that, if Rules do not provide for avenue of promotion to the post of teachers from a particular post, it is not open to the Government to issue administrative instructions to create a new source of recruitment and any such instructions are liable to be ignored being contrary to the Statutory Rules. The instructions issued on 26.09.2001, 17.04.2003 and 02.05.2003, which

provided for promotional avenues to certain employees, who were not part of the feeder cadre for promotion to a post, as per the statutory notified rules, were noticed by the learned Single Judge as being contrary to the judgment rendered in CWP No. 4208 of 1996 titled '**Gurdeep Singh Gill vs State Of Punjab and Others.**' It was noted that any instructions issued for providing promotional avenues *dehors* Rules by way of administrative instructions was contemptuous. It was in this background that the instructions dated 26.09.2001 which provided for 1% quota to be filled up by non-teaching staff for promotion to the post of Master /Mistress Cadre stood withdrawn.

7. Learned counsel for the petitioners would contend that the persons junior to them have already been granted that promotion and parity ought to be given to the petitioners as well. This argument is without any basis, once policy dated 26.9.2001 itself has been withdrawn after the court held it to be in direct contradiction to the judgment rendered in **Gurdeep Singh's case** (*supra*). The petitioners cannot claim the benefit of Article 14 of the Constitution to plead discrimination. In '**State of Haryana & Ors. vs. Ram Kumar Mann**', 1997 (3) SCC 321, it has been observed that:- "*The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality are some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal or resignation. The High Court was wholly*

wrong, in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong, to perpetrate, an employee, after committing mis appropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly circumstanced person claim equality under Section 14 for reinstatement? The answer is obviously “NO”. In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right.”

8. As noticed, it was not open to the government to issue administrative instructions to create new source of recruitment. In this backdrop it is not possible for this court to issue any directions to appoint the petitioners herein on the post of Master/Mistress Cadre.

9. The writ petitions being devoid of any merit are hereby dismissed.

March 31, 2017

vijay saini

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No