

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

CWP No.28501 of 2017 (O&M)

Date of Decision: December 22, 2017

Sonu and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Ms. Anu Chatrath, Senior Advocate,
with Mr. M.M. Pandey, Advocate,
Mr. Puneet Bali, Senior Advocate with
Mr. Deepak Kumar, Advocate and
Mr. Jasbir Mor, Advocate, for the petitioners.

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

Amol Rattan Singh, J. (Oral)

Notice of motion was issued in this petition on 14.12.2017, returnable on 20.12.2017, with notice regarding stay also having been issued.

In response thereto, a short reply by way of an affidavit of the Director, Elementary Education, Haryana, Panchkula, has been filed by the learned State counsel in Court today, a copy of which has been given to the counsel opposite and therefore is taken on record.

In the aforesaid affidavit, the background of the litigation has

been given, to the effect that 9870 posts of JBT Teachers were advertised by the Haryana School Teachers Selection Board in the year 2012; in terms of which advertisement none of the petitioners was eligible to apply as they did not fulfill an essential qualification, i.e. they had not passed the Haryana Teachers Eligibility Test as on the cut off date fixed in the selection process (31.03.2012).

One Antim Kumari, alongwith other candidates, filed CWP no.346 of 2013, stating therein that they had passed the HTET after the advertisement was issued, because prior to that the Haryana School Education Board had not conducted the said examination. During the course of hearing of that petition, a statement was made by the Addl. Chief Secretary, Government of Haryana, Department of Secondary Education, that the Government would consider the claim of even those candidates as had cleared the HTET subsequent to the cut off date, as sufficient number of vacancies were available in the Education Department.

In view of the aforesaid statement, the candidature of such candidates was considered, and the Haryana Staff Selection Commission made a recommendation on 04.08.2015, by which the petitioners in the present writ petition were also recommended for appointment. However, the affidavit filed today further states that all appointments were stayed vide an order dated 11.05.2016 passed in LPA no.686 of 2016, titled as Pardeep Kumar v. State of Haryana.

On 20.04.2017, the stay was vacated against appointment of

JBT Teachers, with directions issued by the Division Bench to issue appointment orders to eligible candidates. Pursuant to that, appointment orders were issued on 27/28.04.2017, including to those four persons as have been referred to by the petitioners in the present petition as being lower than them in the merit list, i.e. i.e. Mamta, Renu Naresh Kumar and Pardeep Kumar (erroneously referred to as the private respondents in the affidavit, as no persons other than the official respondents have been impleaded as yet in the present petition).

Yet further, the affidavit states that another order was passed on 08.05.2017 by the Division Bench, which reads as under:-

“Meanwhile, State of Haryana is directed to identify the total number of posts to be filled in as per the order dated 20.04.2017, as also the number of selected candidates, who as per the original merit list or revised merit list or in terms of the directions issued by learned Single Judge (s), are entitled for appointment. It is further directed as an interim measure that appointments be offered strictly in order of merit as per the revised merit list but subject to final outcome of these proceedings. If some posts remain unfilled after appointing the candidates as per the revised merit list, the same may be offered to the candidates in waiting list provided that the total appointments do not exceed the advertised posts.”

(Emphasis applied in the present order only).

Pursuant to the aforesaid order, a 'joint merit list' is stated to have been prepared by the respondents, containing the names of those on the original merit list (which did not contain the names of those who had

passed HTET after the cut off date), as also from the revised merit list (containing the names of such persons).

It is further stated by the Director in his affidavit that as the total number of appointments were not to exceed the number of advertised posts, appointment orders were withdrawn in respect of those appointees from the first recommendation list, who came lower in merit in the joint merit list.

The number of such persons was 1259.

To resolve the issue, a meeting is stated to have been held thereafter on 10.11.2017, under the Chairmanship of the Chief Minister, Haryana, (attended by the Advocate General, Haryana and senior officers of the Government), wherein a decision was taken to appoint 1259 newly recruited teachers (on an ad hoc basis), whose appointment letters had been cancelled, as also 1054 Guest Teachers appointed earlier on contractual basis, who had been relieved of their posts, 'so as to ensure that the education of the students does not suffer', because of a shortage of primary teachers in the State.

The affidavit also refers to a notification 08.05.1991, issued by the Chief Secretary to the Government of Haryana, imposing a ban on making ad hoc appointments, but justifies the appointments now ordered (on ad hoc basis), on account of the shortage of primary teachers.

It is stated that therefore a relaxation from the provisions of the aforesaid notification was given by the Chief Secretary on 28.11.2017, so

as to adjust the aforesaid persons on the posts of primary teachers on 'ad hoc basis'.

Paragraph 7 of the affidavit gives the number of vacancies of JBTs/PRTs as follows:-

Total JBT/PRT posts after rationalisation	43552
Working	42868
Vacancies	684

Before proceeding further, it is to be stated that today being the last day before the winter vacation, an application is sought to be filed in court to implead two persons as intervenors/ proforma respondents in this petition, they being identically placed as the 3 petitioners who have filed the petition.

Hence, it is considered appropriate to implead those who have filed an application in Court today for such impleadment, as petitioners itself in the petition, on the ground that they too are similarly situated as the petitioners, being higher in merit than those who are proposed to be granted appointment on ad hoc basis.

The aforesaid persons are accordingly impleaded as petitioners no.4 and 5 in the petition.

Both learned senior counsel appearing for the petitioners, as also Mr. Doon, learned State counsel, have addressed arguments in terms of

the pleadings (including the affidavit filed today).

Having considered the arguments of learned Senior counsel appearing for the petitioners, as also learned counsel for the State, in the opinion of this court, once a joint merit list has been prepared by the respondents themselves, after the orders of the Division Bench in LPA no.686 of 2016, thereafter, granting even ad hoc appointments to persons lower in merit in that 'joint list' would be highly improper and wholly arbitrary, such action, in effect being a negation of the joint merit list prepared. Therefore, till the decision of LPA no.686 of 2016, interim directions having been recorded in that appeal, that even those who had passed the HTET after the cut off date in the selection process in question would be considered for appointment, the joint merit list obviously needs to be adhered to. Eventually if it is held that those who had not cleared the HTET by the cut off date cannot be appointed prior to those who had cleared the examination, naturally the Division Bench would pass orders as it deems appropriate. However, in the meanwhile, the interim orders of the Division Bench being binding on the respondents and they themselves having prepared a joint merit list accordingly, they are bound to implement it in letter and spirit.

Consequently, the impugned order, Annexure P-7, is hereby quashed and a direction is issued to the respondents to make appointments in terms of the combined merit list prepared by them, subject naturally to the outcome of LPA no.686 of 2016.

If after all the advertised posts in the selection process in question have been filled up accordingly, there are still vacancies to which respondents wish to make appointments on an ad hoc basis, in order to ensure that the studies of the students are safeguarded (or for any other reason), such appointments be made again firstly strictly as per the order of merit in the joint merit list and only after all such vacancies as the State wishes to fill in are filled in accordingly, would appointment of Guest Teachers/former Guest Teachers be made on the remaining vacancies.

Mr. Doon, learned State counsel, has submitted that the aforesaid direction would interfere with the directions given by this Court in CWP no.11761 of 2017, in which petition the petitioners are those who otherwise come within the merit list, but their appointments are under a cloud, in view of the fact that their finger prints/thumb impressions/signatures are in doubt, when compared with the finger prints/thumb impressions/signatures obtained at the time when they had appeared for the HTET.

That being so, it is directed that as regards the number of candidates who are otherwise in the joint merit list, but their candidature itself is under a cloud as aforesaid, regular appointment to that many number of posts would be kept in abeyance till the decision of CWP no.11761 of 2017. They too may, however, be filled up from the joint merit list on an ad hoc basis, in terms of the directions given hereinabove, (again subject to the outcome of LPA no.686 of 2016).

The aforesaid directions be carried out within a period of two months from the date of receipt of a certified copy of this order.

December 22, 2017
vcgarg

(Amol Rattan Singh)
Judge

Whether speaking/reasoned:	Yes/no
Whether reportable:	Yes/no