

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Reserved on : 25.01.2018
Date of decision : 14.08.2018

- (1) CWP-16290-2013 (O&M)
- Parwinder Kaur and others
Versus
State of Punjab and another
...Petitioner(s)
...Respondent(s)
- (2) CWP-21857-2013 (O&M)
- Kamaljeet Singh and another
Versus
State of Punjab and another
...Petitioner(s)
...Respondent(s)
- (3) CWP-21024-2013 (O&M)
- Navdeep Singh and others
Versus
State of Punjab and others
...Petitioner(s)
...Respondent(s)
- (4) CWP-22003-2013 (O&M)
- Vinod Sharma and others
Versus
State of Punjab and another
...Petitioner(s)
...Respondent(s)
- (5) CWP-22492-2013 (O&M)
- Sakshi Saini and another
Versus
State of Punjab and another
...Petitioner(s)
...Respondent(s)
- (6) CWP-22019-2013 (O&M)
- Nobaljeet Kaur
Versus
State of Punjab and another
...Petitioner(s)
...Respondent(s)
- (7) CWP-22493-2013 (O&M)

Padampreet Kaur		...Petitioner(s)
	Versus	
State of Punjab and others		...Respondent(s)
		(8) CWP-19643-2013 (O&M)
Palwinder Kaur		...Petitioner(s)
	Versus	
State of Punjab and another		...Respondent(s)
		(9) CWP-23363-2013 (O&M)
Lakhvinder Singh and another		...Petitioner(s)
	Versus	
State of Punjab and another		...Respondent(s)
		(10) CWP-23426-2013 (O&M)
Vijay Pal and another		...Petitioner(s)
	Versus	
State of Punjab and another		...Respondent(s)
		(11) CWP-25658-2013 (O&M)
Sukhpreet Kaur and others		...Petitioner(s)
	Versus	
State of Punjab and another		...Respondent(s)
		(12) CWP-25898-2013 (O&M)
Kirandeep Kaur and others		...Petitioner(s)
	Versus	
State of Punjab and another		...Respondent(s)
		(13) CWP-26586-2013 (O&M)
Puneet Kaur and others		...Petitioner(s)
	Versus	
State of Punjab and another		...Respondent(s)
		(14) CWP-27340-2013 (O&M)

Lalita Garg		...Petitioner(s)
	Versus	
State of Punjab and another		...Respondent(s)
		(15) CWP-27596-2013 (O&M)
Navneet Kaur Mohindru and another		...Petitioner(s)
	Versus	
State of Punjab and another		...Respondent(s)
		(16) CWP-19606-2013 (O&M)
Tarlochan Singh and others		...Petitioner(s)
	Versus	
State of Punjab and another		...Respondent(s)
		(17) CWP-22996-2013 (O&M)
Sukhjinder Kaur		...Petitioner(s)
	Versus	
State of Punjab and another		...Respondent(s)
		(18) CWP-22997-2013 (O&M)
Sandeep Makkar and others		...Petitioner(s)
	Versus	
State of Punjab and another		...Respondent(s)
		(19) CWP-22998-2013 (O&M)
Poonam Gupta		...Petitioner(s)
	Versus	
State of Punjab and another		...Respondent(s)
		(20) CWP-23002-2013 (O&M)
Sundervir Kaur		...Petitioner(s)
	Versus	
State of Punjab and another		...Respondent(s)

Mehtab Singh Khalsa and others	(21) CWP-23003-2013 (O&M)
	...Petitioner(s)
Versus	
State of Punjab and another	...Respondent(s)
	(22) CWP-23005-2013 (O&M)
Ramandeep Kaur and others	...Petitioner(s)
Versus	
State of Punjab and another	...Respondent(s)
	(23) CWP-213-2014 (O&M)
Monika	...Petitioner(s)
Versus	
State of Punjab and another	...Respondent(s)
	(24) CWP-1872-2014 (O&M)
Jyoti Sharma	...Petitioner(s)
Versus	
State of Punjab and another	...Respondent(s)
	(25) CWP-19842-2012 (O&M)
Manjot and others	...Petitioner(s)
Versus	
State of Punjab and others	...Respondent(s)
	(26) CWP-22245-2013 (O&M)
Anu Priya	...Petitioner(s)
Versus	
State of Punjab and others	...Respondent(s)
	(27) CWP-23562-2013 (O&M)

Navdeep Kaur

		...Petitioner(s)
	Versus	
State of Punjab and others		...Respondent(s)
		(28) CWP-2406-2014 (O&M)
Amandip Kaur		...Petitioner(s)
	Versus	
State of Punjab and another		...Respondent(s)
		(29) CWP-23908-2013 (O&M)
Rajveer Kaur and another		...Petitioner(s)
	Versus	
State of Punjab and another		...Respondent(s)
		(30) CWP-4295-2014 (O&M)
Sukhdeep Singh and others		...Petitioner(s)
	Versus	
State of Punjab and others		...Respondent(s)
		(31) CWP-5564-2014 (O&M)
Geeta Marwaha and another		...Petitioner(s)
	Versus	
State of Punjab and another		...Respondent(s)
		(32) CWP-23001-2013 (O&M)
Dimple Bansal		...Petitioner(s)
	Versus	
State of Punjab and others		...Respondent(s)
		(33) CWP-9302-2014 (O&M)
Tarlochan Singh		...Petitioner(s)

	Versus	
State of Punjab and others		...Respondent(s)
		(34) CWP-24790-2013 (O&M)
Anuj Kumar and another		...Petitioner(s)
	Versus	
State of Punjab and another		...Respondent(s)
		(35) CWP-24350-2014 (O&M)
Jatinder Singh and others		...Petitioner(s)
	Versus	
State of Punjab and another		...Respondent(s)
		(36) CWP-894-2016 (O&M)
Swati Chugh and others		...Petitioner(s)
	Versus	
State of Punjab and another		...Respondent(s)
		(37) CWP-23120-2013 (O&M)
Rajwinder Kaur		...Petitioner(s)
	Versus	
State of Punjab and another		...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R.K. Malik, Senior Advocate with
Ms. Rimple Sohi Kadyan, Advocate,
and Mr. Parvesh Saini, Advocate,
for the petitioner(s) in CWP No.19842 of 2012,
22003 of 2013, 21857, 22019, 26586, 27596,
22997, 23003, 23005 of 2013 and 24350 of 2014.
Mr. H.C. Arora, Advocate for the petitioner(s) in
CWPs No.16290, 22492, 25658, 22996 of 2013 and
2406 of 2014.
Ms. Vaishali Singla, Advocate for
Mr. Aakash Singla, Advocate
for the petitioner(s) in CWP No.23001 of 2013.
Mr. B.S. Jatana, Advocate

for the petitioner(s) in CWP No.23908 of 2013.
Mr. Sunny Singla, Advocate for the petitioner(s)
in CWPs No.5564 of 2014, 22998 and 23002 of 2013.
Mr. B.S. Ichhewal, advocate for the petitioner(s) in
CWPs No.9302 of 2014, 23426 and 19606 of 2013.
Mr. R.S. Dadwal, Advocate
for the petitioner(s) in CWP No.23120 of 2013.
Mr. Vikas Chatrath, Advocate
for the petitioner(s) in CWP No.1872 of 2014.
Mr. Himanshu Monga, Advocate for
Mr. RK Arya, Advocate,
for the petitioner(s) in CWP No.4295 of 2014.
Mr. Anupam Singla and Mr. Ankit Aggarwal, Advocates,
for the petitioner(s) in CWP No.23363 of 2013.
Mr. Dinesh Kumar, Advocate for
Mr. G.S. Brar, Advocate,
for the petitioner(s) in CWP No.894 of 2016.
Ms. Alka Chatrath, Advocate,
for the petitioner(s) in CWP No.21024 of 2013,
CWP No.27340 of 2013 and CWP No.213 of 2014.
Mr. Rajan Gupta, Advocate for
Mr. Parshotam Lal Singla, Advocate,
for the petitioner(s) in CWP No.19643 of 2013.
Mr. Vaneet Soni, Advocate,
for the petitioner(s) in CWP No.24790 of 2013.
Mr. Harinder Sharma, Advocate,
for the petitioner(s) in CWP No.23562 of 2013.
None for the petitioner(s) in CWP No.22493 of 2013.
None for the petitioner(s) in CWP No. 25898 of 2013
None for the petitioner(s) in CWP No.22245 of 2013.
Ms. Sudeepti Sharma, Addl. AG, Punjab.
Mr. Kapil Kakkar, Advocate
for respondents No.3 to 11 in CWP No.16290 of 2013.
Mr. Sandeep Jasuja, Advocate for respondent No.3/NCTE

JITENDRA CHAUHAN, J.

This judgment shall dispose of above noticed 37 writ petitions as common question of law and facts are involved therein. For brevity, facts are being derived from CWP-16290-2013.

The petitioners, *inter alia*, seek issuance of a writ in the nature of Certiorari for quashing the last/cut off date stipulated in public notice dated 09.07.2012 (Annexure P-3) for receipt of application of Rural Associate Teachers (Master Cadre) for filling up 5078 posts in the State of Punjab.

Learned counsel, *inter alia*, contends that the petitioners could not submit their applications in response to the public notice, Annexure P-3, as the State failed to conduct Teachers Eligibility Test (for short, 'the TET') in the year 2012. The said test was conducted by the respondents on 09.06.2013, i.e. subsequent to the last date of submission of applications in pursuance of the public notice in question. It is asserted that the petitioners took the test held on 09.06.2013 and qualified the same. The petitioners have been made to suffer on account of the inaction of the respondent-State in not conducting the TET even once in the year 2012. The first TET was conducted on 03.07.2011 whereas, the second TET was conducted only in the year 2013. He refers to para No.11 of the guidelines issued vide circular letter dated 11.02.2011 (Annexure P-2) which mandates the appropriate government to conduct the TET at least once every year. It is submitted that the petitioners in several writ petitions out of the present batch, were allowed by this Court to participate in the selection process initiated in pursuance of Annexure P-3.

On the other hand, learned State counsel has vehemently argued that the TET was conducted in the year 2011 i.e. prior to the date of public notice, Annexure P-3, however, the petitioners either did not take the exam or could qualify the same. Once the petitioners did not possess the requisite qualification as on the last date of submission of application, they have no legal right to participate in the selection process. Even otherwise, once the public notice inviting applications for filling up vacancy in question has been issued, extension of the last date thereof for submission of applications for the benefit of some candidates would cause serious prejudice to the selection prospects of candidates who were eligible as on the date in question. As regards the guidelines issued by the NCTE to conduct TET once every year, the same are directory in nature and the petitioners cannot take any benefit therefrom.

Learned counsel for NCTE admits that the guidelines in question are directory in nature and in case, the State does not hold TET every year, it may or may not consider the candidates who have passed CTET or TET conducted by any other State.

Heard.

With a view to impart quality education to all the children, the Parliament of India enacted on 4 August 2009, The Right of Children to Free and Compulsory Education Act or Right to Education Act (for short, 'the RTE Act'), which describes the modalities of the importance of free and compulsory education for children between 6 and 14 in India under Article 21A of the Indian Constitution. As a consequence of this enactment, India has become one of 135 countries to make education a fundamental right of

every child when the Act came into force on 1 April 2010. The Act also provides for the qualifications for appointment and terms and conditions of service of teachers. Section 23 of the Act, reads as under:-

Section 23. Qualifications for appointment and terms and conditions of service of teachers

(1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorized by the Central Government, by notification, shall be eligible for appointment as a teacher.

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:

PROVIDED that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years.

(3) The salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed.

For the proper implementation of the RTE Act, certain guidelines were issued by NCTE vide notification dated 23.08.2010.

Relevant portion of the Guidelines is as under:-

“Frequency of conduct of TET and validity period of TET certificate

11 The 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.”

Further, vide notification dated 29.07.2011, NCTE laid down the minimum qualifications for the candidates to be eligible for appointment as teacher, which read thus:-

“1. Minimum Qualifications:-

(i) Classes I-V

(a) Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Elementary Education (by whatever name known)

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2-year diploma in Elementary Education by whatever name known), in accordance with the NCTE (Recognition Norms and Procedures), Regulations, 2002.

OR

Senior Secondary (or its equivalent) with at least 50%

marks and 4-year Bachelor of Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2-years Diploma in Education (Special Education)

AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the guidelines framed by the NCTE for the purpose.”

In the instant case, public notice dated 09.09.2012 (Annexure P-3) was issued by the State of Punjab inviting applications from eligible candidates for filling up 5078 vacancies of Rural Associate Teachers (Master Cadre) in the State of Punjab. The last date for submission of applications was fixed as 08.10.2012 (5.00 p.m.). It was specifically mentioned in the advertisement that the candidates must have passed TET conducted by the Punjab Government under the RTE Act apart from other qualifications mentioned therein.

The precise grievance of the petitioners is that they could not apply in pursuance of the public notice as the State did not conduct TET in the year 2012, against the guidelines (Annexure P-2), issued by the NCTE which mandates the State Government to conduct the test in question at least once a year. In the absence of the test being conducted in the year 2012, the petitioners were rendered ineligible. It is further the case of the petitioners that when the State conducted the TET in the year 2013, the petitioners have qualified the same. Thus, they have sought indulgence of

this Court to extend the last date of submission of applications to enable them to submit their applications and participate in the selection process. In support of their assertions, the petitioners have placed reliance on the decision rendered by this Court in **CWP-5984-2012**, titled as ***Manpreet Kaur Vs. Chandigarh Administration and others***, decided on 30.03.2012, wherein, under similar circumstances, this Court had directed the respondents to consider the candidature of the petitioners therein till they show themselves as having qualified the CTET, which was scheduled to be held in the month of May 2012. Similarly, 19 JBT had approached this Court on the ground that in the year 2011, public notices were issued for filling up of Master Cadre in the Education Department and it was one of the conditions that concerned candidates must have qualified the TET. The last date for receipt of applications was 30.05.2011, though, the respondent-State had not conducted the test in question, which was ultimately conducted on 03.07.2011 and the result was declared on 13.07.2011. Under these circumstances, **CWP No.21301 of 2011**, titled as ***Gurjinder Singh Vs. State of Punjab and others*** came to be filed seeking extension of the last date of receipt of applications from 30.05.2011 so that the candidates who had qualified TET held on 03.07.2011 may also become eligible. The writ petition was disposed of by this Court directing 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 date of declaration of result of TET.

However, ***Gurjinder Singh's case (supra)*** is distinguishable on

facts as in those cases, vacancies had been advertised without conducting the TET, which was done for the first time on 03.07.2012 and result declared on 13.07.2012. However, in the instant case, TET had already been conducted in the year 2011. In fact, the petitioners either did not take the exam in the year 2011 or could not qualify the same. In ***Bhupinderpal Singh and others Vs. State of Punjab, 2000 AIR (SC) 2011***, Hon'ble the Supreme Court has held as under:-

“13. Placing reliance on the decisions of this Court in Ashok Kumar Sharma Vs. Chander Shekhar & Anr. JT 1997 (4) SC 99; A.P. Public Service Commission Vs. B. Sarat Chandra & Ors. 1990 (4) SLR 235; The Distt. Collector and Chairman, Vizianagaram (Social Welfare Residential School Society) Vizianagaram and Anr. Vs. M. Tripura Sundari Devi 1990 (4) SLR 237; Mrs. Rekha Chaturvedi Vs. University of Rajasthan & Ors. JT 1993 (1) SC 220; Dr. M.V. Nair Vs. Union of India & Ors. 1993 (2) SCC 429; and U.P. Public Service Commission, U.P., Allahabad & Anr. Vs. Alpana JT 1994 (1) SC 94, the High Court has held (i) that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; ii) that if there be

no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice done by invoking the jurisdiction under [Article 142](#) of the Constitution vested in this Court so as to advance the cause of justice.

In view of several decisions of this Court relied on by the High Court and referred to herein above, it was expected of the State Government notifying the vacancies to have clearly laid down and stated the cut off date by reference to which the applicants were required to satisfy their eligibility. This was not done. It was pointed out on behalf of the several appellants/petitioners before this Court that the practice prevalent in Punjab has been to determine the eligibility by reference to the date of interview and there are innumerable cases wherein such candidates have been seeking employment as were not eligible on the date of making the applications or the last date appointed for receipt of the applications but were in the process of acquiring eligibility qualifications and did

acquire the same by the time they were called for and appeared at the interview. Several such persons have been appointed but no one has challenged their appointments and they have continued to be in public employment. Such a loose practice, though prevalent, cannot be allowed to be continued and must be treated to have been put to an end. The reason is apparent. The applications made by such candidates as were not qualified but were in the process of acquiring eligibility qualifications would be difficult to be scrutinised and subjected to the process of approval or elimination and would only result in creating confusion and uncertainty. Many would be such applicants who would be called to face interview but shall have to be returned blank if they failed to acquire requisite eligibility qualifications by the time of interview. In our opinion the authorities of the State should be tied down to the principles governing the cut off date for testing the eligibility qualifications on the principles deducible from decided cases of this Court and stated herein above which have now to be treated as the settled service jurisprudence.”

Similarly, in ***Ashok Kumar Sonkar Vs. Union of India and others, (2007) 4 SCC 54***, it has been laid down that the eligibility of a candidate has to be seen as on the last date fixed for submitting the

application form. The petitioners were not qualified since they had not cleared the TET as on the last date of submission of the application form. It is a settled law 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 ***Ramrao Vs. All India Backward Class Bank Employees Welfare Assn., (2004) 2 SCC 76***, it has been held thus:-

“32. If a cut-off date can be fixed, indisputable 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.”

Otherwise also, Public notice Annexure P-3, cannot also be held to be bad in law only on the ground that the State did not conduct TET

in the year 2012. In all, 8412 candidates were declared successful on 29.07.2011, in the TET which was conducted on 03.07.2011. Thus, there were already sufficient number of successful candidates who had qualified TET held by the State Government in the year 2011 and thus, were eligible to apply for the posts in question advertised in the year 2012. During the course of arguments, a clarification was sought from respondent No.3 as regards the nature of guidelines issued by the NCTE. Learned counsel appearing on behalf of respondent No.3 has stated in unequivocal terms that the requirement of conducting the TET at least once a year is directory and not mandatory. Some of the petitioners in the present batch of petitions did not even possess the basic qualification of B.Ed. at the relevant time, thereby, rendering them ineligible to take the test in question, even if the same had been conducted in the year 2012.

In view of the above, this Court does not find any merit in the present batch of petitions and consequently, the same is hereby dismissed. However, the State is directed to take a conscious decision with regard to holding the TET annually in view of the guidelines issued by the NCTE.

Needless to mention, in view of the dismissal of the main writ petitions, interim orders, whereby the petitioners, in some of the writ petitions, were allowed to take part in the selection process, have been rendered inconsequential.

14.08.2018***atulsethi*****(JITENDRA CHAUHAN)
JUDGE**

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No