

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

CWP No. 18948 of 2013

Date of decision : 17.10.2018

Suman Kumari

..Petitioner

versus

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. P.R. Yadav, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G. Haryana

RITU BAHRI, J.

In the present civil writ petition, the petitioner has sought quashing of advertisement dated 08.11.2012 (Annexure P-6) and rejection letter dated 23.07.2013 (Annexure P-7).

Petitioner who is M.A, B.Ed was appointed as Primary Teacher and in the year 2011, petitioner passed Diploma in Education from Kurukshetra University. The certificates and degrees of the petitioner are Annexure P-1 colly. Vide notification dated 23.08.2010, National Council for Teacher Education issued notification prescribing minimum qualifications for the posts of teachers teaching class I to V and VI to VIII. In para No. 3 of this notification, it was provided that a person with B.A/ B.Sc with at least 50% marks and B.Ed qualification shall also be eligible for appointment for teaching class I to V up to 01.01.2012 provided after appointment he undergoes, an NCTE recognized 6 months special

programme in Elementary Education (Annexure P-2), which was further amended vide notification dated 10.06.2011 (Annexure P-3). By way of another notification dated 29.07.2011, qualification was changed to “Graduation” in place of B.A/B.Sc/B.Com (Annexure P-4).

On 11.04.2012, Government of Haryana notified the Haryana Primary School Education (Group C) District Cadre Service Rules 2012 (for short 'Rules 2012') and earlier Rules of 1994 were repealed. In these Rules in Appendix B under Note (i) it was provided as under:-

In case of direct recruitment, the teachers working in privately managed Government aided, recognized and Government Schools, are exempted to acquire qualifications of passing HTET as described in column No. 3, if they have worked as a teacher for a minimum period of 4 years on the date of enforcement of these rules. However, the said exemption is a one time measure and the said category of teachers on their appointment shall have to qualify HTET by not later than 1st April, 2015 otherwise their appointment shall stand terminated. A copy of Rules 2012 is annexure as Annexure P-5.

On 08.11.2012, respondent No. 3 issued 8763 posts of Primary Teachers (PRT) including 346 posts for backlog of PH (B/L) under category No. 1 and 1107 post of Primary Teachers (PRT) including 44 posts for backlog of PH (B/L) category. However while advertising the above said posts there was Note 3 which reads as under:-

Note 3:- A one time exemption of HTET/STET for teachers who till 11.04.2012 have worked for minimum 4 years in privately managed Govt. Aided Schools, Recognized Schools and Govt. Schools. Number of years is cumulative, candidate must be in service as PRT on 11.04.2012

and in position on the date of applying. The teaching experience must be as Primary teacher after acquiring essential qualification and supported by salary slip. They will have to qualify HTET not later than 1st April, 2015 otherwise their services will be terminated automatically.

Petitioner pursuant to the advertisement dated 08.11.2012 applied for the above post and on 18.12.2012, petitioner was allotted Roll No. 44417767 and the same was downloaded by the petitioner from the website of Selection Board. The date of verification of the documents/interview was fixed on 23.07.2013. The petitioner appeared on 23.07.2013 before the Committee for verification of documents but the candidature of the petitioner was rejected on the ground that the petitioner had not completed 04 years experience after acquiring essential qualification. A copy of Roll Number showing endorsement regarding rejection is annexed as Annexure P-7.

Learned counsel for the petitioner while referring to Rules 2012 stated that there is no such condition that experience as a teacher must be after acquiring the essential qualification rather it is only provided that experience should be as Primary Teacher only. Thus, the extra condition added in the notification regarding experience after essential qualification is contrary to the Rules 2012 and the same is liable to be struck down.

On the other hand, learned State counsel while referring to the reply filed on behalf of respondent No. 1 states that the application of the petitioner has rightly been rejected as she has not fulfilled the requisite qualifications for the post. The petitioner has annexed experience certificate as primary teacher in which she has served in the school from 01.04.2005 to 13.08.2009 and rejoined on 25.11.2011 and has been shown still serving in

the school by the Principal Himalaya Public School Assandh (Karnal). This experience cannot be considered as a valid and legal experience as the petitioner passed her diploma in Education Course on 24.11.2011 whereas the experience has been gained before valid qualifications as the petitioner, with having qualifications of BA/BEd joined services as primary teacher at Himalaya Public School Assandh (Karnal). The petitioner is having more than 4 years service (01.04.2005 to 13.08.2009) as primary teacher but this certificate cannot be consider as legal and valid one as the school has been granted recognition vide Director Secondary Education Haryana Order dated 30.04.2007 (Anneuxre R-1).

On the other hand, learned counsel for the petitioner has referred to the replication filed by the petitioner to the written statement filed by respondent No. 1 and contends that the petitioner had already qualified the HTET for Primary teacher during the pendency of the writ petition and a copy of certificate of HTET dated 18.12.2015 is Annexure P-9. Even prior to the offering of appointment to the post of JBT (Primary Teacher), the petitioner had qualified the HTET, which is valid up to 31.12.2010 and the case of the petitioner is covered by the undertaking given by State of Haryana in the case of Antim Kumari v. State of Haryana and other, passed in CWP No. 346-2013 and other connected matters, decided on 29.04.2015 (Annexure P-10) wherein the petitioner who had cleared HTET during the pendency of the writ petition were considered as eligible.

It has further been stated that the certificate issued by the Himalaya Public School Assandh (Karnal) to the petitioner is valid as this

school was granted permanent recognition up to class V on 12.10.2001 (Annexure P-11). Further the Service Rules for appointment of B.A, B.Ed as JBT teacher are only for regular appointment in Government service. Even the State of Haryana has appointed a large number of Guest Teachers as JBT (Primary Teachers), who are B.A., B.Ed qualification or M.A, B.Ed. The teachers with B.Ed degree were appointed by State of Haryana as Primary Teachers even after deleting B.E, B.Ed qualification for Primary Teachers. The information received under RTI is Annexure P-12 colly.

Heard learned counsel for the parties.

Pursuance to direction by this Court, the petitioner was interviewed provisionally, subject to outcome of the present writ petition and her result was kept in a sealed cover. The result was produced in this Court on 16.12.2014 and the last candidate in the category of the petitioner secured 58.92 marks. However, the last candidate in the waiting list secured 57.19 marks. The petitioner secured 58.60 as per information given by learned State counsel. Thus, the marks secured by the petitioner are less than the last candidate in her category i.e BCA but her marks are more than the last candidate in the waiting list.

Reference at this stage can be made to affidavit filed on behalf of respondent No.3 wherein it has been clearly stated that the advertisement is bad in law and is liable to be set aside as there is clear cut violation of statutory provisions.

Reference at this stage can be made to ***CWP No. 15929-2012 titled as Shivani Gupta and others v. State of Haryana and others, decided on 21.12.2012*** wherein one time relaxation provided was held to be valid

and the condition of working on 11.04.2012 given in the advertisement was held illegal and only four years experience was considered valid.

Learned counsel for the petitioner has referred to a judgment of Hon'ble the Supreme Court of India in a case of ***K. Kuppusamy and anr vs. State of T.N and others, 1998 (8) SCC 469*** wherein it was held that Executive Orders or Executive Practice cannot override Statutory Rules. Merely because Government had taken a decision to amend Rules does not mean that rule stood obliterated. Till the rule is amended the rule applies. As and when amendment of Rules is effective ordinarily, it would be prospective in nature unless expressly or by necessary implication found to be set retrospectively.

Learned counsel while referring to the above judgment contends that the condition in Note 3 of the advertisement that the teaching experience must be as Primary teacher after acquiring essential qualification and supported by salary slip, is bad in law and contrary to the Rules.

Reference at this stage can again be made to ***Shivani Gupta's case (supra)*** wherein in para 38, it has been observed as under:-

“38. One aspect raised in some of the writ petitions remains to be discussed, viz., some of such GFTs and other Teachers, who have four years experience but were not in service as on 11.4.2012 have been excluded from consideration. Insofar as Note(i) in the Rules of 2012 is concerned, it does not contain any stipulation that such Teachers are to be in service as on the date of enforcement of the rules, i.e., 11.4.2012. The exemption is given “if they have worked as Teachers for the minimum period of four years on the date of enforcement of these rules”. That means, they should have worked for a period of four years and this four years period is to be reckoned by taking cut off date as 11.4.2012. However, in the advertisement, such a condition, namely, Teacher should be working also as on 11.4.2012, is provided. We do not see any rationale or justification in prescribing this

condition. Once we accept the argument of the Government itself that because of experience of four years provision is made in the rules giving them exemption, such benefit needs to be extended to all those who have requisite four years experience whether they were working on 11.4.2012 or not. It is more so when Rules of 2012 do not prescribe any such condition and laying down same in the advertisement is contrary to the rules.”

Once in the above mentioned judgment, the inclusion of one condition was held to be against Rules, 2012, therefore, in the present case as well, the inclusion of Note 3 is against Rules 2012. In the present case, it cannot be read that the experience should be after acquiring the diploma.

Applying the ratio of the above mentioned judgment to the facts of the present case, the present writ petition is allowed and direction is issued to the respondent-department to consider the case of the petitioner for appointment in BCA category by placing her name as per her marks in the waiting list, without insisting on the condition that the teaching experience must be as Primary teacher after acquiring essential qualification and supported by salary slip

(RITU BAHRI)
JUDGE

17.10.2018

G Arora

Whether speaking/reasoned
Whether reportable

Yes
No