

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.13475 of 2018(O&M)

Date of Decision:9.7.2018

Virender Singh and others

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Jagbir Malik, Advocate for the petitioners

RAJIV NARAIN RAINA, J.

1. The petitioners worked as Post Graduate Teacher (for short “PGT”) in different Government Schools of the State of Haryana. The services of Trained Graduate Teachers (for short “TGT”) and Elementary School Headmasters (for short “ESHMs”) are governed by the Rules known as Haryana School Education (Group C) State Cadre Service Rules, 2012 (for short “Rules of 2012”). These rules repealed previous rules of 1998. As per Appendix A to the Rules of 2012, the pay scale for the post of TGT is Rs.9300-34800+4600 Grade Pay and the Pay Scale for the post of ESHMs is Rs.9300-34800+4800 Grade Pay. As per Rule 9 read with Appendix B of the Rules of 2012, the post of TGT is feeder cadre post of Post Graduate Teachers (PGT). Rule 9 (1) (b) of the Haryana State Education School Cadre (Group B) Service Rules, 2012 deals with the method of filling up the post of High School Headmaster (for short “HHS”). The post of HHS is filled by way of promotion from amongst ESHMs and TGTs. ESHMs or TGTs with 8 years teaching experience as ESHM/TGT in regular capacity can be promoted to the post of HHS. Both TGT and ESHMs are feeder posts to PGT. At the time of finalization of the Rules of

2012, the Post Graduate Teachers had to be given posting in Senior Secondary Schools to teach 11th and 12th Class. The State took a decision that PGT will also teach 9th and 10th Classes with 11th and 12th Classes. An anomaly is said to have arisen to the effect that if the school is Senior Secondary, there is no difficulty, but if the School is only High School, then the difficulty arises with respect to PGTs.

2. Petitioners no.1 and 2 are posted in High Schools whereas petitioner no.3 teaches in Senior Secondary School. Petitioner no.3 has highlighted heartburn by a representation dated 1st March, 2017 (Annex. P-4) asking the respondents to remove the anomaly and redress the grievance of persons like him. Petitioner no.3 has also served a legal notice dated 19th March, 2018 (Annex. P-6), but no decision has been taken on the same. This request is stated not to have been considered. In this background, impugned letter dated 16th March, 2018 (Annex. P-7) was sent by the Government to all the District Education Officers and District Elementary Education Officers in the State of Haryana directing them to send promotion cases of all the ESHMs and the TGTs appointed upto 31st December, 1989 for promotion to the post of HHS. Petitioner no.2 has served a legal notice dated 18th May, 2018 (Annex. P-8) upon the respondents informing them that if ESHMs or TGTs are promoted to the post of HHS, then he and all the TGTs and ESHMs who are posted in High Schools will face hardship and hence a request was made not to promote ESHMS/TGTs to the post of HHS till PGTs are provided a channel of promotion to these posts. A representation (Annex. P-9) was also addressed to the Education Minister, Haryana by the Haryana State Lecturers’

Association through its State President against the impugned letter dated 16th march, 2018 asking them not to implement it.

3. This Court called upon the petitioners on 28th May, 2018 to file an additional affidavit explaining the sanctity of the date 31.12.1989 and they were asked to produce service rules prior to 2012 to understand what was left behind and what was carried forward in the rules. The additional affidavit has been filed. In the affidavit, it is averred as follows:-

“1.That the deponent had tried to enquire about the fact that why the cases of all eligible ESHMs/TGTs appointed upto 31.12.1989 have been demanded for promotion to the post of High School Head Masters. The deponent has been informed orally that all the vacant posts of High School Head Masters will be filled up if the cases of all eligible ESHMs/TGTs appointed upto 31.12.1989 are considered. The deponent has been provided nothing in black and white.

2.That before separation of Haryana and Punjab and upto 15.12.1998, the service conditions of High School head Masters was governed by Punjab Educational Service Class III, School Cadre Rules, 1955. As per these rules the post of Head Master was to be filled up by Direct Recruitment or By Transfer or By Promotion from lower grades in the service. A true copy of the Rules is attached herewith as Annexure A-1.

3.That on 15.12.1998, the State of Haryana has introduced Haryana State Education (School and Inspection Cadre) (Group B) Service Rules, 1998 governing the services of High School Head Master. As per these rules this post was to be filled up by Direct Recruitment as well as by Promotion from Middle School Head Master and Masters now TGT. A true copy of the Rules is attached herewith as Annexure A-2.

3.The prior to coming into force of the rules of 2012, the service conditions of Lecturers School Cadre were governed by Haryana State Education Lecturer School Cadre (Group C) Service Rules, 1998. As per these rules the Post of Masters now TGT is feeder post to be Post of Lecturer now PGT. A true copy of the rules is attached as Annexure A-3.

4.That prior to coming into force of the rules of 2012, the service conditions of Master now TGT were governed by Haryana and State Education School Cadre (Group C) Service Commencement Rules, 1998. As per these rules the post of Masters now TGT is having lower pay scales to the post of Lecturer now PGT. A true copy of the Rules is attached herewith as Annexure A-4.

5.That the deponent submits that the post of TGT and Elementary School Head Master is lower post than the post of PGT occupied by the deponent and other petitioners. Repealing all the above rules, now in 2012 the Government of Haryana introduced rules of 2012.”

4. The prayer in this petition is for quashing the impugned letter dated 16th March, 2018 (Annex. P-7) which requisition's the cases of ESHMs and TGTs for promotion to the post of HHS. A perusal of this letter reveals its subject matter as 'Promotion cadre of ESHMs/TGTs appointed upto 31st December, 1989 for promotion to the post of HHS'. The letter is reproduced below:-

“From

Directorate of Secondary Education,
Haryana, Panchkula

To

- 1.DPI, Chandigarh
- 2.Director SCERT, Gurugram
- 3.All DEOs in the State

4.All DEEOs in the State
Memo No.4/2-2018 HRG-II (1)
Dated: Panchkula, the 16.03.2018

Subject:Promotion Cadre of Elementary School Headmaster/TGTs appointed upto 31.12.1989 for post of Headmaster, High School.

Reference to subject cited above.

It is submitted that on continuance demand of ESHMs/TGTs, it has been decided that all eligible ESHMs/TGTs appointed upto 31.12.1989 be considered for appointment by mode of promotion to post of Headmaster, High School, your goodself as requested to submit promotion cases of eligible ESHMs/TGTs, strictly as per provisions of Service Rules, 2012 with personal file, no complaint pending certificate, no departmental/judicial enquiry pending certificate be submitted within a period of 15 days positively through special messenger from the date of issuance of this letter with soft copy on the proforma as under. It is also advised that a certificate be submitted that there remained no claimant pending in the District.

Sr.No.	Seniority no. as Master TGT as on 1.1.2012	Name of ESHMs/TGTs	School	Education qualification	Date of adhoc/temporary appointment	Date of regular appointment	Remarks regarding pending inquiry if any

16.3.18

sd/-Deputy Director HRG-II
For Director Secondary Education,
Haryana, Panchkula.”

5. Consideration for promotion has taken place under the service rules of 2012. The rub in the service rules, 2012 is that only one avenue of promotion available to Lecturer/PGT is to the post of Principal whereas the TGT/ESHMs have two avenues of promotion available to them. TGT/ESHMs can seek promotion to the post of PGT in his subject and can be promoted as HHS. In case a TGT/ESHMs is appointed as a Head of the

High School, he is further eligible for promotion to the post of Principal since 33% of the posts of Principals are to be filled from amongst HHS. Promotion of TGT/ESHMs to the post of HHS is placed in a pay band of Rs.15600-39100 with a grade pay of Rs.5400 whereas a PGT is placed in the Pay Band of Rs.9300-43800 with a Grade Pay of Rs.4800. The petitioners assert in these inequitable circumstances, PGTs should also have a right to be promoted to the post of HHS. The petitioners call this an anomalous situation wherein a lecturer who was earlier reporting to a principal would now have to report to a HHS irrespective of the fact that the basic qualification of PGT/Lecturer is more than the basic qualification required for being appointed as HHS. The new rules provide only one avenue of promotion to the post of Principal and this is said to have resulted to the disadvantage of the petitioners.

6. As per rules of 2012, the petitioners, to my mind, have no case. If there is an anomaly, then the stage is not set for intervention by this Court on a policy matter. For providing avenues of promotion, mandamus would not normally be issued. The rules are not under challenge in the petition and only the letter dated 16th March, 2018 is agitated. I would, therefore, dismiss this petition at this stage. Since direction cannot not issued to create channel of promotion and thus, the petitioners are left to their remedies before the rule making authority to whom representations/legal notices have been sent.

7. In these circumstances, this writ petition is dismissed at this stage. However, the competent authority amongst the respondents are directed to look into the representations/legal notices of the petitioners as also the representation sent by the Haryana State Lecturers' Association and

take such suitable action on them as is deemed fit and proper for which petitioners and Haryana State Lecturers’ Association deserve to be heard and conveyed a decision thereon within a reasonable time.

9.7.2018
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No