

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21132 of 2016 (O&M)
Date of Decision: 17.01.2018

Naveen Dahiya

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present: Mr. Bhupinder Malik, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

Mr. Manoj Makkar, Advocate,
for respondents No.5 to 7.

Mr. Ramandeep, Advocate,
for the applicants in CM No.18030 of 2017.

Mr. Girish Agnihotri, Sr. Advocate,
with Mr. Vijay Pal, Advocate,
and Mr. Ishaan Bhardwaj, Advocate,
for respondents No.14 to 18.

RAJIV NARAIN RAINA, J.(Oral)

1. The following main prayers have been made in this petition:-

“i) Issue a writ in the nature of Certiorari to quash the impugned Advertisement dated 25.04.2016 (Annexure P-7) alongwith all the steps taken by respondents no.1 to 3 in furtherance of this advertisement being violative of the Rule 9 (3) and Rule 19 of “Industrial Training Department, Haryana, Field Offices (Group C) Service Rules, 2013”

ii) Further also quash the impugned Instructions/Criteria dated 30-03-2016 (Annexure P-6) whereby the respondent No. 3 has issued the instructions/criteria for the recruitment of vocational

instructors/ instructors in ITIs in a most arbitrary, illegal and arbitrary manner and which is absolutely against the Instructions/Criteria fixed by the DGT, Government of India.

iii) *It is further prayed that an appropriate writ, order or direction especially in the nature of Mandamus may also be issued thereby directing the Respondents Nos.1 to 3 to adopt the instructions/criteria (Annexure P-4) fixed by the Respondent no.4 for recruitment of Instructors in the ITIs of the State and re-advertise the posts as “Industrial Training Department, Haryana, Field Offices (Group C) Service Rules, 2013” and as per reservation policy, in the interest of justice;”*

2. The advertisement for filling up posts of Instructors in ITIs on contractual basis came up for consideration in CWP No.20191 of 2016, *Benam Singh Parashar and others v. Union of India and others*. This Court accepted the stand of the State of Haryana that since the department is suffering from huge shortage of regular Instructors an alarming situation has arisen and the department was thus left only with the remedy of engaging Instructors ITIs on contractual basis, as per Government outsourcing policy dated February 16, 2009 as amended by policy dated April 06, 2015.

3. The Court considered the question directly that if the process of recruitment on contractual basis is halted, it would adversely affect the public interest and the student body in these Industrial Training Institutes across Haryana would suffer which might jeopardize their careers. The affidavit filed by the State adequately explained the ground level situation and, therefore, the stop gap arrangement was accepted on the doctrine of necessity and public interest as a temporary bridge between contractual service and desired regular recruitment. This takes care of the first prayer.

4. The second prayer is for quashing the criteria of selection on contract basis claiming that it is arbitrary, illegal and against the criteria

fixed by the Government of India. In *Benam Singh Parashar* case the text of which has been placed as an annexure with the written statement (p.115) the criteria was held to contain nothing illegal, arbitrary, perverse or unconstitutional in it and which would not lead to destruction of merit within contractual service. As a result, the petition was dismissed on November 28, 2016.

5. Both the issues having been answered in order dated November 28, 2016, the stay order granted on April 25, 2017 directing the official respondents not to proceed for issuance of appointment orders to the candidates selected on contractual basis until further orders does not appear to be justified any longer. The result of the interim order dated April 25, 2017 is that it has brought the entire process of an ad hoc arrangement to a grinding halt even before the regular hands are available.

6. It is for this reason, to tide over the difficulty faced by the interim order that the State had filed CM No.9481 of 2017 for vacation of stay order dated 25.04.2017. Another application CM No.12522 of 2017 for vacation of stay has also been filed by respondents No.5 to 7 through Mr. Manoj Makkar, Advocate. Both the C.M. Applications have been disposed of by order dated 10.10.2017 leaving it free to the State to appoint Instructors on regular basis as per the advertisement to which appointments the petitioners have no objection, if followed.

7. In the affidavit filed by the department it has been adequately explained that the total number of regular posts of Instructor (ITI) are 4234. The posts filled on regular basis are 1456. Posts filled up on contractual basis are 1273. The vacant posts shown in the affidavit in para.2 are 1505.

Out of these, 1025 posts are being filled up by the department through Outsourcing Policy (Part-II) dated April 06, 2015 of the Government of Haryana. It has been deposed therein that advertised contractual posts are not in excess of existing Instructors posts.

8. Ms. Shruti Goyal informs the Court that three separate advertisements have been issued successively in 2017 by the Haryana Staff Selection Commission to fill up the post of Instructors (ITI) on regular basis. Approximately 2598 vacancies have been advertised vide advertisement No.7/2017, advertisement No.9/2017 and advertisement No.10/2017. The closing dates for the three recruitment processes were August 21, 2017, September 20, 2017 and October 05, 2017 respectively. She assures the Court that the Commission is seized of the matter and will conclude the selection processes as early as practicable. However, this might take time as is inherent feature in direct recruitment processes involving thousands of applications and, therefore, the stop gap principle in *Benam Singh Parashar* case can be put into motion immediately to tied over any hardship to the student body may face due to shortage of teachers for the academic year till recruitment brings a crop of regular hands so that studies are not disrupted.

9. The petitioner who is only as aspirant to contractual employment has no locus standi to challenge either the advertisement calling applications for filling up posts on contractual basis or even the criteria adopted having been unsuccessful in the selection process and the criteria judicially approved in *Benam Singh Parashar* case.

10. Learned counsel submits that the petition was brought before the

selection was made. If that is so then the writ is premature having been filed on October 03, 2016. The tentative result was issued on September 29, 2016. The present writ was filed on October 03, 2016. The judgment in *Benam Singh Parashar* was passed on November 28, 2016 effectively putting an end to the dispute since the judgment covers the issues raised in this petition and especially the upholding of the criteria which could have been the only ground to approach the Court before the result was out.

11. Learned counsel says that there is an additional ground claimed by the petitioner, that is, he was a Sportsman and reservation for Sportsman is not provided in the general category while it is given to the SC and BC category. There is also a Sport certificate dispute raised stoutly by the private respondent to show that the sports gradation certificate has not been recognized by the Department of Sports & Youth Affairs, Government of Haryana. There is also no prayer with regard to reservation for Sportsman in the prayer clause as reproduced above. In any case, a mandamus will not issue to create reservation where there is none provided in the advertisement. In any case, the objection cannot be taken when it is not pleaded and prayed as a ground of relief. The reservation policy is also not under challenge. Besides, such horizontal reservation need not be applied in an advertisement for contractual employment pending regular recruitment round the corner. No infraction of the Industrial Training Department, Haryana, Field Offices (Group C) Service Rules, 2013 has been shown as far as criteria and horizontal reservation is concerned.

12. As far as CM No.18030 of 2017 under Order 1 Rule 10 CPC is concerned it is dismissed. The applicants have applied under the

advertisement of 2017 for regular recruitment. They cannot join issue with the petitioner to continue contractual employment to prevent regular recruitment. It would be against the interest of the applicants themselves.

13. It goes without saying that the Commission will make every endeavour to conduct and conclude the regular recruitment process within reasonable time and make its recommendations to the Government.

14. The petition stands dismissed.

(RAJIV NARAIN RAINA)
JUDGE

17.01.2018
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No