

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 26774 of 2016

Date of decision : November 17, 2018

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Raj Bala

.....Petitioner

Versus

State of Haryana and another

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. R.K Malik, Senior Advocate with
Mr. Samrat Malik, Advocate for the petitioner.

Mr. Harish Rathee, Senior Deputy Advocate General, Haryana.

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RITU BAHRI, J.

Petitioner is seeking writ of mandamus to consider her for appointment as PGT Sanskrit from the date candidates lower in merit have been appointed. Petitioner has further prayed for grant of consequential benefits.

Haryana School Teachers Selection Board advertised various posts including 1465 posts of PGT Sanskrit vide advertisement dated 07.6.2012 (Annexure P-1). The petitioner also applied for the said post. She was interviewed vide Roll No.10011716 and the result was declared.

The petitioner was selected at merit no.869 amongst the actual advertised

909 posts of General Category. Vide letter dated 3.12.2015 (Annexure P-2), a show cause notice was issued to the petitioner to the effect that as per application submitted by the petitioner, her date of birth is 05.10.1971 and thus her age is more than 40 years, as per advertisement. For the purpose of consideration of the candidature, the age relaxation is required. Whereas this case does not seem to be covered for consideration as age relaxation on the basis of the observations made in view of the advertisement 1/2012 dated 07.06.2012 and the Haryana State Education School Cadre Rules, 2012. It was further stated therein in the show cause notice that in view of the above you were not eligible to be considered for the post of PGT being overage. Thus it is proposed to recommend the name to the HSTSB for cancellation of candidate in respect of Ms. Rajbala D/o Partap Singh recommended by the HSTSB Panchkula for appointment as PGT in Sanskrit. But, before initiating any action, the show cause notice is hereby served as to why the recommendations for cancellation of the candidature in respect of Ms. Rajbala D/O Partap Singh be not made to the appropriate authority. Reply, if any, you want to file in response to this notice may reach in the office of Director Secondary Education, Haryana, Panchkula not later than 15 days from the date of the receipt of this notice. In case you fail to respond the notice within a stipulated period, it shall be presumed that you have nothing to say/submit in this regard and decision will be taken ex-parte. The petitioner submitted the reply but got no response. Petitioner served final demand notice and request was made that if her claim for appointment as PGT- Sanskrit was not considered up to 15.12.2016 then the

petitioner will have no alternative except to approach to the Court. Hence the present petition.

On notice, the respondents have taken a stand that as per record, date of birth of the petitioner is 05.10.1971. Accordingly, age of the petitioner was 40 years 9 months and 10 days which was more than 40 years as on 15.7.2012 i.e the last date of submission of application forms. She had claimed age relaxation on the basis of registration of her name in the employment exchange before attaining the age of 40 years, whereas Rule 5 of the Haryana State Education School Cadre (Group-B) Service Rules 2012 provides age relaxation only on the basis of the service rendered as a teacher in privately managed Government aided, recognized and Government School. Therefore, the claim of petitioner could not be entertained. It was further stated in the reply that there is no provision of age relaxation for the candidates whose name is registered with the employment exchange as per the existing service rules Haryana State Education School Cadre (Group-B) Service Rules 2012 pertaining to PGTs. It has also been submitted in the written statement that against the judgment in the case of **Subhash Chand vs. State of Haryana and others (CWP No.5781 of 2015)** decided on June 4, 2015, department had filed LPA No. 1220 of 2015 and the same was listed for hearing on 20.8.2015, wherein operation of the impugned order has been stayed.

Counsel for the petitioner has argued that as per Rule 5 of Haryana State Education School Cadre (Group-B) Service Rules 2012, ***“No person shall be appointed to the post in the service by direct recruitment***

on contract basis who is less than eighteen years or more than forty years of age or such age as fixed by the Government from time to time on the last date of submission of application to the recruiting agency. Provided that teachers working in privately managed Government aided recognized and Government schools shall be given age relaxation in upper age limit to the extent of service rendered by them as a teacher subject to a maximum of five years. However, the said relaxation shall be as a one time measure only.”

Petitioner has referred to the experience certificates (Annexure P-3), whereby he worked w.e.f 1.7.2006 to 20.3.2009 as TGT SKT in RDM Sr. Sec. School, DADRI TOYE (Jhajjar) and as TGT Sanskrit from 1.5.2009 to 27.7.2012 at Ranbir Singh Model School, Village Daryapur, Distt. Jhajjar (Haryana) (Annexure P-4). He placed on record the Certificate of registration with the Employment Exchange on 2.4.2009 under Registration No. 1854/09 as M.A B.Ed. He has further argued that as per the Instructions of the Haryana Government dated 25.6.1981 and 12.2.1982, it has been decided that if the name of the employee is registered in the employment exchange within the age as provided in the rules and got over aged during the interregnum i.e before getting regular employment, then he is entitled to age relaxation. As per experience certificates (Annexures P-3 & P-4) and registration with employment exchange (Annexure P-5), he can get maximum age relaxation for five years.

Heard counsel for the parties. In the present case, the judgment in Subhash Chand's case (supra) will not be applicable as in that

with the Employment Exchange before attaining the age of 40 years as per Instruction dated 12.2.1982, which provided that where a candidate got himself registered with the Employment Exchange within the age as provided in the Rules and got over aged during the interregnum, i.e before getting regular employment then such type of candidates would be considered till the time they are appointed on regular basis. In the present case, even if petitioners' case is not to be considered as per the registration of the Employment Exchange (Annexure P-5), she has a right to be considered for relaxation of upper age limit keeping in view her experience certificates (Annexure P-3 and P-4). The experience certificate was not a ground for allowing the writ petition in the *Subhash Chand's case (supra)*. The proviso to Rule 5 also envisages a relaxation in upper age limit to the extent of service rendered by a teacher subject to a maximum of four years as one time measure if a teacher is teaching in privately aided recognized schools. In the present case, as per the certificates (Annexures P-3 & P-4), the petitioner has been working from 1.7.2006 till 23.7.2012 for six years in privately recognized school. Petitioner is not seeking the benefit of 5 years but is seeking the benefit of only 9 months and 10 days towards age relaxation. It is not the case of the respondents that they have not given benefit of age relaxation to any candidate as per the above said rules on the basis of experience nor any judgment has been cited that the above said Rules have been quashed. On this short ground alone, the present writ petition deserves to be allowed.

Keeping in view all that has been discussed above, present writ

petition is allowed. Respondents are directed to verify the experience certificates (Annexures P-3 & P-4) of the petitioner and issue her appointment letter, keeping in view that she had been selected on merit at no. 869 amongst the actual advertised posts against the general category.

November 17, 2018
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No