

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

LPA No.1016 of 2017 (O&M)

Date of Decision : 26.11.2018

Roshan Lal Khera and others

....Appellants

Versus

State of Punjab and others

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE LALIT BATRA

Present: None.

...

MAHESH GROVER, J. (Oral)

Case has been called out twice. There is no representation on behalf of the appellants. The matter has been pending since July 2017 and till now no attempt has been made by the learned counsel for the appellants to argue the same.

We have perused the impugned order. The appellants as writ petitioners claim that they possess a Bachelors Degree of Physical Education and in some cases Masters as well in the same subject. They were working as Lecturer in Physical Education, a Class-II post in the Department of Education (Senior Secondary), Punjab and teaching 10+2 classes. The posts of Masters/Mistresses in Physical Education termed as DPE with Diploma in Physical Education or Bachelors Degree in the same subject also teach physical education from class-6 to 10. The post of DPE is considered to be a feeder cadre for promotion to the post of Lecturer in Physical Education which carries a higher pay scale than the post of DPE, a

Class-III post governed by the Punjab State Education Class-III (School Cadre Service Rules), 1978 (in short 'the 1978 Rules').

The posts of Assistant Education Officers were created by amendment made in 1995 to the 1978 Rules where as per Appendix-B, the method of recruitment to these posts is 100% by way of direct recruitment. The essential qualifications prescribed for the said post are equivalent to the Master Cadre/DPE. However, for a long period these posts were not filled up in accordance with the rules and in order to achieve the purpose the DPEs were posted on seniority-cum-merit basis and the petitioners were promoted as Assistant Education Officers on 06.09.2016, but this was withdrawn vide different orders dated 05.12.2016 and 13.12.2016 leading to the writ petition.

It was not disputed before the writ court that the posts of Assistant Education Officers were upgraded and only members of the Lecturer Cadre were to be appointed to such posts instead of DPEs.

The learned Single Judge concluded that post of Lecturer in Physical Education is a Class-II post and carries a higher pay scale than the post of Assistant Education Officer which is equivalent to Class-III post and equated to the post of DPEs. Nothing came on record to indicate that the post of Assistant Education Officer was upgraded from Class-III to Class-II and there is nothing to suggest that the rules were amended in this regard. The learned Single Judge also concluded that these posts were statutory in character and had to be filled up in accordance with the prescribed mode. The policy introduced by the State did not find any favour with the writ court.

Consequently, the writ petition was dismissed, as by direct inference it was concluded that the post of Assistant Education Officer being a Class-III post could not be termed to be a promotional avenue for those already in Class-II. There would be no reason for us to disagree with the observations of the learned Single Judge in this regard as it is a settled principle that a promotional avenue necessarily shall imply a higher pay structure to subserve a legitimate expectation of a person working on a lesser pay. Once these statutory provisions reveal them to be carrying a lesser pay scale than the Class-II posts of Lecturers, the plea of the petitioners of their being promoted would not be acceptable, particularly when the statutory rules provide eligibility conditions at par with those of DPEs holding Class-III posts. There is thus no ground to interfere.

Apart from this, the appeal is also barred by an inordinate delay of 138 days which we do not intend to condone in the absence of any plausible explanation.

Dismissed.

(MAHESH GROVER)
JUDGE

26.11.2018
dss

(LALIT BATRA)
JUDGE

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