

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

CWP No.18139 of 1995 (O&M)
Date of Decision:24.1.2019

Krishan Kumar & Others

... Petitioners

Versus

State of Haryana and others

... Respondents

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

Present: Mr.Kulvir Narwal, Advocate for
Mr.Hari Chand, Advocate for the petitioners

Ms.Shruti Jain Goyal, DAG, Haryana

RAJIV NARAIN RAINA, J. (Oral)

1. I have heard learned counsel for the parties and have perused the paper-book. My response to the prayers on the asserted right to selection grade is as follows:

2. Brief facts are that the petitioners came from provincialised cadre in a Municipal Board School as untrained teachers. The petitioners while serving on the posts of Drawing Teachers, have filed this petition for grant of 'Selection Grade' on completion of 18 years of service after taking into consideration the entire service including the service rendered by them prior to the provincialization of services at District Board run schools and Local Bodies schools and, thereafter, service rendered by them in Govt. schools after taking over municipal schools by the State Government w.e.f.1.10.1957.

3. The service rules as applicable to them is the Punjab Educational Service (Provincialized Cadre) Class III Rules, 1961 notified on 13th February, 1961. The 'Provincialized School' under the

rules was defined as ‘a school taken over or that may hereafter be taken over by the State Government from the control and management of a local authority within the State’. Rule 9 deals with seniority of members of service which has to be drawn *inter se* members of the service as on 1st October, 1957. Proviso (e) to Rule 9 (1) (c) provides that in the case of “untrained teachers” their length of service or date of appointment will count from the date of appointment in a regular grade after they got the training or received special certificate. It is not disputed that the petitioners acquired special certificates and on the dates they qualified they became members of the service. Their seniority has to run from the date when they became members of the service on acquiring the requisite training or award of special certificates. Claims to seniority prior to the date of being member of the service have to be rejected. They would be entitled to Selection Grade on completion of the requisite service from the date they became members of service under the State Government which issue raised in the present petition has to be answered against the petitioners and in favour of the respondent State. The period spent in provincialized service in municipal schools before take-over would not count for purposes of selection grade.

4. There is yet another reason why the petition deserves to be dismissed which is for the reason that in the Index of this petition, the case relied on by the petitioner i.e. CWP No.10529 of 1995 to seek admission of the case has been dismissed by a reasoned order dated 7.5.2003, the file of which has been perused after it was put up by the Registry called by the court.

5. In the reply filed by the State, they have placed reliance on the judgment of the Division Bench passed in LPA No.253 of 2007

(Rameshwar Dass vs. State of Haryana and others decided on 30.1.2009). The Court upheld the view of the learned Single Judge that service rendered by an untrained teacher cannot be deemed to be service rendered by an employee, against a post in the service. Unless an employee becomes a member of the service of the State, the benefit of continuous service cannot be given to him. On similar lines, single bench decision rendered in CWP No.1624 of 1995 (Shiv Kumar and another vs. State of Haryana and others, delivered by me on 12.7.2016) has been relied on to urge that only regular satisfactory service will count for benefit of selection grade as it is akin to the right to promotion.

6. For what has been said before, this petition is found devoid of merit and is dismissed.

24.1.2019
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No