

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

**Reserved on : 18.03.2019
Date of decision: March 27, 2019
RA-CW-100 of 2019 (O&M) in
CWP No.33525 of 2018**

Mukesh Kumar and others

.....Applicants

Versus

State of Haryana and others

....Respondents

**RA-CW-126 of 2019 (O&M) in
CWP No.33525 of 2018 (O&M)**

Mukesh Kumar and others

.....Applicants

Versus

State of Haryana and others

....Respondents

**RA-CW-129 of 2019 (O&M) in
CWP No.33525 of 2018 (O&M)**

Mukesh Kumar and others

.....Applicants

Versus

State of Haryana and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Ranjit Singh Kalra, Advocate
for review applicants No.7 to 11 (in RA-CW-100 of 2019) &
for review applicants No.12 to 126 (in RA-CW-126 of 2019).

Mr. Tejpal Dhull, Advocate
for review applicants No.7 to 42 (in RA-CW-129 of 2019).

None for applicants No.12 to 16
(in CM No.4287-CWP of 2019 in RA-CW-100 of 2019).

Mr. Puneet Bali, Senior Advocate with

Mr. Vibhav Jain, Advocate for non-applicants-petitioners.

Ms. Shruti Jain Goel, Deputy Advocate General, Haryana.

Mr. Ashok Kumar Jindal, Advocate
for non-applicant-respondent No.5 (in RA-CW-100 of 2019).

Mr. R.D. Anand, Advocate
for non-applicant-respondent No.6 (in RA-CW-100 of 2019).

A.B. CHAUDHARI, J

By way of this common order, above said all the review applications are being disposed of.

CM No.3337-CWP of 2019 IN RA-CW-100 of 2019,
CM No.4272-CWP of 2019 IN RA-CW-126 of 2019 AND
CM No.4365-CWP of 2019 IN RA-CW-129 of 2019

2. There is delay of 39 days in filing RA-CW-100 of 2019, 55 days in filing RA-CW-126 of 2019 and 57 days in filing RA-CW-129 of 2019.

Heard.

Applications are allowed for the reasons stated therein. Delay in filing the review applications are condoned.

RA-CW-100 of 2019 (O&M), RA-CW-126 of 2019 (O&M) AND
IN RA-CW-129 of 2019 (O&M)

3. By the present review applications, review applicants have sought review of judgment and order dated 19.12.2018 passed in CWP No.33525 of 2018 and another connected case.

4. Mr. Rajiv Atma Ram, Senior Advocate with Mr. Ranjit Singh Kalra, Advocate for review applicants No.7 to 11 (in RA-CW-100 of 2019) & for review applicants No.12 to 126 (in RA-CW-126 of 2019) and Mr.

Tejpal Dhull, Advocate for review applicants No.7 to 42 (in RA-CW-129 of 2019), vehemently argued that the review applicants were not parties to the main writ petition bearing CWP No.33525 of 2018 when they could be the aggrieved persons on the date of filing of those writ petitions. Therefore, there are applications under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC') for joining them as party-respondents to the present review applications.

Learned Senior counsel submitted that there is delay of 57 days in filing RA-CW-129 of 2019, 55 days in filing RA-CW-126 of 2019 and 39 days in filing RA-CW-100 of 2019.

For the reasons stated in the applications for condonation of delay in filing review applications, we have already condoned the delay.

5. Learned Senior counsel vehemently argued that this Court had held that the Rule that was amended w.e.f. 23.06.2017 in respect of equivalence of qualification for the Post Graduate Teachers in Sanskrit ought to apply retrospectively because the candidates who are available with the equivalence qualification now recognized by virtue of amendment to the Rule could not be deprived of opportunity to participate in the process of employment. He further submitted that in accordance with the order made by this Court, the relevant Rule was amended and the equivalence was added. The review applicants are entitled to the benefit thereof and since the Rule was amended for taking care of the persons like the review applicants whose qualification was not being recognized earlier and was recognized post amendment to the Rule w.e.f. 23.06.2017, the Rule ought to have been held

to be retrospective. Learned Senior counsel therefore, submitted that the impugned judgment under review is based on misconception and error apparent on the face of record and hence, the same is liable to be reviewed.

6. *Per contra*, learned State counsel opposed the review applications and argued that the Rule was amended w.e.f. 23.06.2017 pursuant to the order dated 05.08.2016 in CWP No.24595 of 2015 made by this Court in the matter of equivalence of the qualification. It is not in dispute, according to the State, that the said equivalence was not available prior to the said date. The issue of making equivalence is the prerogative of the authorities in the State of Haryana. Apart from that when by the amended Rule, for the first time, equivalence was made, the same cannot be made retrospective and therefore, this Court has rightly found that the Rule was required to be interpreted to be prospective. She, therefore, prayed for dismissal of the review applications.

7. We have heard learned counsel for the rival parties at length in the present review applications. At the outset, we find that the judgment dated 19.12.2018 under review, was put to challenge before the Apex Court and the SLP was dismissed as withdrawn. Nevertheless, we have heard the learned counsel for the rival parties to find out if there is error apparent on the face of record. It is not in dispute that prior to the amendment w.e.f. 23.06.2017, i.e. the Haryana State Education School Cadre (Group B) Service (Amendment) Rules, 2017, the qualification was not recognized as equivalent qualification. It is for the first time this Court had made order in the form of directions dated 05.08.2016 and steps to make amendment to the

Rule were taken by the Government of Haryana which issued notification dated 23.06.2017. The said notification does not say that the amended Rule would be retrospective in operation. Secondly, we find that the word “substituted” in the amendment was the matter of contest. But then this Court found that the dictum laid down by the Apex Court, in Para 14, of its judgment in the case of Gottumukkala Venkata Krishnamraju versus Union of India and others, 2018 LawSuit (SC) 866, could be applied and therefore, it was held that Rule would be read prospectively. This Court found that there was no equivalence recognized by the Government of Haryana prior to coming into force of amended Rule. The notification amending the Rule does not anywhere say that it would be retrospective. The object sought to be achieved, obviously, was to make equivalence of those from the date when the notification was issued in the wake of order dated 05.08.2016 made for the first time. Thus, taking into consideration the object for which the Rule was amended coupled with the fact that the Rules itself does not say that it would be having retrospective effect in ordinary course, the interpretation was required to be made that it was having prospective effect. We, therefore, made interpretation accordingly. If according to the review applicants, the interpretation made by this Court is wrong and illegal, the same cannot be the matter of error on the face of record as the question of law by making interpretation also considering order/direction dated 05.08.2016 the said direction has been decided by this Court. But then that cannot be the ground for review of the impugned judgment.

8. Not only that it is clear from the judgment under review that the

learned Advocate General, Haryana had made a statement, on instructions from the Government, that even after the amendment w.e.f. 23.06.2017, many posts have become vacant and within a period of two months from the date of result of the selection process, such candidates would definitely be considered in the light of the amended Rule provided they are otherwise eligible as on 28.06.2015, i.e. the date of advertisement and further provided that they had applied pursuant to the said advertisement. The learned Advocate General also made a statement that even if they are age barred, they will be granted exemption. In the light of the above statements, we were satisfied that those who were not before the Court and could be the affected were well taken care of by the Government by making such statements. Accordingly, we took up the said statement and stated thus, in Para 7 of judgment under review:-

“7. We make it clear that from the date of declaration of such result, fresh advertisement for the vacant posts shall be issued as stated before us. We also make it clear that those who had applied pursuant to the advertisement dated 28.06.2015 shall not be debarred from consideration on the ground of age limit as stated before us provided they are otherwise qualified and does not have any disqualification.”

9. The quintessence is that if this Court has made a wrong interpretation by holding the Rule to be prospective rather than retrospective, the same cannot be the ground for review. In the result, we do not think that a case for review is made out as contended by the learned counsel for the review applicants.

10. Hence, RA-CW-100 of 2019 (O&M), RA-CW-126 of 2019

RA-CW-100 of 2019 (O&M) in CWP No.33525 of 2018,
RA-CW-126 of 2019 (O&M) in CWP No.33525 of 2018,
RA-CW-129 of 2019 (O&M) in CWP No.33525 of 2018

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(O&M) and RA-CW-129 of 2019 (O&M) are dismissed. In view of the dismissal of these review applications, applications i.e. CM No.3338-CWP of 2019 IN RA-CW-100 of 2019, CM No.4287-CWP of 2019 in RA-CW-100 of 2019, CM No.4275-CWP of 2019 IN RA-CW-126 of 2019 and CM No.4366-CWP of 2019 IN RA-CW-129 of 2019 for impleadment in the main/original writ petitions are consequently dismissed.

(A.B. CHAUDHARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

March 27, 2019

mahavir

Whether speaking/ reasoned: **No**

Whether Reportable: **No**