

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 3362 of 1996
Decided on 22.04.2019

Ms. Meena Badal

...Petitioner

Versus

State of Punjab & Ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Argued by : None for the petitioners.

Mr. Abhaypal Singh Gill, AAG, Punjab.

ARUN MONGA, J.

1. Petitioner herein has assailed order dated 26.02.1996 (Annexure P-11), relieving her from the post of JBT Teacher, *inter alia*, contending that the same is in violation of Article 14 of the Constitution of India.

2. First the factual background, shorn of unnecessary details. The petitioner was working as Social Studies Teacher at Shri Mahavir Jain Model High School, Kapurthala. After being offered a job at S.D. Kanya Mahabidiyala Senior Sec. School, Phagwara (respondent No.5) under Parents Teacher Association Fund (PTA Fund), she resigned from Kapurthala on 13.12.1994 and joined at Phagwara on 14.12.1994. The SDKMSSS, Phagwara-respondent No.5 was a grants-in-aid institution.

3. While she was working with respondent No.5, posts of JBT Teachers were advertised. Since petitioner fulfilled the necessary

conditions, she applied for the same and was appointed as such against a regular vacancy vide appointment letter dated 24.04.1995 (Annexure P-3). Pursuant thereto she joined on 27.04.1995.

4. Subsequently, post of Part-time Associate Lady NCC Officer was advertised. The petitioner having requisite teaching experience and also having NCC Grade-II certificate applied for the same and was successful in the selection process. She was selected to the post vide appointment letter dated 23.11.1995 (Annexure P-9). Being a regular employee, the services of the petitioner were governed by the Punjab Privately Managed Recognised Schools Employees (Security of Service) Act, 1979. Section 4 of the Act states that a regular employee cannot be dismissed, removed or reduced in rank or within a time scale, except with the prior approval of Director, Higher Education.

5. The Government of Punjab issued instructions dated 26.01.1996 (Annexure P-10), for filling up of vacant JBT Teachers posts from the Graduate/Post Graduate and B.Ed. qualified candidates. These instructions were made applicable to the privately managed aided schools as well. The relevant whereof is reproduced hereinbelow:-

“6. The Government vide its letter No. 1/18/95-3-C-7/20602 dated 14.9.95 has taken the decision that in future the appointment of JBT Teacher in the Government Schools should be done in two parts: In first part those candidates who possess JBT/EET qualification should be considered for appointment and thereafter if the department feels that JBT/EET pass candidates are not available, then in the second part, recruitment is to be made. Then in the advertisement it may be written that in case the candidates holding JBT/EET or its equivalent qualification are not available

in complete numbers, then against the vacancies the graduate/ post graduate along with B.Ed. Candidates can also be considered. But the Graduate/ Post Graduate with B.Ed. qualification candidates would be given the grade of JBT teacher only and in these cases, affidavit be obtained from the candidates to the effect that after selection and joining the post, they would not claim the higher scale and in this regard while making requisition for the post, this should be made clear in the advertisement itself.”

6. It is the case of the petitioner that the said instructions nowhere stated that the employees already working on the JBT Teachers posts would be removed or terminated from service. Still, the Managing Committee merely relying on the instructions, *ibid*, passed the impugned order dated 26.02.1996 (Annexure P-11), relieving the petitioner from the post of JBT Teacher. It is also averred that Respondent No. 7, being a similarly situated employee, has been allowed to continue in service. Being aggrieved of the above said order the petitioner has filed the present writ petition.

7. Respondents have filed their respective replies to the writ petition. Respondents No. 1 to 4 have averred that the petitioner has wrongly stated that she fulfilled the criteria fixed for appointment as a regular JBT Teacher. In case the government appoints a person for specific period to discharge the duties of the post due to non-availability of qualified persons, they cannot claim the benefit of being regular employees. The government is empowered to withdraw its decision. Respondents No. 1 to 4 are not the appointing authority and the writ does not lie against them. Respondent No. 1 had vide its memo dated 01.03.1994, resolved not to appoint any B.A/B.Ed Teacher against the post of JBT Teacher. In case of any violation of this stipulation by the Managements of the schools, such appointments would

not meet approval for the purpose of entitlement of grant-in-aid to the institution.

8. Respondent No. 5- S.D. Kanya Mahabidiyala, Kapurthala has taken specific stand that even though the petitioner was appointed on probation against the vacant post of JBT Teacher vide appointment letter dated 24.04.1995, but this was subject to approval of the DPI/ Distt. Education Officer. As no approval was given, the appointment of the petitioner was never confirmed and she was never a regular employee of the school. The petitioner was consequently issued relieving letter dated 16.02.1996 (Annexure R-5/1). Merely sending the name of the petitioner for the post of Associate Lady NCC Officer cannot be held to be regularisation of her services. It is stated that the petitioner neither appeared for selection to the post nor worked as such with the respondent school.

9. Respondent No. 7 in her written statement has denied the contention raised by the petitioner that she is overage and that the impugned order was arbitrarily passed. She contends that she was appointed as Social Studies Teacher after going through the due selection process. There is no criteria of being overage as laid down by the service rules governing the privately managed aided schools. She also categorically denied that the petitioner ever appeared for selection as Social Studies Teacher with respondent No.5-School.

10. I have heard the contentions of the learned counsel for the State and have gone through the pleadings.

11. It is evident that impugned order dated 26.02.1996 (Annexure P-11) was passed while relying upon memo dated 26.01.1996 issued by the District Education Officer. A perusal of the memo dated 26.01.1996 would show that the Government took the decision to make appointment of JBT

Teachers in the Government Schools in two phases. Firstly, the candidates who possessed JBT/ EET qualifications were to be considered and if the requisite number of candidates were not available, then the recruitment was to be made from the candidates having Graduate/ Post Graduate along with B.Ed. Degree, but they would have to give an undertaking that after selection and joining the post, they would not claim the higher scale. It was also decided to implement the decision on the privately managed aided schools w.ef. 14.09.1995 to 30.06.1997 and was required to be reviewed in 1997.

12. It has come on record that the department had issued specific instructions to the school not to appoint any B.A./B.Ed. Teacher against the post of JBT Teacher and in case of violation of rules, it was decided not to approve the appointment for the purpose of grants-in-aid institution. It has been the specific stand of respondents No.1 to 4 that the petitioner was not possessing the requisite JBT/ ETT qualification and in the light of governments instructions above, her appointment was for a specific period. Since the petitioner did not possess the requisite qualification for being appointed against the post of JBT Teacher, I am of the view that the respondents were justified in relieving the petitioner of her services. Even if it is assumed, for the sake of argument, that the petitioner was having requisite qualifications for the post, she was still an employee of grants-in-aid school and her appointment was subject to the approval of the competent authority. As noticed above, requisite approval of competent authority was never accorded to her appointment.

13. In light of the discussion above and the reasons contained therein, I do not see any ground for interfering with the order passed by

Respondent No. 5-School. Accordingly, the writ petition is dismissed with no order as to costs.

(ARUN MONGA)
JUDGE

April 22, 2019
Jiten/R

- | | | |
|----|-----------------------------|---------|
| 1. | Whether speaking/ reasoned: | Yes/ No |
| 2. | Whether reportable: | Yes/ No |