

CWP-15843-2018 (O&M)

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

**CWP-15843-2018 (O&M)
Date of decision : 16.10.2019**

Bhagwan and others

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ranjit Singh Kalra, Advocate
for the petitioners.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

AMIT RAWAL, J. (ORAL)

CM-15317-2019

For the reasons stated in the application, which is supported by an affidavit, Annexures P-19 to P-21 are taken on record, subject to all just exceptions.

CM stands disposed of.

CM-15318-2019

For the reasons stated in the application, additional affidavit on behalf of petitioner, is taken on record, subject to all just exceptions.

CM stands disposed of.

MAIN CASE

Claim of petitioners, in the instant case, is short. They have been working as Trained Graduate Teacher (TGT), Physical Education in Education Department, Haryana on the basis of direct recruitment. The next

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promotional post, according to averments, would be Post Graduate Teacher (PGT) with three years' experience, as provided in Haryana State Education School Cadre (Group B) Service Rules, 2012 (in hereafter called 'the 2012 Rules'). Qualification for promotion to the post of PGT, Physical Education, as per Appendix B of 2012 Rules, is as under:-

- i) M.A. Physical Education or M.P.Ed. with at least 50% marks and Bachelor of Physical Education or Diploma in Physical Education or its equivalent from a recognized University;*
- ii) Matric with Hindi/Sanskrit or 10+2/B.A./M.A. with Hindi as one of the subject;*
- iii) Certificate of having qualified Haryana Teacher Eligibility Test (HTET)/School Teachers Eligibility Test (STET).*

Mr. Ranjit Singh Kalra, learned counsel appearing on behalf of the petitioners submits that the petitioners are holder of M.A. Physical Education degree, from deemed University i.e. Institute of Advance Study Education , Sardar Sahar, Rajasthan Janardan Rai Nagar, Rajasthan Vidyapeeth University, Udaipur, Rajasthan, and the aforementioned qualification of M.A. Physical Education, was obtained after taking necessary permission from the Department, vide Annexures P-3 and P-14. The Principal, finding the petitioners to be eligible from all angles i.e. qualification as well as experience, vide Annexure P-1, dated 30.05.2015/22.06.2015, recommended the case of petitioners for promotion. However, the same was withheld, as the Department did not recognize the aforementioned deemed University.

It was further contended that persons, junior to the petitioners,

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were recommended for promotion, thus, the said action of the respondents, entailed into, cause of action for approaching this Court. This Court, vide order dated 03.07.2018, while issuing notice of motion, restrained the respondents from superseding the juniors viz-a-viz the seniors except on the grounds of work and conduct. In order to lend support to submissions, he relies upon the *ratio decidendi* culled out by this Court rendered in **“Gurmail Kaur and others V/s State of Haryana and another” 2015 (4) SCT 271.**

This Court is also informed about preference of letters patent appeal against the judgment rendered in Gurmail Kaur's case (supra), on behalf of the respondents/State, but vide order dated 19.08.2019 (Annexure P-21), has been withdrawn, thus, urges this Court for allowing the present writ petition, by issuing a writ of mandamus.

Mr. Hitesh Pandit, Addl. A.G., Haryana, submits that vide Annexure R-III, dated 22.10.2018, Department sought the clarification from IASE, Sardarshahr, Rajasthan, as to whether the petitioners obtained the degrees as regular students i.e. through class room teaching from the University Campus or through distance education mode. The basis for seeking clarification was on account of general directions of UGC rendering persons ineligible, if they have undertaken the course through Study Centre.

He further submits that judgment rendered in **Gurmail Kaur's case** (supra) is under challenge in the letters patent appeal and there was interim stay, but its withdrawal has not been denied.

Mr. Kalra, rebutted the submissions of Mr. Pandit, by referring to the letter issued by the University (Annexure P-19), wherein it has been stated that the petitioners have not studied from Study Centre as they were

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enrolled directly with the University.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Kalra.

This Court in **Gurmail Kaur's case** (supra), noticing the judgment rendered by the Division Bench of this Court in **"Kartar Singh V/s Union of India and others, 2012 (4) SCT 741; 2013 (1) RSJ 224,** holding the candidates, therein, having acquired technical qualification through deemed university, to be ineligible, has found that the said *ratio decidendi* culled out i.e. **"Kartar Singh's case** (supra) would not be applicable viz-a-viz students/candidates, eligible for promotion or admission, if they completed the degree through distance mode/deemed university.

The facts, aforementioned as well as information received from the University revealing the petitioners to be directly enrolled candidates, leaves no manner of doubt qua eligibility of petitioners for promotion to the post of PGT. Only ground for withholding their promotion was that degree of M.A. Physical Education, is from a deemed university.

This Court cannot remain oblivious of the fact that the petitioners had undertaken the aforementioned course, after obtaining necessary permission from the Department, vide Annexure P-3 and P-14, therefore, the degrees cannot be denied for promotion.

It would be in the fitness of things to extract the relevant paras of ratio decidendi culled out in **Gurmail Kaur's case** (supra), which reads as under:-

"14. The clarification issued by the UGC on 13.10.2014 does

not require any interpretation for the reason that the Government of India vide its Gazette Notification dated 1.3.1995 had decided that all the qualifications awarded through Distance Education by the Universities established by an Act of Parliament or State Legislature shall be automatically recognized. Even otherwise also, the letter dated 1.8.2014 issued by the UGC clearly envisages that all the Universities from where the students have obtained their academic qualifications in various subjects through study centres are recognized, though the matter is sub judice before the Hon'ble Supreme Court. The alleged discrimination on the part of the respondent-State does not stop here inasmuch in regard to the petitioners who had challenged the imposition of condition of exemption from sitting in the test, i.e., HTET/STET. The matter has been taken to the Hon'ble Supreme Court and despite pendency of the Special Leave Petition, vide Annexures P-17 and P-18, the candidates had been issued the appointment letters by putting a condition that the "appointment shall be subject to the final outcome of the Special Leave Petition", thus, the respondent-State has shackled the fate of petitioners in not following the said procedure by issuing the appointment letters to the petitioners. The relevant portion of the condition imposed in appointment letter in regard to the matter pending against the judgment rendered in Shivani Gupta's case is extracted herein below:-

"The appointment will be subject to the final outcome of SLP

No.7820 of 2013 and other connected SLPs pending for adjudication in the Hon'ble Supreme Court of India, CWP No.18693, 20344, 17656 of 2012 pending in Hon'ble Punjab and Haryana High Court.”

15. There is another facet to this controversy. Some of the petitioners have attached copy of the certificate issued by the respective University stating therein that such students are not only bona fide students of the University, but their academic Post Graduation Course/enrolment was directly from the University. In essence, he/she had completed the degree through distance mode directly from the University. Even the petitioners falling in the aforementioned category have been denied the appointment letters for the reasons that they have acquired the Post Graduation Degree from the aforementioned Universities.

16. The argument of Mr.Nalwa, though in the first impression, appeared to be attractive, but on going through the relevant paragraphs in Kartar Singh's judgment, it leaves no manner of doubt that the Division Bench of this Court has only pondered upon the controversy with regard to the awarding of the degree by the aforementioned Universities in respect of “technical/professional courses” and not with regard to the general study, i.e., Post Graduation Course as the pith and substance of the judgment pertains to only degrees of technical/professional courses.

17. There is another reason to disbelieve the plea of the

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respondents on the premise that prior to the pronouncement of the judgment in Kartar Singh's case, many candidates, who have obtained the Post Graduation Degree from the aforementioned Universities have been given the appointment letters."

Keeping in view the aforementioned facts and law on point in consideration, the present writ petition is allowed and the respondents are directed to consider the case of petitioners for promotion to the post of PGT Physical Education from the date when their juniors have been promoted with all consequential benefits, if entitled to.

Let this exercise be undertaken within a period of two months from the date of receipt of certified copy of this order. In case, no such decision is taken, liberty is granted to the petitioners to move appropriate application, in present writ petition, in accordance with law.

16.10.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No