

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

CWP No.16309 of 2018 (O&M)

Date of Decision.26.09.2019

Dr. Santosh

...Petitioner

Vs

State of Haryana and others

...Respondents

2. CWP No.8668 of 2018 (O&M)

Puneet Walia

...Petitioner

Vs

State of Haryana and others

...Respondents

Present: Mr. Atul Lakhanpal, Senior Advocate with
Mr. Arvindpal Singh, Advocate
for the petitioner in CWP No.16309 of 2018.

Mr. Rajesh K. Kataria, Advocate
for the petitioner in CWP No.8668 of 2018.

Mr. Lokesh Sinhal, Addl. A.G., Haryana.

Mr. Vikas Chatrath, Advocate
for respondent No.7 in CWP No.8668 of 2018.

Mr. Anurag Goyal, Advocate
for respondent No.5 in CWP No.16309 of 2018.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

C.M. No.12379 of 2018 in CWP No.16309 of 2018

Application is allowed.

Replication filed on behalf of the petitioner is taken on record.

C.M. No.10481 of 2019 in CWP No.8668 of 2018

Application is allowed.

Replication along with Annexures P-27 to P-30 is taken on record.

Main Cases

This order of mine shall dispose of two writ petitions i.e. CWP No.16309 of 2018 'Dr. Santosh Vs. State of Haryana and others' (hereinafter called as first writ petition) and CWP No.8668 of 2018 titled as 'Puneet Walia Vs. State of Haryana and another' (hereinafter called as second writ petition). Prayers in both writ petitions are as under:-

“First writ petition

Civil Writ petition under Articles 226/227 of the Constitution of India for issuance of a writ of certiorari, mandamus or any other appropriate writ, order or direction as this Hon'ble High Court in the circumstances of the case may deem fit be issued for quashing of order dated 25.6.18 (Annexure P-1) of respondent No.1 being absolutely illegal, arbitrary and mala fide.

Second Writ Petition.

Civil Writ Petition under Article 226/227 of Constitution of India for the issuance of a writ in the nature of Certiorari for the quashing of appointment orders dated 02.02.2017 (P-3) of the respondent No.7 who was selected for the post of Principal by ignoring the rights of the petitioner, in a very arbitrary, discriminatory, illegal manner against the principle of natural justice and against the service rules.

AND

For issuance of the writ in the nature of Mandamus directing the respondents to cancel the appointment of the respondent No.7 being illegal and fresh interview may be conducted for the post of Principal in the aforementioned school after giving due opportunity to the petitioner and other applicants under the advertisement dated 21.04.2016 (P-1) in the interest of justice.

AND

The petitioner may be informed 15 days earlier through registered letter prior to the schedule of interview in case of rejection of candidature for the post of Principal so that the petitioner may be able to pursue the legal remedy.

AND/OR

Pass any appropriate order/directions/writ which this Hon'ble Court deems fit in the interest of justice and equity as prayed.”

For deciding the aforementioned writ petitions, it would be in the fitness of things to refer few facts. Prarambh School for Teacher Education Model School Campus, Jhajjar caused an advertisement No.1/2016 dated 21.04.2016 inviting online applications from Indian Nationals possessing excellent academic background for filling up posts of Principal and Assistant Professors in various subjects including Specialized Courses. Controversy involved in present writ petitions is with regard to appointment of Principal. The academic qualification and experience required to apply for post of Principal is as under:-

S No .	Designation and Post	No. of post (category wise)	Academic qualification and experience	Scale of pay/pay band and grade pay
1	Principal	1	(i) Master degree in Science/Humanities/Commerce with 55% marks (ii) M.Ed. with 55% marks or its equivalent. (iii) Ph.D in Education (iv) 10 year teaching experience out of which at least 8 years' teaching experience in a secondary teacher education institution. (v) Consistently good academic record. (vi) Conversant in IT skills and effective use of new technologies as tools for learning. (vii) Matric with Hindi/Sanskrit or 10+2/B.A./M.A. with Hindi as one of the subjects. (viii) Age not less than 35 years. <u>Desirable</u> Experience of working in a residential institute.	PB-IV (37400 67000+G P 10000)

Petitioner-Santosh in writ petition No.1 in pursuance of advertisement, being an aspirant, applied for the said post online, with registration No.10500116 (Annexure P-3). 17 (seventeen) candidates applied but vide letter dated 02.11.2016, only five (5) were found eligible by the scrutiny committee. The names are Dr. Manu Bala, Sh. Sandeep Kumar, Sh. Sandeep Berwal, Mrs. Santosh and Sh. Rajesh Kumar. Petitioner received e-mail for appearance in the interview to be held on 19.11.2016 as well as for verification of the documents. In the application form submitted her educational qualification and experience i.e. Matric with 73% marks, 10+2 (Non-Medical) 52%, B.Sc (Non-Medical) 61%, M.Sc. 57%, M.Ed. 60% (2006), B.Ed. in 1999, M.Phil in 2007 and also Ph.D in Education. Against column of experience disclosed that she has

been Lecturer in Mathematics in Markanda National College, Shahabad, Kurukshetra w.e.f. 23.07.2003 to 15.03.2005 and thereafter from 31.10.2006 to 16.09.2008 in Seth Tek Chand College of Education, Kurukshetra, from 06.10.2008 to 12.12.2013 as Assistant Professor in Education (teaching of Maths) in Dr. Ganesh Dass D.A.V. College of Education for Women, Karnal and as Assistant Professor (Research) in Prarambh School for Teacher Education, Jhajjar from 23.12.2013 till the submission of application. Details of books self authored/co-authored were also given, much less, research articles/ papers published in journals/periodicals/conference proceedings/ newspapers.

Vide Annexure P-7 dated 02.02.2017, petitioner was issued appointment to the post of Principal on certain terms and conditions and she submitted her joining report on 07.02.2017 (Annexure P-8) and filled up a bio-data i.e. Appendix III of the appointment letter accompanied by certificate of allegiance to the Constitution, certificate of marriage and declaration of marriage etc. However, as per Annexure P-12, was astonished to received show cause notice dated 25.05.2017 calling up her to explain as to why post offered to her may not be withdrawn, owing to lack of teaching experience. It was alleged that she had acquired qualification in May/June, 2007, therefore, for counting experience of 10 years for the post, experience certificate for the period from June, 2007 can only be considered because the teaching experience beyond 8 years 11 months and 3 days was attained when she was not eligible as did not acquire the basic qualification i.e. M.Phil, thus, her total teaching experience to be treated valid, was, counted as 8 years 11 months, falling short of 1 year and 1 month than the prescribed period of 10 years.

Vide Annexure P-13, petitioner submitted a detailed reply and in paragraph 7 thereof, stated that she had fulfilled experience as per the column of advertisement i.e. minimum 8 years' experience of secondary teacher education institution and 2 years other teaching experience by explaining that she had 10 years and 1 day experience as secondary teacher education institution and 1 year, 3 months and 19 days other teaching experience i.e. Lecturer in Mathematics in Markanda National College, Shahabad, Kurukshetra at the time of interview. On 25.05.2016 i.e. last date of submission of application, her experience was 9 years 6 months and 6 days as secondary teacher education and 1 year, 3 month and 19 days as other teaching experience, details of which were also given in tabulated form.

It is pertinent to mention here that before receipt of show cause notice, petitioner, had, approached this Court vide CWP No.2976 of 2017. This Court vide order dated 07.04.2017 disposed of the writ petition permitting the petitioner to continue, subject to condition, submitting of reply to show cause. The aforementioned reply, according to the petitioner, was not found justified and was dismissed from service, compelling her to approach this Court.

Now coming to facts of second writ petition, it has been averred that petitioner in pursuance to aforementioned advertisement, had also applied vide his online application (Annexure P-2) by giving details of his qualification as under:-

Matric	--
10+2(Non-Medical)	56.00%
B.Sc. (Non Medical)	60.00%
Master in Science	56.00%
M.Ed.	60.00%

Matric	--
B.Ed.	1998
M.Ed.	2001
M.Phil	---
Ph.D	Yes

As regards experience, it was stated that from 18.08.2009 to 28.07.2010 worked in Tek Chand College of Education, Kurukshetra, from 28.10.2005 to 31.10.2006 in University College of Education, Kurukshetra, from 01.11.2006 to 17.08.2009, Seth Banarsi Dass College of Education, Kurukshetra, from 04.09.2002 to 23.04.2003 in University College of Education, Kurukshetra, from 11.09.2003 to 30.06.2004 in Department of Education, Ch. Devi Lal University, Sirsa, from 01.08.2010 to 03.10.2012 in Seth Banarsi Dass College of Education, Kurukshetra, from 04.10.2012 to 30.09.2015 in Hari Om Shiv Om College of Education, Radaur, Yamuna Nagar, from 02.11.2015 to 02.05.2016 in Maharaja Aggarsain College of Education, Pundri Kaithal and from 03.05.2016 till the submission of application form in College of Education, Israna, Panipat. He had also given details of co-curricular activities and research articles, much less, presentation of certain papers.

It has been averred that though he had been regularly checking the website i.e. www.hsspp.in but respondents did not communicate petitioner about his eligibility status on e-mail address given in the application form and despite personal visit, was also not given any suitable reply, however, in the month of May, 2017, came to know from reliable sources that interview for the post of Principal had already been conducted on 19.11.2016 whereby respondent No.7, Dr. Santosh i.e. petitioner in the first writ petition was selected for the post of Principal, being totally, against the services rules and bye laws of the society. It is,

thereafter, petitioner approached Director, Haryana School Shiksha Pariyojna Parisahd at Panchkula for redressal of his grievance and as per averment in para 9 of the writ petition, the aforementioned officer admitted alleged irregularities and gave assurance for cancellation of appointment of respondent No.7. Since order of cancellation was not passed and finding no alternative, petitioner submitted a written complaint/representation to Chief Minister window, Haryana on 26.05.2017 (Annexure P-5) but again did not receive any communication and on 03.07.2017, sought information under Right to Information Act, 2006 (Annexure P-6) and in response to the aforementioned application, respondents supplied document and on going through said documents, ascertained irregularities in appointment. It has also been alleged that quorum of selection committee was not complete, thus, sought indulgence of this Court with two fold prayer i.e. for quashing of the appointment order of respondent No.7 dated 02.02.2017 and directing the respondents to cancel appointment of respondent No.7 and to re-conduct interview for the post of Principal after giving opportunity to petitioner and other applicants.

Mr. Atul Lakhanpal, learned Senior Counsel assisted by Mr. Arvindpal Singh, Advocate appearing for petitioner in CWP No.16309 of 2018 and Mr. Vikas Chatrath, Advocate for respondent No.7 in second writ petition submit that advertisement envisage 10 years teaching experience, out of which at least 8 years teaching experience in a secondary teacher education institution and not of an Assistant Professor as noticed in the impugned order. He drew attention of this Court to Annexure P-1 and the impugned order whereby the petitioner allegedly

was not found eligible for the post of Principal on account of holding 8 years, 11 months and 3 days experience as Assistant Professor after acquiring the minimum qualification against 10 years as Assistant Professor, which is essential for the post of Principal. In support of aforementioned contention, relied upon National Council of Teachers Education Rules, 2014, at page 217 of the paper book, to point out that against column No.5.2, the qualification for the Principal/HOD is postgraduate degree in Arts/Science/Social Sciences/Humanities/Commerce with minimum 55% marks and M.Ed. with minimum 55% marks and Ph.D. in Education or in any pedagogic subject offered in the institution and eight (8) years of teaching experience in a secondary Teacher Education Institution. Similarly qualification of B.Ed Course prescribed by the Maharshi Dayanand University, Rohtak vide Annexure P-30, at page 220 of the paper book, prescribed eight years of teaching experience in a secondary teacher education institution.

In order to buttress his argument in assailing the order made following submissions:-

- (i) The impugned order has been passed without affording any opportunity to the petitioner as the same was passed on the basis of report of the Committee, which was never confronted to the petitioner.
- (ii) Column No.IV of the advertisement prescribes 10 years experience out of which at least 8 years teaching experience in a secondary teacher education institution and two years other teaching experience. In fact, reiterated stand taken in reply to the show cause notice that petitioner had 10 years and 1 day

experience in secondary teacher education institution and 1 years 3 months 19 days other teaching experience i.e. Lecturer in Mathematics in Markanda National College, Shahabad, Kurukshetra at the time of interview. Attention of this Court was drawn to the table giving details years, month and day wise.

(iii) The advertisement did not mention that experience will be considered only after attaining full eligibility of Assistant Professor in secondary teacher education institution, as according to the National Council of Teachers Education (Gazette of India), Annexure P-29, and M.D. University Rules referred *ibid*, 8 years of teaching experience in a secondary teacher education institution is required. The appointing authority and screening/selection committee noticed the aforementioned certificate produced by the petitioner and found her to be fully eligible and issued appointment letter. In fact, the institution was jolted on receipt of complaint made by the petitioner Dr. Walia, petitioner in other writ petition, though the cause of action accrued for him was way back in 2016 but writ petition has been filed in April, 2018. It is at his instance, entire process of selection was under cloud.

(iv) The petitioner was liable to be awarded two extra marks for M.Phil as per Annexure P-32A. She, though, had taken admission in M.Phil i.e. through regular process in 2001 but completed in 2007 as in the interregnum, was married and in family way. Attention of this Court was drawn page 242 of

the paper book. Another M.Phil through correspondence was also done in 2017, thus, observation of the Committee of having obtained M.Phil in one year is wholly baseless. Mr. Walia obtained the M.Phil degree in 2010 and on the date of application i.e. 2016, he did not have experience of teaching whereas cleared NET test in 2013.

(v) Case of the petitioner is covered as per dictum laid down by Hon'ble Supreme Court in **Dr. M. Dakshayani Vs. State of Karnataka and another 2018 (2) SCT 756** where in para 7 and 8 of the judgment while referring to qualification, it was found that teaching experience of three years as Lecturer for promotion to the post of Assistant Professor was in addition to the post graduate qualification whereas scheme of rules did not envisage that experience of three years should be after acquisition of post-graduate degree. In other words, the reasoning assigned in the impugned order is totally opposite to the experience prescribed in the advertisement. It is settled law that terms and conditions of advertisement cannot be interpreted in the manner suitable to the selection committee as there has to be a strict adherence or to be construed in letter and spirit. The condition extracted above do not remotely suggest what has been found in the impugned order.

(vi) Reliance has also been laid to judgment rendered by Coordinate Bench of this Court in **Baljit Kaur Vs. State of Punjab and others 2009 (3) SCT 286** wherein para 4, it was held that Committee cannot deviate from rules prescribing

qualification, experience. Reliance has been laid to the experience certificates, details of which are given in the application form (Annexure P-26 collectively) from page 153 to 209 of the paper book.

Per contra, Mr. Lokesh Sinhal, Addl. Advocate General, Haryana submitted that there is specific condition in the appointment letter that certificate submitted by the candidates if found to be bogus or defective, his/her services could be terminated at any point of time. On receipt of various complaint regarding appointment of the Principal, Committee was constituted to examine and verify the record with regard to selection and appointment of the Principal and on the basis of report of Committee, it was found that petitioner was not found eligible for the post of Principal, as she had only 8 years 11 months and 3 days experience. One Dr. Vandana Disodia, Additional Director, Elementary Education was appointed as enquiry officer to conduct enquiry into the matter and as per her report (Annexure R-3), petitioner was found ineligible and show cause notice was issued to the petitioner, which was replied.

Mr. Anurag Goyal, learned counsel appearing on behalf of respondent No.5, Director, Prarambh School for Teacher Education, Jhajjar, arrayed in personal capacity, submitted that there would not be any need to rebut allegation in the writ petition in view of the fact that Mr. Atul Lakhanpal has given up the allegation of mala fide against him.

Mr. Rajesh K. Kataria moved an application for impleadment of Dr. Puneet Walia as respondent in CWP No.16309 of 2018 but amended memo of parties has not been attached. He urges that Dr. Puneeta Walia should be impleaded as respondent.

In support of averments in second writ petition i.e. CWP No.8668 of 2018, Mr. Kataria submitted that as per chart reflected in the writ petition as well as in application, petitioner-Puneet Walia had more than 10 years of experience, but, the Committee erroneously did not take into consideration. Any information was required to be published on website of the institution and not, on, Centre for Development of Advanced Computing (CDAC). He submitted, that as per Annexure P-20 dated 08.08.2007, expression 'experience' has been defined, which shall mean the service rendered in the department after regular appointment on the post. Experience certificate submitted by respondent No.7 i.e. petitioner in other writ petition, nowhere shows that she was appointed on regular post from 23.07.2003 to 15.03.2004, 22.07.2004 to 15.03.2005 and 31.10.2006 to 16.09.2008. Experience certificate can be counted only after basic eligibility, which respondent No.7 and petitioner in first writ petition did not have. In other words, she lacked experience of teaching after eligibility. As per document of interview sheet dated 19.11.2016 received under RTI, six (6) candidates were interviewed for the post of Principal whereas, as per letter dated 2.11.2016 (Annexure P-12) sent by the office of respondent No.5 i.e. M/s Centre for Development of Advanced Computing (CDAC), only five (5) candidates were shown eligible which do not rule out manipulation. There are cutting and editing ensuring selection of respondent No.7. Selection Committee was not constituted as per resolution passed by the Executive Council, as quorum, was incomplete as neither Chairperson of the Executive Council nor nominee of Director NCERT were present at the time of selection. Official respondents never uploaded any clarification/modification, date of

interview, eligibility status of the candidates and selection criteria on official website of the Haryana School Shiksha Pariyojna Parishad.

Mr. Atul Lakhanpal, learned Senior Advocate and Mr. Vikas Chatrath, learned counsel appearing on behalf of respondent No.7 in CWP No.8668 of 2018 raised objection qua maintainability of the writ petition. He drew attention of this Court to the written statement of respondent No.1 to 6 whereby as per Annexure R-1 while dealing with complaint of Dr. Puneet Walia, enquiry officer submitted her report but there is no challenge to the findings of Enquiry Officer, holding the petitioner to be ineligible. On enquiry, the Committee found that Dr. Puneet Walia acquired basic qualification of UGC NET in 2013, thus, teaching experience before 2010 could be counted as valid teaching experience. He had only 5 years 6 months and 29 days of experience. The application was uploaded on site of CDAC and since there is no system of communication through e-mail, candidates were to visit the site and ascertain their status of interview. Respondent No.7 received Annexure P-5 and P-6 whereby she was found to be eligible and intimated about date of verification as well as of interview. Petitioner, thus, had cause of action only in June, 2016 but he did not challenge the same and only sought indulgence of this Court for provisional interview.

Dr. Santosh, respondent No.7, joined in February, 2017 but her appointment was cancelled and ultimately, vide order dated 07.04.2017 (Annexure P-11) of this Court, she allowed to continue. It is settled law that a person, who is ineligible cannot challenge the eligibility or selection process. In order to lend support, reliance has been laid to para 10 of the judgment rendered by Division Bench of this Court in **Puran Chand and**

others Vs. State of Haryana and others 2012 (1) SCT 247.

Dr. Santosh did not mis-represent to the Selection Committee and therefore, there was no *mens rea* to withhold the requisite qualification, compelling the official respondents to form, an incorrect view, of want of requisite qualification. The present writ petition has been filed in March, 2018. Reliance was also laid to the judgment of Hon'ble Supreme Court in **Bhagwati Prasad and others Vs. Delhi State Mineral Development Corporation 1992(8) SLR 785** wherein it has been held that practical experience would always aid the persons to effectively discharge the duties. A person appointed though did not have minimum prescribed educational qualification but worked for considerable length of time cannot be refused confirmation on the ground of lack of prescribed qualifications.

Qua maintainability of writ petition in the absence of challenge to the enquiry report, relied upon para 12 of the judgment rendered by Division Bench in **Dhani Ram Chaudhary Vs. State of Haryana and another 2005 (1) SCT 571**. The pith and substance of argument of Mr. Chatrath is that petitioner cannot be permitted to challenge appointment of respondent No.7 and petitioner in first writ petition, in the absence of any challenge laid to the enquiry report whereby he has been found to be ineligible.

I have heard learned counsel for the parties, appraised the paper book and of the view that the first writ petition deserves to be allowed whereas second to be dismissed and the reasons are as under;

On going through the condition in the advertisement, nowhere it prescribes, as culled out in the impugned order, that the person should

have experience of 8 years as Assistant Professor. In plain and simple language, it envisages 10 years of experience out of which at least 8 years' teaching in secondary teacher education institution i.e. colleges. However, it would be in the fitness of things to extract relevant part of application form of petitioner whereby entire details of experience has been given:-

Employer	Post Held	From	To
Prarambh School for Teacher Education, Jhajjar	Assistant Professor (Research)	23/12/2013	Till date
Dr. Ganesh Dass DAV College of Education for Women, Karnal	Assistant Professor in Education (Teaching of Maths)	06/10/08	21/12/2003
Seth Tek Chand College of Education, Kurukshetra	Lecturer in Teaching of Mathematics	31/10/2006	16/09/2008
Markanda National College Shahabad, KKR	Lecturer in Mathematics	22/07/2004	15/03/2005
Markanda National College, Shahabad, KKR	Lecturer in Mathematics	23/07/2003	15/03/2004

On calculating the aforementioned period, it is seen that petitioner in first writ petition had 10 years 1 day experience as secondary teacher education and 1 year 3 months and 19 days other teaching experience i.e. Lecturer in Mathematics in Markanda National College, Kurukshetra at the time of interview. Interpretation of the Department considering whole 10 years experience as Assistant Professor is, thus, wholly unsustainable as it is only 8 years experience as Assistant Professor.

As regards other reasoning with regard to having obtained M.Phil degree in one year, vide Annexure P-35, it is discerned that petitioner had sought admission in M.Phil in Mathematics only in the year 2001 but was given a mercy chance to complete her course in 2007 whereas vide Annexure P-36 at page 254 of the paper book, applied for

M.Phil Education in 2006-2007. The competent authority did not examine the aforementioned record and formed opinion despite were duly explained in reply to the show cause notice annexed thereto. In such circumstances, I am of the view that impugned order is not sustainable and hereby set aside.

Now coming to the second writ petition, it would be in the fitness of things to reproduce relevant column No.XV of general information informing that information would be available on website www.recruitment-portal.in and www.hsspp.in and with regard to any other information, which is reproduced herein below but the fact of the matter is that aforementioned advertisement, it has not been denied that information was uploaded on portal of CDAC.

“(xv) Information is also available on Parishad's website www.hsspp.in. Any modification/ amendment/ notice/clarification with regard to the recruitment process will be posted on the website www.recruitment-portal.in and www.hsspp.in. Candidates are advised to keep on checking the website for regular updates.”

It is only from opening of aforementioned website, the petitioner filled up online application and submitted to the respondents, thus, it does not lie in the mouth of Dr. Walia to allege that college failed in its duty to intimate on his e-mail or through other method regarding date of interview. In my view, the writ petition is bereft of explanation from November, 2016 till the appointment letter in February, 2017. There is no explanation what petitioner had been doing except he had been only making effort to ascertain the outcome of his application by looking at the website of www.hsspp.in. It is too remote to apprehend that person having

Ph.D qualification would be novice and nor open the website of CDAC despite application form was submitted online. The present writ petition admittedly was filed in April, 2018. It is a co-incidence that during the interregnum, the selected candidate had to approach this Court in CWP No.2976 of 2017 and vide order dated 07.04.2017 till such time as an order was passed, this Court had directed her to work on the post. The relevant portion of the order reads as under:-

“Be that as it may. Till such time as an order is passed in this regard, the petitioner can not be prevented from the working to a post which has been regularly selected and appointed and where she has already submitted his joining report.

Consequently, petition stands allowed.

Petitioner is permitted to work in the school in question with the immediate effect.”

In order to cover up delay and latches, petitioner in second writ petition has very cleverly raked up the cause of action by submitting application under RTI in the month of July, 2017 by seeking information regarding uploading of the list of eligible candidate, which according to the information were uploaded on 02.11.2016. It is not only the petitioner in second writ petition, who submitted complaint but there were other complaints enabling the Department to hold enquiry and in the enquiry, it was found that petitioner was ineligible. The aforementioned findings have not been assailed so far. The law with regard to same is no longer *res integra* in view of ratio decidendi culled out in para 12 of the judgment rendered by Division Bench of this Court in **Dhani Ram Chaudhary's case** (supra), which reads as under:-

“12. Since the judgments relied upon by the learned

counsel for the petitioner, do not deliberate upon the limitation prescribed in the rule extracted above, we are satisfied that the same are inapplicable for adjudicating the claim raised by the petitioner finally. The vires of the rules under reference have not been impugned by the petitioner in the instant writ petition. Accordingly, it is imperative to conclude that the petitioner accepts the aforesaid rule as it presently exists. The rule clearly stipulates that alteration in the date of birth in the service book of a Government employee can be sought only within two years from the date of entry into service. Since the alteration, in the instant case, was sought long years beyond the date of entry into service, and just one year before attaining the age of retirement, it is not possible for us to accept the claim of the petitioner. The instant writ petition, is accordingly, dismissed.”

The Hon'ble Supreme Court while pondering upon the expression 'teaching experience' in para 7 and 8 of the judgment rendered in **Dr. M. Dakshayani's case** (supra) held as under:-

“7. The teaching experience of three years as a Lecturer for the promotion to the post of Assistant Professor is in addition to the Post-Graduate qualification. It does not appear from the scheme of the Rules that the experience of three years should be after acquisition of Post-Graduate Degree. In Anil Kumar Gupta (supra), this Court considered a similar rule where the essential qualification was a degree and two years professional experience. It was held that the experience of two years after obtaining the degree was not required. The Rules pertaining to promotion as Superintending Engineer fell for interpretation before this Court in A.K. Raghmani's case (supra). The

requirement of the Rule was that the Executive Engineer and Surveyor of Works should possess a Degree in Civil/ Mechanical Engineering or its equivalent from a recognized institution with 6 years regular service in the grade. The word “with” was interpreted by this Court as follows:

“ 7. The word “with” has been defined in the New Shorter Oxford Dictionary (1993), diversely the meaning depending on the context in which it is used. But when it is used to connect two nouns it means: “Accompanied by; having as an addition or accompaniment. Frequently used to connect two nouns, in the sense ‘and’ - ‘as well’.”

8. Applying the definition to the eligibility criteria it is clear that it requires the prescribed educational qualification and 6 years’ experience as well. Given the plain meaning of the phrase, the Court would not be justified in reading a qualification into the conjunctive word and imply the word “subsequent” after the word “with”. ”

8. The High Court was right in relying upon the judgment in A.K. Raghumani’s case (supra) to hold that the rule in the instant case does not require three years teaching experience after acquisition of Post-Graduate Degree. The eligibility criteria for promotion as Assistant Professor are Degree in Medicine, Post-Graduation qualification in Ophthalmology and three years teaching experience as Lecturer. A plain reading of the qualification prescribed for promotion as Assistant Professor would make it clear that three years teaching experience as Lecturer along with a Post-Graduation Degree is sufficient. There is no requirement of three years experience after a person acquires Post-Graduation Degree.”

In *U.P. State Road Transport Corporation Vs. Vinod Kumar*

(2008) 1 SCC 115, Vinod Kumar, aggrieved party, availed the remedy in

High Court against the punishment imposed on the basis of finding

rendered by the Labour Court. The enquiry officer found that there was no account of issuing certain tickets being a Conductor. As a consequence thereof, he was imposed a punishment of removal, which was assailed in the Labour Court. The Labour Court set aside the punishment, resulting into litigation before the High Court which reached upto Supreme Court and it was found that in the absence of challenge to report of enquiry officer, the delinquent was estopped to challenge the consequential effect of punishment i.e. removal from service. For the sake of brevity, para of the judgment reads as under:-

“10. As stated in the preceding paragraphs, the respondent had confined his case only to the conclusions reached by the Enquiry Officer as well as the quantum of punishment. Therefore, since the respondent had not challenged the correctness, legality or validity of the enquiry conducted, it was not open to the Labour Court to go into the findings recorded by the Enquiry Officer regarding the misconduct committed by the respondent. This Court in a number of judgments has held that the punishment of removal/dismissal is the appropriate punishment for an employee found guilty of misappropriation of funds; and the Courts should be reluctant to reduce the punishment on misplaced sympathy for a workman. That, there is nothing wrong in the employer losing confidence or faith in such an employee and awarding punishment of dismissal. That, in such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering with the quantum of punishment. Without burdening the judgment with all the judgments of this Court on this point, we may only refer to a recent judgment in Divisional Controller, N.E.K.R.T.C. Vs. H. Amaresh,

2006 (6) SCC 187, wherein this Court, after taking into account the earlier decisions, held in para 18 as under:-

"In the instant case, the mis-appropriation of the funds by the delinquent employee was only Rs.360.95. This Court has considered the punishment that may be awarded to the delinquent employees who mis-appropriated the funds of the Corporation and the factors to be considered. This Court in a catena of judgments held that the loss of confidence is the primary factor and not the amount of money mis-appropriated and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found guilty of pilferage or of mis-appropriating the Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment. The judgment in [Karnataka State Road Transport Corporation v. B.S. Hullikatti](#) (2001) 2 SCC 574 was also relied on in this judgment among others. Examination of the passengers of the vehicle from whom the said sum was collected was also not essential. In our view, possession of the said excess sum of money on the part of the respondent, a fact proved, is itself a misconduct and hence the Labour Court and the learned Judges of the High Court misdirected themselves in insisting on the evidence of the passengers which is wholly not essential. This apart, the respondent did not have any explanation for having carried the said excess amount. This

omission was sufficient to hold him guilty. This act was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his was bound to result in financial loss to the appellant irrespective of the quantum."

[Underlining is ours]"

In para 10 of judgment rendered by Division Bench of this Court in **Puran Chand's case** (supra), it was held that if a person lacks qualification to be eligible for appointment to a post then he is not permitted to challenge the selection process as in such circumstances, no effective relief could be granted. For the sake of brevity, para 10 of the judgment reads as under:-

"10. It is well settled that if a person lacks qualification to be eligible for appointment to a post then he is not permitted to challenge the selection process because in such a situation no effective relief could be granted to him. Accordingly, he would not have any locus standi. In Jeet Singh and another v. State of Punjab, 1979 (1) SLR 604, the question fell for consideration of Hon'ble the Supreme Court. In para 8 of the judgment it has been held that those petitioners lacked locus standi to file a petition because they were not qualified for promotion and they did not have any right for promotion prior to the selected candidate nor they could succeed in their claim. Similar principles have been echoed in the case of R.K. Jain v. Union of India, (1993) 4 SCC 119. In that case challenge was made to the appointment of the President of CGAT. Initially he was appointed as Judicial Member in 1982 and in 1991 he was given

appointment as Senior Vice-President of CGAT. Thereafter, in pursuance of directions issued by Hon'ble the Supreme Court he was appointed as President of CGAT. His appointment was challenged on the ground that as per the convention a sitting or retired Judge of Hon'ble the Supreme Court is appointed as President of CGAT in consultation with Chief Justice of India and the aforesaid convention has been totally disregarded. It has been held by Hon'ble the Supreme Court that a third party, which was not even a candidate, has no locus standi to challenge the appointment of any person. Accordingly, we are of the view that the writ petition cannot be maintained by those who are yet to acquire the qualification of J.B.T. and become eligible for appointment to the post of Junior Basic Training teachers by the last date fixed for receipt of applications. Therefore, the writ petition is liable to be dismissed on this short ground. Even otherwise, a Full Bench of this Court in the case of Manjit Singh v. State of Punjab and others (C.W.P. No. 451 of 2008, decided on 5.2.2010) has now taken the view that higher qualification of B.A. B.Sc. or B.Ed. for appointment to the post of Junior Basic Training Teachers is no bar (C.f. Full Bench judgment in the case of [Som Dutt v. State of Punjab](#), 1983 (3) SLR 141). It is further appropriate to mention that vide notification dated 28.2.2003, 'the Rules' have been amended and Note (ii) from Appendix 'B' has been deleted.”

All the aforementioned factors are conspicuously wanting in the second writ petition. In other words, petitioner in second writ petition has not challenged the enquiry report holding him ineligible nor has approached the Court with promptitude and lame excuses culled out in the

writ petition cannot be found to be justified.

I would not delve upon quorum of selection committee in the absence of any challenge to the enquiry report.

Since the petitioner in second writ petition has already availed remedy of writ petition, prayer in the application for impleadment in first writ petition i.e. CWP No.16309 of 2018 does not appear to be justified and accordingly dismissed.

As an upshot of my finding, the order dated 25.06.2018 (Annexure P-1) is quashed. The writ petition bearing No.16309 of 2018 is allowed and the 8668 of 2018 is dismissed. Petitioner Dr. Santosh in CWP No.16309 of 2018 is entitled to all consequential benefits with effect from the date of her termination.

(AMIT RAWAL)
JUDGE

September 26, 2019

Pankaj*

Whether speaking/reasoned Yes

Whether reportable No