

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.23991 of 2014

Date of Decision: 08.03.2019

Dinesh Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present: Mr. R.K. Malik, Senior Advocate,
with Mr. Digvijay Singh, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. K.K. Gupta, Advocate,
for respondent No.3.

RAJIV NARAIN RAINA, J.

1. The petitioner was declared ineligible for the post of PGT Physics in a recruitment process starting mid 2012 for appointments in the Education Department, Haryana. The selection was conducted by the erstwhile Haryana School Teachers Selection Board. As per the advertisement, the eligibility qualification was Matric with Hindi/Sanskrit or 10+2/BA/MA with Hindi as one of the subject. In addition, candidate should have qualified Haryana Teachers Eligibility Test (HTET) or School Teachers Eligibility Test (STET) of the respective subject conducted by the Board of School Education, Haryana, Bhiwani. The note gave one time exemption to HTET/STET to candidates who have worked for minimum four years till April 11, 2012 in privately managed Government aided schools, recognized schools and Government schools and they must be in

service on April 11, 2012. Candidates will have to qualify HTET not later than April 01, 2015 otherwise services will be terminated automatically. That apart, the advertisement required consistent good academic record according to the percentages mentioned, which are not necessary to go into. Lastly, M.Sc. candidate must hold degree of M.Sc. Physics/Applied Physics/Nuclear Physics/Electronics Physics with at least 50% pass marks.

2. The petitioner had thus to show he had four years cumulative experience as on April 11, 2012 as per Note-2 of the advertisement. He attached evidence of two of them. One from Government Model Senior Secondary School, Samalkha, District Panipat for the period November 07, 2006 to August 10, 2007 (22 weeks and 7 periods); the other experience certificate was from the Panipat Institute of Engineering & Technology, Patti, Kalayana Samalkha for the period August 10, 2007 to June 2012.

3. At the time of scrutiny of documents-cum-interview process, objections were red flagged in the experience documents of the petitioner but still he was allowed to appear for interview provisional subject to depositing required documents in the office of the Board. Accordingly, vide letter dated November 29, 2012 the Board sent letters to the candidates and the petitioner who had been provisionally interviewed asking them to deposit their proper/requisite documents as proof of requisite experience within the time specified. The petitioner submitted the same experience certificates as he had earlier which included the disputed experience earned at the Panipat Institute of Engineering & Technology. Since the experience from this Institute did not match the advertised eligibility conditions the petitioner's candidature was rejected. Rejection of candidature came on

November 29, 2012 (P-11).

4. Feeling aggrieved, the petitioner has approached this Court under Article 226 of the Constitution praying that the decision be quashed and he be offered appointment on the basis of his merit and experience.

5. The short controversy which arises for determination in this case is whether the experience gained in the Institute is from a School. In other words, whether the word “School” would cover the definition of “Institution” as per Rule 2 (e) of the Haryana State Education School Cadre (Group-B) Service Rules, 2012 (“2012 Rules”).

6. Mr. R.K. Malik, learned Senior Counsel has relied on the definition of the word “Institution” in the 2012 Rules with special reference to Rule 2 (e) and Section 2 (r) of the Haryana School Education Act, 1995 which defines school to include primary, middle, high or senior secondary school and also includes any other institution which imparts education and training below degree level but does not include an institution which imparts technical education. He draws attention on the rules and regulations of the Board of School Education, Haryana which define “Institution” to mean School/College imparting education relating to Secondary/Senior Secondary level recognized by the Department of Education and affiliated to the Board. The Board of School Education, Haryana, Bhiwani was impleaded as a party to receive their view in the matter.

7. Mr. K.K. Gupta has appeared for the Board together with an affidavit in response.

8. The petitioner claimed experience as Lecturer in Physics from July 2008 to July 2012 in Pre-Engineering Department to teach 11th and 12th

classes in Panipat Institute of Engineering & Technology. In the affidavit, the Board has clarified in paras.2 & 3 as under:-

“2. That in this regard it is submitted that the Panipat Institute of Textile and Engineering, Samlkha (Panipat) was granted recognition for introduction of Pre-Engineering Course for the session 2008-09 by the Directorate of Technical Education Haryana, Chandigarh vide letter dated 10.06.2008, wherein it was provided that the said Institute shall obtain necessary affiliation from Haryana School Education Board, Bhiwani and the candidates admitted in the Pre-Engineering Course shall be examined by the Haryana School Education Board, Bhiwani and candidates passing the examination shall be awarded Senior Secondary School Examination Certificate by the Board equivalent to 10+2 Non Medical. A copy of the said letter dated 10.06.2008 is attached as Annexure R-3/1. In pursuance to the said communication, the Board of School Education Haryana, Bhiwani granted affiliation to the said Institute for Senior Secondary Class for the year 2008-09 vide letter dated 03.10.2008, a copy of which is attached as Annexure R-3/2. The affiliation was further continued on year to year basis.

3. That the word “Institution” as well as “School” have been defined in the Rules and Regulations of the Board of the School Education Haryana as under:-

*“**Institute** means School/College imparting Education relating to Secondary/Senior Secondary level recognized by the Department of Education and affiliated to the Board”*

*“**School** means a school recognized by the Department of Education, Haryana and affiliated to the Board.”*

As such the aforesaid Institute at Samalkha (Panipat) can be said to be of the level of school for imparting education relating to Secondary/Senior Secondary level.”

9. The Haryana Staff Selection Commission successor-in-interest of the Board, the present custodian of record of the disbanded Board in its

reply has produced Memo dated August 24, 2012 (R-2/1) which is a letter

from the Director Secondary Education, Haryana, Panchkula addressed to the Secretary, HARTRON on the subject matter clarification regarding qualification, experience and recognition of degrees and diplomas. In answer to queries raised by the Board, the third query is the relevant one.

The third query by the Board seeking guidance runs thus:-

“3. It is informed you that many candidates who have applied against Advt. No. 1/2012, for the post of PGT have the teaching experience of Colleges, Polytechnic Institutions and Engineering Colleges. You are therefore, requested to clarify whether the experience of Colleges and Polytechnic Institutions and Engineering Colleges is to be considered or not for the post of PGT as they are teaching the same subject as lecturer.

Please also clarify whether the experience of candidates, who teaches (10+1) and (10+2) or equivalent classes in Colleges/Gurukuls are to be considered.”

10. The response of the Director Secondary Education, Haryana Panchkula is as follows:-

“In Appendix 'B', note (i) of the Haryana State Education School Cadre (Group B) Service (2nd Amendment) Rules, 2012 (copy enclosed), it has been clearly mentioned that in case of direct recruitment, the teachers working in privately managed Government aided, recognized and Government schools, are exempted from having qualifications of Haryana Teachers Eligibility Test or School Teachers Eligibility Test and B.Ed. as described in column 3, if they have worked as a teacher for a minimum period of four years on the date of enforcement of these rules. Meaning, thereby that only the experience gained as a Teacher in the privately managed Government aided, recognized and Government schools is to be considered. The HSTSB to take action accordingly.”

11. This excludes the petitioner's case regarding experience claimed from the Institute.

12. Mr. Malik has also relied on a letter dated August 18, 2017 issued by the Panipat Institute of Engineering & Technology with the heading "To whom it may concern" certifying that the petitioner Dinesh Kumar worked as a Lecturer in Physics in Pre-Engineering Department, equivalent to 10+2 (Non Medical) as the institution is affiliated to the Haryana Board of Secondary Education, Bhiwani. The Institute has certified in the same letter that the syllabus of Physics subject taught in Pre-Engineering course part.1 & 2 is exactly the same as the syllabus of Physics in 10+1 and 10+2 (Non-Medical) classes in Haryana Government schools. His reliance on this letter does not fill in the blanks to solve the controversy on hand and appears not be the answer. For one, the Institute has no authority to speak on equivalence as that falls in the domain of the State Government.

13. Hence I am unable to bring myself to hold that the self proclaimed opinion of the Institute binds the Government on the point of experience. If what the petitioner holds for part of the four years is relied upon as an experience certificate which is valid for appointment of PGT Physics then it would seem to me to fall outside the ambit of the terms and conditions of the advertisement which provide experience to be earned from privately managed Government aided schools, recognized schools and Government schools alone, which eligibility conditions are the same in the 2012 Rules of service and as clarified by the Director Secondary Education Haryana Panchkula.

14. Experience if not from a school ought not to be amplified to include experience from a technical college such as the Panipat Institute of

Engineering & Technology as it would be in violation of Rule 2 (e) of the 2012 Rules governing service. If the stand of the petitioner is accepted it would result in changing the rules which is legally impermissible. Appendix 'B' to the 2012 Rules requires production of a certificate of having qualified HTET and STET. The petitioner had not qualified HTET/STET. Four years teaching experience was a condition precedent prescribed as substitute for qualifying the HTET/STET and that is why it seems to me that experience of four years has to be read in Clause (iii) of Sr. No.12 of Appendix 'B' to the 2012 Rules to achieve harmony in construction of the provisions upon which the fate of the selection turned.

15. In view of this line of reasoning, I believe no illegality was committed by the Board in holding the petitioner ineligible as far as his experience is concerned which came from teaching in the Panipat Institute of Engineering & Technology. The court would not tinker with the express terms of the advertisement and the prescription in the statutory rules of service. Any adventure from the clear path would lead to the wilds.

16. Accordingly, the petition has no firm base and is liable to be dismissed and the reason for rejection maintained as fair and proper.

17. However, before parting, I would say that in future clarification, if any, should be obtained from the State Government regarding the exact type of experience required for exemption from qualifying HTET so that no ambiguity is left in the matter to debate whether experience from Colleges, Polytechnic Institutions and Engineering colleges where earlier part of the academic programme involves the stages of 10+1 and 10+2 classes is sufficient or not in the same subject for appointment to

the post of PGTs.

18. The petition is dismissed without any order as to costs.

08.03.2019
manju

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No