

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

Date of decision : 06.05.2019

(1) CWP-3210-2016 (O&M)

Varinder Kumar

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

(2) CWP-9815-2016 (O&M)

Rajinder Kaur

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Kapil Kakkar, Advocate,
for the petitioner(s) in both the petitions.

Mr. Vikas Mohan Gupta, Addl.A.G., Punjab.

JITENDRA CHAUHAN, J.

This judgment shall dispose of above noticed two writ petitions as common question of law and facts are involved therein. For brevity, facts are being derived from CWP-3210-2016.

The petitioner, inter alia, seeks issuance of a writ in the nature of Mandamus, directing the respondents to consider the case of the petitioner for appointment to the post of Math/Science Master against the seats reserved for the candidates belonging to the Backward Class (BC)

category, as he has qualified the PSTET Paper 2 in the revised result.

It is contended that the petitioner belongs to Backward Class category and applied for the Teachers Eligibility Test Paper-I and II (PSTET-II) in the years 2013. Vide result sheet dated 19.06.2013 (Annexure P-5), though, he was declared pass in the Paper-I but in the column of Paper-II, his result was shown as NA as he had secured less than 82 marks as against the 83 minimum qualifying marks prescribed. Some similarly placed candidates who had secured 82 marks and were declared 'fail', approached this Court by way of filing various petitions including CWP-4807-2014 titled as ***Balwinder Kaur Vs. State of Punjab and others.*** The said writ petition was allowed vide common judgment dated 13.08.2014 (Annexure P-6). Pursuant thereto, the SCERT revised the result of the TET examination held on 09.06.2013 and the petitioner who had 82 marks to his credit, was also declared successful. It is further submitted that vide advertisement dated 09.09.2012 (Annexure P-9), the respondent-department invited applications for filling up of 5078 posts of Rural Associate Teachers in the Master Cadre in various subjects on contract basis on a consolidated pay. In addition to the minimum prescribed educational qualification for the post in question, i.e. Degree from recognized University, a candidate was required to possess B.Ed. degree and TET pass. Though the advertisement was issued in the year 2012, but the process for recruitment started only in the year 2014, when the candidates were called for counselling vide notice dated 20.11.2014.

It is contended that in the TET held on 09.06.2013, the petitioner was declared not qualified in Paper-II, therefore, he could not

submit his application. However, with the revision of result in pursuance of the judgments passed by this Court, the petitioner has been declared qualified in Paper-II. A number of posts are also lying vacant. Therefore, the petitioner ought to have been considered for selection to the post in question. The petitioner could not submit his application in response to the public notice, Annexure P-9, as the State failed to conduct Teachers Eligibility Test (for short, 'the TET') in the year 2012. The said test was conducted by the respondents on 09.06.2013, i.e. subsequent to the last date of submission of applications in pursuance of the public notice in question.

On the other hand, learned State counsel submits that the TET was conducted in the year 2011 i.e. prior to the date of public notice, Annexure P-9, however, the petitioner either did not take the exam or could not qualify the same. Once the petitioner did not possess the requisite qualification as on the last date of submission of applications, he has no legal right to participate in the selection process.

Heard.

The Right of Children to Free and Compulsory Education Act or Right to Education Act (for short, 'the RTE Act'), prescribes the qualifications for appointment and terms and conditions of service of teachers. Section 23 of the Act, reads as under:-

“Section 23. Qualifications for appointment and terms and conditions of service of teachers

(1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorized by the Central Government, by notification, shall be eligible for appointment as a teacher.

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:

PROVIDED that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years.

(3) The salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed.

For the proper implementation of the RTE Act, certain guidelines were issued by NCTE vide notification dated 23.08.2010.

Relevant portion of the Guidelines is as under:-

“Frequency of conduct of TET and validity period of TET certificate

11 The appropriate Government should conduct a TET at least once every year. The Validity Period of TET qualifying certificate for appointment will be decided by the appropriate Government subject to a maximum of seven years for all categories. But there will be no restriction on the number of attempts a person can take for acquiring a TET Certificate. A person who has qualified TET may also appear again for improving

his/her score.”

Further, vide notification dated 29.07.2011, NCTE laid down the minimum qualifications for the candidates to be eligible for appointment as teacher, which read thus:-

“1. Minimum Qualifications:-

(i) Classes I-V

(a) Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Elementary Education (by whatever name known)

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2-year diploma in Elementary Education by whatever name known), in accordance with the NCTE (Recognition Norms and Procedures), Regulations, 2002.

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor of Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2-years Diploma in Education (Special Education)

AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the guidelines framed by the NCTE for the purpose.”

In the instant case, public notice dated 09.09.2012 (Annexure

P-3) was issued by the State of Punjab inviting applications from eligible candidates for filling up 5078 vacancies of Rural Associate Teachers (Master Cadre) in the State of Punjab. The last date for submission of applications was fixed as 08.10.2012 (5.00 p.m.). It was specifically mentioned in the advertisement that the candidates must have passed TET conducted by the Punjab Government under the RTE Act apart from other qualifications mentioned therein. The petitioner appeared in the PSTET-2 in the year 2013. The petitioner was declared as 'qualified' as per the revised result declared in the month of July, 2015. It is to be noticed that the TET had already been conducted in the year 2011. In fact, the petitioner either did not take the exam in the year 2011 or could not qualify the same.

In ***Bhupinderpal Singh and others Vs. State of Punjab, 2000 AIR (SC) 2011***, Hon'ble the Supreme Court has held as under:-

“13. Placing reliance on the decisions of this Court in Ashok Kumar Sharma Vs. Chander Shekhar & Anr. JT 1997 (4) SC 99; A.P. Public Service Commission Vs. B. Sarat Chandra & Ors. 1990 (4) SLR 235; The Distt. Collector and Chairman, Vizianagaram (Social Welfare Residential School Society) Vizianagaram and Anr. Vs. M. Tripura Sundari Devi 1990 (4) SLR 237; Mrs. Rekha Chaturvedi Vs. University of Rajasthan & Ors. JT 1993 (1) SC 220; Dr. M.V. Nair Vs. Union of India & Ors. 1993 (2) SCC 429; and U.P. Public Service Commission, U.P., Allahabad & Anr. Vs. Alpana JT 1994 (1) SC 94, the High Court has held (i) that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such

date as may be appointed for the purpose in the advertisement calling for applications; ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice done by invoking the jurisdiction under [Article 142](#) of the Constitution vested in this Court so as to advance the cause of justice.

In view of several decisions of this Court relied on by the High Court and referred to herein above, it was expected of the State Government notifying the vacancies to have clearly laid down and stated the cut off date by reference to which the applicants were required to satisfy their eligibility. This was not done. It was pointed out on behalf of the several appellants/petitioners before this Court that the practice prevalent in Punjab has been to determine the eligibility by reference to the date of interview and there are innumerable cases wherein such candidates have been seeking employment as were not eligible on the date of making the applications or the last date appointed for receipt of the applications but were in the process of acquiring eligibility qualifications and did acquire the same by the time they were called for and appeared at the interview. Several such persons have been appointed but no one has challenged their appointments and they have continued to be in public employment. Such a loose practice, though prevalent, cannot be allowed to be continued and must be treated to

have been put to an end. The reason is apparent. The applications made by such candidates as were not qualified but were in the process of acquiring eligibility qualifications would be difficult to be scrutinised and subjected to the process of approval or elimination and would only result in creating confusion and uncertainty. Many would be such applicants who would be called to face interview but shall have to be returned blank if they failed to acquire requisite eligibility qualifications by the time of interview. In our opinion the authorities of the State should be tied down to the principles governing the cut off date for testing the eligibility qualifications on the principles deducible from decided cases of this Court and stated herein above which have now to be treated as the settled service jurisprudence.”

Similarly, in ***Ashok Kumar Sonkar Vs. Union of India and others, (2007) 4 SCC 54***, it has been laid down that the eligibility of a candidate has to be seen as on the last date fixed for submitting the application form. The petitioners were not qualified since they had not cleared the TET as on the last date of submission of the application form. It is a settled law that cut off date is sacrosanct and only those persons who were eligible on the date of submission of application form would be entitled to be considered. In ***Ramrao Vs. All India Backward Class Bank Employees Welfare Assn., (2004) 2 SCC 76***, it has been held thus:-

“32. If a cut-off date can be fixed, indisputable those who fall within the purview thereof would form a separate class. Such a classification has a reasonable nexus with the object which the decision of the Bank to promote its employees seeks to achieve. Such

classifications would neither fall within the category of creating a class within a class or an artificial classification so as to offend Article 14 of the Constitution of India.

33. Whenever such a cut-off date is fixed, a question may arise as to why a person would suffer only because he comes within the wrong side of the cut-off date, but the fact that some persons or a section of society would face hardship, by itself cannot be a ground for holding that the cut-off date so fixed is ultra vires Article 14 of the Constitution.”

Otherwise also, there were already sufficient number of successful candidates who had qualified TET held by the State Government in the year 2011 and thus, were eligible to apply for the posts in question advertised in the year 2012.

In view of the above, the instant petitions fail and are hereby dismissed.

Photocopy of this judgment be placed on the file(s) of the connected case(s).

06.05.2019
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No