

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

103+104

Date of decision: 23.05.2019

CWP-27315-2018

POONAM GAUTAM AND OTHERS

...PETITIONERS

VS.

UNION OF INDIA AND OTHERS

...RESPONDENTS

CWP-27837-2018

SUKRITI AND ANOTHER

...PETITIONERS

VS.

UNION OF INDIA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Mandeep Singh, Advocate,
for Mr. Rohit Seth, Advocate,
for the petitioners in CWP No. 27315 of 2018.

Mr. Sunil Kumar Bhardwaj, Advocate,
for the petitioners in CWP No. 27837 of 2018.

Mr. Narender Kumar Vashist, Senior Panel Counsel,
for respondent No. 1-UOI.

Mr. Anurag Chopra, Advocate,
and Mr. Brijeshwar Jamwal, Advocate,
for respondents No. 2 and 3.

Mr. Sandeep Jasuja, Advocate,
for respondent No. 5 in CWP No. 27315 of 2018.

AUGUSTINE GEORGE MASIH, J. (ORAL)

By this order, I propose to decide CWP-27315-2018 titled as
Poonam Gautam and others vs. Union of India and others and CWP-27837-
2018 titled as Sukriti and another vs. Union of India and others.

2. Affidavit on behalf of respondents No. 2 and 3 dated 22.05.2019 in CWP No. 27315 of 2018 has been filed in Court, which is taken on record, copy whereof has been supplied to the counsel opposite. The facts have been taken from CWP No. 27315 of 2018.

3. Petitioner Nos. 9, 11, 12, 17 and 24 are the petitioners left now in the prayer where they are seeking the relief of declaring them eligible for consideration for appointment to the post of Junior Basic Teacher. Initially when they approached the Court, the plea taken by them was that the Central Teachers Eligibility Test (hereinafter referred to as 'CTET') was not held for the last two years and the same was likely to be held in December, 2018. In the meanwhile, an advertisement had been issued by the respondents dated 03.10.2018 inviting applications for appointment to the post of JBT on contract basis under the Samagra Shiksha Abhiyan. As per the said advertisement, passing the CTET Paper-1 was a mandate for a person being eligible for consideration for appointment and applying for the said post.

4. Faced with this situation and they having not qualified the CTET, petitioners approached the Court with the present writ petition taking the plea that they did not have any opportunity to participate in the CTET Paper-1 examination and, therefore, cannot be held responsible for the said lapse as the competent authority to hold the examination of CTET was the National Council for Teacher Education (hereinafter referred to as 'NCTE') which is mandated to hold the examination at least once in a year but despite that, the said examination has not been held. For the in-action on the part of the NCTE, petitioners should not be deprived of the opportunity for participating in the selection process especially in the light

of the fact that the CTET examination was slated for December, 2018 and the last date for receipt of the applications was 01.11.2018 and the selection process was not likely to conclude prior to the holding of the examination and declaration of the result.

5. Another plea, which has been taken by the petitioners who were B.Ed. pass, was that in the light of the Notification dated 28.06.2018 (Annexure P-2) issued by the NCTE, the persons, who had acquired the qualification of Bachelor of Education from any NCTE recognized institution, shall be considered for appointment as a Teacher in Classes I to V and the said person had to undergo a six months' Bridge Course in Elementary Education recognized by the NCTE within two years of such appointment as Primary Teacher. Subsequently, it came out that the requirement for the B.Ed. qualified person was to pass the CTET Paper-1. In the meanwhile, a public notice was issued on 13.11.2018 by respondent No. 2 allowing the petitioners and all similarly situated other candidates to apply for the post of JBT from 13.11.2018 to 22.11.2018 subject to clearance of the CTET Paper-1 examination.

6. It is under these circumstances that this Court was pleased to pass orders directing the respondents to accept the application forms of the petitioners and permit them to participate in the selection process subject to clearance of CTET Paper-1 examination, which was to be held in December, 2018. In pursuance to the interim order passed by this Court, application forms of the petitioners were accepted. They participated in the CTET Paper-1 examination. Some of the petitioners failed to qualify the CTET Paper-1 examination and, therefore, the writ petitions qua them was dismissed by this Court on 09.05.2019.

7. Now, the stand, which has been taken by the respondents in the present affidavit, is that petitioner No. 9, namely, Amit Bawa d/o Sh. Raj Kumar in CWP No. 27315 of 2018 and Sukriti d/o Sh. Narender Kumar-petitioner No. 1 in CWP No. 27837 of 2018 are not eligible nor are they entitled to the benefit of non-holding of the CTET by the CBSE as they qualified their B.Ed. examination earlier but with the coming into force of the Notification dated 28.06.2018, they could not have participated in the CTET Paper-1 examination and, thus, cannot take the plea of non-holding of the CTET examination earlier and on that grounds they would only be eligible if they would have cleared CTET prior to 22.11.2018, which was the extended last date for receipt of the applications, meaning thereby that had they qualified CTET between 28.06.2018 and 22.11.2018, they would have been treated as eligible for consideration for appointment to the post of JBT Teachers and not otherwise.

8. Qua the other petitioners who have passed the requisite Diploma/Degree, the only plea, which has been taken by the respondents, is that since they had not passed the CTET Paper-1 examination prior to the last date of receipt of the applications i.e. 22-11-2018, they cannot be treated to be eligible for appointment to the post of JBT as they are ineligible.

9. I have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the records of the case.

10. It is an admitted case of the parties that the CTET examination had not been held by the CBSE since the year 2016. It is not in dispute that the CBSE was to hold and/or get conducted the examination of CTET

Paper-1 itself or some agency, in pursuance to the mandate given to them by the NCTE, at least once in a year. It can, therefore, safely be said that prior to the date of receipt of the applications i.e. 22.11.2018, all candidates, who became eligible at least after 2016, could not participate in the selection process as one of the mandated qualification prescribed was passing of the CTET Paper-1, which examination had not been held.

11. It is also not in dispute that the CTET is to be held as per the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as '2009 Act') by the NCTE which has not held the test since the year 2016. The candidates, thus, were at the mercy of the NCTE, which is the sole authority prescribed and it did not hold the examination or authorize any agency to hold the same and, therefore, the candidates cannot be left high and dry leaving them, rather denying them, the opportunity to participate in the selection process.

12. As the position stands today, after the holding of the CTET examination in December 2018 for the first time since 2016, petitioners have qualified the said examination and, therefore, have to be held eligible for consideration for appointment to the post although beyond the last date of receipt of the applications. The plea, which has been taken by the respondents primarily to hold the petitioners other than those with B.Ed. to be ineligible, is that they have not qualified the CTET examination prior to the last date of receipt of the applications i.e. 22.11.2018 and qua the two petitioners, who are B.Ed. and have become eligible only because of the Notification dated 28.06.2018, that they in any case, cannot take the benefit of non-holding of the examination since the year 2016 as they were required to be qualified for being eligible for consideration for appointment to the

post prior to the cut off date. Qua the other candidates, the position would be different especially those who could not participate in the CTET examination because of non-holding of the said test.

13. Dealing with the candidates, who are otherwise eligible except for having passed by the CTET examination, qua them, suffice it to say that since the CTET examination was not held since the year 2016, they cannot be denied the opportunity to participate in the selection process and that too, to a public post and above all, the posts of teachers, where the best talent and merit should be given the first priority. By expanding the scope of selection to the extent of bringing in the best persons and that too, to groom the future of nation which cannot be overlooked. Such candidates cannot be deprived of the opportunity in the present selection process when there is no fault of theirs when the sole Statutory Body/Authority has failed in performing its duty under the 2009 Act where it is a mandate of the Statute that the CTET examination should be held at least once in a calendar year, which, admittedly, has not been held since the year 2016. Therefore, all the candidates, who were otherwise eligible as per the advertisement except for the passing of the CTET examination and having participated in the CTET examination held in December, 2018, have passed the said examination result whereof was declared on 04.01.2019, should be declared eligible for participating in the selection process in question.

14. Another aspect, which weighs on the mind of the Court, is that the written examination for preparing the merit of the candidates for the post of JBT was held on 27.01.2019, on which date, in any case, after the declaration of the result of CTET examination on 04.01.2019, the candidates were fully eligible.

15. As regards the assertion of the respondents with regard to the candidates who have cleared the B.Ed. examination and have become eligible for the first time after coming into force of the Notification dated 28.06.2018 is concerned, suffice it to say that they cannot be discriminated viz-a-viz the candidates who were eligible prior to coming into force of the said Notification. Once as per the Notification issued by the NCTE dated 28.06.2018 (Annexure P-2), they have become eligible for consideration for appointment to the post of JBT and are similarly placed now after passing the CTET on 04.01.2019 as far as qualifying the CTET Paper-1 is concerned, they cannot be discriminated against. May be that prior to 28.06.2018, they did not have the eligibility for participating in the CTET-Paper-1 examination, however, keeping in view the fact that the CTET examination for the first time was held after a gap of more than 2 years in December, 2018, in which they have participated after applying in the month of August, 2018 and have qualified prior to the date of the written examination, as detailed above, they cannot be treated differently from that of similarly placed JBT candidates. If that be so, the reasoning, as applied to the otherwise qualified JBT Teachers i.e. Diploma in Elementary Education viz-a-viz the B.Ed. candidates would be applicable to them as well.

16. With the aims and objects in mind and to give effect to the intent and purpose for which the Right of Free and Compulsory Education Act, 2009 was propounded and enforced and keeping in view the equity, public interest and especially the interest of the education of the minors, who deserve the best teachers, this order is being passed in the peculiar facts and circumstances of the case in hand, as have been stated above.

17. In view of the above, these writ petitions are allowed. All the candidates, who had applied for the posts advertised and possessed the requisite qualification(s), except for passing the CTET and have passed the same in the examination as held in December, 2018, are held eligible for consideration for appointment to the posts of JBT as advertised.

18. This order would be applicable not only to the petitioners but to non-petitioners as well who are similarly placed. This is being done with an intention to curb unnecessary flood of litigation which the similarly placed candidates are forced into and this Court is sanguine that the authorities would not fail the faith and confidence reposed by this Court in them.

19. It is further clarified that this order has been passed based upon the peculiar facts and circumstances of the present case(s) and is for this selection only and would not be taken as a precedent nor will it be applicable to the subsequent selections and appointments to be made by the respondents in any manner.

May 23, 2019
pj

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No