

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

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Civil Writ Petition No.23320 of 2019
Date of Decision: August 29th, 2019

Sabina

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Ms. Alka Chatrath, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J.

Petitioner, who belongs to the visually handicapped category and had applied for the post of JBT Teacher in pursuance to advertisement dated 03.10.2018 (Annexure P-11) issued by the Samagra Shiksha, U.T., Chandigarh, for filling up 418 post on contractual basis at fix remuneration of ₹39,422/- as revised from time to time by the society, participated in the selection process and had qualified the written test but had been declared ineligible vide letter dated 19.07.2019 (Annexure P-16) on the ground that she had passed the Central Teacher Eligibility Test (hereinafter referred to as 'CTET') on 26.07.2011 and, therefore, was not eligible as it was no more valid after expiry of seven years from the date of issuance of the said certificate.

2. It is the contention of learned counsel for the petitioner that the petitioner is 100% visually impaired by birth. She possesses the qualification of B.A., B.Ed. with CTET, which was passed by her on 26.07.2011 (Annexure P-6). In pursuance to the advertisement which had been issued by the Samagra Shiksha, U.T., Chandigarh, petitioner applied for the post under the visually handicapped category online. On considering

the respondents, E Admit Card (Annexure P-13) was issued to her for participating in the written examination, which was held on 27.01.2019. In the registration form, petitioner had categorically given the date of declaration of CTET as 26.07.2011. On the basis of the written examination which was held, her name found mentioned in the provisional merit list (Annexure P-14) of candidates, who were called for documents verification. It is at this stage that she was declared ineligible for appointment to the post of JBT vide letter dated 19.07.2019 (Annexure P-16). This, the counsel for the petitioner, states is not permissible as because of the wrongful acceptance of the candidature of the petitioner for appointment to the post of JBT and having not rejected it at the very outset, resulted in the petitioner missing an opportunity to participate in the CTET examination, which was held in December 2018. It is submitted that because of the inaction/fault of the respondents, petitioner cannot be made to suffer, especially when the National Council for Teacher Education, which is the competent authority to hold the examination of CTET had not held the said examination from the year 2016 onwards. Petitioner had a certificate of CTET pass dated 26.07.2011, which was valid up to 25.07.2018.. During the interregnum, because of non-holding of the CTET examination, she had no occasion to become eligible for appointment to the post of JBT. For the fault of the statutory body/authority having failed to perform its duty of holding the examination each year, petitioner cannot be made to suffer. She, thus, contends that the rejection of the candidature of the petitioner at this belated stage, especially when she had participated in the selection process and had been selected also, is bad in law and deserves to be set aside. In any case, she contends that the petitioner belongs to a reserved category and is

visually handicapped, where posts are lying vacant as none has been selected. She, thus, contends that the respondents should have proceeded to relax the qualifications in the peculiar facts and circumstances. She has further asserted that the petitioner, who is B.Ed. and had even qualified the CTET examination, was not eligible for appointment to the post of JBT unless the issuance of the notification dated 28.06.2018. It is after the issuance of the said notification dated 28.06.2018 that the petitioner had become eligible for appointment to the post of JBT and, therefore, she had no occasion for participating in the CTET examination from the year 2016 onwards as the same had not been held, as referred to above. Therefore, the petitioner should have been treated as eligible for appointment to the post of JBT. Learned counsel for the petitioner has referred to the judgment passed by this Court in *CWP No.27315 of 2018* titled as *Poonam Gautam and others Versus Union of India and others* decided on 23.05.2019 (Annexure P-18).

3. I have considered the submissions made by learned counsel for the petitioner and with her assistance, have gone through the records of the case.

4. The qualifications which has been laid down in the advertisement for appointment to the post of JBT Teacher, which admittedly is as per the eligibility laid down by the National Council for Teacher Education as per the provisions of Right of Children to Free and Compulsory Education Act, 2009, read as follows:-

“ESSENTIAL QUALIFICATIONS FOR THE POST OF JBT [A or B]

[A] (i) Graduate or its equivalent from a recognised University.

(ii) Diploma in Elementary Education (D.El.Ed.) (by whatever name known) of not less than 02 years

duration recognised by NCTE.

(iii) Pass in Teacher Eligibility Test (TET) conducted by CBSE New Delhi applicable for the teachers teaching class I to V in accordance with the Guidelines framed by the NCTE.

OR

[B] # (i) Graduation with at least 50% marks and Bachelor of Education (B.Ed.).

(ii) Pass in Teacher Eligibility Test (TET) conducted by CBSE New Delhi applicable for the teachers teaching class I to V in accordance with the Guidelines framed by the NCTE.

Note: *#candidates who have acquired the qualification of Bachelor of Education from any NCTE recognised institution shall be considered for appointment as a teacher in classes I to V provided the person so appointed as a teacher shall mandatorily undergo a six month Bridge Course in Elementary Education recognized by the NCTE, within two years of such appointment as primary teacher.”*

5. Mode of selection and the procedure was also detailed therein. Even the procedure for submission of online applications was mentioned there. Under this heading i.e. Procedure for Submission of Online Applications, condition No.7 reads as follows:-

“7. Before applying for the post of JBT, candidate must ensure that he/she fulfils all the eligibility conditions mentioned in the advertisement. Eligibility regarding qualification will be checked with reference to closing date for submission of applications.”

6. Under the heading General Instructions, Instructions 2 and 3 would be relevant for the present case, which read as follows:-

“2. The candidates applying for the posts of JBT should ensure that they fulfil the eligibility conditions as per details mentioned in the advertisement. Their

candidature will be provisional at all the stages of recruitment process i.e. Acceptance of online applications, issue of admit cards and scrutiny of original documents. Eligibility status will be uploaded on the website in respect of those candidates who are called for scrutiny of original documents.

3. *Mere issue of Admit Card or appearing in the written test or scrutiny of original documents does not imply that candidate is eligible for the post of JBT. In case, any information is found wrong at any stage even after joining, the candidature will be cancelled without any notice.”*

7. The E Admit Card (Annexure P-13) issued to the petitioner also mentions it to be provisional subject to eligibility. The above conditions and the note, which have been reproduced above, indicate beyond doubt that the onus was primarily at the outset on the candidate to ensure that the said candidate was eligible for consideration for appointment to the post of JBT Teacher as per the advertisement. At no stage has it been ever conveyed that on acceptance of the application form/registration form, the candidature of the candidate would be treated to be acceptable for the purpose of determining the eligibility meaning thereby that the candidate was eligible for appointment to the post of JBT, rather it has been clearly mentioned at various places that the eligibility of the candidates will be checked after declaration of the written examination as per the details mentioned under the selection procedure. Mention has further been made that simply appearing in the written test does not give the candidate any right for appointment. It has clearly been mentioned that mere issuance of the Admit Card and appearing in the written examination or scrutiny of the documents does not imply that candidate is eligible for the post of JBT.

for the petitioner that the fault of the respondents to have not declared petitioner ineligible at the very outset, makes her eligible for appointment to the post of JBT, cannot be accepted nor can it be said that the right of the petitioner to participate in the examination held for CTET in December 2018 been in any manner hampered or affected by the respondents.

9. It would not be out of way to mention here that the applications for participating in the examination for CTET were called for in the month of June 2018 and ultimately the examination was held in December 2018. The CTET examination cleared by the petitioner on 26.07.2011 was valid up to 25.07.2018 and, therefore, she was well aware of the said fact but still chose not to participate in the CTET examination which was held in December 2018.

10. It may be added here that the last date for receipt of applications for selection to the post of JBT, as per the advertisement dated 03.10.2018 (Annexure P-11), was 01.11.2018, which was extended up to 22.11.2018 after coming into force of the notification dated 28.06.2018. Petitioner was very much aware of the fact that on the last date of submission of online application, which was the date mentioned in the advertisement to be the date for determining the eligibility of the candidate, she did not fulfill the requisite qualifications as the validity of her CTET certificate had expired prior to the last date of submission of the said application. Even the date of the advertisement was 03.10.2018 (Annexure P-11), on which date also, the petitioner was not eligible. The plea, thus, as raised by the petitioner in the present writ petition cannot be accepted.

11. The notification dated 28.06.2018, on which reliance has been placed by learned counsel for the petitioner to contend that she had become eligible on the said date and, therefore, on the date of issuance of the notification, she was eligible as she had a valid CTET certificate, would not be of any help to the petitioner since the date of eligibility for appointment to the post of JBT Teacher for a candidate was the last date of receipt of the application. Therefore, the said notification cannot be said to have any effect in the manner.

12. It is true that the candidate is 100% visually handicap but there is no provision under which relaxation with regard to qualification prescribed under the statute can be granted and in any case, this is a case where the candidate had slept over her rights and when she got an opportunity to make herself eligible by passing the CTET, failed to participate in the said examination.

13. Hon'ble Supreme Court in the latest judgment passed in *Civil Appeal No.6669 of 2019* tilted as *The State of Tamil Nadu and Ors. Versus G. Hemalathaa and Ors.* decided on 28.08.2019 in the case of an Advocate, who had applied for appointment to the post of Civil Judge in the Tamil Nadu State Judicial Service and while attempting mains examination, violated the Instructions, which had been issued by the Tamil Nadu Public Service Commission, which prohibited candidates from using a pencil for any purpose, which she had used for underlining the answer-sheet on several places in Law Paper-I, has set aside the order passed by the High Court, which had taken a lenient view in the matter, which prayer was again made before the Hon'ble Supreme Court. In para 7, 9 to 12,

Hon'ble Supreme Court has held as follows:-

“7. We have given our anxious consideration to the submissions made by the learned Senior Counsel for the Respondent. The Instructions issued by the Commission 5 are mandatory, having the force of law and they have to be strictly complied with. Strict adherence to the terms and conditions of the Instructions is of paramount importance. The High Court in exercise of powers under Article 226 of the Constitution cannot modify/relax the Instructions issued by the Commission.

9. In spite of the finding that there was no adherence to the Instructions, the High Court granted the relief, ignoring the mandatory nature of the Instructions. It cannot be said 1 M. Vennila v. Tamil Nadu Public Service Commission, (2006) 3 Mad. LJ 376 2 (1999) 2 SCC 635 3 (2003) 6 SCC 545 6 that such exercise of discretion should be affirmed by us, especially when such direction is in the teeth of the Instructions which are binding on the candidates taking the examinations.

10. In her persuasive appeal, Ms. Mohana sought to persuade us to dismiss the appeal which would enable the Respondent to compete in the selection to the post of Civil Judge. It is a well-known adage that, hard cases make bad law. In Umesh Chandra Shukla v. Union of India MANU/SC/0050/1985 : (1985) 3 SCC 721, Venkataramiah, J., held that:

13.... exercise of such power of moderation is likely to create a feeling of distrust in the, process of selection to public appointments which is intended to be fair and impartial. It may also result in the violation of the principle of equality and may lead to arbitrariness. The cases pointed out by the High Court are no doubt hard cases, but hard cases cannot be allowed to make bad law. In the circumstances, we lean in favour of a strict construction of the Rules and hold that the High Court had no such power under the Rules.

11. Roberts, CJ. in Caperton v. A.T. Massey MANU/USSC/0047/2009 : 556 U.S. 868 (2009) held that:

Extreme cases often test the bounds of established

legal principles. There is a cost to yielding to the desire to correct the extreme case, rather than adhering to the legal principle. That cost has been demonstrated so often that it is captured in a legal aphorism: “Hard cases make bad law.”

12. *After giving a thoughtful consideration, we are afraid that we cannot approve the judgment of the High Court as any order in favour of the candidate who has violated the mandatory Instructions would be laying down bad law. The other submission made by Ms. Mohana that an order can be passed by us under Article 142 of the Constitution which shall not be treated as a precedent also does not appeal to us.”*

In view of the above observations, this Court would not be in a position to accept the contention of learned counsel for the petitioner that a lenient view be taken in the case.

14. The judgment passed by this Court in *Poonam Gautam's case* (*supra*) would not be of any help to the case of the petitioner in the facts and circumstances as narrated above.

15. Keeping in view the above facts and circumstances of this case, the Court does not find any merit in the writ petition.

16. The same, therefore, stands dismissed.

August 29th, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes