

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Date of Decision: *September 16th, 2020*

1.

Civil Writ Petition No.8248 of 2020

Karamjit Kaur & others

..... PETITIONER(S)

VERSUS

State of Punjab & others

..... RESPONDENT(S)

. . .

2.

Civil Writ Petition No.10132 of 2020

Gurwinder Kaur & others

..... PETITIONER(S)

VERSUS

State of Punjab & others

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE SANT PARKASH**

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PRESENT: - Ms. Neesh Garg, Advocate, for the petitioners.

Ms. Ambika Bedi, Assistant Advocate General, Punjab.

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Sant Parkash, J

This judgment shall dispose of two writ petitions viz. CWP

No.8248 of 2020, titled 'Karamjit Kaur and Others vs. State of Punjab' and

Others and CWP No.10132 of 2020, titled 'Gurvinder Kaur and Others vs.

State of Punjab and Others', as they involve similar facts and questions of law.

For reference to facts file of CWP No.8248 of 2020 is taken up.

The instant petition has been preferred by the petitioners under Article 226/227 of the Constitution of India, for issuance of a writ in the nature of certiorari, quashing the appointments over and above the prescribed posts to the extent of 25% of posts of the Head Teachers which have been filled more than the quota prescribed in Appendix A and B of the recruitment policy issued by the notification dated 21.05.2018 vide which the working teachers were promoted to the extent of 75% to the posts of Centre Head Teacher and Head Teacher.

Further prayer has been made for quashing public notice dated 1.06.2020 vide which the department has invited the options for transfer of teachers including Head Teachers and Centre Head teachers without waiting for the lapse of probation period or stay period of newly selected candidates. Payer has also been made for stay of notice dated 01.06.2020.

Facts of the present case are that the petitioners were appointed as ETT Teachers in the year 1997 onwards. The Government of Punjab vide notification dated 21.05.2018 framed the rules for employees through public notification and distributed the posts of Centre Head Teachers and Head Teachers in 16 districts of Punjab with the different number of appointments as reflected in Appendix A. In Appendix B attached to the aforesaid notification, the mode of reservation has been prescribed,

verifying therein that the appointments were to be made to the extent of 25% as direct appointments and 75% on the basis of promotion.

The petitioners came to know that the department has filled up the posts more than 25% quota against the posts of Centre Head Teachers in districts Mansa and Sangrur, and appointed some persons by violating/disturbing the conditions of reservation policy. The respondents without rectifying the excess posting and without waiting for the expiry of the probation period, vide public notice dated 01.06.2020, invited the applications for transfer of new appointees to opt their place of postings.

Petitioners represented the respondents to correct the seniority list and to withdraw the transfer policy but to no effect.

The contentions of learned Counsel for the petitioners, coupled with the contentions as reflected in order dated 18.06.2020 are that recruitment to the posts of Head Teachers is to be made to the extent of 25% by way of direct recruitment and 75% by way of promotion but the Department has filled up posts more than 25% by way of direct recruitment which is against the relevant Government notification. The department has also invited options for the transfer of various Teachers, Head Teachers and Centre Head Teacher without waiting for the lapse of probation period or the stay period of the newly selected candidates to be appointed in the various districts including Mansa and Sangrur Districts which will disturb the seniority list and will affect the promotion of the petitioners and other deserving candidates.

Per contra, learned counsel for the state has argued that petitioners in CWP No 8248 of 2020 were promoted as Head Teachers on 01.09.2016. Though, petitioner Nos.1,4 and 5, who belong to district Mansa,

joined as Head Teacher, however petitioner Nos. 2 and 3 who belonged to district Sangrur did not submit their joining to the promoted posts of Head Teacher within the prescribed period and thus cannot claim any relief for the purpose of seniority for the post of Head Teacher.

The Department of School Education, Punjab advertised 375 posts of Centre Head Teachers and 1558 posts of Head Teachers vide advertisement dated 08.03.2019. The posts of Centre Head Teacher and Head Teacher are of district cadre as per statutory service rules namely The Punjab State Elementary Education (Teaching Cadre) Group – C Service Rules 2018 (for short, ‘2018 Rules’). The next promotional channel from the post of ETT is Head Teacher and that of Head Teacher is Centre Head Teacher.

Learned State counsel has further submitted that earlier the posts of Centre Head Teacher and Head Teacher were governed by The Punjab State Education Class – III (Primary School Cadre) Service Rules, 1997 (for short, ‘1997 Rules’) and total sanctioned post of Head Teacher were 8134 and that of Centre Head Teacher were 1500. The 1997 Rules further reserved 25% of total sanctioned posts for direct recruitment and 75% posts were reserved for promotion quota. The 1997 Rules were later amended as 2018 Rules vide the impugned notification dated 21.05.2018, which also provide for the same quota for direct recruitment and promotion.

Learned state counsel further argued that as per Appendix-A to Rule 3 of 2018 Rules, total posts of Head Teacher in the State of Punjab have been reduced from 8134 to 6230, including 4331 in 16 non border districts and 1899 in 6 border district areas. In the process of replacing 1997 Rules to 2018 Rules, in the interregnum, a few districts filled up 75% posts

of Head Teacher by promotion, on the basis of cadre strength as per 1997 Rules and thus these posts exceeded the quota of 75% as specified in Appendix B of 2018 Rules, after its amendment. The Head Teachers who were promoted prior to 21.05.2018 could not be demoted and were temporarily adjusted against the vacant posts towards 25% quota reserved for the direct recruitment.

It is contended that upon completion of recruitment pursuant to advertisement dated 08.03.2019, the new directly recruited Head Teachers were shifted to other districts on temporary basis against the vacant posts. The transfer policy was further amended vide letter dated 27.05.2020, stipulating the provision of stay upto 3 years on a particular station in respect of teachers who were directly recruited.

I have heard counsel for the parties through video conference and with their kind assistance, perused the records and find no substance in the contentions of learned counsel for the petitioners.

As far as the question in respect of filling posts more than 25% by way of direct recruitment is concerned, reply filed by way of affidavit of Renu Mehta, Assisting Director (Establishment), Office of Director Public Instructions (Elementary Education) Punjab reveals that 375 posts of Centre Head Teachers and 1558 posts of Head Teachers were advertised on 08.03.2019 which were reserved for appointment by direct recruitment and this process stood completed in January 2020. It is pertinent to mention here that the posts of Centre Head Teacher and Head Teacher were governed by 1997 Rules which were further amended in 2018 vide notification dated 21.05.2018, thereby reducing the posts of Head Teachers from 8134 to 6230. It specifically reveals from the reply that while the

process of aforesaid amendment was being carried out, a few districts already filled up 75% posts of Head Teacher, notified for promotion quota, on the basis of cadre strength as provided under 1997 Rules. In this view of the matter, though the cadre strength was reduced under 2018 Rules, the promotional quota posts exceeded the quota of 75% as specified in Appendix B of 2018 Rules. As per the settled canons of law, the Head Teachers who were promoted prior to 21.05.2018, that is the date when amended rules came into existence, could not be demoted and were rightly adjusted against the vacant posts in the 25% quota reserved for direct recruitment. Consequently, upon completion of recruitment process, the newly recruited Head Teachers had to be shifted to other districts which was merely a temporary adjustment of newly selected Head Teachers against the available vacant posts of promotion quota in districts Mansa and Sangrur.

So far as the inviting of options for transfer of teachers without waiting for lapse of probation period or stay period at initial place of posting of newly selected candidates is concerned, it will not disturb the seniority list as some of the petitioners were already promoted in the year 2016 as Head Teachers whereas the newly recruited Head Teachers joined in the year 2020, and those ETT teachers who did not submit their joining to the promoted posts of Head Teachers cannot equate themselves with the newly recruited Head Teachers for the purpose of seniority.

As per the transfer policy, amended vide letter dated 27.05.2020, a stay of 3 years on a station of posting was required, however relaxation was given to newly recruited Head Teachers also regarding the requirement of 3 years stay at initial place of posting and transfer was permitted in their case as well. Moreover, the petitioners have failed to bring

on record any material to establish as to how the aforesaid relaxation is prejudicial to them and has caused discrimination.

In view of the aforesaid discussion, the instant petitions lack merit and accordingly dismissed.

(Sant Parkash)
Judge

September 16, 2020
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No