

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

CWP No. 14480 of 2020
Date of decision: 16.09.2020

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Dilshad Ali and another

....Petitioner(s)

Versus

State of Punjab and others

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Mohit Jaggi, Advocate,
for the petitioner.

(Proceedings are conducted through video
conferencing as per instructions).

G.S.SANDHAWALIA, J. (Oral)

The petitioners seek a writ in the nature of certiorari in a petition filed under Articles 226 and 227 of the Constitution of India for quashing the public notice dated 21.07.2020 (Annexure P-10), vide which 13 candidates from backward class category have been asked to remain present in the office of the Director with their identity cards and certificates for appointment as ETT (Elementary Teacher Training) Teachers. Challenge has also been raised to public notice dated 27.08.2020 (Annexure P-11) alongwith provisional merit list whereby again candidates (respondents no. 4 to 16) have been called in the office by putting their names in the provisional merit list as the selection process for the post of ETT Teachers under backward class which has not been initiated for about five years. The petitioners claim to have become eligible to compete for the said posts of ETT Teachers in view of the notification dated 28.06.2018 (Annexure P-9).

Counsel for the petitioner has argued that in view of the subsequent notification dated 28.06.2018 (Annexure P-9), the petitioners

have become eligible as such since now they possess necessary qualification of Bachelor of Education and, therefore, since posts which are being filled up pertain to the advertisement dated 09.11.2015 (Annexure P-3), a fresh advertisement should be issued. He has placed reliance upon the judgment of the Apex Court in ***Chandgi Ram vs. University of Rajasthan, 2001 (10) SCC 556.***

In the present case, as noticed, the advertisement was issued on 09.11.2015 for filling up 3522 posts of Elementary Teachers Training Teachers. The petitioners belong to the backward class category for which 352 posts were reserved. The posts admittedly were increased to 4500 and the backward class category posts were increased to 450 vide the Corrigendum issued on 13.01.2016 (Annexure P-6). The petitioners earlier had filed CWP No. 17854 of 2016 on the ground that the objections have been raised against their candidature as they did not possess the essential qualifications of the two years' Elementary Teachers Training certificate. The claim was that they possessed Bachelor of Arts (Graduation Level) alongwith Bachelor of Education degree, which was higher and, therefore, challenged the said action of the respondents. The same was repelled by holding as under:-

“Therefore, the educational qualification prescribed for the post of ETT is certainly having the relevance and cannot be ignored and thus, the petitioners' claim in the absence of possessing the essential qualification, merely on the basis of higher qualification is not acceptable and liable to be rejected. Even otherwise, this proposition of law is well settled by a Division Bench of this Court in CWP No.17467 of 2010 titled Ritesh Dutta and Others Vs. State of Haryana and others, decided on 13.7.2011, the

concluding paragraphs of the same reads as under:

"Basic Teachers Training Programme of two years duration is necessary. B.Ed is no substitute for such a course. In the absence of necessary qualification with the petitioners there is no possibility of finding any fault with the impugned notifications dated 30.8.2010 (P.5) and 17.9.2010 (P.6). The petition does not merit admission. Accordingly the writ petition is devoid of merit and the same is hereby dismissed."

In view of the aforesaid discussion, this Court finds no merit in the present petition and the same is dismissed."

Merely because the notification has now been subsequently issued on 28.06.2018 (Annexure P-9) whereby National Council of Teachers Education has prescribed the qualification as Graduation with at least 50% marks and B.Ed. amending the qualification as B.Ed. will not entitle the petitioners as such to agitate afresh on this account since the said notification would be prospective in nature. The petitioners had applied against the advertisement dated 09.11.2015 and are bound by the said advertisement and the terms of the eligibility and qualifications prescribed therein and the subsequent change in the qualification would not alter the terms of the advertisement.

Therefore, the reliance upon the judgment in *Chandgi Ram's case (supra)* to this extent that the fresh advertisement should be issued for the unfilled seats is not tenable.

In the said case, the issue was the termination of the employee, who had been appointed on *ad hoc* basis and his grouse was that till regular appointment is made, he should be permitted to work. The Division Bench had modified the order of the Single Judge by directing that the employee would be eligible to participate in selection process alongwith other eligible candidates while dismissing the writ petition. It is in such circumstances, it

is held that the culture of adhocism cannot develop and it only permitted irregular appointees to continue for long and the university was accordingly directed to take steps to expedite the selection on regular basis. The said judgment is, thus, not applicable in the facts and circumstances of the present case.

The recruitment process is obviously not complete since the respondents have issued the public notice for filling up the balance 13 posts under the backward class category out of the provisional merit list framed and no fault as such can be found with the action of the respondents. Merely because private respondents are having less marks in the PSTET examination of 83 marks and merely because the petitioners have higher marks of 95 and 89, would not entitle them for consideration since their eligibility has never been recognized in comparison to the private respondents.

In such circumstances, no case is made out for calling upon the respondents and the writ petition is accordingly dismissed in limine.

16.09.2020
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No