

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

112

CWP-15330-2020

Date of decision: 24.09.2020

Harkesh Kaur Lottey

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present: Ms. Riti Aggarwal, Advocate for the petitioner.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present petition under Article 226/227 of the Constitution of India for issuance of a writ, order or direction in the nature of certiorari for quashing selection list of Centre Head Teacher in physically handicapped category dated 04.09.2019 (**Annexure P-10**) vide which the persons lower in merit stand selected and list of rejected candidates dated 17.08.2020 (**Annexure P-11**) vide which the candidature of the petitioner was illegally rejected. The petitioner has further sought issuance of a writ, order or direction in the nature of mandamus directing the respondents to consider and appoint the petitioner on the post of Centre Head Teacher in pursuance of the advertisement dated 08.03.2019 (**Annexure P-1**).

Briefly stated, the petition has been filed on the averments that the Education Department Recruitment Directorate, Punjab (for short, "the respondent department") issued advertisement dated 08.03.2019 (**Annexure P-1**) for direct recruitment of 375 Centre Head

Teachers and 1558 Head Teachers mentioning the educational qualification, mode of selection and age limit as reproduced in para No.2 of the petition. The petitioner had worked in Ramgarhia Public School, Malerkotla from 25.05.2011 to 31.12.2015. The petitioner being fully eligible for the above said post, applied for the same under Handicap (Visual) Category as she is 40% visually handicapped. The petitioner was also having experience of teaching in Government schools for more than four years. The petitioner appeared in written examination and secured 104 marks. Vide notice dated 08.08.2019, candidates were called for scrutiny of documents at Government Model Senior Secondary School (Microsoft Building), Phase-3B1, SAS Nagar on 13.08.2019 to 14.08.2019, 16.08.2019 and 19.08.2019 to 23.08.2019. The respondent department displayed the selection list of candidates of Centre Head Teacher on 04.09.2019 whereby the persons lower in merit were selected. The respondent department did not follow notification dated 02.05.1997 vide which 1% quota was given to each category of handicapped persons (i) blindness or low vision (ii) hearing impairment (iii) locomotor disability or cerebral palsy. The respondent department has also circulated list of rejected candidates of Centre Head Teacher from which the petitioner came to know that her candidature had been rejected on the grounds of (i) marks of graduation being less than 50% (ii) experience of private school and (iii) the petitioner being over age. The action of the respondents is illegal and violative of Articles 14 and 16 of the Constitution of India and the impugned lists are liable to be set aside and the petitioner is entitled to be considered for appointment.

I have heard learned counsel for the petitioner and gone through the relevant record.

Learned counsel for the petitioner has argued that the candidature of the petitioner has been wrongly rejected. Rejection of candidature of the petitioner on the ground of having less than 50% marks in graduation is contrary to law laid down by Hon'ble Supreme Court in ***Neeraj Kumar Rai and others Vs. State of U.P. and others, 2017 AIR (SC) 3545***. The candidature of the petitioner could not be rejected on the ground of her experience being of private school in view of judgment of this Court in ***Saroj Anand and another Vs. State of Punjab and others, 1999 (4) RSJ 588***. The respondent department has advertised the post after a period of more than 7-10 years which warranted relaxation of the condition as to age under Rule 19 of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 and candidature of the petitioner could not be rejected on the ground of being over age in view of judgment of this Court in ***CWP 25534-2016 titled as Mangat Singh and others Vs. State of Punjab and others decided on 03.02.2020***. The impugned lists being violative of Articles 14 and 16 of the Constitution of India are liable to be set aside and the petitioner, having secured more marks than the last selected candidate, is entitled to appointment on the post of Centre Head Teacher.

On consideration of the submissions made by learned Counsel for the petitioner and perusal of the material on record, I am of the considered view that the petition is devoid of any merit and is liable to be dismissed.

Rule 6 of the Punjab State Elementary Education (Teaching Cadre) Group C Service Rules 2018 which provides the method of appointment, qualification and experience for post of Centre Head Teacher and Head Teacher reads as under:-

“6. Method of appointment, qualification and experience

– (1) All appointments to the Service shall be made in the manner specified in Appendix 'B':

Where the Government is of the opinion that it is expedient to do so, the Government may, in exceptional circumstances, fill the vacancy by making appointment of the person by transfer from any other State Government or Government of India against direct quota if the person holds similar post.

(2) No person shall be appointed to a post in the Service, unless he possesses the qualifications and experience, as specified against that post in Appendix 'B'.

(3) Appointment to the Service by promotion shall be made on seniority-cum-merit basis and no person shall have any right to claim promotion on the basis of seniority alone.”

Appendix 'B' appended to the Punjab State Elementary Education (Teaching Cadre) Group C Service Rules 2018 lays down qualifications and experience for the post of Centre Head Teacher and Head Teacher as under:-

“Centre Head Teacher -

(1) Should possess Bachelor's Degree from a recognized university or institution with at least 50% marks as per guidelines of the University Grants Commission;

(2) Should possess two years Elementary Teachers' Training course from a recognized university or institution or two years Diploma in Elementary Education (D.El.Ed.) as per guidelines of the National Council for Teachers' Education or Bachelor Degree in Education (B.Ed.) from a recognized university or institution as per guidelines of the University Grants Commission; and

(3) Should possess teaching experience of working as Primary School Teacher for a minimum period of four years in a Central/State Government School. However, a prospective candidate must have acquired such experience after acquiring the minimum educational and professional qualifications specified for the posts under these rules.

Head Teacher-

(1) Should possess Bachelor's Degree from a recognized university or institution with at least 50% marks as per guidelines of the University Grants Commission;

(2) Should possess two years Elementary Teachers' Training course from a recognized university or institution or two years Diploma in Elementary Education (D.El.Ed.) as per guidelines of the National Council for Teachers' Education or Bachelor Degree in Education (B.Ed.) from a recognized university or institution as per guidelines of the University Grants Commission; and

(3) Should possess teaching experience of working as Primary School Teacher for a minimum period of three years in a Central/State Government School. However, a prospective candidate must have acquired such experience after acquiring the minimum educational and professional qualifications specified for the posts under these rules.”

The eligibility conditions regarding requirement of 50% marks in graduation and experience of working in Central/State Government Schools are laid down in Appendix 'B' to the Punjab State Elementary Education (Teaching Cadre) Group C Service Rules 2018. The petitioner did not file any petition earlier challenging the University Grants Commission Guidelines and the constitutional validity of the above said Rules. Even in the present petition the petitioner has merely challenged the selection list of Centre Head Teacher in physically handicapped category dated 04.09.2019 and list of rejected candidates in Centre Head Teacher dated 17.08.2020 without challenging the constitutional validity of the Punjab State Elementary Education (Teaching Cadre) Group C Service Rules 2018 which prescribed the eligibility conditions. The petitioner having participated in the selection process without challenging the eligibility conditions prescribed by the Punjab State Elementary Education (Teaching Cadre) Group C Service Rules 2018 is estopped from challenging the same on rejection of her candidature in accordance with

the same. For judicial precedents in support of this view reference may be made to judgments of Hon'ble Supreme Court in *Madan Lal Vs. State of J. & K. : (1995) 3 SCC 486*; *State of Haryana and others Vs. Jagroop Singh 2003(2) SCT 226*; *Marripati Nagaraja Vs. Government of Andhra Pradesh and others : (2007) 11 SCC 522*; *Dhananjay Malik and others Vs. State of Uttaranchal and others : (2008) 4 SCC 171*; *Amlan Jyoti Borooah Vs. State of Assam : (2009) 3 SCC 227*; *K.A. Nagamani Vs. Indian Airlines and others : (2009) 5 SCC 515*; *Ramesh Kumar Vs. High Court of Delhi : 2010(3) SCC 104*; *Sudeepti Sharma Vs. State of Punjab : 2014 (1) SCT 451* and *Dr. Ashwani Kumar Dalal Vs. Central Administrative Tribunal, Chandigarh Bench, Chandigarh and others : 2010(4) SCT 753* and judgments of this Court in *Dhani Ram Chaudhary Vs. State of Haryana and another : 2005 (1) PLR 453* and *CWP No.16828 of 2013 (O&M) titled as 'Sarika Vs. State of Haryana and others' decided on 07.01.2020.*

In *Saroj Anand Vs. State of Punjab (Punjab and Haryana)(D.B.) : 1999(4) RSJ 588* as per the extract of the advertisement experience of teaching of the level of the post for which the applicant applied was to be considered which was required to be of Government/Aided/Recognized Institution. The petitioners challenged their non-selection on the ground that while assessing comparative merit of the candidates, the Departmental Selection Committee arbitrarily ignored the experience gained by them while working in schools affiliated to the Central Board of Secondary Education/the Punjab School Education Board. The respondents opposed the petitions

on the ground that experience in schools not aided or recognized was not considered but in the course of hearing admitted that in case of some applicants experience of working in schools affiliated to the Central Board of Secondary Education and the Punjab School Education Board, which were not aided or recognized, had been considered. The Division Bench of this Court while allowing the petitions observed as under:-

“We are also inclined to agree with the learned counsel for the petitioners that clause 10 of the advertisement issued by the Departmental Selection Committee should be interpreted in such a manner that the teaching experience gained by the candidates in the schools affiliated to the Central Board of Secondary Education and the Punjab School Education Board is counted for the purpose of assessing their merit. If a restrictive interpretation is given to the said clause, then it will become prone to the charge of discrimination. Otherwise also, there does not appear to be any cogent reason as to why the experience gained by a candidate by teaching in a school which fulfils the norms prescribed by the Punjab School Education Board or the Central Board of Secondary Education should not be counted for the purpose of assessing his/her merit. The learned Deputy Advocate General has not suggested that the schools which are affiliated to these Boards are in any manner inferior to Government aided schools. It is also not his submission that the teachers employed in these schools are less qualified than the teachers employed in the aided schools. Thus, there can be no justification to exclude the experience gained by the candidates by teaching in the schools recognised by the Central Board of Secondary Education and the Punjab School Education Board.”

In ***Neeraj Kumar Rai and others Vs. State of U.P. and others : 2017 AIR (SC) 3545*** the validity of notification dated 29th July, 2011 issued by the National Council for Teacher Education (NCTE) under Section 23 (1) of the Right of Children to Free and Compulsory Education Act, 2009 (RTE) was challenged on the ground of arbitrariness leading to violation of Article 14. Under the impugned

notification, requirement of 50% marks in graduation was made mandatory apart from other qualifications for appointment of teachers in schools. Hon'ble Supreme Court allowed the petitions observing as under:-

"6. It is submitted that similarly placed candidates approached the Rajasthan High Court by way of D.B. Civil Writ Petition No. 3964 of 2011 etc. titled Sushil Sompura and Ors. v. State (Education) and Ors. The Division Bench of the High Court in its judgment dated 20th May, 2011 upheld their stand and observed:-

"The relief prayed by the petitioners stands satisfied in view of the agreement expressed on behalf of NCTE to the effect that in case they have passed B.A., B.Sc., B.Com., Senior Secondary or its equivalent qualification and obtained admission in the requisite courses such as B.Ed., B.El.Ed., D.Ed. etc. as mentioned in para-1 of the Notification dated 23.8.2010, prior to the prescription of the minimum qualifying marks by NCTE in Bachelor's degree or Master's degree etc. or any other qualification equivalent thereto vide notification dated 27.9.2007 and 31.8.2009, the minimum qualification of having 45% or 50% marks, as the case may be, in the Bachelor's degree or Master's degree etc. or any other equivalent qualification, shall not be insisted as stated by Mr. Kuldeep Mathur, learned counsel appearing on behalf of the NCTE on being instructed by Regional Director, NCTE. Thus, the major grievance of the petitioners that their qualifications of B.Ed. B.El.Ed. etc. mentioned in para 1 are being derecognized with retrospective effect when there was no prescription of minimum qualifying marks of 45% or 50%, as the case may be, stands redressed in view of the statement made by learned counsel appearing on behalf of the NCTE. It has been further stated by the learned counsel for the NCTE that for the first time, de-novo qualifications were prescribed by the NCTE vide Notification dated 27.9.2007 and further, qualifications were prescribed vide Notification dated 31.8.2009 and in case admission has been taken by the incumbents in any of the courses of B.Ed. B.El.Ed. etc. as mentioned in para-1 of the Notification dated 23.8.2010 prior to aforesaid dates, they shall not insist for having 45% or 50% marks, as the case may be, in qualifying examination for aforesaid courses. Thus, respondents have to allow aforesaid incumbents in

TET examination, 2011."

(emphasis added)

7. Again, similar issue was raised before the High Court of Uttarakhand in Writ Petition No. 772(SS) of 2011 etc. titled *Baldev Singh and ors. v. State of Uttarakhand and ors.* The High Court in its judgment dated 20th August, 2011, after noticing the observations in the Rajasthan High Court judgment, observed:

"Apparently therefore the restriction of a minimum percentage of marks in graduation (45% or 50% as the case might be) is not going to be enforced by NCTE, as it is evident from the above paragraph, as these were the instructions of the Regional Director, NCTE to its counsel before the Hon'ble Rajasthan High Court. The counsel representing NCTE Mr. Sudhir Singh has fairly submitted before this Court that he also gets his instructions from the same Regional Director, NCTE, yet there are no such instructions with him. That being the factual position, we leave it at that.

However, even assuming for the sake of argument that the above decision of the Hon'ble Rajasthan High Court does not help the case of the petitioners, yet this Court is of a considered view, as it has already been discussed in the preceding paragraphs, that such a restriction (of having minimum percentage in graduation) is both unreasonable, unjust and violative of Article 14 of the Constitution of India. Therefore, this Court declares such condition of asking a minimum percentage of marks in graduation from those candidates who are B.Ed. qualified in NCTE notification dated 23.8.2010 and subsequent State Government Order dated 29.4.2011 as violative of Article 14 of the Constitution of India. Further this Court directs the respondents to permit the petitioners to appear in TET examination treating them to be qualified under Clause 3 of the notification dated 23.8.2010 and State Government Order dated 29.4.2011."

8. Mr. AS Nadkarni, learned Additional Solicitor General, appearing for the NCTE fairly stated that the appellants may be treated at par with those covered by the Rajasthan and Uttarakhand High Courts judgments which have been accepted by the NCTE.

9. In view of fair stand of learned Additional Solicitor General and the view of Rajasthan and Uttarakhand High Courts, we do not find any reason to deny similar relief to the appellants. No doubt, as rightly held by the High Court the NCTE ought to have issued a clarification by way of a supplementary notification but the NCTE may now do so within one month from today. Accordingly, we direct that

if the appellants or any other similarly placed persons are entitled to any further relief in terms of judgments of Rajasthan and Uttarakhand High Courts, they will be at liberty to put forward their claim before the concerned authorities who may take a decision thereon in accordance with law within one month. We have not examined any such claim in these proceedings except what has been stated herein above.”

Since the facts of the present case are evidently different as constitutional validity of the Punjab State Elementary Education (Teaching Cadre) Group C Service Rules 2018 prescribing eligibility conditions regarding requirement of 50% marks in graduation and experience of working in Central/State Government Schools as laid down in Appendix 'B' to the same has not been challenged, observations made by Hon'ble Supreme Court in ***Neeraj Kumar Rai and others Vs. State of U.P. and others : 2017 AIR (SC) 3545*** in the context of notification dated 29th July, 2011 issued by the National Council for Teacher Education (NCTE) under Section 23 (1) of the Right of Children to Free and Compulsory Education Act, 2009 and Division Bench of this Court in ***Saroj Anand and another Vs. State of Punjab and others : 1999 (4) RSJ 588*** in the context of clause 10 of the advertisement which required experience of Government/Aided/Recognised Institution are not applicable to the facts of present case and are not of any help to the petitioner.

In ***CWP 25534-2016 titled as Mangat Singh and others Vs. State of Punjab and others decided on 03.02.2020*** the grievance of the petitioners was with regard to there being no selection process/appointment during the period 2006-2016 which fact was not in dispute. The candidates who intended to be appointed against the post of Multipurpose Health Worker (Male) claimed that they had lost the

chance for applying/participating in the selection process. In such peculiar circumstances the petitioners approached this Court with a prayer for relaxation in the upper age limit for appointment to the post of Multipurpose Health Worker (Male), as advertised. By noticing these facts the petitions were allowed by a Coordinate Bench of this Court observing as under:-

“In these circumstances, this Court is of the opinion that the respondents should consider the prayer of the petitioners sympathetically and if some force is found therein, which would justify granting relaxation in the upper age limit, the said decision be taken within a period of four weeks from today.

The decision so taken be conveyed to the petitioners and in case, the request of the petitioners is accepted, further steps be taken in accordance with law.”

No principle of law that the respondents would be bound to give relaxation in age in such an eventuality was laid down in ***CWP 25534-2016 titled as Mangat Singh and others Vs. State of Punjab and others decided on 03.02.2020*** and observations made therein are not of any help to the petitioner. The petitioner did not make any representation or file any petition challenging upper age limit of 47 years prescribed in respect of applicants for posts reserved for handicapped category at the time of applying for the post or at any time thereafter before participating in the selection process on the ground of advertisement of posts after long period of 7-10 years. The petitioner is estopped from challenging the eligibility conditions and rejection of her candidature after participating in the selection process. Further, any such further relaxation in age under rule 19 of the Punjab Civil Services (General and Common Conditions of Services) Rules, 1994 could be given before and not after conducting of the selection process and that

too not to the petitioner alone but to all similarly placed applicants.

Even though the petitioner has claimed by making reference to her application (**Annexure P-4**) that the petitioner had experience of working in Government School for 12 years 9 months but the petitioner has not attached any documents with the petition in support of her claim.

In the present case the petitioner did not have 50% marks in graduation, experience of teaching in Central/State Government School and was overage being aged 49 years (two years more than upper age limit of 47 years with ten years relaxation on the prescribed age of 37 years) and the petitioner was not eligible to apply for the post. Therefore, rejection of the candidature of the petitioner can not be said to be arbitrary or illegal and the petitioner is not entitled to any relief as prayed for.

In view of the above discussion the petition being devoid of any merit is hereby dismissed.

24.09.2020

Vinay

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No