

(1)

CWP-17465-2013 &
CWP-18487-2013

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 14th January, 2020

CWP-17465-2013

Sanjiv Kumar

...Petitioner

Versus

State of Punjab & others

...Respondents

(2)

CWP-18487-2013

Prashant Arora

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Gagneshwar Ahluwalia, Advocate
for the petitioner in CWP-17465-2013.

Mr. Vikram Bali, Advocate
for the petitioner in CWP-18487-2013.

Mr. Charanpreet Singh, Asstt. A.G., Punjab
for the respondents.

AUGUSTINE GEORGE MASI, J. (ORAL)

By this order, I propose to dispose of CWP-17465-2013, titled as 'Sanjiv Kumar Vs. State of Punjab & others' and CWP-18487-2013, titled as Prashant Arora Vs. State of Punjab & others' as prayer made by the petitioners in these writ petitions are identical and they are seeking writ in the nature of mandamus directing the respondents to appoint them against the vacant posts of ETT, which were initially in the Zila Parishad, but has

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now been merged with the Department of Education, Punjab and the Appointing Authority of the ETT teachers is the District Education Officer (Elementary).

2. Briefly, the facts are that an advertisement was issued in the month of June, 2007 (Annexure P-1), whereby 168 seats of ETT teachers in District Amritsar, were advertised. It is, in pursuance to this advertisement, that the petitioner had applied but prior to the declaration of result, district Amritsar was bifurcated and out of which, district Tarn Taran was carved out vide notification dated 23.05.2007. Out of the advertised posts, 83 posts were shifted to district Tarn Taran. Result of the selection was declared and these 83 posts of district Tarn Taran were filled-up. Petitioner in CWP-17465-2013 had obtained 120.06 marks, whereas, petitioner in CWP-18487-2013 secured 143.90 marks. Petitioners were initially although higher in merit than the last selected candidate but were not considered eligible on the ground that the diploma which had been obtained by them was not recognized by the National Council for Teacher Education. The said issue stands settled by issuance of a notification dated 23.08.2010 (Annexure P-2) granting recognition to the diploma which was issued to the petitioners holding all the candidates with that qualification to be eligible for consideration for appointment to the posts of ETT. One of the writ petitions where such situation had arisen was considered by this Court i.e. CWP No.9123 of 2009, titled as 'Mahesh Kumar Vs. State of Punjab & others', decided on 14.09.2010 (Annexure P-3), whereby it was held that the diploma, which was obtained by the petitioner therein and whose eligibility

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was questioned by the respondents, was declared eligible and the impugned order set aside. Petitioners had also approached this Court by filing these writ petitions, whereby directions were issued to consider the claim of the petitioners in the light of *Mahesh Kumar's* case (supra) leading to the passing of the order by the then Director, Rural Development and Panchayat Department, Punjab that the petitioners cannot be appointed in the light of the fact that the posts are not available against which they could be so appointed. This led the petitioners to approach this Court by filing these writ petitions. Petitioner in CWP-17465-2013 has obtained information under the Right to Information Act, 2005, wherein, details with regard to the information received indicated that the Zila Parishad, Tarn Taran did not issue any advertisement for filling-up 168 posts and the merit list prepared by Zila Parishad, Amritsar, in pursuance to the advertisement issued in the month of June, 2007, 83 posts of ETT teachers were filled by the Zila Parishad Tarn Taran and no seat of Zila Parishad, Tarn Taran, was transferred to the Zila Parishad, Amritsar. 663 posts of EET teachers were transferred from the Zila Parishad, Amritsar to Zila Parishad, Tarn Taran, on carving out of district Tarn Taran and since all 83 posts were filled-up, the petitioners were denied appointment despite they being higher in merit. It may be added here that the petitioners belong to the general category and the last selected candidate with ETT qualification, who has been appointed, had obtained 103.53 marks.

3. The stand of the respondents is only limited to the extent that 83 posts, which were transferred to Zila Parishad Tarn Taran, stand filled

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and there is no vacancy against which the petitioners could be appointed. The facts with regard to the petitioners being higher in merit and there being a common merit list for district Amritsar, from which the appointments were made, has not been disputed. The plea primarily which was taken was with regard to the diploma which the petitioners possess, which was stated to be not recognized by the National Council for Teacher Education and therefore, there was no question of selection of the petitioners as the notification recognizing the diploma obtained by the petitioners came on 28.03.2010, whereas the selection had taken place in the year 2007.

4. As regards the judgment passed by this Court in *Mahesh Kumar's* case (supra), the stand of the respondents is that the termination of the services of the petitioner had taken place on the ground that the diploma possessed by Mahesh Kumar, as of the petitioners, was not recognized and equivalent to ETT. It has further been stated that he was duly selected and therefore, his service was terminated on the ground that he being not eligible, whereas in the case of the petitioners, they were not at all selected and from the very outset, they have been denied the appointment despite the fact that they had obtained a particular merit. Since they did not possess the requisite qualification, there is no question of appointing the petitioners. It is, therefore, asserted that these writ petitions deserve dismissal. He, however, could not deny the fact that the posts of ETT teachers are still lying vacant as of today.

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

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case.

6. The facts as recorded above are not in dispute as is apparent from the information which has been received by the petitioner under the Right to Information Act, 2005. The advertisement, which has been issued, was for the district Amritsar, of which Tarn Taran was a sub-division. It is subsequent to the issuance of the advertisement but prior to the finalization and declaration of the result of the selection that district Tarn Taran was carved out of district Amritsar. Merit list which has been prepared in pursuance to the advertisement pertains to district Amritsar including district Tarn Taran. There was no separate merit list prepared for districts Amritsar and Tarn Taran. Admitted is the position with regard to the fact that the merit list of district Amritsar was taken to be the basis for selecting and appointing the candidates to the post of ETT teachers. The primary reason, which appears to be for non selecting and appointing the petitioners is that the diploma which the petitioners possessed i.e. Diploma in Special Education was not duly recognized by the National Council for Teacher Education. As per the notification dated 23.08.2010 (Annexure P-2), the diploma which had been obtained by the petitioners was recognized for all intents and purposes in the light of the Clause (2) of the said notification, which reads as follows:-

“2. Diploma/Degree Course in Teacher Education:-

For the purpose of this Notification, a diploma/degree course in teacher education recognized by the National Council for Teacher Education (NCTE) only shall be

considered. However, in case of Diploma in Education (Special Education) and B.Ed. (Special Education), a course recognized by the Rehabilitation Council of India (RCI) only shall be considered.”

7. Perusal of the above clause would show that the diploma, which has been recognized earlier by the Rehabilitation Council of India, was ratified by this notification on 23.08.2010. This was not a recognition, which has been conferred upon the diploma for the first time, rather it stood recognized from the date, the same was recognized by the Rehabilitation Council of India. It is not in dispute that at the time when the selection was made, the diploma which the petitioners had obtained stood duly recognized by the Rehabilitation Council of India. It, therefore, can be said that the notification dated 23.08.2010, had acknowledged and accepted a fact that the diploma obtained by the petitioners has conferred eligibility for appointment to the post of ETT. This aspect is further clear from the judgment passed by this Court in *Mahesh Kumar's* case (supra) where, the termination of service of the petitioner therein, who has been appointed, possessed the same qualification as the present petitioners, stood set aside by this Court in the light of the notification dated 23.08.2010.

8. The petitioners, therefore, having been held eligible as above, and admittedly higher in merit than the last selected candidate, who had obtained 103.53 marks, whereas the petitioners have obtained 120.06 marks and 143.90 marks respectively, it can without doubt be said that the petitioners have wrongly been denied the appointment to the post of ETT.

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9. Counsel for the petitioners submit that the petitioners would give up their right for monetary benefits for the period they have been denied the appointment.

10. Keeping in view the above fact, the prayer made by the petitioners in the writ petitions is allowed. Petitioners are directed to be appointed to the post of ETT teacher with effect from the date the last selected candidate with 103.53 marks was appointed. They shall, however, be entitled to the notional and consequential benefits but no actual financial benefits till today.

11. Direction is issued to the Director, Public Instructions (Elementary Education), Punjab, to ensure that the appointment letters to the petitioners are issued either by himself or by the Competent Authority of the Department of Education, Punjab, within a period of one week.

12. Copy of this order be given **dasti** to the counsel for the parties under signatures of the Bench Secretary of this Court.

(AUGUSTINE GEORGE MASIH)
JUDGE

14th January, 2020
Harish

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes