

CWP-23575-2015 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-23575-2015 (O&M)

Date of Decision: 10th January, 2020

Amit Kataria & others

...Petitioners

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.K. Bawa, Advocate,
for the petitioners.

Ms. Anu Pal, DAG, Punjab.

Mr. Vipin Mahajan, Advocate
for respondents No.4, 6, 9 to 13.

Mr. R.S. Bajaj, Advocate
for respondents No.5 and 8.

None for respondent No.7.

AUGUSTINE GEORGE MASIH, J.

CM-8576-CWP-2019

Experience certificates as well as investigation forms of the
selected candidates are taken on record as Annexure P-15 (colly), subject to
all just exceptions.

Application stands disposed of.

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In the present writ petition, petitioners have challenged the
selection and appointment of the candidates including respondents No.4 to

13, who did not possess the experience certificates duly countersigned by the District Education Officer (Secondary Education) concerned prior to 27.11.2013, which is the extended last date of submission of the application forms for the post of Head Masters/Head Mistresses as per the terms of the advertisement issued by the respondents in the month of July, 2013 (Annexure P-11 colly).

2. Briefly, the facts of the case are that in the month of July, 2013, Chairman-cum-Principal Secretary, Punjab School Education Department Recruitment Board – respondent No.3 issued an advertisement inviting applications to fill-up 264 posts of Head Masters/Head Mistresses on contract basis. The last date of submission of application forms duly filled in was originally 31.10.2013, which was extended upto 27.11.2013 by way of issuance of a corrigendum (Annexure P-11 colly). Out of these 264 posts, 132 belonged to the reserved categories and the remaining were open. Requisite educational qualifications and experience were laid down therein including the criteria for selection apart from other terms and conditions. One of the requirements was experience. In Clause 8 of the advertisement, procedure for selection was laid down. As per the criteria laid down, firstly the provisional merit list was to be prepared of the candidates, thereafter, three times candidates of the posts were to be called for scrutiny and after that, they were to be called for interview before the Selection Board. After the interview, final merit list was to be published. General conditions were mentioned in Clause 9 of the advertisement, Sub Clause 4 thereto dealt with the posts of Head Master. Experience to be reckoned was provided for. The

original experience certificate as given in Annexure 1 appended along with the advertisement was to be produced at the time of scrutiny. The experience certificate was required to be countersigned by the District Education Officer (Secondary Education) of the concerned district. As per Sub Clause 11, it was provided that the candidate must fulfill all the terms and conditions before the last date of submission of the applications. Clause 15 mandated a candidate to bring all his original certificates of education/provisional qualification, experience and category etc., along with self attested copies thereof, which must be issued before the last date of applying. It is specifically mentioned that the certificate issued after the last date of applying would not be considered. Sub Clause 18 required that any candidate, who failed to produce the original certificates of his qualification and experience etc. at the time of scrutiny would not be entitled for appointment and the candidate lower in merit than him would be considered for that post.

3. Petitioners No.1 and 2 belong to the general category, whereas petitioner No.3 belongs to the backward class category. Petitioners being eligible and qualified submitted their applications for appointment to the post of Head Masters/Head Mistresses before the cut off date. They were called for counselling/interview in the month of January, 2014. After the counselling/interview, names of the petitioners figured in the tentative merit list, which was declared on 02.12.2013. There was no objection mentioned against the names of the petitioners with regard to their qualification, experience or any other condition, however, in the said list, apart from the

others, names of respondents No.4 to 13 figured with an objection raised that their experience certificates have been issued after the last date of submission of applications. The relevant pages pertaining to the petitioners and the private respondents have been appended as Annexure P-12. Thereafter, the final select list was published in the month of October, 2014, where the names of the private respondents figured. Copy of the select list has been appended as Annexure P-13.

4. Petitioners filed CWP No.23026 of 2014, titled as 'Amit Kataria & others Vs. State of Punjab & others', which was dismissed as premature by this Court vide order dated 12.11.2014 (Annexure P-14) as by that time, only offer of appointment had been made. Liberty was granted to the petitioners to approach this Court when appointments are made and in case, they felt aggrieved. Copies of the appointment letters of the private respondents have been appended as Annexures P-1 to P-10.

5. Aggrieved by the action of the respondents in issuing appointment letters to the ineligible candidates, petitioners have approached this Court by filing the present writ petition asserting that the private respondents and other similarly placed candidates, who did not possess the requisite qualification and all other conditions before the last date of submission of the application form i.e. 27.11.2013 being violative of the advertisement, their selection and appointment cannot sustain. It has further been stated that all the certificates which were required to be submitted at the time of scrutiny must have been issued prior to the last date of submission of the application, as mandated under Clause 9 Sub Clause 15 of

the advertisement, which further clarified that no certificate issued after the last date of submission of the applications would be accepted. It has also been asserted that despite there being objection raised at the time of scrutiny, which is apparent from the list (Annexure P-12) with regard to the eligibility of the private respondents and similarly placed persons, the respondents have arbitrarily, illegally and without any authority proceeded to accept the said certificates, which is impermissible in law being violative of the judgment of the Hon'ble Supreme Court in **Ramakichenin Vs. Union of India** 2008 (1) SCT 17, wherein, it has been held that the condition of advertisement cannot be altered or changed and the same must be read as it is and even the Court cannot add words to the advertisement. It has also been asserted that in the advertisement, which has been issued, there is no power conferred on any authority for relaxation in the conditions advertised. It is submitted that relaxation, if exercised in favour of the candidates, who did not fulfill the conditions of the advertisement, would be violative of the judgment passed by the J&K High Court in **Mohammed Maqbool Pandit Vs. Chairman Recruitment Board** 1981 (1) SLR 490.

6. After notice having been issued, reply to the writ petition has been filed, wherein, the facts as stated by the petitioners and recorded above have not been disputed by the official respondents as well as private respondents, however, the only explanation which has been submitted by them is that the experience certificates were issued before the last date of submission of the applications i.e. 27.11.2013 but the same have been countersigned by the concerned District Education Officer (Secondary

Education) subsequent to the cut off date. It has been asserted that the official respondents decided to consider the claim of the private respondents on the ground that the experience certificate was issued by the concerned schools before the cut off date for the posts in question for appointment.

7. Learned counsel for the petitioners has, on the basis of the pleadings, put forth his submission by asserting that the selection and appointment of the private respondents is violative of terms and conditions of the advertisement especially Clause 9 Sub Clause 15 of the advertisement. He has further asserted that in the absence of any power of relaxation in the advertisement, such relaxation as has been granted to the private respondents for consideration of their experience certificates, which had not been countersigned by the Competent Authority prior to the last date of submission of applications i.e. 27.11.2013, being violative of the terms and conditions of advertisement, cannot sustain. Prayer has, thus, been made for quashing the selection of the private respondents and similarly placed candidates who have been selected and appointed.

8. On the other hand, learned counsel for the State has asserted that the private respondents and other similarly placed selected candidates did possess the requisite qualifications for appointment to the post of Head Masters/Head Mistresses. Their experience certificates have been issued by the concerned schools prior to the last date of receipt of the applications but merely because the same have been countersigned by the District Education Officer (Secondary Education) after the last date of submission of the applications, would not render the experience certificates unacceptable. In

any case, she asserts that the Competent Authority having realized that the experience certificates were issued in time, took a decision to accept such experience certificates. She asserts that at the time of counselling/interview, the original certificates were submitted by these candidates and therefore, they have rightly been selected and issued appointment letters.

9. Counsel for the private respondents have added that the delay, if any, has occurred at end of the concerned District Education Officer (Secondary Education) while countersigning the experience certificates, for which the private respondents cannot be held responsible and they should not suffer because of the same. The procedural and official delay in the office of the District Education Officer (Secondary Education) cannot be used to put the selected candidates at disadvantage, who admittedly are meritorious and higher in merit than the petitioners. Accordingly, prayer has been made for dismissal of the writ petition.

10. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the pleadings and the relevant annexures, which have been referred to by them.

11. The facts are not in dispute and therefore, for brevity, are not being restated here. The admitted position on the basis of the pleadings is that the basic document which not only provides the educational qualifications and experience which a candidate must possess for applying to the post of Head Master/Head Mistress was the advertisement (Annexure P-11 colly) but it also specified and laid down the procedure which was required to be followed for the selection including the conditions of

eligibility, various stages of selection and the steps which had to be taken therein. The relevant clauses for the purpose of decision of this case, therefore, need to be referred to at this stage as it is the advertisement, which is the *magna carta* for the purpose of determining the eligibility of the candidates for selection and appointment to the posts advertised.

12. Clause 9 of the advertisement deals with the general conditions, which lays down that the posts are on contract basis initially for one year, which can be extended for next year considering the character and work of the candidate. Reservation policy as per the instructions of the Punjab Government would apply and the benefit of reservation would only be restricted to the permanent residents of Punjab. Experience for the posts of Head Masters has been provided for in Sub Clause 4 of Clause 9, which reads as follows:-

“4. For the post of Head Master:-

Experience of Government, Government aided, recognized and affiliated from CBSE/ICSE/PSEB and any other board equivalent to aforesaid school for teaching from 6th to 12th class as Master/Mistress or Lecturer School cadre would only be considered. Original experience certificate as given in Annexure-1 must be taken along with at the time of scrutiny.

Regarding countersigning of experience certificate.

i. **Government, Government aided, recognized and affiliated schools (CBSE/ICSE/PSEB and any other**

board equivalent to aforesaid) experience certificate must be countersigned by District Education Officer (SE) of concerned district.

ii. Experience would be considered only after B.Ed/M.Ed.

iii. It should be clarified in the experience certificate that the candidate had worked against which post.

iv. The school must be recognized as middle/high/senior secondary level for the time for which experience issued.”

13. Sub Clause 15 of Clause 9 of the advertisement is the one which is pressed into service by the petitioners to assert that the candidates who have been selected and issued appointment letters do not fulfill the terms and conditions laid down therein and thus, the selection and appointment of the private respondents and similarly placed candidates is unsustainable and therefore, the same is reproduced herein below as follows:-

“15. Candidate would bring all his original certificates of education/profession qualification, experience and category etc. with him with self attested copies in a file.

All these documents must be issued before last date of applying. Certificate issued after last date of applying would not be considered.

14. In Sub Clause 18 of Clause 9 of the advertisement, it has been

stated that in case the candidate failed to produce the original certificate of his qualifications etc. at the time of scrutiny, he would not be entitled for appointment and the candidate junior to him would be considered for that post. Sub Clause 18 is reproduced below:-

“18. If any candidate failed to produce original certificate of his qualification etc. at the time of scrutiny, then he would not be entitled for appointment and junior candidate to him would be considered for that post.”

15. A perusal of the above reproduced sub clauses would show that all the documents such as certificates of education/professional qualification, experience and category etc. must be issued before the last date of applying i.e. 27.11.2013. It has been specifically stated therein that the certificate issued after the last date of applying would not be considered and the candidate lower in merit to him would be considered for that post. Perusal of the advertisement would show and it is not in dispute that there is no condition or clause which confers any power of relaxation of any of the terms and conditions of the advertisement upon any of the authorities.

16. In the light of the above, the terms and conditions as laid down in the advertisement are sacrosanct and cannot be in any manner changed or violated as it is admitted that none of these terms and conditions have been changed by way of issuance of any corrigendum after the issuance of corrigendum for extension of last date of submission of the applications. If that be so, no violation of the terms and conditions of the advertisement is permissible in law as has been laid down in *Ramakicheni's* case (supra),

where it has been held that the conditions of advertisement must be read as it is and nothing can be added or subtracted therefrom, even the Court cannot add words to the advertisement.

17. The admitted facts are that as per Clause 9 Sub Clause 15, a candidate was mandated to possess not only the qualifications prior to the date of submission of the application fixed in the advertisement/corrigendum but to even possess the certificates issued to him/her by the said date. It was specifically mentioned that any document/certificate issued after the last date of submission of the application would not be considered. If that be so, the candidate would be rendered ineligible for consideration for appointment to the post he/she applied for.

18. In the present case, since experience is an essential qualification, non possession of an experience certificate duly countersigned by the concerned District Education Officer (Secondary Education) prior to the last date of submission of the application i.e. 27.11.2013 would render the candidate ineligible for consideration for selection. The plea, which has been taken by the respondents for taking into consideration the experience certificates of the private respondents and similarly placed other candidates is that the experience certificate has been issued by the schools concerned prior to the last date of submission of the applications and the same have been countersigned at a subsequent date, which cannot render them ineligible as impermissible.

This contention of the respondents cannot be accepted in the light of fact that the experience a candidate is mandated to possess is

provided for in Clause 9 Sub Clause 4 which makes it clear that the experience certificate must have been countersigned by the concerned District Education Officer (Secondary Education) without which, it cannot be considered. Thus, an experience certificate which although may have been issued prior to the last date of submission of the applications but without it being countersigned cannot be reckoned and accepted as an experience certificate for the purpose of consideration for selection in pursuance to the advertisement (Annexure P-11 colly). The stand, thus, taken by the respondents cannot be accepted.

19. Another argument which has been raised by the private respondents is that the experience certificates have been duly issued by the concerned schools to the said respondents, which were submitted to the office of the concerned District Education Officer (Secondary Education) and the delay, if any, had occurred in his office, which cannot be attributed to the private respondents and they cannot be penalized for the same, which argument cannot be accepted in the light of the fact that the terms and conditions of the eligibility, selection process and other conditions were known to them from the date of initial advertisement, which was issued in the month of July, 2013. The last date for submission of the application had also been extended by way of a corrigendum by extending it upto 27.11.2013. There was ample time, therefore, available with the private respondents/similarly placed employees to get prepared their experience certificates especially when they were aware of the fact that it was a part of their essential qualification for appointment to the post of Head

Masters/Head Mistresses, for which posts, they had decided to apply for. It was well known to the private respondents that they were required to possess the certificates prior to putting forth their application for appointment. It was clearly mentioned in the advertisement that the certificates/documents should have been issued before the last date of applying i.e. 27.11.2013 but still the private respondents waited for the same till the end. Apart from this, nothing has come on record, which would indicate the date of submission of the experience certificates by the private respondents in the office of the concerned District Education Officer (Secondary Education). In the absence of said date, the submission/argument of these respondents cannot be even considered to the extent of interfering especially in the light of the fact that there was no clause in the advertisement for relaxation of any of the conditions stipulated therein.

20. It may be added here that it is not in dispute that there is nothing in the advertisement which would indicate the power of relaxation with any of the authorities relatable to the terms and conditions of the advertisement, what to say of any specific reference for relaxation. In the absence of such a power being available, the jurisdiction exercised by the official respondents for taking into consideration the experience certificates of the private respondents and similarly placed candidates, cannot sustain.

21. The conclusion as has been drawn above with regard to the requirement of possessing the certificates as referred to in clause 9 sub clause 15 of the advertisement is not only provided for therein but is deductible from clause 9 sub clause 11, which requires a candidate to fulfill

all the terms and conditions prior to applying for a particular post. Similarly, in clause 9 sub clause 18, if a candidate fails to produce any of the original documents at the time of scrutiny, he would not be entitled for appointment. Certificate/document, therefore, are the ones which are provided for in sub clause 15 of clause 9, which is clarified to be those, which must have been issued before the last date of applying.

22. In the light of the above, the action of the respondents in taking into consideration the experience certificates, which have been produced by the private respondents and similarly placed candidates, which are countersigned after the last date fixed for submission of the applications is violative of the terms and conditions of the advertisement rendering the selection and appointment of such candidates illegal being in violation of the terms and conditions as laid down in the advertisement (Annexure P-11 colly).

23. Accordingly, the writ petition is allowed and selection and appointment of respondents No.4 to 13 along with the candidates, who were not in possession of the experience certificate duly countersigned by the District Education Officer (Secondary Education) concerned prior to the last date of submission of the applications fixed i.e. 27.11.2013, is hereby declared illegal and quashed.

24. Direction is issued to the official respondents to issue show cause notices to ineligible candidates as held above seeking their reply and action be taken against them. The claim of the petitioners along other eligible candidates, as per merit list, which is to be recast by excluding the

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candidates who do not possess the experience certificate duly countersigned prior to the last date of submission of the applications i.e.27.11.2013, be considered and appointment letters issued to them. The said process be completed at the earliest but not beyond the period of three months from the date of receipt of certified copy of this order.

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

CM-1263-CWP-2018

In the light of the disposal of the main writ petition, the present application has been rendered infructuous.

Disposed of as such.

10th January, 2020
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No