

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

214

Civil Writ Petition No.8666 of 2014

Date of Decision: March 5th, 2020

Parveen Kumar and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. R.K. Arora, Advocate
for the petitioners.

Mr. Charanpreet Singh, Assistant Advocate General, Punjab.

Respondent No.6 *ex parte*.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioners have approached this Court challenging the letter/order dated 12.02.2014 (Annexure P-1) passed by the Government of Punjab, Department of Education, whereby after taking over the control of the S.D. Government High School, Maur Mandi, Bathinda, by the State Government, it has been decided that only those employees of the school can be taken into Government service, who are working against the aided posts. The employees working against the un-aided posts cannot be absorbed into Government service, because of the said decision petitioners, who were working with the managing committee of the S.D. Government High School, Maur Mandi, District Bathinda, against the un-aided posts, have approached this Court by asserting that they would be ousted from service.

2. When the case came up for hearing before this Court on 07.05.2014, following order was passed:-

“Learned counsel for the petitioners submitted

that S.D. Government High School (Boys), Maur Mandi, District Bathinda, was taken over by the Government, vide memo dated 29.04.2013. It was stated in the said communication that the staff working against the Aided posts in the school, will be taken into the service of the Government on ad-hoc basis whereas for the staff working against the un-aided posts, the decision will be taken as per policy. In the policy issued by the Government on 09.04.1975 for taking over privately managed schools, there is no distinction made with regard to the aided or un-aided staff in any school taken over by the Government. It is simply said that the Government shall not be bound to recruit the members of the staff in Government service however, it may retain such members of staff as are considered suitable. The petitioners have been working on teaching and non-teaching posts in the school. The claim of the absorption of the petitioners who were working against un-aided posts has been simply rejected for the reason that they were not working against aided posts. The matter has not been examined in the light of the policy framed by the Government. In the case in hand the school which is running for the last more than 60 years started receiving grant-in-aid from the Government in the year 1967. No fresh recruitments on aided posts were made for quite some time as there was ban. The management had to engage staff on their own to continue teaching activity.

Notice of motion for 28.07.2014.

In the meantime, status quo regarding service of the petitioners shall be maintained.”

3. Reply to the writ petition has been filed, wherein the stand taken by the respondents is that the Government has taken a conscious decision to take over the S.D. Government High School, Maur Mandi, District Bathinda, along with the building and staff as per the

Punjab Government Policy/Government Instructions dated 09.04.1975 (Annexure P-3). In this regard, reference has been made to the decision dated 29.04.2013 (Annexure R-1). For supporting the decision which has been taken by the respondents, reliance has been placed upon condition No.5 of the above referred to Policy/Government Instructions dated 09.04.1975. For the decision of the present writ petition, the said paragraph/clause/condition of the Notification dated 09.04.1975 (Annexure P-3) would be essential, which reads as follows:-

*“5. Government will not be bound to recruit and members of the staff in Governemtn (**sic**) service. Government may retain only such members of staff as are considered suitable by the appropriate recruitment selection agency of the Government. In the case of personnel like Headmaster/Lecturer, they may be taken over in the same capacity in Government service only, if they fulfill the academic qualifications and minimum teaching experience, as it normally possessed by the holder of that post promoted in Government service. In case the Headmaster/Lecturer does not come upto this level, he may be taken over as master, Their enrolments, howe4ver approved by the Department at the time of taking over may be protected but the scale of pay will be the one for which he is considered suitable by the public service Commission/ Department Selection Committee. The date of entry into government service will determine their seniority. Taking over will not be effected till the necessary screening of the staff has been done by the recruiting/selection agency of the government and decision regarding their acceptance/rejection is taken.”*

4. Apart from that, clause Nos.6, 7 and 8 would also be relevant, which read as follows:-

“6. Only trained hands with satisfactory record of service will be taken over. No untrained teacher or any one whose record of service is found to be unsatisfactory will be taken over.

7. Such of the employees as are accepted for entry into government service, will be treated as fresh entrants and they will be placed at the bottom of relevant cadre of the post for which they are accepted in Government Service. No credit whatsoever of the previous service will be given.

8. Government will take no liability of any kind whatsoever on behalf of the Management of the school to be taken over.”

5. It is not in dispute that the services of the school had been taken over as per the resolution passed by the management of the school on 15.09.2012 (Annexure P-2). The Government of Punjab took a decision dated 06.12.2012 (Annexure P-3) to accept the said resolution. Decision with regard to the employees of the school had to be taken by the Government subsequently and it is in pursuance thereto, the said decision has been taken on 29.04.2013 (Annexure R-1). In the said decision dated 29.04.2013 (Annexure R-1), it was decided as follows:-

“In the light of decision taken in the meeting of Council of ministers, the approval to take over the S.D. High School, Maur Mandi as per policy of 1975 is granted on the following terms and conditions.

- 1. This school will be given the grade of Government High School (Boys) Maur Mandi.*
- 2. The girls studying in this school may be transferred*

to Government Senior Secondary School (Girls) Maur Mandi or in the schools nearer to them as per their convenience.

3. *In order to run the school properly, for the required posts, for the time being the vacant / additional posts available in the district are approved to be shifted temporarily.*
4. *After approval of the new posts the school will be given the permanent posts.*
5. *For the time being the staff working against the Aided posts in the school, will be taken into Government service on Ad-hoc basis.*
5. *Regarding staff working against the un-aided posts, later on separate decision, after considering all the aspects of the matter by the administrative Department, will be taken as per policy.*
6. *The name S.D. (Sanatan Dharam) will remain attached with the name of this school.”*

6. Perusal of the above decision would show that qua the staff of the school which was working against the aided posts, their services were to be taken over in the Government on *ad hoc* basis. Regarding staff working on the un-aided posts, later on a separate decision was to be taken as per the policy after considering all aspects of the matter by the Administrative Department. This decision of the Government is said to have been communicated to the Director Public Instructions (Secondary Education), Punjab, on 12.02.2014 (Annexure P-1), where without referring to the consideration with regard to the staff working against the un-aided posts, as per the policy decision of the Government, their services were said to be not absorbed.

7. This action of the respondents/State cannot be justified keeping in view its own decision dated 29.04.2013 (Annexure R-1), according to which the claim of the staff working against the un-aided posts were to be considered in the light of the policy decision dated 09.04.1975 (Annexure P-3) of the Government of Punjab. Nothing has been placed on record which would indicate that the claims of the the staff, who was working against un-aided posts, for absorption was ever considered by the department. A blanket decision has been taken without following the policy decision under which the management and the school was taken over. Para 5 of the policy dated 09.04.1975 (Annexure P-3) of the Government of Punjab clearly lays down this aspect, on which reliance has been placed by the State.

8. The decision dated 12.02.2014 (Annexure P-1), therefore, of the respondents, cannot sustain as regards the employees working against the un-aided posts are concerned. The said decision, therefore, qua this aspect stands set aside.

9. Let the respondents, on consideration of the claim of each of the employees, who are working against the un-aided posts, be considered as per the policy dated 09.04.1975 (Annexure P-3) within a period of three months from today.

10. The interim order which has been passed by this Court on 07.05.2014 shall operate qua the petitioners till a decision is taken by the competent authority with regard to the absorption or otherwise petitioners shall also be entitled to the remuneration/salary in pursuance to the order dated 07.05.2014, if already not paid till the date a decision is taken by the

competent authority with regard to the absorption or otherwise of the petitioners.

11. The writ petition stands disposed of in the light of the above.

March 5th, 2020
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No