

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

CWP-958-2021.

Date of Decision: January 29, 2021

SACHIN GARG AND ANOTHER PETITIONER(s)

Versus

STATE OF HARYANA AND OTHERS RESPONDENT(s)

AND

CWP-1444-2021

JOGINDER PAL AND OTHERS PETITIONER(s)

Versus

STATE OF HARYANA AND OTHERS RESPONDENT(s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Salil Dev Singh Bali, Advocate
for the petitioners in CWP-1444-2021.

Mr. Vikram Sheoran, Advocate
for the petitioners in CWP-958-2021.

Ms. Shruti Jain Goyal, D.A.G., Haryana.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to the outbreak of pandemic, COVID-19.

CWP-958-2021, titled ‘Sachin Garg and another Vs. State of Haryana and others’ and CWP-1444-2021, titled ‘Joginder Pal and others Vs. State of Haryana and others’ are taken up together for decision as they involve an identical issue.

Brief facts necessary for adjudication of matters are that advertisement dated 20.07.2006 (Annexure P-1) was issued by Haryana Staff Selection Commission (for short, 'the Commission') for selection to 816 posts of Art & Craft Teacher, category no.22. Thousands of posts in the School Education Department including post of PTI and Sanskrit Teachers were advertised alongwith. Last date of receipt of applications was 21.08.2006. Qualifications prescribed therein are a matter of record and are not in dispute. A public notice was thereafter published in newspaper on 12.06.2008, stating that on account of large number of applications received in response to advertisement dated 20.07.2006, pertaining to posts of DPE, Art & Crafts Teacher and Physical Training Instructor (for short 'PTI'), it was decided to hold a written test. Written test for recruitment to the post of Art & Craft Teacher was stated to be held on 13.07.2008. 25 marks were kept for viva voce. Total marks obtained in written test and viva voce, was to determine merit of the candidates in the category. Qualifying marks for different categories were provided. Written test was, however, cancelled before it could be held and a public notice dated 11.07.2008 was issued by the respondent-Commission, stating that it was decided to short list the candidates 8 times the number of vacancies in respective categories for interview on the basis of merit obtained in the academic qualifications. Minimum marks for each category was provided. However, before interview could take place, another public notice dated 31.07.2008 was issued by the Commission stating that on reconsideration of the matter in respect to three categories of posts mentioned above, it was decided to call all eligible candidates for interview, which was duly held. Result was ultimately

declared on 25.03.2010 mentioning the criteria adopted for selection to be 60 marks for academic qualification and 30 marks for interview.

Selection process for the post of PTI as well as of Art & Craft Teachers was challenged by unsuccessful candidates and a number of writ petitions were filed. Process of selection to the post of PTIs was decided on 11.09.2012 in CWP-15656-2010, titled ‘Sanjeev Kumar and others Vs. State of Haryana and others’. Same was upheld in LPA-1555-2012, titled ‘Vijay Kumar and others Vs. Sanjeev Kumar and others’, decided on 30.09.2013. The Hon’ble Supreme Court in Civil Appeal 2103 of 2020, titled ‘**Ramjit Singh Kardam and others Vs. Sanjeev Kumar and others**’, upheld the setting aside of selection of PTIs on 08.04.2020. Hon’ble Supreme Court observed that *“The learned Single Judge, however, did not issue appropriate consequential directions for holding the fresh selection. There was no defect in the advertisement dated 20.06.2006 and mode of selection as envisaged by public notice dated 28.12.2006. The arbitrariness crept thereafter from the stage of scrapping the written test scheduled to take place on 20.07.2008. The directions ought to have been issued to complete the process from that stage i.e. the stage of holding the written test. All the candidates who had applied for the post of PTI including those selected, ought to have been permitted to take the written test. We need to clarify that in the facts of the present case there was no requirement of fresh advertisement and inviting fresh applications. In the event fresh applications are called, large number of applicants who participated in the selection would have become over age. All the applicants who had applied in response to advertisement No.6 of 2006 had right to participate in selection as per criterion notified on 28.12.2006. The direction of learned Single Judge needs modification and clarification to the above effect.”*

Following directions were issued in **Ramjit's** case:-

- (i) *The Commission shall conclude the entire selection process initiated by the advertisement No.6 of 2006 as per criterion notified on 28.12.2006 i.e. holding objective type written test of 200 marks and viva voce of 25 marks. All the applicants who had submitted applications in response to the above advertisement including those who were selected shall be permitted to participate in the fresh selection as directed.*
- (ii) *The candidates who have been selected and have worked on the post of PTI shall not be asked to refund any of the salary and other benefits received by them as against their working on the posts. No refund shall also be asked from those candidates who after their selection worked and retired from service.*
- (iii) *The entire process be completed by the Commission within a period of five months from the date Commission starts working after the present lockdown is over, which was the time fixed by the learned Single Judge for completing the process.*
- (iv) *The costs imposed by the Division Bench in paragraph 54 of the judgment of the High Court are deleted except the costs imposed on the Commission.”*

Selection to the post of Art & Craft Teachers was also challenged and was set aside in CWP-18482-2010, titled ‘Suman Kumari

Vs. State of Haryana and others' and other connected cases, decided on 20.02.2015 while holding that:-

- i) The criteria, as was finally followed for the purpose of making selection, was never disclosed till such time the result was declared and in fact the criteria was changed.
- ii) **Initially the selection was to be made on the basis of written test and interview and later it was changed to interview and then to marks in academic qualification and interview.** (emphasis added)
- iii) There are basic defects in the process of selection from the very beginning as the respondent No.3-Commission had not been working as a multi member body and there was no decision by the Commission as such. The entire decision making was by the Chairman individually in consultation with the Secretary of the Commission.
- iv) **No criteria was laid down for selection before or immediately after the advertisement was issued, rather the criteria on the basis of which the selections were sought to be justified was tailor made to ensure selection of particular candidates.** (emphasis added)
- v) **Even the criteria for selection of different posts was fixed arbitrarily.** (emphasis added)

Direction was issued to the Commission to hold a fresh selection in accordance with law within a period of five months from receipt of certified copy of the order.

Said decision dated 20.02.2015 was upheld by the Division Bench of this Court in LPA 359-2015 (and other connected matters), decided on 10.11.2020. Decision of the Hon'ble Supreme Court in **Ramjit's** case was duly considered and found applicable. It is observed that no explanation was forthcoming to explain reasons for the different criteria

fixed on the same date for related petitioners. Reference was specifically made to the different criteria fixed for Lecturers in Economics, English, Geography, Hindi, History, Political Science, Punjabi and Sanskrit but a totally different one for the posts of Lecturers in discipline of Fine Arts, Home Science, Public Administration, Physics and Sociology. It is thus observed that selection of both PTI's and Art/Craft Teachers was processed in a similar fashion. It is in this context, it is observed that ***Ramjit's*** case is applicable. Division Bench of this Court directed completion of the selection process within five months i.e. the time fixed in decision dated 20.02.2015. Decision dated 10.11.2020 in LPA-359-2015 was upheld by the Hon'ble Supreme Court and SLP-14481-2020, titled 'Vijay Pal and others Vs. Mohan Lal and others alongwith connected Special Leave to Appeal Petitions were dismissed on 14.12.2020.

Petitioners in CWP-958-2021 had earlier challenged the selection process, which now stands finally decided up to the Hon'ble Supreme Court. Petitioners in CWP-1444-2021 are the successful candidates in the earlier selection, who are informed to have unsuccessfully challenged decision dated 20.02.2015 before the Division Bench of this Court.

Petitioners in both the present writ petitions have challenged advertisement dated 28.12.2020 (Annexure P-6), which has now been issued inviting applications for the posts of Art & Craft Teachers, on the ground that criteria mentioned therein is opposed to the judgment of the Hon'ble Supreme Court in ***Ramjit Singh Kardam's*** case (supra). It is vehemently argued that initial advertisement and criteria, which was fixed in the case of Art & Craft Teachers was that of awarding marks on the basis of educational

qualification and interview. There was no provision for the written test in so far as Art & Craft Teachers are concerned. Learned counsel refers to the judgment of Hon'ble Supreme Court in ***Ramjit Singh Kardam's*** case (supra) to submit that it has been directed that the entire selection process has to be carried out as per the criteria first published in respect to the selection and that selection process should be concluded as per the criteria notified on 28.12.2006. Learned counsel refer to an affidavit filed by the Secretary, Haryana Staff Selection Commission, Panchkula, before the Hon'ble Supreme Court in Ranjit Singh Kadam's case attached as Annexure P-6 with CWP-1444-2021 to submit that the criteria in so far as the Art & Craft Teachers is concerned was marks to be awarded on the basis of educational qualifications and for the interview i.e. 60 marks for the basic qualification and 30 marks for the interview. Learned counsel also refers to the judgment of Division Bench in LPA-359-2015, to submit that ***Ramjit Singh Kardam's*** case has been held to be squarely applicable in the present matter as well. It is thus prayed that public notice dated 28.12.2020 (Annexure P-6) issued for the post of Art & Craft Teachers be set aside being in violation of specific directions of the Hon'ble Supreme Court and selection should be carried out for the post of Art & Craft Teachers only on the basis of marks for educational qualification and interview, there should be no condition of a written test.

Though, notice of motion has not been issued but as advance copy of petitions has been supplied to the State, learned counsel for the state has appeared and opposed these writ petitions. Learned counsel for the State submits that the question sought to be raised in this writ petition has been

squarely dealt with firstly by the Single Bench and thereafter, by the Division Bench in detail. Furthermore, the said decisions have been upheld by the Hon'ble Supreme Court. Therefore, these writ petitions should be dismissed.

I have heard learned counsel for the parties at length and have gone through the file with their able assistance.

The factual position in so far as setting aside of the selection process qua the posts of Art & Craft Teachers, pursuant to advertisement No.6/2006 dated 20.07.2006 (Annexure P-1) issued by the Haryana Staff Selection Commission, is not in dispute. It is obvious that petitioners are seeking to re-agitate an issue, which has already been succinctly dealt with in the earlier decisions in the first round of litigation. Selection process had been found absolutely unfair and arbitrary. Learned Single Bench in decision dated 20.02.2015 in CWP-18482-2010, has observed as under:-

“In the present case, the process of selection started with the issuance of advertisement No. 6/2006 by the Commission on 20.7.2006. The last date for receipt of applications was 21.8.2006. Though it is claimed that the criteria for final selection was fixed on the last date fixed for receipt of applications, i.e., 21.8.2006, but the manner the same was fixed, as has been dealt with in the files maintained by the Commission, and the criteria produced before the court do not inspire confidence, rather, it goes to establish that the criteria was not fixed on that date. It was a tailor-made criteria for making selection of some candidates, who could otherwise not make to the select list. A notice was published in the newspapers on 12.6.2008 mentioning that in view of large number of applications received, the Commission has decided to hold written examination subject to final determination of their eligibility lateron.

.....

*It is not in dispute that the criteria, as was finally followed for the purpose of making selection, was never disclosed till such time the result was declared. In fact, as has already been noticed in preceding paragraph of the judgment, the criteria was changed. **Initially, the selection was to be made on the basis of written test and interview. Then it was changed to interview and later to marks in academic qualification and interview.** (emphasis added)*

.....

No criteria was laid down for selection before or immediately after the advertisement was issued, rather, the criteria, on the basis of which the selections are sought to be justified, was 'tailor-made' to ensure selection of particular candidates, as is evident from the marks awarded to the candidates in viva-voce. There was change of criteria after the process of selection was initiated.” (emphasis added)

The Division Bench in its decision dated 10.11.2020 in LPA-359-2015, dealt with the identical contention raised before it. Specifically argument on behalf of the selected candidates/appellants therein is noted in para 17 of the said decision as;

‘Further it was urged that the selection for the post of Art & Craft Teachers was made as per the original criteria, which was fixed on 21.08.2006 i.e. last date of submission of application and not on the criteria fixed later and therefore, case of the Art & Craft Teachers was distinguishable from the case of PTIs’.

Division Bench of this Court while negating this argument observed as under:-

“The primary argument raised by the learned counsel for the appellants is that in the present case, there is no malice involved because criterion was not changed. This argument, however, does not carry weight. In the present case of Art & Crafts Teacher, the

advertisement was issued on the same date as of PTIs i.e. 20.07.2006 with last date as 21.08.2006. Thereafter public notice was issued on 11/12.06.2008 by the Commission stating that it was decided to hold written test with 100 multiple choice of questions of 2 marks each and qualifying marks were mentioned. Further, candidates for three times number of vacancies would be called for interview and 25 marks were kept for viva-voce. This notice of 11/12.06.2008 was common for both PTIs and Art & Crafts Teacher.”

It was specifically observed that the chronology of events would show that both PTIs and Art & Craft Teachers’ selection was processed in a similar fashion and most of the public notices were the same and that there had been change in the criteria midway alike the PTIs selection process. Specific findings of the Single Bench in CWP-18482 of 2015 were upheld to the extent that

- i) The criteria, as was finally followed for the purpose of making selection, was never disclosed till such time the result was declared and in fact the criteria was changed.
- ii) **Initially the selection was to be made on the basis of written test and interview and later it was changed to interview and then to marks in academic qualification and interview.** (emphasis added)
- iii) There are basic defects in the process of selection from the very beginning as the respondent No.3-Commission had not been working as a multi member body and there was no decision by the Commission as such. The entire decision making was by the Chairman individually in consultation with the Secretary of the Commission.
- iv) No criteria was laid down for selection before or immediately after the advertisement was issued, rather the criteria on the basis of which the selections were sought to be justified was tailor-made to ensure selection of particular candidates. (emphasis added)

- v) **Even the criteria for selection of different posts was fixed arbitrarily.** (emphasis added)

A parallel was thus drawn between the selections of PTI's and Art & Craft Teachers and in said context it was observed that the judgment of Hon'ble Supreme Court in *Ramjit Singh Kardam's* case (supra) would apply in the present case. Categorical finding that initial selection in the case of Art & Craft Teachers was to be made on the basis of written test and interview and it was later changed to interview and then to marks in academic qualification & interview has attained finality. Decision dated 20.02.2015 in CWP-18482-2010 as well as decision dated 10.11.2020 in LPA-359-2015 have been upheld by the Hon'ble Supreme Court in SLP-14481-2020, titled 'Vijay Pal and others Vs. Mohan Lal and others'. Therefore, in the given factual matrix, it is not for this Court to juxtapose another interpretation at this stage.

No other argument has been raised.

Keeping in view the facts and circumstances, I do not find any ground whatsoever to interfere in the present writ petitions for setting aside public notice dated 28.12.2020. Writ petitions are accordingly dismissed with no orders as to cost.

29.01.2021
Sunil

(LISA GILL)
JUDGE

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