

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 11149 of 2020 (O&M)

Date of Decision: 06.04.2021

Dr. Kiran Mayee

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. R.K. Malik, Senior Advocate assisted by
Mr. Samrat Malik, Advocate, for the petitioner.

Mr. Hitesh Pandit, Additional Advocate General, Haryana.

Mr. Jagdish Manchanda, Advocate, for respondent No.3.

JASGURPREET SINGH PURI, J.

The present civil writ petition has been filed under Article 226 of the Constitution of India seeking a writ in the nature of certiorari to quash the decision dated 17.07.2020 (Annexure P-5) by which the additional charge of Director, State Council of Educational Research & Training, Haryana, Gurugram (hereinafter called as 'Director, SCERT, Haryana, Gurugram') has been ordered to be given to respondent No.3, with a further prayer to declare respondent No.3 to be not eligible for taking the additional charge of Director, SCERT, Haryana, Gurugram.

A brief factual matrix which has led to filing of the present petition is that the petitioner was promoted as Additional Director in the pay scale of schedule-I pay matrix of HSC (Revised Pay Scale) 2016 vide Annexure P-1 dated 28.12.2017. Thereafter, on 11.12.2019 vide Annexure P-2 the petitioner was given additional charge of Director, SCERT, Haryana, Gurugram in addition to her present duties and no additional remuneration was to be paid to her. However, vide impugned order Annexure P-5, a decision has been taken to give additional charge of Director, SCERT, Haryana, Gurugram to respondent No.3 by withdrawing the same from petitioner. This decision has been taken by the State of Haryana. The petitioner is aggrieved by the aforesaid action of the State in giving additional charge to respondent No.3 who was not even eligible for being appointed to the post of Director, SCERT, Haryana, Gurugram under the statutory rules namely State Council of Educational Research & Training, District Institute of Education & Training, Block Institute of Teachers Education & Government Elementary Teachers Training Institute (Group-A) Service Rules, 2014 (hereinafter called as 'Rules of 2014').

Mr. R.K. Malik, learned Senior Advocate with Mr. Samrat Malik, learned Advocate while arguing on behalf of the petitioner has submitted that giving of additional charge of Director, SCERT, Haryana, Gurugram to respondent No.3 is totally illegal and contrary to the Statutory Rules of 2014. The learned Senior Counsel submitted that respondent No.3 did not fulfill the basic requisite qualifications for being appointed as Director, SCERT, Haryana, Gurugram and, therefore, he could not have been given the additional charge of Director, SCERT, Haryana, Gurugram and therefore, the aforesaid impugned decision Annexure P-5 is liable to be

set aside. He has referred to Rule 9 as well as Appendix-B to submit that the recruitment to the post of Director, SCERT, Haryana, Gurugram can be made by direct recruitment or by transfer or deputation of an officer already in the service of State Government or the Government of India. He submitted that respondent No.3 has been granted additional charge despite the fact that he was not in the service of State Government or the Government of India. Furthermore, respondent No.3 did not fulfill the academic qualifications and experience at all. The relevant portion of Rule 9 as well as Appendix-B is as under:-

'9(1) Recruitment in the Service shall be made-

(a) In the case of Director, State Council of Educational Research & Training;

i) by direct recruitment; or

ii) by transfer or deputation of an officer already in the service of State Government or the Government of India'.

The relevant provisions of Appendix-B of the above said Rules are also reproduced below for ready reference:-

“APPENDIX-B

(See Rule 7)

S. No.	Designation of posts	Academic qualification & exp. if any, for direct recruitment	Academic qualification & exp. if any, for appointment other than by direct recruitment
A. State Council of Educational Research & Training			
1	Director, State Council Educational Research & Training	i) Post Graduation with 55% marks and Ph.D. from a recognized University. ii) M.Ed./B.Ed. With 55% marks from a recognized University. iii) 15 years exp. out of	i) Post Graduation with 55% marks and Ph.D. from a recognized University. ii) M.Ed./B.Ed. With 55% marks from a recognized University. iii) 15 years exp. out of

		<i>which 5 years as Principal of a Post Graduate College/ College of Education or Professor in Education in a University/National Council of Educational Research & Training (NCERT)/National University of Educational Planning and Administration (NUEPA).</i> <i>OR</i> <i>8 years exp. as Principal in Teacher Training Institute (School Education) and 5 years exp. of teaching in a Post Graduate College/ College of Education/Teacher Training Institute (School Education).</i> <i>iv) Well conversant with IT skills and should have knowledge of effective use of new technologies as tools for learning.</i> <i>v) Consistent good academic record;</i> <i>v) Hindi/Sanskrit upto Matric Standard or higher education.</i>	<i>which 5 years as Principal of a Post Graduate College/ College of Education or Professor in Education in a University/National Council of Educational Research & Training (NCERT)/National University of Educational Planning and Administration (NUEPA).</i> <i>OR</i> <i>8 years as Principal in Teacher Training Institute (School Education) and 5 years teaching in a Post Graduate College/College of Education/Teacher Training Institute (School Education).</i> <i>iv) Well conversant with IT skills and should have knowledge of effective use of new technologies as tools for learning.</i> <i>v) Consistent good academic record;</i> <i>v) Hindi/Sanskrit upto Matric Standard or higher education.</i>
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The learned Senior Counsel argued that granting of additional charge does not fall under Rule 9(1) (a) (i) because it was not a case of direct recruitment but would fall under Rule 9 (1) (a) (ii) as it was a case by transfer although for the purpose of additional charge. He submitted that in this situation only such officer can be appointed to the post of Director, SCERT, Haryana, Gurugram who is in the service of State Government or the Government of India. He referred to Annexure P-3 by which respondent No.3 was appointed as Director (Prarambh) purely on deputation basis on 23.06.2017 and vide Annexure P-4 dated 09.06.2020 he was permanently absorbed as Director (Prarambh)-State Institute of Advanced Studies in Teacher Education, Jhajjar. The learned Senior Counsel submitted that once respondent No.3 stands permanently absorbed as Director of the aforesaid Institute namely, Prarambh, he ceased to be in the service of the State Government because Prarambh is not a Government Institute but is purely an autonomous body which although may be funded by the State Government, but by no means can respondent No.3 be termed to be an officer in the service of the State Government.

Furthermore, the learned Senior Counsel submitted that respondent No.3 did not even fulfill the basic academic qualifications as provided in Appendix-B. It is an essential condition precedent sine qua non for being appointed as Director, SCERT, Haryana, Gurugram that a person must be Post Graduate with 55% marks and Ph.D. from a recognized University. This condition is applicable to both direct recruitment as well as by transfer or deputation. Furthermore, number of years in experience is also provided in the aforesaid Appendix-B. He submitted that respondent No.3 is neither a Post Graduate with 55% marks nor fulfills the requisite

experience provided under Appendix-B as he had secured 51.10% marks in M.A 2nd Division. He further submitted that once respondent No.3 does not fulfill the basic qualifications, therefore, he could not have been granted additional charge to the post of Director, SCERT, Haryana, Gurugram and so far as the petitioner is concerned, she is fully eligible for being granted additional charge to the post of Director, SCERT, Haryana, Gurugram.

On the other hand, Mr. Hitesh Pandit, learned Additional Advocate General, Haryana while referring to the affidavit filed by Joint Director, Admn. office of Director, Secondary Education, Department of School Education, Panchkula, submitted that neither respondent No.3 nor petitioner fulfill the essential qualifications and experience for the post of Director, SCERT, Haryana, Gurugram. Para 5 of the affidavit in this regard is reproduced as under:-

'5. That it is pertinent to mention here that as per Appendix-B of Rule 9(1) of Haryana State Education (Group-A) Service Rules, 2014, neither respondent No.3 nor petitioner fulfills the essential qualification & experience for the post of Director, State Council of Educational Research & Training. The comparative summary of qualification & experience of respondent no.3 & petitioner respectively is reproduced below:-

The qualification & experience of Respondent No.3 is as under:-

<i>Qualification</i>	<i>Experience</i>
<i>M.A. English with 51.1% M.Ed. with 68% MBA with 60.7% Ph.D. in Education</i>	<i>i. 19 years as experience as Principal in Gita Niketan Awasiya Vidyalaya Kurukshetra. ii. 3 Years experience as Director State Institute of Advanced Studies in Teacher Education, Jhajjar.</i>

The qualification of the petitioner is as under:-

<i>Qualification</i>	<i>Experience</i>
<i>M.A. Sanskrit Sahitya with 60%</i>	<i>i. Joint Director in the O/o SCERT for 6.5 yrs</i>
<i>M.Ed. with 50%</i>	<i>ii. As Addl. Dir. for 2 years</i>
<i>B.Ed. With 62%</i>	<i>iii. As DEEO Panipat for 1.2 years</i>
<i>Ph.D. Sanskrit</i>	<i>iv. As DEO Rohtak for 3.6 years</i>
	<i>v. As Dy. Director for 11 months</i>

The learned Additional Advocate General, Haryana however argued that the impugned order Annexure P-5 was only a proposal to be given additional charge of Director, SCERT, Haryana, Gurugram to respondent No.3 and now orders granting additional charge have been passed on 04.08.2020 vide Annexure R-1. He further submitted that another reason as to why the additional charge was withdrawn from the petitioner and given to respondent No.3 is that the petitioner is the First Appellate Authority of the Directorate under RTI Act, 2005 and there are lot of appeals pending against the order of State Public Information Officer of the Directorate and these appeals are to be decided by the petitioner within a time bound manner. Moreover, the place of additional charge i.e SCERT, Gurugram is at a distance of approximately 260 KM from Panchkula where the Directorate is situated and the petitioner is posted as Additional Director (Academic) in the office of Director, Secondary Education, Haryana, Panchkula and, therefore, it would incur lot of expenditure on the Government exchequer in the form of TA/DA whereas the Prarambh Institute is only 45 KM from SCERT, Gurugram. He also referred to Rule 17 of Haryana Government Gazette (Extra), June 10, 2014 of Group-A to the effect that relaxation can be made in the provisions of the rules in respect of any class or category of persons. However, nothing specific was shown as

to whether any relaxation was made in the present case or not.

In the replication which was filed by the petitioner to the affidavit filed by the respondent-State, it has been specifically stated that no relaxation has been granted to respondent No.3 with regard to any of the essential conditions. Furthermore, when the petitioner was earlier given the additional charge of Director, SCERT, Haryana, Gurugram no extra expenses of TA/DA etc. were taken by the petitioner and she had not charged a single penny of TA/DA. Furthermore, although the petitioner is First Appellate Authority under the RTI but no case is pending with the petitioner even today and, therefore, the reasoning given by the State is perverse and contrary to record.

Mr. Jagdish Manchanda, Advocate, appearing on behalf of respondent No.3 submitted that respondent No.3 has been granted additional charge under due procedure and it is not a permanent appointment and, therefore, writ petition is not maintainable. He further submitted that the petitioner has challenged Annexure P-5 which is a decision of respondent No.1 to give additional charge of Director, SCERT, Haryana, Gurugram to respondent No.3 but has not challenged the order dated 04.08.2020 (Annexure R-1) by which the order was passed in this regard. He further submitted that appointment of respondent No.3 was in view of the provision of the MOA as well as under the provision of the service by-laws of the Prarambh State Institute of Advanced Studies in Teacher Education and respondent No.3 was permanently absorbed as Director of the Institute vide Annexure P-4 and, therefore, there is no illegality in granting the additional charge to respondent No.3 as the same can be given in addition to his present duties. He further submitted that present petition is barred by

limitation and is liable to be dismissed on the ground of delay and laches.

On 01.12.2020 this matter was adjourned in order to enable the learned counsel for the State to get the file whereby the appointment of respondent No.3 was made after giving him the benefit of relaxation under Rule 17 of Haryana Government Gazette (Extra), June 10, 2014 of Group-A and that he shall place on record the said decision. However neither any decision has been placed on record nor it has been produced in the Court at the time of arguments and, therefore, it can be safely presumed that no such decision has been taken for grant of relaxation in favour of respondent No.3. On 10.12.2020, the learned State counsel sought time to clarify as to whether as per order dated 09.06.2020 (Annexure P-4), respondent No.3 after being permanently absorbed as Director of the Institute is to be taken to be Government service of the State of Haryana. In response thereto, an affidavit dated 16.03.2021 has been filed by the Director, Secondary Education, Haryana, Panchkula. In the affidavit it has been stated that the Prarambh-State Institute of Advanced Studies in Teacher Education is an Autonomous Institute run in the Society mode namely Prarambh-State Institute of Advanced Studies in Teacher Education Society, Jhajjar and the services of the employees of the Institute are governed by the Service Bye-laws of the Society. Furthermore, respondent No.3 has been permanently absorbed as Director, Prarambh by the Government and approved in Governing Body of Prarambh-State Institute of Advanced Studies in Teacher Education Society, Jhajjar on 11.06.2020. Para 4 and 5 of the aforesaid affidavit are reproduced as under:-

'4. That the Prarambh-State Institute of Advanced Studies in Teacher Education is an Autonomous Institute run in the

Society mode namely Prarambh-State Institute of Advanced Studies in Teacher Education Society Jhajjar. Hon'ble Chief Minister of the State is the President of the Governing Body of Additional Chief Secretary to Govt. Haryana, School Education Department is the Chairperson of the Executive Council of the Society. This Institute is funded through 100% Grant-in-aid and controlled by the State Government. The services of employees of the institute are governed by the Service Bye-laws of the society. Copy of the service Bye Laws are annexed herewith as Annexure R/A.

5. That it is, further, submitted that respondent No.3 was initially appointed as Director on deputation basis from Geeta Niketan School, Kurukshetra, (Private School) where he was working as Principal, by inviting applications for the same by Haryana School Shiksha Pariyojna Parishad in 2018. Thereafter, the services of respondent No.3 have been permanently absorbed as Director, Prarambh, by the Government and approved in Governing Body of Prarambh-State Institute of Advanced Studies in Teacher Education Society, Jhajjar held on 11.06.2020 as per clause 16(1) MOA and Services Bye Laws (Amended) 2019.

Keeping in view of the submission made above, it is, therefore, respectfully prayed that the present writ petition may be dismissed in the interest of justice'.

I have heard the learned counsel for the parties.

The core issue which arises for consideration in the present case is as to whether respondent No.3 could have been granted additional charge of Director, SCERT, Haryana, Gurugram even although admittedly he did not fulfill the basic qualifications and experience to the aforesaid post.

As per Rule 9(1) (a) a Director, SCERT can be appointed either

by direct recruitment or by transfer or deputation of an officer already in the service of State Government or the Government of India. In the affidavit filed by the Director, Secondary Education, Haryana, Panchkula, it has been specifically stated that respondent No.3 was permanently absorbed as Director of Prarambh and approved by the Governing Body on 11.06.2020 and that the Prarambh Institute is an Autonomous Institute run in the Society mode namely Prarambh-State Institute of Advance Studies in Teacher Education Society, Jhajjar and the services of the employees of the Institute are governed by the Service Bye-laws of the Society. Therefore, there is force in the argument raised by the learned Senior Counsel for the petitioner that respondent No.3 was not in the service of State Government or the Government of India and, therefore, was not eligible for being appointed as Director, SCERT, Haryana, Gurugram.

So far as the academic qualifications and experience are concerned, respondent No.3 did not fulfill the qualification of 55% marks in Post Graduation as he had passed M.A 2nd Division with 51.10 % marks and, therefore, one of the basic academic qualification was not fulfilled. Furthermore, the State Government in its affidavit has itself admitted that respondent No.3 did not fulfill the essential qualification and experience for the post of Director, SCERT, Haryana, Gurugram.

One of the arguments raised by the learned counsel for the respondent is that in the present writ petition, Annexure P-5 has been challenged which was only a proposal to grant additional charge of Director, SCERT, Haryana, Gurugram to respondent No.3 and in fact the order was passed vide Annexure R-1 on 04.08.2020 which has not been challenged by

the petitioner. The argument raised by the learned counsel for respondents seems to be attractive but does not cut any ice. A perusal of Annexure P-5 would show that the same was not merely a proposal but it was a decision taken on the proposal and has been approved till the level of Education Minister and the Chief Minister. So far as the Annexure R-1 dated 04.08.2020 is concerned, although it was a formal order passed by the Additional Chief Secretary to the Government of Haryana but it was a consequential order passed in pursuance of the decision already taken vide Annexure P-5. Once the decision itself is under challenge before this Court, then the consequential formal order passed during the pendency of the present petition need not be challenged separately and, therefore, the argument raised by the learned counsel for the respondent cannot be sustained.

Another argument raised by the learned counsel for the respondent is that the grant of mere additional charge would not be amenable to judicial review in exercise of power under Article 226 of the Constitution of India. It is correct that a writ of quo warranto would not lie unless a public post is being held substantively and it can be shown that the holder of the post was not having essential qualifications. But a writ of Certiorari can certainly be issued where the action of the respondents is totally contrary to law and is arbitrary in nature. A Constitutional Bench of Hon'ble Supreme Court in '**A.K. Kraipak and others' V/s. Union of India' [1969(2) SCC 262]** observed that the dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. Furthermore, in our Constitution, the rule of law pervades over the entire field of administration. The concept of rule of law

would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. Para 13 and 20 of the judgment are reproduced as under:-

'13. The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power. The following observations of Lord Parker C.J. in Beging v. Criminal Injuries Compensation Board, Ex. Parte Lain (1967)2 Q.B. 864 are instructive.

"With regard to Mr. Bridge's second point I cannot think that Atkin, L.J. intended to confine his principle to cases in which the determination affected rights in the sense of enforceable rights. Indeed, in the Electricity Commissioners

case, the rights determined were at any rate not immediately enforceable rights since the scheme laid down by the commissioners had to be approved by the Minister of Transport and by resolutions of Parliament. The commissioners nevertheless were held amenable to the jurisdiction of this court. Moreover, as can be seen from Rex. v. Postmaster-General, Ex-parte Carmichael (1928)1 K.B. 291 and Rex. v. Boycott Ex parte Kessles(1939)2 K.B. 651 the remedy is available even though the decision is merely a step as a result of which legally enforceable rights may be affected.

The position as I see it is that the exact limits of the ancient remedy by way of certiorari have never been and ought not to be specifically defined. They have varied from time to time being extended to meet changing conditions. At one time the writ only went to an inferior court. Later its ambit was extended to statutory tribunals determining a lis inter parties. Later again it extended to cases where there was no lis in the strict sense of the word but where immediate or subsequent rights of a citizen were affected. The only constant limits throughout were that it was performing a public duty. Private or domestic tribunals have always been outside the scope of certiorari since their authority is derived solely from contract, that is, from the agreement of the parties concerned.

Finally, it is to be observed that the remedy has now been extended, see Reg. v. Manchester Legal Aid Committee, Ex parte R.A. Brand & Co. Ltd.(1952)2 Q.B. 413 to cases in which the decision of an administrative officer is only arrived at after an inquiry or process of a judicial or quasi-judicial character. In such a case this court has jurisdiction to supervise that process. We have as it seems to me reached the position when the ambit of certiorari can be said to cover every case in which a body of persons of a public as opposed to a purely private or domestic character has to determine matters affecting subjects provided always that it has a duty to act judicially. Looked at in this way the board in my

judgment comes fairly and squarely, within the jurisdiction of this court. It is as Mr. Bridge said, "a servant of the Crown charged by the Crown, by executive instruction, with the duty of distributing the bounty of the Crown." It is clearly, therefore, performing public duties."

20. It was next urged by the learned Attorney-General that the mere fact that one of the members of the Board was biased against some of the petitioners cannot vitiate the entire proceedings. In this connection he invited our attention to the decision of this Court in Sumer Chand Jain v. Union of India and another, Writ Petition NO. 237/66, decided on 4.5.1967. Therein the Court repelled the contention that the proceedings of a departmental promotion committee were vitiated as one of the members of that committee was favourably disposed towards one of the selected candidates. The question before the Court was whether the plea of mala fides was established. The Court came to the conclusion that on the material on record it was unable to uphold that plea. In that case there was no question of any conflict between duty and interest nor any members of the departmental promotion committee was a judge in his own case. The only thing complained of was that one of the members of the promotion committee was favourably disposed towards one of the competitors. As mentioned earlier in this case we are essentially concerned with the question whether the decision taken by the board can be considered as having been taken fairly and justly'.

Another argument raised by the learned State counsel is that the reason as to why respondent No.3 has been granted additional charge was that the Prarambh Institute is close to Gurugram whereas the office of the petitioner is far away and, therefore, in order to save TA/DA etc. the additional charge was given to respondent No.3. Such a justification on the face of it cannot pass the test of reasonableness. In case a person is not even

eligible for being appointed to a particular post is given an additional charge then such a supportive justification is totally contrary to the Statutory Rules and therefore cannot be sustained. Apart from this, the petitioner has specifically stated in her replication that earlier she had never claimed any TA/DA when she was holding additional charge of Director, SCERT, Haryana, Gurugram.

The next argument raised by the learned counsel for respondent that the petitioner being Appellate Authority under the RTI Act is burdened with appeals would also not hold good in view of the fact that in the replication filed by the petitioner, she has stated that no case is pending with petitioner. Therefore, both the arguments raised by the learned counsel for the respondent are without any substance.

Once it is an admitted case that respondent No.3 did not possess the bare minimum qualification and experience under the Statutory Rules to the post of Director, SCERT, Haryana, Gurugram, he cannot be permitted to continue with additional charge of said post. It would be trite in law to say that essential qualifications and experience are not required for giving additional charge of a public post. In the present case, respondent No.3 is neither in the service of the Government nor does he possess requisite essential qualifications under the Statutory Rules. Therefore, it would not only be improper and illegal but would also be contrary to the Statutory Rules in case the respondent No.3 is permitted to continue to hold additional charge to the post of Director, SCERT, Haryana, Gurugram.

Consequently, the present petition is allowed. The decision taken by the Government vide Annexure P-5 dated 17.07.2020 and

consequential order dated 04.08.2020 (Annexure R-1) are hereby quashed and set aside.

However, there shall be no order as to costs.

06.04.2021
rakesh

(JASGURPREET SINGH PURI)
JUDGE

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