

126 (1st case)

RA-CW-228 of 2021 in CWP-17300-2021

GURMEET KAUR AND ORS. Versus STATE OF PUNJAB AND ORS.

126 (2nd case)

RA-CW-230 of 2021 in CWP-15363-2021

JAGTAR SINGH AND ORS. Versus STATE OF PUNJAB AND ORS.

126 (3rd case)

RA-CW-231 of 2021 in CWP-15744-2021

HARDEEP SINGH AND ORS. Versus STATE OF PUNJAB AND ORS.

Present:- Mr. H.S.Saini, Advocate for the applicants/petitioners
(in RA-CWP Nos. 228 & 230 of 2021).

Mr. Sunny Singla, Advocate for the applicants/petitioners
(in RA-CWP No.231 of 2021).

Present review applications i.e. RA-CW-228-2021, RA-CW-230-2021 & RA-CW-231-2021 have been filed against the orders dated 03.09.2021, 23.08.2021 & 18.08.2021, respectively, whereby interim prayer of the applicants/petitioners for participating in the selection process in pursuance of the Advertisement dated 30.07.2011 (P-11) was declined being over aged.

The above orders dated 23.08.2021 & 03.09.2021 were passed in view of the order dated 18.08.2021, passed in CWP No.15744 of 2021 along with six other connected cases, which reads as under:-

“As an interim measure, the petitioner(s) are seeking provisional participation in the selection process in pursuance of the advertisement dated 30.07.2021 for the post(s) of ETT Teachers in the State of Punjab.

Learned counsel for the petitioner(s) contend that under old rules, namely, Punjab State Education Class-III (Primary Schools Cadre) Service Rules, 1997 (for short 'Rules of 1997'), the upper age limit for the post(s) in question was fixed as 42 years. However, in the year 2018, the above rules were replaced by way of new rules, namely, Punjab State Elementary Education (Teaching Cadre) Group 'C' Service Rules, 2018 (for short 'Rules of 2018'), but these rules are silent regarding the requirement of age.

Also contended that by virtue of rule 9 of Rules of 2018, common rules, namely, Punjab Civil Services (General and Common Conditions of Service) Rules 1994 (for short 'Rules of 1994') have been incorporated by the State of Punjab for the purpose of the matters, which are silent under the new rules (ibid).

Again contended that for several categories, relaxation in upper age limit has been given in an arbitrary manner to the extent of services rendered by them on contract basis, despite the fact that Rules of 1994 were framed by the Department of Personnel, Government of Punjab, but the notification dated 11.11.2020 for age relaxation has been issued by the Education Department.

Further contended that petitioner(s) also deserve the benefit of age relaxation, but the respondents have deprived them merely on account of the fact that they are from the open market.

On the other hand, learned State Counsel opposed the prayer and submitted that Rules of 1994 have been amended by way of gazette notification dated 12.01.2021 and rule 5 of these rules is replaced to the extent that maximum upper age limit would be 37 years and the condition being statutory in nature, is binding upon all concerned including the petitioner(s).

Also contended that prior to the amendment dated 12.01.2021, petitioner(s) participated for selection to the post(s) of ETT on previous occasion(s), including in pursuance of the advertisement issued in the year 2020, and this factual position is not disputed on behalf of the petitioner(s).

Heard both sides and perused the paper-book(s).

Concededly, Rules of 1994 have been incorporated in terms of rule 9 of Rules of 2018. Now, vide amendment dated 12.01.2021, the upper age limit is prescribed as 37 years and all the petitioners have crossed that limit.

There is no dispute that these rules are statutory in nature; thus, binding upon all concerned including the petitioner(s). Respondents while issuing the above advertisement, has stipulated the upper age limit of 37 years in consonance with the amended rules, but petitioner(s) are not eligible being over-aged. In such a scenario, if petitioner(s) are allowed to participate in the ongoing selection process that would virtually amount to tinkering with the amendment dated 12.01.2021.

The argument that notification dated 11.11.2020 for granting relaxation in maximum age limit to some of the categories has not been issued by the Personnel Department is also not helpful for the simple reason that even if the above notification is ignored, the petitioner(s) are not going to gain anything.

Although notification dated 11.11.2020 is alleged to be arbitrary, but that does not appear to be so, for the reason that it has been issued to give benefit of age relaxation to the contractual employees in lieu of the services rendered by them, thus at this stage, the decision seems to have some rationale and as such cannot be termed as arbitrary.

Since as on today, petitioner(s) have crossed the upper age limit of 37 years, therefore, prima facie, no case is made out to allow them for joining the selection process in terms of the advertisement dated 30.07.2021. As a result thereof, the interim prayer of the petitioner(s) is declined.

Posted on 14.10.2021.

It is clarified that selections, if any, shall be subject to the final outcome of the present writ petition(s).

Para-wise reply be filed by the respondents on or before the next date of hearing, positively.

Photocopy of this order be placed on the files of other connected cases.

Needless to say that observations made above be not construed as an expression of opinion on merits of the case(s).”

Against the above order dated 18.08.2021, two separate LPA Nos.777 & 779 of 2021 were filed, but the same were dismissed as withdrawn on 09.09.2021 in the following manner:-

“Case has been heard through Video Conferencing on account of COVID-19 Pandemic.

Mr. Patwalia has referred to an order dated 6.9.2021 passed by a Coordinate Bench wherein the candidates have been allowed to participate in the selection process. He further submits that the facts slightly differ but the question of law is same.

Admittedly, learned Single Judge is still seized of the matter. Mr. Patwalia submits that he may be allowed to withdraw these appeals with liberty to move appropriate application before the learned Single Judge. We accept the prayer.

Dismissed as withdrawn with aforesaid liberty.

A photo copy of this order be placed on the file of the connected case.”

It is necessary to mention here that in CWP Nos.15363 & 17300 of 2021, the interim prayer was declined by this Court on 23.08.2021 & 03.09.2021, respectively, on the basis of order dated 18.08.2021 and both these orders were challenged by way of separate LPAs i.e. LPA Nos.789 & 788 of 2021, respectively and these LPAs were also dismissed as withdrawn on 09.09.2021.

All the above four LPAs were withdrawn with liberty to move appropriate application before this Court.

In view of the above liberty, present review applications have been filed, but this Court is not inclined to accept the same for the following reasons:-

- 1) Concededly, interim relief was declined in different writ petitions and against that, four LPAs were filed, which have been dismissed as withdrawn while passing the order(s) dated 09.09.2021 with liberty to move appropriate application on the premise that facts of the cases are slightly different, but the question of law is the same. In the opinion of this Court, order dated 06.09.2021 noticed by the Division Bench while granting liberty to the applicants/review petitioners was passed in LPA No.768 of 2021 in a different context and thus, not relevant to the present controversy.
- 2) Since the main writ petitions are pending for 14.10.2021, therefore, at this stage, it would not be appropriate for this Court to consider the question of law while entertaining the review applications; rather the applicants/petitioners may argue the same at the final stage.
- 3) Above all, the interim prayer was declined by this Court after passing detailed order(s) and now the applicants/petitioners are trying to re-argue the cases like an appeal, which is not the scope of review petition(s).
- 4) Even otherwise, this Court does not find any error apparent in the present cases which may fall within the purview of Order 47 Rules 1 & 2 of the CPC.

RA-CW-228 of 2021 in CWP-17300-2021
RA-CW-230 of 2021 in CWP-15363-2021
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In view of above, there is no option except to dismiss the present review applications.

Ordered accordingly.

Photocopy of this order be placed on the connected cases.

September 28th, 2021

Gagan

(MAHABIR SINGH SINDHU)
JUDGE