

CWP-24356-2018(O&M)

and connected cases

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

1. CWP-24356-2018(O&M)

Narender and others

.....Petitioners

Versus

State of Haryana and another

.....Respondents

2. CWP-26104-2018(O&M)

Sanjay Singh and others

.....Petitioners

Versus

State of Haryana and another

.....Respondents

3. CWP-32134-2018(O&M)

Naveen Chaudhary and others

.....Petitioners

Versus

State of Haryana and another

.....Respondents

.....Respondents

Date of decision:28.04.2021

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr.V.K.Jindal, Sr. Advocate with
Mr. Akshay Jindal, Advocate for the petitioners**

in CWP-24356-2018

Mr. Sunil K Nehra, Advocate for the petitioners
in CWP-26104-2018

Mr. Kuldeep Sheoran, Advocate for the petitioners
in CWP-32134-2018

Mr. Baldev Raj Mahajan, Advocate General, Haryana
with Ms. Kirti Singh, DAG, Haryana

ANIL KSHETARPAL, J.

By this order three connected writ petitions i.e CWP 23456, 26104 and 32134 of 2019 shall stand disposed of.

Learned counsel representing the petitioners are ad idem that identical issues of facts and law are involved and therefore, these writ petitions can conveniently be disposed of by a common order.

All the petitioners in these three writ petitions came to be recruited as Primary Teachers/JBT Teachers in the year 2011. They claim to have become eligible for promoted as Trained Graduate Teacher (English) [hereinafter referred to as ‘the TGT (English)’], however, wrongly not being promoted. It has been claimed that in promotion quota there are 1939 posts for the subject TGT (English) whereas only 934 posts have been filled up by promotion. The grievance of the petitioners is that the respondents are permitting ineligible teachers including Social Studies Masters to work although, they are not eligible as per the Haryana School Education (Group C) State Cadre Service Rules, 2012 (hereinafter referred to as the ‘2012 Rules’). The petitioners have also alleged that certain Guest Teachers are being permitted to occupy the vacancies and resulting in denial of promotions to the petitioners.

On the other hand, the State Government has filed three

separate affidavits in response. It has been pointed out that before 2012 Rules came to notified, the posts of TGT (English) were not in existence. It has been pointed out that previously, Social Studies Masters used to teach English subject. It has further been pointed out that the post of TGT English has been created for the first time in the year 2012 and in the rationalization of posts carried out in the year 2019, the net requirement of TGT English is 2336, out of which 33% posts of TGT (English) are required to be filled up by way of promotion, which comes to 770 whereas more than 1000 TGT English have already been promoted.

Heard learned counsel for the parties at length and with their able assistance perused the paper books. Learned counsel representing the petitioners has submitted that ineligible teachers cannot be allowed to continue. He submitted that at present TGT Social Studies are being permitted to teach English subject which is in violation of the Rules. He submits that such teachers cannot be permitted to continue. He further submits that as per 2012 Rules, for appointment as TGT (English), one is required to have qualification as provided in Appendix B to 2012 Rules. He submits that the petitioners are qualified and competent, however, they are not being considered for promotion, although, more than 900 posts are lying vacant. It is further contended that the Guest Teachers cannot be permitted to continue once regular teachers are available. Sh. Nehra has pointed out that the respondents are continuing with direct recruitment.

Per contra, learned Advocate General, Haryana, has pointed out that for the first time, in the year 2012 the posts of TGT (English) were created. Thereafter, strength of students in the Government schools started coming down. In view of the reduced work load, in the year 2019 the

exercise of rationalization of the post was carried out and it was found that the net requirement TGT English is 2336 teachers. He submits that in view of the 2012 Rules, 33% of the posts are to be filled by way of promotion which comes to 770 posts whereas more than 1000 teachers after having promoted are in place. He further submitted that the teachers who were already in employment before the year 2012 as Social Studies Master cannot be thrown out. Previously also the aforesaid Social Studies Masters, who had sufficient knowledge and experience to teach English subject were continuing to teach in the schools. He further contended that the TGT (English) teachers are supposed to teach from Class VI to VIII whereas Primary Teachers teach all subjects in Classes I to V. He further contended that the advertisement issued for recruitment of TGT (English) has already been cancelled. He further submitted that mere availability of the posts creates no right in favour of the employees.

Having carefully analyzed the arguments of the learned counsel for the parties, this Bench now proceeds to evaluate the arguments. It is undisputed that before 2012 Rules, the English subject was being taught by the Social Studies Masters. It is for the first time the posts of TGT (English) were created by 2012 Rules. As per Rule 9, 67% of the posts of TGT (English) are to be filled up by direct recruitment, whereas 33% posts have to be filled up by way of promotion from amongst the Primary Teachers/Classical and Vernacular Teachers. After 2012 Rules, the promotions are required to be made in accordance with the Rules. Appendix B lays down the minimum qualification which a TGT (English) teacher is required to have. Now, it is not in dispute that no ineligible TGT (English) teacher has been appointed after 2012 Rules came into force. The

teachers who are already working cannot be thrown out. In Government schools, TGT English teach English as a compulsory subject. The Social Studies Teachers who are already in employment, have also studied English subject in their graduation. Since, a large number of Social Studies Teachers are available and therefore, the decision of the Government to utilize their services cannot be said to be patently arbitrary. In the affidavit, it has been pointed out that 4551 Social Studies Masters have become surplus, which includes 2083 Guest Teachers. The services of Guest Teachers cannot be dispensed with being protected under the Haryana Guest Teacher Service Act, 2019, correctness whereof has not been challenged. In these circumstances, the petitioners cannot force the employer to promote them, merely, because the petitioners have become eligible for being considered for promotion. The State, in view of the prevailing circumstances, has even decided to abandon the fresh direct recruitments to the post of TGT (English). The State is also on affidavit that on rationalization of the post, it has been found that there is no further requirement of the post of TGT (English).

Keeping in view the aforesaid facts, there is no substance in any of the arguments of the learned counsel for the petitioners. Hence, all the writ petitions are dismissed.

28.04.2021

rekha

Whether speaking/reasoned

Whether Reportable

Yes /No

Yes / No

(ANIL KSHETARPAL)
JUDGE