

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

CWP No.22906 of 2021 (O&M)

Date of Decision: 29.11.2021

Dr. Malkeet Kaur and others

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Sameer Sachdeva, Advocate for the petitioners.

Ms. Harsimrat Rai, DAG, Punjab for respondent Nos.1 to 3.

Mr. M.K.Dogra, Advocate for respondent No.4.

Mr. H.S.Batth, Advocate for respondent No.5.

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of the
Constitution by three petitioners with the prayer to:-

*“(i) issue an appropriate writ, order or direction against the
action/inaction/proceedings of the respondents whereby
while posting Public Notice dated 19.10.2021 (Annexure
P-4) for filling up vacant posts of Assistant Professors
on regular basis in Govt. Colleges in State of Punjab on
the basis of 2001-2002 PPSC Selection Process now for*

the first time after gap of almost 21 years, the candidates like the petitioners who duly participated and succeeded in earlier recruitment drive in 2001-2002 by PPSC but those selections of meritorious candidates like petitioner could not conclude due to Ravi Sidhu PPSC scam, are now being left in lurch by depriving them of opportunity to govt. service for all times through open discrimination and inequitable treatment;

- (ii) with further prayer to issue directions to the respondents to consider the case of the petitioners at par with other class of candidates who have been given concession as per the Public Notice dated 1.11.2021 (Annx. P-5) to ensure that petitioners who are all duly qualified and experienced are also given free and fair chance to compete for govt. service once in their lifetime in view of huge gap of 20 years caused by respondents in advertising the posts of Assistant Professors;*
- (iii) with further prayer to issue interim directions allowing the petitioners to submit their application form for selection to the post of Assistant Professor in pursuance to Public Notice dated 1.11.2021 till the pendency of present proceedings before this Hon'ble Court;*
- (iv) issue any other order or direction, which this Hon'ble Court may deem fit and proper under the peculiar facts and circumstances of the case;*
- (v) dispense with the filing of certified/original copies of the Annexures P-1 to P-6;*
- (vi) dispense with the supply of advance notices of the writ petition to the respondents;*
- (vii) allow the cost of the petition in favour of the petitioners."*

(2) Pleadings in the writ petition are ambiguous, therefore, after taking assistance from the official records of the respondents, brief facts can be narrated as under:-

Petitioners are stated to be qualified as Doctorate (Ph.D.) and cleared their National Eligibility Test (*for short 'NET'*). All three are aspirant for the post(s) of Lecturer (College) in Punjabi [*now called as 'Assistant Professor'*].

(3) About 20 (twenty) years back, the Punjab Public Service Commission (*for short 'Commission'*) advertised 536 posts of Lectures (College) for the batches of 1999 & 2001 in different subjects. After conducting screening test, names of 391 candidates were recommended by the Commission; but due to certain irregularities, the Government cancelled entire selection process. Aggrieved against the above action, various writ petitions were filed; and in one of the writ petitions i.e. CWP 7766 of 2003, the Division Bench of this Court passed an interim order dated 16.01.2003, *inter alia*, in the following manner:-

“ Accordingly, we direct the Punjab Public Service Commission not to hold interview of the candidates who had appeared in the Screening test held during the pendency of the Writ Petition for the post of Lecturers for the subjects of Mathematics, Bio-Chemistry, Physics, Chemistry, Economics, Hindi, Philosophy, History, Music (Instrument) and Botany.”

(4) In CWP No.7732 of 2003, pertaining to other subject(s), similar interim directions were issued.

(5) The petitioners have averred that later on, the Commission decided to re-conduct interviews for the posts of Lecturers (Punjabi) and two of them i.e. Nos.1 & 3 received intimation dated 28.01.2004 in this regard.

(6) At present, petitioner No.1 is teaching in Government School; petitioner No.2 as Lecturer with an aided College; whereas petitioner No.3 stated to be working on contract basis with some Govt. College.

(7) Due to pendency of litigation, regular appointments could not be made for the posts of Lecturers/Assistant Professors. Thus, in order to safeguard the interest of the students, some temporary arrangements i.e. Part Time/Guest Faculty/Contractual engagements were made from time to time. According to records of the respondents, as on today, more than 70% sanctioned posts of Lecturers/Assistant Professors in government Colleges are lying vacant in the state of Punjab.

(8) In the above ongoing litigation, various miscellaneous applications were filed; the Division Bench after hearing respective parties, disposed off some applications on 13.11.2019 with the observations that *“there was no bar, as such on filling up of fresh vacancies which fell vacant on account of passage of time (on account of promotions, retirement, resignations etc. etc.) or due to increase in sanctioned strength of the cadre”*. It was also ordered that *“the cases of the petitioners, who have been declared as non-tainted by the State Government on examining the cases on individual basis, be granted fresh appointments upon submission of undertakings by the petitioners accepting fresh appointments.”* All those cases are stated to be pending before the Division Bench on 17.12.2021.

(9) Taking a cue from above order, the Government vide Memo dated 18.10.2021 decided to fill up 1158 posts of Assistant Professors in different

subjects including 142 posts of Assistant Professors (Punjabi). It was further decided that the recruitment shall be made purely on the basis of written test and there shall be no marks for interview/viva-voce.

Also decided that two Selection Committees i.e. one headed by Vice Chancellor, Guru Nanak Dev University and another under the Chairmanship of Vice Chancellor, Punjabi University, Patiala shall be constituted. In order to mitigate hardship being faced by the Part Time/Guest Faculty/contractual teachers working in the government run Colleges, the teachers, who are eligible as per prescribed qualifications, were granted relaxation in upper age limit to the extent of period they worked as such. In addition, such teachers were to be given weightage of one mark per year subject to maximum of five marks in respect of experience gained by them while working as Part Time/Guest Faculty/contractual in the government run Colleges.

(10) In pursuance of the above decision, Director, Higher Education, Punjab (*for short 'Director'*) issued 33 separate advertisements on 19.10.2021, including Advt. No.31/2021 regarding 142 posts of Assistant Professors (Punjabi). Concededly, all three petitioners applied and selection process is still going on.

Also necessary to mention here that at the time of issuing above advertisements, separate Public Notice dated 19.10.2021 was circulated in two News Papers with reference to the order dated 13.11.2019 for clarification of the candidates that these posts are other than those, which were advertised in the year 1999 & 2001 and the same have arisen subsequently.

(11) Later on, in terms of the order dated 13.11.2019, the Director issued another Public Notice dated 01.11.2021 for consideration of the non-tainted candidates, who were selected against advertisements of 1999 & 2001 by the Commission in the year 2002, but their selection was cancelled and they had filed writ petition prior to 13.11.2019.

(12) It is averred that petitioners made representations dated 21.10.2021 & 02.11.2021 for seeking benefit of Public Notice dated 01.11.2021 to appoint them as Assistant Professors against batches of 1999 & 2001; to afford them opportunity of participating in the ongoing selection process against 142 posts and to exempt from passing the written test, but till date no action has been taken by the respondents.

Hence this writ petition.

(13) **CONTENTIONS RAISED ON BEHALF OF THE PETITIONERS:-**

Learned Counsel contended that on earlier occasion, all the petitioners duly participated in the selection process for the batches of 1999-2001, but due to litigation, the selection could not be finalized for the last 20 (twenty) years; therefore, they be granted the benefit of Public Notice dated 01.11.2021 at par with other similarly situated candidates. Further contended that action of the respondents while not allowing the petitioners to avail the benefit of Public Notice dated 01.11.2021 has resulted into grave injustice; thus same being discriminatory is in violation of the Articles 14 & 16 of the Constitution. Also submitted that petitioners be exempted from passing the written test for the ongoing selection of 142 Assistant Professors or at least the same be deferred for three months so that they can prepare themselves for the

test. Reference in this regard is made to the judgment dated 25.03.2021 (P-8) of Hon'ble Supreme Court, titled as **University of Delhi Versus Delhi University Contract Employees Union and others.**

On the other hand, learned State Counsel opposed the prayer while submitting that Public Notice dated 01.11.2021 has been issued in pursuance of the order dated 13.11.2019 passed by the Division Bench for consideration of those candidates, who were selected in the year 2002; but due to cancellation of selection, they had approached this Court prior to 13.11.2019. She specifically submitted that Public Notice dated 01.11.2021 has nothing to do with the ongoing selection for recruitment of 142 posts of Assistant Professors (Punjabi) as these posts became available subsequent to the earlier selection for the year 1999 & 2001. Further submitted that it is altogether different process initiated on the basis of the advertisement dated 19.10.2021; for which written test is mandatory and no one has been exempted from passing the same. Again submitted that in the year 2002, petitioners were never selected; nor they filed any writ petition before this Court prior to 13.11.2019 and as such they are not entitled for the benefit of Public Notice dated 01.11.2021. Also submitted that as per this Public Notice, it was open for every eligible candidate in terms of the order dated 13.11.2019 to submit application for consideration and final decision in that regard is yet to be taken by the quarter concerned. Lastly submitted that the whole endeavour of the petitioners is to stall the ongoing selection process for recruitment of 142 posts of Assistant Professors (Punjabi); hence, prayed for dismissal of the writ petition.

Learned Counsel for respondent Nos.4 & 5 fully supported the pleas raised by learned State Counsel.

(14) Heard learned Counsel for the parties and perused the records.

(15) Although, the controversy is quite simple, but petitioners have unnecessarily tried to complicate the same while withholding the order dated 13.11.2019 passed by the Division Bench as well as the Public Notice dated 19.10.2021. Both these documents are complete answer to the grievance of petitioners; but knowingly they did not disclose the same; nor were annexed with paper-book for the reason(s) best known to them.

(16) Since the order dated 13.11.2019 of the Division Bench is most material for adjudication of the matter in controversy; therefore, the relevant part of the same is extracted as under:-

***“C.M.No.10543 of 2019 in CWP No.7732 of 2003
C.M.No.3973 of 2015 in CWP No.7732 of 2003
C.M.No.3958 of 2015 in CWP No.7766 of 2003
C.M.No.3955 of 2015 in CWP No.1167 of 2004
C.M.No.3974 of 2015 in CWP No.1166 of 2004*”**

The State Government by filing CM No.10543 of 2019 in CWP No.7732 of 2003 has sought for modification/clarification of the order dated 16.01.2003 whereby direction was issued to the P.P.S.C. not to hold interviews of the candidates who had appeared in the screening test held during the pendency of the writ petition for the post of Lecturers in the subjects of Agriculture, Geography, Commerce, Political Science & Sanskrit. Similar interim orders were passed in CWP 1166 of 2004 vide order dated 10.2.2004 in CWP 1167 of 2004 vide order dated 10.2.2004 and in CWP No.7766 of 2003 vide order dated 16.01.2003 pertaining to various other streams of Lecturers.

Notice to the applicants was issued in the aforesaid applications on 3.9.2019. Thereafter time was sought to file reply on 23.9.2019.

It has been pointed out by the Ld. Counsel for the state that C.M. No.10543 of 2019 in CWP No.7732 of 2003 is the latest application containing all the facts and background of the present case, however, the same is not shown to be listed despite notice having being issued to the non-applicants. Though all other aforesaid applications for modification/clarification are listed before this Court. As the prayer and all the applications are similar, therefore, on consensus between the Counsel for both the sides, the C.M.No.10543 of 2019 in CWP No.7732 of 2003 is taken on Board for hearing.

Since all the applications filed by the State Government pertained to modification/clarification of the orders vide which direction was issued not to hold interviews of the candidates who had appeared in the screening test during the pendency of the writ petition, contents mentioned in C.M. No.10543 of 2019 in CWP No.7732 of 2003 are being taken into consideration for disposal of the above said applications.

A perusal of the application makes it evident that the State had issued an advertisement in the year 2008 advertising fresh posts of Lecturers in different subjects. Upon issuance of the advertisement in the year 2008 various contempt petitions were filed by the candidates who were beneficiary of the order dated 16.1.2003 (Annexure A-1). The contempt petitions were disposed of upon undertaking given by the State before the petitions were disposed of upon undertaking given by the State before the Contempt Court to the effect that the petitioners would be adjusted against the available vacancies in the event they are found to be successful upon disposal of the writ petition. There was no bar, as such on filling up of fresh vacancies which fell vacant on account of passage of time (on account of promotions, retirement, resignations etc. etc.) or due to increase in sanctioned strength of the cadre. Faced with this the Ld. State Counsel conceded and brought to the notice of this Court the averments made in paragraph 15 (b) of the C.M.10543 of 2019 wherein the State Government inadvertently on its own conveyed to the Hon'ble

Contempt Court in C.O.C.P. No.1830 of 2009 that they do not intend to go ahead with the recruitment process notified vide advertisement dated 4.4.2008 and since then on account of the statement no posts have been filled up. Resultantly as of now 1439 posts of College Lecturers are lying vacant across the State.

It is abundantly clear from above, that there is no stay with regard to filling up of vacant posts of Lecturers (College cadre) in the State of Punjab and the State on its own had taken upon itself not fill up the posts, however for the sake of convenience and keeping in view the public interest, it is clarified that posts equivalent to the number of petitioners in the present bunch of petitions in their respective categories/streams/subjects be kept vacant during the pendency of the writ petitions and rest of the posts lying vacant can be filled up, in accordance with law, if so desired.

All the aforesaid applications are disposed of in the above terms.

MAIN CASE

In the present case in the category of Lecturers, none of the petitioners were permitted to join, therefore the cases of the petitioners who have been declared as non-tainted by the State Government on examining the cases on individual basis, be granted fresh appointments upon submission of undertakings by the petitioners accepting fresh appointments. The petitioners who have been found to be non-tainted by the State Government in the affidavit dated 21.1.2016 were already granted liberty by this Court vide order dated 23.09.2019 to furnish an undertaking accepting fresh appointment. At this point Ld. State Counsel points out that none of the petitioners have furnished undertaking in terms of the liberty granted by this Court on 23.09.2019. Though this Court had already granted opportunity to the petitioners, however in the interest of justice, the petitioners are granted another opportunity to furnish an undertaking accepting fresh appointments and the State government is directed to issue appointment letters upon furnishing of the undertaking by the

petitioners. It is made clear that appointment granted to the petitioners will be treated as fresh appointments and no benefit of previous period will be granted. The State Government is directed, that the petitioners who furnish an undertaking and join in pursuance thereof, list of the petitioners-based submitted before this Court, so that their cases could be disposed off accordingly.”

The Division Bench while passing the above order on 13.11.2019 made it clear that:-

- (i) There was no bar for the State of Punjab to fill up the vacancies which fell vacant on account of passage of time (on account of promotions, retirement, resignations etc. etc.) or due to increase in sanctioned strength of the cadre.*
- (ii) The non-tainted petitioners in those cases were granted another opportunity to furnish undertaking(s) accepting fresh appointments and the State government was directed to issue appointment letters upon furnishing of such undertaking by them.*

(17) The respondents in an affidavit dated 16.11.2021 of Sh. Gurdarshan Singh Brar, Assistant Director, Office of Director Public Instructions (Colleges), Punjab, specifically averred that present petitioners were not parties to the writ petitions which are already pending before the Division Bench; nor they had been selected at any point of time for the batches of 1999 & 2001. There is no material on record to indicate that present petitioners were ever selected on earlier occasion or that they had approached this Court prior to 13.11.2019; rather it is claimed in the representation dated 21.10.2021 that they were in the waiting list for the batches of 1999 & 2001 and relevant part of the same extracted as under :-

“We appeared for the interview as conducted for the 1999/2001 Screening test for the posts of lecturers (College cadre). But because of Ravi Sidhu Case, we could not get selected. We have been waiting for last (20) twenty years according to the waiting lists for the same. The committees formed by the Punjab Govt. found the Candidates of Punjabi Subject-as Tainted. Being in the waiting lists, it is our right to get those posts.”

(18) Evidently, the petitioners were neither selected for the batches of 1999 & 2021; nor they were party to the earlier litigation up to 13.11.2019 when the Division Bench passed the order for consideration of non-tainted candidates and if the petitioners are having any grievance (although this is not their case) against the said order, then the present petition is not the right course to be followed. Moreover, the matter regarding earlier selection is already *sub judice* before the Division Bench of this Court. Thus, the plea of the petitioners to grant them the benefit of Public Notice dated 01.11.2021 for appointment against the batches of 1999 & 2001 is unfounded, hence rejected.

(19) As discussed above, after passing of the order dated 13.11.2019, the Government decided to fill up various vacant posts of Assistant Professors vide Memo dated 18.10.2021 and the same being material is recapitulated from official records as under:-

*“Government of Punjab
Department of Higher Education & Languages
(Education-I Branch)*

To

*The Director of Public Instruction (Colleges)
Punjab, SAS Nagar, Mohali*

Memo No.HED-EDU10APPT/15/2021-6 edu/2104

Dated, Chandigarh, the : 18 October, 2021.

Subject:- Filling up vacant posts of teaching cadre and non teaching posts in Colleges situated in the State of Punjab.

1.0 Kindly refer to the subject cited above.

2.0 It has been decided by the State Government that:-

- (i) The applications may be invited to fill up all the posts which have already been sanctioned by the Council of Ministers i.e. 1091 (931 + 160) teaching cadre and 67 Librarians by holding the selection test by authorized/competent agency i.e. Punjabi University Patiala and Guru Nanak Dev University, Amritsar;*
- (ii) Applications will be invited through online and Universities will conduct selection test in all the subjects. The candidates who are qualified as per UGC guidelines to be appointed as Assistant Professors will only be eligible to apply against these posts strictly in accordance with the qualifications prescribed by the relevant departmental service Rules and guidelines of the University Grants Commission;*
- (iii) After holding the selection test, candidates in the decreasing order of merit (category wise) will be called for counselling and after verifying the documents, the successful candidates shall be offered appointments by the competent authority;*
- (iv) The recruitment will be made purely on the basis of the scores achieved in the written test and there shall be no marks for interview/viva voce.*
- (v) The subjects will be divided in two groups i.e. the two State Universities i.e. GNDU and Punjabi University, Patiala will be engaged to handle recruitment of one group each. The Department in consultation with the said universities shall decide the subjects to be given to the State Universities;*
- (vi) Two selection committees one each in Guru Nanak Dev University and Punjabi University, Patiala will be*

constituted for carrying out this recruitment process which inter alia includes preparation of question papers, conducting of examination, preparation of results and all other necessary tasks which might arise during the process. The constitution of the Department Selection Committee is as follows:-

(a) Guru Nanak Dev University:

- Vice Chancellor: Chairman*
- Controller Examination or any other officer as selected by VC: Member Secretary*
- Dean Academic Affairs : Member*
- Assistant Director Services : Member*
- Smt. Jyoti Bala; (Principal S.R. Govt. College for Women, Amritsar) ; Member*

(b) Punjabi University, Patiala

- Vice Chancellor: Chairman*
- Controller Examination or any other officer as selected by VC: Member Secretary*
- Dean Academic Affairs : Member*
- Assistant Director Services : Member*
- Dr. Parminder Singh; (Principal State College of Education, Patiala): Member.*

(vii) The subjects assigned to the respective selection committees is attached at Annexure 'A'.

(viii) Advertisement shall be issued by the DPI (colleges).

(ix) Separate Advertisement will be given for each subject.

3.0 *In order to mitigate hardship being faced by the Part Time/Guest Faculty/contractual teachers working in the government run colleges, it has also been decided by the Government that such teachers who are otherwise eligible as per prescribed qualifications will be given relaxation in upper age limit to the extent of period they have worked as such. Further, such teachers shall be given weightage of one mark per*

year subject to maximum of five marks in respect of experience gained by them while working as Part Time/Guest Faculty/contractual teachers in government run colleges.

4.0 *You are requested to initiate the recruitment process for filling up the aforesaid posts and it will be ensured that the said recruitment process is completed in a time bound manner preferably within a period of 45 days. The progress of the said recruitment process shall be reviewed on weekly basis and a report to this effect shall be sent to the Government.*

Sd/-

Secretary Higher Education

Endst. No.HED-EDU10APPT/15/2021-6edu/2105 Dated: 18.10.21

A copy of the above is forwarded to the Vice Chancellor, GNDU and Punjabi University, Patiala with the direction that the necessary action may kindly be taken immediately to ensure that the recruitment process is completed within the stipulated time and the teachers are made available to the colleges so as to minimize the loss of studies of the students.

Sd/-

Secretary Higher Education”

(20) In pursuance of the above decision, apart from 33 different advertisements, the Public Notice dated 19.10.2021 was also issued for clarification that these posts are other than those posts, which were advertised for the years 1999 & 2001; but the Notice has been concealed by the petitioners and which reads as under:-

“Public Notice (Appointments)

(Last date for filling online Application form: 08-11-2021)

The Department of Higher Education invites Online Application Forms from eligible candidates for following posts in the department against the various subjects and Librarians individually:-

Sr. No.	Name of the Posts	Number of the Posts	Advt. No.	Registration/Examination fee
1	Assistant Professor AGRONOMY	1	1/2021	1. The general instruction regarding registration/online application, qualifications, mode of selection, break up of posts as per government reservation policy and other detailed information etc. can be seen on the websites as mentioned below www.educationrecruitmentboard.com and http://eservices.gndu.ac.in/govtreruitment 2. The candidates can see the prescribed fees to be paid as per Govt. of Punjab instructions in the general instructions hosted on website for different advertisements for different subjects.
2	Assistant Professor BIO-CHEMISTRY	1	2/2021	
3	Assistant Professor BOTANY	39	3/2021	
4	Assistant Professor CHEMISTRY	71	4/2021	
5	Assistant Professor COMMERCE	70	5/2021	
6	Assistant Professor COMPUTER SCIENCE	56	6/2021	
7	Assistant Professor ECONOMICS	53	7/2021	
8	Assistant Professor HISTORY	73	8/2021	
9	Assistant Professor HISTORY OF ARTS	1	9/2021	
10	Assistant Professor HOME SCIENCE	9	10/2021	
11	Assistant Professor HORTICULTURE	1	11/2021	
12	Assistant Professor MATHEMATICS	73	12/2021	
13	Assistant Professor PHYSICAL EDUCATION	54	13/2021	
14	Assistant Professor PHYSICS	47	14/2021	
15	Assistant Professor SOCIOLOGY	14	15/2021	
16	Assistant Professor ZOOLOGY	40	16/2021	
17	Assistant Professor DANCE	2	17/2021	
18	Assistant Professor DEFENCE STUDIES	2	18/2021	
19	Assistant Professor EDUCATION	3	19/2021	
20	Assistant Professor ENVIRONMENT SCIENCE	3	20/2021	
21	Assistant Professor ENGLISH	154	21/2021	
22	Assistant Professor FINE ARTS	10	22/2021	
23	Assistant Professor GEOGRAPHY	43	23/2021	
24	Assistant Professor HINDI	30	24/2021	
25	Assistant Professor MUSIC INSTRUMENT	7	25/2021	
26	Assistant Professor MUSIC VOCAL	10	26/2021	
27	Assistant Professor PHILOSOPHY	6	27/2021	
28	Assistant Professor POLITICAL SCIENCE	53	28/2021	
29	Assistant Professor PSYCHOLOGY	12	29/2021	
30	Assistant Professor PUBLIC ADMINISTRATION	10	30/2021	
31	Assistant Professor PUNJABI	142	31/2021	
32	Assistant Professor URDU	1	32/2021	
33	Librarian	67	33/2021	

For conditions of eligibility i.e. Education qualifications, Age and Scale of Pay etc., see details in the General Information for Candidates for each Subject separately for each post has been uploaded on the website www.educationrecruitmentboard.com and <http://eservices.gndu.ac.in/govtreruitment>.

Last date for filling online Application form : 08-11-2021

P.S.: The above mentioned posts are subsequently arisen other than the posts advertised in 1999 and 2001 by the P.P.S.C. and the

Hon'ble Punjab & Haryana High Court, vide interim order dated 13.11.2019 in C.M.No.10543 of 2019 in CWP No.7732 of 2003, has clarified that there was no bar, as such on filling up of fresh vacancies which fell vacant on account of passage of time (on account of promotions, retirement, resignations etc. etc.) or due to increase in sanctioned strength of the cadre.

Date: 19.10.2021

*Sd/- Paramjit Singh, I.A.S.
Director, Higher Education
Government of Punjab”*

A bare perusal of the above Notice clearly reveals that 142 posts of Assistant Professors (Punjabi) were those posts, which have arisen subsequent to the batches of 1999 & 2001 and even specific reference of the order dated 13.11.2019 was also made to clarify the position.

(21) The criteria for selection for the posts of Assistant Professors was mentioned in the Memo dated 18.10.2021 and the same has been duly incorporated under Clause 4 of the advertisement, which reads as under:-

4. Mode of Selection

- (i) The recruitment will be made purely on the basis of scores achieved in the written test.*
- (ii) Successful candidates in order of merit will be called for counseling and after verifying the documents, the Department will issue them appointment letters.*
- (iii) The part time/guest faculty/contractual teachers working in the government colleges clearing the written test will be given extra weightage of one mark per completed academic year of teaching experience subject to a maximum limit of five marks.*
- (iv) The marks corresponding to experience obtained by these candidates will be added to the score achieved by them in the written test for the purpose of preparing the merit list.”*

The perusal of above clause clearly reveals that selection for 142 posts is to be made on the basis of written test plus weightage of work experience. Although, petitioners are claiming exemption from passing the written test, but as per clause 4 of the advertisement, same is mandatory and there is no challenge to that effect in the present writ petition. Even the petitioners have failed to prove that any other candidate has been granted exemption from passing the written test for the ongoing selection process. Thus, the contention on behalf of the petitioners to that effect is also ill-conceived, hence rejected.

(22) Although, learned Counsel for the petitioners made a reference to **University of Delhi's case (supra)**, but the same is not helpful in any manner. In that case, 255 posts of Junior Assistants i.e. non-teaching cadre were advertised by the Delhi University on 06.11.2013; but prior thereto i.e. between 2003-2013, about 300 Junior Assistants were engaged on contract basis.

Aggrieved against the above advertisement, writ petition was filed by the Union of the contractual employees and the same was dismissed by learned Single Judge on 16.12.2013. Upon challenge in an intra Court appeal, the above order was set aside by the Division Bench. Ultimately, the matter reached before the Hon'ble Supreme Court at the instance of both sides i.e. Civil Appeal No.1007 of 2021 preferred by the University; whereas Civil Appeal No.1008 of 2021 filed by the Union. During the pendency of the matter, an affidavit dated 09.03.2021 was filed by the University and para Nos.6 & 7 of the same were extracted by the Hon'ble Supreme Court and which read as under:-

“6. In view of the order of this Court, to enable the contractual employees to participate in the recruitment process, a comprehensive age relaxation with respect to the upper age limit has been given to the contract employees working at the University in the present recruitment process.

7. In addition to the above, a maximum of upto 10 extra marks, depending on the number of years of service of the contract employee, would be given to them while finalizing the merit.”

The Hon’ble Supreme Court while setting aside the order of LPA Bench, in para 11 of the judgment, held as under:-

*“11. The contract employees in the present case cannot, therefore, claim the relief of regularization in terms of paragraph 53 of the decision in **Umadevi**. The rejection of their petition by the single Judge of the High Court was quite correct and there was no occasion for the Division Bench to interfere in the matter.”*

Ultimately, in para 13, the Hon’ble Supreme Court issued following directions:-

“13. We, therefore, direct that all the concerned contract employees engaged by the University be afforded benefits as detailed in paragraphs 6 and 7 of the affidavit dated 09.03.2021 with following modifications:

- (a) The benefit of age relaxation as contemplated in paragraph 6 of the affidavit without any qualification must be extended to all the contract employees.*
- (b) In modification of paragraph 7 of the affidavit, those employees who were engaged in the year 2011 be given the benefit of 10 marks in the ensuing selection process while for every additional year that a contract employee had put in, benefit of one more mark subject to the ceiling of 8 additional marks be given. In other words, if a*

contract employee was engaged for the first time in the year 2010, he shall be entitled to the benefit of 11 marks, while one engaged since 2003 shall be given 18 marks, as against the appointee of 2011 who will have the advantage of only 10 marks. The contract appointees of 2012 and 2013 will have the advantage of 9 and 8 marks respectively.

- (c) The Public Notice inviting applications from the candidates shall specifically state that the advantage in terms of the order passed by this Court would be conferred upon the contract employees so that other candidates are put to adequate notice.*
- (d) All the contract employees shall be entitled to offer their candidature for the ensuing selection in next four weeks and in order to give them sufficient time to prepare, the test shall be undertaken only after three months of the receipt of applications from the candidates.”*

Perusal of clause (d) of para 13, extracted hereinabove, reveals that contractual employees were held entitled to offer their candidature for the “ensuing selection” in the next four weeks and in order to give them sufficient time for preparation of the test, it was to be undertaken after three months of the receipt of applications.

Admittedly, in the present case, advertisement has already been issued; selection process is going on and there is no challenge to the same.

Also necessary to mention here that as per Clause 4.0 of the Memo dated 18.10.2021, the Government specifically conveyed the Selection Committees that *“it be ensured that the process is completed in a time bound manner preferably within a period of 45 days”* and the *“progress of the said*

recruitment process shall be reviewed on weekly basis and a report to this effect shall be sent to the Government”.

No doubt, such imperatives by the Government may be detrimental to the independence and impartial functioning of the Selection Committees; but at the same time, the petitioners have not questioned the legality and validity of Clause 4.0 (supra).

In view of the above, petitioners cannot be permitted to seek a mandate to postpone the written test *dehors* Clause 4.0 of Memo dated 18.10.2021. Resultantly, the contention regarding deferral of the written test is also liable to be rejected being without any substance.

Therefore, from every angle, the writ petition is totally misuse of the process of the Court and there was no occasion for the petitioners to invoke the extraordinary jurisdiction of this Court for judicial review.

(23) In view of the facts and circumstances, the irresistible conclusion would be as under:-

- (i)** *The Division Bench in C.M.No.10543 of 2019 in CWP No.7732 of 2003 while passing the order dated 13.11.2019 made it clear that there is no bar for the State of Punjab from filling up the posts of Assistant Professors lying vacant.*
- (ii)** *After passing of the above order, State of Punjab vide memo dated 18.10.2021 decided to fill up various posts which were put to public notice through 33 different advertisements including advertisement No. 31/2021 dated 19.10.2021 for 142 posts of Assistant Professors (Punjabi) which are other than the posts advertised for the batches of 1999 & 2001.*
- (iii)** *Petitioners have failed to substantiate that they were selected and/or approached this Court for the earlier selection prior to 13.11.2019.*

- (iv) *Public Notice dated 01.11.2021 is having no co-relation with the advertisement dated 19.10.2021.*
- (v) *Petitioners have miserably failed to substantiate that respondents have granted exemption from written examination to any candidate for selection of 142 posts.*
- (vi) *There is no challenge to the Memo dated 18.10.2021 or advertisement dated 19.10.2021;*
- (vii) *Petitioners have tried to mislead the Court while not attaching the copy of order dated 13.11.2019 as well as Public Notice dated 19.10.2021.*

(24) Since the petitioners have deliberately withheld the order dated 13.11.2019 as well as the Public Notice dated 19.10.2021, therefore, their intentions are not *bona fide*.

The Hon'ble Supreme Court in '**K.D.Sharma Versus Steel Authority of India Limited and others**', (2008) 12 SCC 481 while emphasizing that the petitioner approaching the writ Court must come with clean hands, *inter alia*, observed :-

"36 .A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating "We will not listen to your application because of what you have done". The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.'

Again, the Hon'ble Supreme Court in case of '**Kishore Samrite Versus State of Uttar Pradesh**', (2013) 2 SCC 398 observed that punitive

costs be imposed against the dishonest litigants. Para 34 & 35 of the judgment being relevant are extracted as under:-

“34. It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the justice-delivery system.

35. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of process of the Court. One way to curb this tendency is to impose realistic or punitive costs.”

(25) In view of the above, this Court was inclined to dismiss the present writ petition with exemplary costs; however, taking a lenient view, the same is simply dismissed, but no costs.

(26) Pending application(s), if any, shall also stand disposed off.

November 29th, 2021
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes