IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

103+261 (17 cases) +
265 (03 cases)

CM-13397-CWP-2022 &
CM-13398-CWP-2022 in/&

(1) CWP-14660-2020
Date of Decision :07.12.2022

Lalita Sharma and another **...Petitioners**

Versus

State of Haryana and others **....Respondents**

(2) CWP-15073-2020

Ravita and others **...Petitioners**

Versus

State of Haryana and others **....Respondents**

(3) CWP-22367-2020

Manju Bala and others **...Petitioners**

Versus

State of Haryana and others **....Respondents**

(4) CWP-22369-2020

Mintu Yadav **...Petitioner**

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Versus

State of Haryana and others **....Respondents**

(5) CWP-18454-2020

Laleeta and others **...Petitioners**

Versus

State of Haryana and others **....Respondents**

(6) CWP-15096-2020

Usha Rani **...Petitioner**

Versus

State of Haryana and others **....Respondents**

(7) CWP-14163-2020

Premlata Yadav **...Petitioner**

Versus

State of Haryana and others **....Respondents**

CM-3103-CWP-2022 in/&
(8) CWP-14166-2020

Anju Sharma **...Petitioner**

Versus

State of Haryana and others **....Respondents**

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(9) CWP-14168-2020

Sushma Kumari @ Sushma Shekhawat **...Petitioner**

Versus

State of Haryana and others **....Respondents**

(10) CWP-14867-2020

Sushila Kumari **...Petitioner**

Versus

State of Haryana and others **....Respondents**

(11) CWP-16337-2020

Monika Manchanda and others **...Petitioners**

Versus

State of Haryana and others **....Respondents**

(12) CWP-16471-2020

Bhawana Jangir and another **...Petitioners**

Versus

State of Haryana and others **....Respondents**

(13) CWP-14937-2020

Seema **...Petitioner**

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Versus

State of Haryana and others **....Respondents**

(14) CWP-15484-2020

Vipin Singh **...Petitioner**

Versus

State of Haryana and others **....Respondents**

(15) CWP-5423-2021

Manju Bala **...Petitioner**

Versus

State of Haryana and others **....Respondents**

(16) CWP-6414-2021 (O&M)

Harsha Bhatia **...Petitioner**

Versus

State of Haryana and others **....Respondents**

(17) CWP-6759-2021

Vinod **...Petitioner**

Versus

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State of Haryana and others **....Respondents**

265-(1) **CWP-1385-2021**

Ankita Budhiraja **...Petitioner**

Versus

State of Haryana and others **....Respondents**

265-(2) **CWP-2024-2021**

Rajvinder Kaur **...Petitioner**

Versus

State of Haryana and others **....Respondents**

265-(3) **CWP-8089-2021**

Satish Kumar **...Petitioner**

Versus

State of Haryana and others **....Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sunil K Nehra, Advocate for the petitioners
in CWP-14660-2020 and CWP-14867-2020.

Mr. Mazlish Khan, Advocate for the petitioners
in CWP Nos.15073, 18454, 15096, 15484-2020 and
CWP-6759-2021.

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Mr. Suresh Kumar Kaushik, Advocate
for the petitioners in CWP-14163, 14168,
22367, 14166, 14937, 22369 of 2020 and
CWP Nos. 1385, 2024 & 8089 of 2021 and
for applicant in CM-3103-CWP-2022

Mr. Dalbir Singh, Advocate for the petitioners
in CWP-16337, 16471 of 2020 and 5423 of 2021.

Mr. Rajesh Gaur, Addl.A.G. Haryana.

Mr. Sanjeev Kumar Birla, Advocate
for the applicants-respondents No.34 to 37 in
CMs-13399-98-CWP-2022.

Mr. Satbir Singh Gill, Advocate
for the respondents No.4 to 33 and for applicants in
CM-11425-CWP-2020 and CM-13601-CWP-2020 in
in CWP-14660-2020.

* * *

Harsimran Singh Sethi, J. (Oral)

CM-13397-CWP-2022

As prayed for, application is allowed.

Main Case

By this common order, above mentioned writ petitions are being disposed of as all the writ petitions involve the same question of law based on similar facts.

In the present writ petitions, the petitioners, who are working as Extension Lecturers with the respondent-State of Haryana though, unqualified to be appointed on regular basis keeping in view the rules governing the service, have approached this Court with a prayer that the action of the respondents in relieving them from service is arbitrary and illegal keeping in view the fact that in the earlier round of litigation, Coordinate Bench of this Court allowed the ineligible Extension Lecturers

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to continue in service till the eligible candidates are appointed on regular basis or eligible candidates are appointed as Extension Lecturers in their places by following due process of law.

According to the petitioners, in view of the order passed by a Coordinate Bench of this Court in the bunch of petitions being **CWP-20767 of 2017** titled as **Anita vs. State of Haryana and others** decided on 25.01.2018, the petitioners have a right to continue in service till they are replaced by regularly selected candidates or by candidates having required qualification as envisaged under the rules governing the service. As per the petitioners, the said judgment of the learned Single Judge has already been upheld hence, order dated 11.09.2020 (Annexure P/12) passed by the respondents relieving the petitioners from service is liable to be set aside.

Learned counsel for the petitioners argues that even otherwise, order dated 11.09.2020 (Annexure P/12) relieving the petitioners from service cannot be sustained for the reason that the same has been passed on the basis of the Instructions dated 04.03.2020 issued by the respondent-State of Haryana so as to relieve the ineligible Extension Lecturers, whereas the same instructions have already been interpreted by the Division Bench of this Court in **LPA No.814 of 2021** titled as **Amrit Kaur Vs. State of Haryana and others** vide interim order dated 10.11.2021 to mean that ineligible candidates can continue in service as per Policy dated 04.03.2020 of the State of Haryana till they are replaced by the regularly selected candidates or by candidates who are fully eligible as per the rules governing the service. Learned counsel for the petitioners submits that said interim

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order dated 10.11.2021 passed by a Division Bench of this Court in **Amrit Kaur (supra)** has attained finality as special leave petition filed against the said order by the State of Haryana was withdrawn by them.

Learned counsel for the petitioners further submits that in some of the cases, the petitioners have attained eligibility while they were working as Extension Lecturers hence, their cases need to be reexamined on the basis of the fact that they have already attained the required qualification envisaged under the rules governing the service.

Learned counsel for the respondents submits that once the petitioners are not eligible to teach the students keeping in view the rules governing the service, they have no right to continue in service especially, after Policy dated 04.03.2020, according to which, all the ineligible Extension Lecturers were required to be relieved from service. Learned counsel for the respondents further submits that as per his instructions, requisition for 1500 posts of Lecturers in different subjects have already been sent to the Haryana Public Service Commission for making regular selection hence, prayer of the petitioners for allowing them to continue in service despite being ineligible to hold the post in question may kindly be declined.

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

The question which has arisen before this Court is whether the candidates who are ineligible to be appointed as lecturer can be allowed to continue in service till they are replaced by the regularly selected candidates or by andidates who fulfills the qualification required under the rules

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governing the service.

A similar prayer was raised by the petitioners before this Court on an earlier round of litigation in CWP-20767-2017 and connected cases and after hearing both the parties, order dated 25.01.2018 has been passed by the Coordinate Bench of this Court. Relevant paragraph of the order is as under:-

> "5. In case, NET qualified candidates are not available in response to the advertisements inviting applications for Extension Lecturers, to the extent of vacancies notified, then the petitioners, who do not possess NET certificates, will have a right to continue as Extension Lecturers for the time being provided their work, conduct and performance is satisfactory. Those petitioners, who are not NET qualified but fall within the deficit/shortfall of advertised vacancies will not be replaced by a similar arrangement till direct recruitment is made and regular candidates are available for joining the cadre posts. However, in cases, where the NET qualified candidates are available to fill all the vacancies required to be filled from amongst Extension Lecturers then it will be open to the Government to engage the petitioners who are NET qualified to the exclusion of others."

As per the said order, the petitioners have been allowed to continue in service till they are replaced by regularly selected candidates or workload existed or the qualified Extension Lecturers are available to replace them.

The said judgment was tested before the Division Bench of this Court in LPA No.395-2020, which LPA was decided by the Division Bench of this Court on 06.08.2020. Before the LPA Bench, the prayer of the unqualified Extension Lecturers was that they be given opportunity to

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acquire NET qualification and till the acquisition of the said qualification, they be allowed to continue in service. The said contention was raised on the ground that they have already been working for a considerable years.

The Division Bench while considering the said plea, recorded certain findings in order dated 06.08.2020 passed in LPA No.395-2020 that unqualified lecturers cannot claim continuity in service especially, when Policy dated 04.03.2020 insists upon NET qualification so as to continue even on the post of Extension Lecturer. Further prayer of the ineligible candidates to allow them to continue in service till they acquire minimum qualification was also declined by the Division Bench in para 06 of the said order. Not only this, the Division Bench recorded the finding that once a candidate does not possess mandatory NET qualification, they cannot continue in service and it does not lie in the right of the ineligible candidates to demand as to how they are to be replaced. Relevant paragraphs of the said judgment of the Division Bench in LPA No.395-2020 are as under:-

> "5. As far as this contention is concerned, learned counsel for the Respondents has pointed out that minimum requirement of NET qualification has been consistently insisted upon by the State in its policies and has been reiterated in its recent policy dated 4th March, 2020.
>
> 6. Since, as of date there is no such policy to grant time to serving contractual Extension Lecturers, not possessing NET time to possess such qualification while continuing in service, it is not possible for the Court to

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> dictate to the Respondents to provide such a facility to the Appellants.
>
> 7. The second contention raised is that those replacing the Appellants should not be themselves engaged on a contractual basis. As far as this contention is concerned, since the Appellants in any event do not possess the mandatory NET qualification and, as such, cannot continue, there is no requirement to consider the submission as to how they are likely to be replaced."

From the perusal of the said order, it is clear that though, order of the learned Single judge was not interfered with but same stood modified accordingly when the finding was recorded by the Division Bench that ineligible candidates cannot demand that they be allowed to continue in service as per the policy dated 04.03.2020.

A similar question as raised in the present petitions was raised before this Court in CWP-18958-2020 and the Coordinate Bench of this Court vide order dated 07.09.2021 while interpreting Policy dated 04.03.2020 held that ineligible candidates cannot be allowed to continue in service. The said order dated 07.09.2021 was assailed in **LPA No.814-2021** titled as **Amrit Kaur vs. State of Haryana and others** so as to claim continuity in service till ineligible candidates are replaced by regularly selected candidates or qualified Extension Lecturers. The Division Bench of this Court while hearing the said LPA No.814-2021 by way of an interim order dated 10.11.2021 stayed the operation of the order of the Coordinate Bench dated 07.09.2021. Said interim order dated 10.11.2021 is as under:-

> "Heard learned counsel for the appellant.

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Notice of motion.

Sh. Sharan Sethi, learned Additional Advocate General, Haryana, accepts notice on behalf of the appellants.

The operation of the impugned order is stayed subject to the above directions since the learned Single Judge does not appear to have noticed the Clause in the Policy dt. 04.03.2020 which permits continuance of persons like appellants if there is adequate workload and their work is satisfactory.

It is not in dispute that there is adequate workload, and that not even an advertisement has been issued as of date by the respondents to fillup the vacancies of the Lecturers pursuant to Policy dt. 04.03.2020. Since the appellants had been in service upto the date of the judgment of the learned Single Judge under appeal; and since even as per the Policy guidelines dated 04.03.2021, Lecturers would be allowed to deliver lectures if there is sufficient workload and their work is satisfactory; and since there are no newly appointed Lecturers, the respondents are directed to allow the appellants to work continuously in the post they were holding on the date of judgment of the learned Single Judge till the State makes appointments of regular Lecturers, who possess the qualification of NET/Ph.D.

List on 22.02.2022.

A photocopy of this order be placed on the files of connected cases."

Feeling aggrieved against the interim order dated 10.11.2021,

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State of Haryana though, preferred a Special leave petition before the Hon'ble Supreme Court of India but withdrew the same. Resultantly, Amrit Kaur, who is similarly situated as the petitioners in the present petitions i.e. non-qualified candidate, keeping in view the rules governing the service, is being allowed to continue in service.

The prime contention of the learned State counsel is that relieving of the petitioners is keeping in view the policy of the Government of Haryana dated 04.03.2020. As per the respondents, subsequent to the passing of the impugned order, the Division Bench of this Court have already had an occasion to express opinion about the said policy dated 04.03.2020 and its implementation in a particular manner vide order dated 10.11.2021 in LPA No.814-2021. That being so, the respondents need to examine the issue of relieving the petitioners afresh in the light of the interim order dated 10.11.2021 passed in LPA No.814-2021 titled as **Amrit Kaur vs. State of Haryana and others** i.e. as to whether petitioners who are unqualified Extension Lecturers are to be allowed to be continued in service till they are replaced by regularly selected candidates or the eligible Extension Lecturers or not.

By way of interim order, operation of the impugned order was already stayed and the petitioners are continuing in service keeping in view the facts which have come into existence after filing of the present petitions which have been noticed hereinbefore, hence, it becomes incumbent upon the respondents to examine the issue whether ineligible Extension Lecturers can be allowed to continue in service in case workload exists or till the regularly selected candidates are appointed or candidates eligible as per the

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rules are appointed in their place.

Let fresh consideration be given by the respondent-State keeping in view the facts which have been stated hereinbefore including the observation of the competent Court of law noticed hereinbefore and a fresh order be passed within a period of 08 weeks from the receipt of this order.

Before parting, it may be noticed that teachers are the pillars of the society and once the State Government has formulated certain rules envisaging minimum required qualification for appointment, there has to be a valid justification in not appointing regular selected candidates having those qualification and continuing the ineligible candidates despite the fact that there exist ample opportunity with the State to recruit the qualified persons so as to teach the young generation which is to hold the future of the country. As the respondent-State has informed that they have already sent a requisition to the Commission for making regular appointment in respect to the posts being held by the petitioners and the similarly situated Lecturers, it will be in the interest of justice as well as in the interest of the students that eligible regular Lecturers are appointed at the earliest to teach the students so that they do not suffer in any manner. Respondents are directed to expedite the selection of regular lecturers and it will be appreciated in case selection process is completed in next 06 months.

Till fresh consideration is given by the respondents, the petitioners, who are already working under the interim order passed by Coordinate Bench, will be allowed to continue in service.

Writ petitions stand disposed of in above terms.

All the pending civil miscellaneous applications stand disposed

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of.

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December 07, 2022 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

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

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