

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

237 (06 cases)	(1) CWP-24339-2021
Manoj Kumar and others	...Petitioners
Versus	
State of Haryana and others	...Respondents
	(2) CWP-25124-2021 (O&M)
Sanjay Kumar and others	...Petitioners
Versus	
State of Haryana and others	...Respondents
	(3) CWP-3526-2022
Pradeep Kumar and others	...Petitioners
Versus	
State of Haryana and others	...Respondents
	(4) CWP-4985-2022
Rajender and others	...Petitioners
Versus	

State of Haryana and others

...Respondents

(5) CWP-7364-2022

Parveen and others

...Petitioners

Versus

State of Haryana and others

...Respondents

(6) CWP-5347-2022

Bharat Pal and another

...Petitioners

Versus

State of Haryana and others

...Respondents

Date of Decision :09.11.2022

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sachmeet Singh Randhawa, Advocate for the petitioners
in CWP-24339-2021.

Mr. Gurnoor Singh Sandhu, Advocate
for respondents No.4 to 27 in CWP-24339-2021.

Mr. Ravinder Bangar, Advocate for the petitioners
in CWP-4985, 5347 and 7364 of 2022.

Mr. Mukul Aggarwal, Advocate for petitioners
in CWP-3526-2022.

Mr. Ravinder Malik (Ravi) Advocate for the petitioners
in CWP-25124-2021

Mr. Salil Dev Singh Bali, Advocate
for respondent NO.4 in CWP-25124-2021.

Mr. Vikas Chatrath, Advocate for the respondents No.28 & 29.

in CWP-24339-2021.

Mr. Vikram Sheoran, Advocate for the respondents.

Mr. Vivek Khatri, Advocate for the applicant
in CM-6801-CWP-2022.

Mr. Harish Nain, AAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

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

The present petitions have been filed by the petitioners claiming selection and appointment to the post of Art and Crafts Teacher.

Factual aspects leading to the filing of the present writ petitions are that the Haryana Staff Selection Commission advertised 816 posts of the Art and Crafts Teachers vide advertisement No.06/2006. The selection in pursuance to the said advertisement was made and the selected candidates were also appointed but the said selection was challenged before this Court in **CWP-23394-2010** titled as **Neha and others vs. State of Haryana and others** and vide order dated 20.02.2015, a Coordinate Bench of this Court set aside the said selection and consequent appointment. The judgment of the Coordinate Bench of this Court was impugned before the Division Bench of this Court in LPA No.359-2015, which judgment was upheld by the Division Bench of this Court vide order dated 10.11.2020. Thereafter, the judgment of the Division Bench of this Court was upheld by the Hon'ble Supreme Court of India in **SLP No.14171-2020** vide order dated 14.12.2020.

Keeping in view the order passed by the competent Court of

law, the selection process was started afresh and fresh written test was conducted in pursuance to the fresh selection process on 31.01.2021. The result of the written examination was declared on 10.03.2021 and the interviews were conducted on 14.03.2021 and 20.03.2021 and final result was declared on 14.11.2021.

In the final result, which was declared in November 2021, certain candidates, who had obtained their essential qualification i.e. Art and Crafts Diploma through Distance mode from Kurukshetra University, Kurukshetra were also treated eligible and were selected by the selecting agency but with a condition that their selection is subject to the decision in **SLP No.8670-2007** titled as **Devender Bhaskar and others vs. State of Haryana and others** wherein, question regarding the eligibility of the candidates, who had obtained their Art and Crafts Diploma through Distance mode from Kurukshetra University, Kurukshetra was pending consideration as to whether those candidates are eligible to compete for appointment to the post of Art and Crafts Teacher or not keeping in view the rules governing the service.

SLP No.8670-2007 titled as **Devender Bhaskar and others vs. State of Haryana and others** was decided by the Hon'ble Supreme Court of India on 24.11.2021 and it has been held that the Art and Crafts Diploma obtained by the candidates through Distance mode from Kurukshetra University, Kurukshetra is not equivalent to two years diploma in Art and Crafts Examination conducted by the Haryana Industrial Training Department and the candidates who had obtained Art and Crafts Diploma through Distance mode from Kurukshetra University, Kurukshetra are not

eligible to be appointed to the post of Art and Crafts Teacher.

Consequent upon the decision of the Hon'ble Supreme Court of India in SLP No.8670-2007 titled as **Devender Bhaskar and others vs. State of Haryana** dated 24.11.2021, candidates who were selected with the condition that their selection will be subject to the decision in SLP No.8670-2007 were declared ineligible by the respondent-commission and approximately 668 candidates, who have been recommended by the respondent-Commission against 816 posts of Art and Crafts Teachers, which recommendation was subject to the decision in Devender Bhaskar (supra) became ineligible to be considered for appointment despite having merit to their credit in the selection process, which was conducted by the respondents in the year 2021.

The petitioners are those candidates, who could not make up in the first selection list, keeping in view the merit they obtained but their prayer is that as the selection of 668 candidates, who had obtained their Art and Crafts Diploma through Distance mode from Kurukshetra University, Kurukshetra have been declared ineligible, the petitioners be considered for selection against the posts vacated by the ineligible candidates and their consequent appointment against the posts, which have become available keeping in view the judgment of the Hon'ble Supreme Court of India in SLP No.8670-2007 titled as **Devender Bhaskar and others vs. State of Haryana** dated 24.11.2021

Upon notice of motion, the respondents have filed reply. In the reply, factual averments, which have been stated hereinbefore have not been disputed. Learned counsel appearing for the private respondents, who are

the candidates who were selected initially in the selection made in the year 2021 but have been declared ineligible keeping in view the judgment of the Hon'ble Supreme Court of India in SLP No.8670-2007 titled as **Devender Bhaskar and others vs. State of Haryana** dated 24.11.2021 contends that the review petition has already been filed by the candidates and as the said review petition is pending consideration before the Hon'ble Supreme Court of India, the claim of the petitioners to consider them eligible in the place of the candidates who are having Art and Crafts Diploma through Distance mode from Kurukshetra University, Kurukshetra may kindly be declined at this stage, keeping in view the pendency of the review petition before the Hon'ble Supreme Court of India.

Learned counsel for the private respondents also contends that by allowing the prayer of the petitioners third party right will also come into effect hence, present writ petitions may kindly be adjourned so as to await the decision of the Hon'ble Supreme Court of India in the review petition.

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

The factual assertions which have been noticed hereinbefore are not disputed by any of the parties concerned. The question which arises is whether the claim of the petitioners for allowing them consideration for selection and consequent appointment, keeping in view the fact that 668 selected candidates, have now been become ineligible, needs to be accepted or not.

The teachers are to be appointed for the benefit of the students to teach them. This Court had asked the respondent-department as to

whether there is any urgency in finalizing the recruitment so as to appoint the teachers so that the students do not suffer. The respondent-department has stated before this Court that the department does not have required number of teachers as of now to teach the students though, certain teachers have been appointed on contractual basis.

Keeping in view the above factual position, this Court is to decide qua the prayer of the petitioners and also to ensure that none of the parties suffer prejudice.

Factual aspect is that the petitioners were not meritorious enough to be selected in the initial selection process keeping in view the merit they obtained and concededly, though, the private respondents were more meritorious but as per the facts which exists now, they lack basic qualification required to be selected and appointed to the post of Art and Crafts teacher keeping in view the decision of the Hon'ble Supreme Court of India in Devender Bhaskar (supra) though, a review petition, which has been filed by the private respondents, is still pending consideration before the Hon'ble Supreme Court of India.

Keeping in view the plea of the private respondents that the review petition is pending in SLP No.8670-2007 hence, the present proceedings be adjourned to await the decision of Hon'ble Supreme Court of India in the said review petition, the present case has already been adjourned for about four times. Prayer of the private respondents to adjourn the present proceedings cannot be accepted for indefinite time especially, when the claim of the private respondents has already been substantially decided upto the Hon'ble Supreme Court, especially when the said issue

relates to public interest of school children, who need teachers for their welfare and studies.

As per the settled principle of law settled by the Hon'ble Supreme Court of India while deciding **Contempt Petition No.570-2022** titled as **Reliance Industries Limited vs. Vijayan A** on 07.11.2022, it has been held that the pendency of an appeal or writ petition along with stay cannot be equated with pendency of a review petition. Once, there is a final decision of the Hon'ble Supreme Court of India in an appeal merely because a stay application is pending in the review petition, the same cannot be a ground to grant stay hence, there is no ground with the respondents not to implement the judgment in question. Relevant portion of the judgment is as under:-

“We have gone through the aforesaid decisions and the subsequent order passed by this Court dated 12.10.2022 in Review Petition (Crl.) No.250/2022. The pendency of an appeal and/or writ petition along with stay cannot be equated with pendency of the review petition. There is a final decision by this Court in an appeal. Merely because the stay application is pending in review petition cannot be a ground to grant stay by the respondent on its own and not to comply with the directions issued by this Court.”

In the present case also, the issue in question has already attained finality up to the appeal before the Hon'ble Supreme Court of India though, a review petition has been filed in which notice is yet to be issued hence, as per the settled principle of law noticed hereinbefore, no benefit can be given to the private respondents not to implement the judgement in

Devender Bhaskar (supra) merely on the ground that review petition has been filed.

Prayer of the petitioners needs to be decided, keeping in view the facts and circumstances of this case stated hereinbefore. In order to ensure that none of the parties suffer prejudice, keeping in view the pendency of the review petition in Devender Bhaskar (supra), respondent-Commission is directed to consider the claim of the eligible candidates against the 668 posts, which have become available keeping in view the decision the Hon'ble Supreme Court of India in Devender Bhaskar (supra) but the selection of the candidates will be subject to the decision to be passed by the Hon'ble Supreme Court of India in review petition in Devender Bhaskar (supra), which has been filed by the candidates concerned against the order passed in SLP No.8670-2007 dated 24.11.2021.

Learned Senior counsel appearing on behalf of the petitioners submits that the petitioners are ready to give an undertaking/affidavit before the department concerned that they will abide by the decision of the Hon'ble Supreme Court of India in review petition, which has been filed in Devender Bhaskar (supra) and in case as per the ultimate decision of the Hon'ble Supreme Court of India, petitioners are liable to vacate their posts despite their consideration and consequent selection and appointment under this order, they will vacate the posts in question without raising any objection.

That being so, respondent-department is directed that against the 668 posts which have become available, selection process be initiated to

select 668 candidates for selection and consequent appointment of Art and Crafts Teachers. Any candidate, who is selected and secures appointment will be required to furnish an undertaking/affidavit that he/she will be governed by the order to be passed by the Hon'ble Supreme Court of India in review petition, which has been filed in SLP No.8670-2007 titled as Devender Bhaskar (supra) and in case as per the order of Hon'ble Supreme Court of India in review petition warrants vacation of post by him/her, he/she will vacate the same without raising any objection, only then their cases be considered for appointment in case they are selected. The said selection and consequent appointment under this order will not given any right to the petitioners over and above any order to be passed by the Hon'ble Supreme Court of India in review petition, which has been filed in SLP No.8670-2007 titled as Devender Bhaskar (supra) and the candidates so selected and appointed under this order will be governed by the order to be passed in the review petition in Devender Bhaskar (supra) without their being further proceedings.

It is also made clear that as the selection and consequent appointment of the candidates against the 668 posts will take some time and if before the selection or appointment of the candidates against the vacated post advertised, judgment of the Hon'ble Supreme Court of India in review petition, which has been filed in SLP No.8670-2007 becomes available for consideration of the department, the same will prevail over this Order and the same will be implemented and this order will not be given effect to.

This Court has been informed that the selection in question has also been challenged by some of the candidates in CWP-26393-2021, LPA

No.263-2021, LPA-1091-2021 and CWP-25124-20209. This Court is not making any observation qua the eligibility of the petitioners in the present petitions or the genuineness of the selection and the said aspect will be decided in those writ petitions, which are pending on the said issue.

Keeping in view the above, present writ petitions are disposed off in above terms.

Let respondents carry out the selection process against the 668 posts, which have become available and all the endeavour be made to complete the process within a period of two months from the date of receipt of copy of this order.

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

All pending civil miscellaneous applications stand disposed off.

November 09, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No