

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(110+298)

CM-15669-CWP-2022 and
CM-16137-CWP-2022 in/and
CWP-8150-2021
Date of Decision : October 29, 2022

Krishan Kumar Jatian

.. Petitioner

Versus

State of Haryana and others

.. Respondents

(109+256)

CM-15105-CWP-2022 in/and
CWP-16098-2019

Dr. Ashok Rana

.. Petitioner

Versus

State of Haryana and others

.. Respondents

(256-A)

CM-15922-CWP-2022 in/and
CWP-20228-2021

Rajnish Singh

.. Petitioner

Versus

State of Haryana and others

.. Respondents

(115)

CWP-23481-2022

Bijender Singh

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Malik, Senior Advocate, with
Mr. Sunil Hooda, Advocate, for the petitioner
in CWP No.8150 of 2021.

Mr. Abhishek Bansal, Advocate, for
Mr. Ravinder Malik (Ravi), Advocate, for the petitioner
in CWP No. 16098 of 2019.

Mr. J.S Thind, Advocate, for the petitioner
in CWP No.20228 of 2021.

Mr. Akshay Bansal, Advocate, for the petitioner
in CWP No.23481 of 2022.

Mr. Sandeep Singh Maan, Additional Advocate General,
Haryana.

Mr. R.S. Budhwar, Addl. A.G., Haryana.

Mr. Angel Sharma, Advocate, for respondent No.3.

HARSIMRAN SINGH SETHI J. (ORAL)

By this common order, four writ petitions, the details of which
have been given in the heading, are being decided as all the petitions
involve the same question of law on similar facts.

CM-15669-CWP-2022 in CWP-8150-2021

As prayed for, the application is allowed.

Reply on behalf of respondent No.3 is taken on record.

CM-16137-CWP-2022 in CWP-8150-2021

As prayed for, the application is allowed.

Replication to the written statement filed on behalf of
respondent No.3 as well as Annexures P-31 and P-32 are taken on record.

CM-15105-CWP-2022 in CWP-16098-2019

As prayed for, the application is allowed.

Reply on behalf of respondent No.3 is taken on record.

CM-15922-CWP-2022 in CWP-20228-2021

As prayed for, the application is allowed.

Reply on behalf of respondent No.3 is taken on record.

CWP-8150-2021 and other connected writ petitions

The grievance of the petitioners is that though the petitioners were initially appointed as Demonstrator with the qualification as required for appointment to the post of Demonstrator but later on, the said post was upgraded to that of a Lecturer and the petitioners were designated as Lecturers in their respective subject/field and were granted all the benefits of the post of Lecturer but for the issuance of the Teacher Code to the petitioners, an objection has been taken by the respondents that as the petitioners do not have post graduate qualification required for appointment to the post of Lecturer, the said Teacher Code cannot be given to the petitioners.

For the purpose of the present order, the facts are being taken from CWP No.8150 of 2021.

The petitioner in the present petition was appointed in the respondent No.2-College on the post of Demonstrator. It is a conceded position that the petitioner fulfilled the required qualification for the post of Demonstrator on the date of appointment i.e. 06.08.2004.

The Central Council of Indian Medicine by their letter dated 02.05.1991 (Annexure P-1) allowed the re-designation of the Demonstrator as a Lecturer and thereafter, in the year 1996 again reiterated that all the Demonstrators, who are working with the Colleges concerned be re-designated as Lecturer. Keeping in view the said direction, though the

Demonstrators were not fulfilling the required qualification for appointment to the post of Lecturer as mentioned in the relevant rules, but by granting them relaxation, they were re-designated as Lecturer. In the respondent-College also, the Demonstrators, who are working, were re-designated as Lecturers.

It is a conceded position that all the petitioners, who were working as Demonstrators, were re-designated as a Lecturer irrespective of having post graduate qualification or not and were being given all the benefits for which a Lecturer is entitled for including the pay scale and other benefits. The said benefits were extended to the Demonstrators by re-designating them as Lecturer by relaxing the rules in their favour.

For the purpose of teaching, a policy was framed that only the teachers, who have been given a Teacher's Code by respondent No.3, are entitled to teach in the respective college so as to ensure that no one, who is not authorized to teach the students, is employed by the College. The Teacher Code is issued to all the Lecturers, who are working in their respective college.

The Teacher's Code was also granted to the petitioner by respondent No.3 and the petitioner kept on discharging the duties of the Lecturer including the job of teaching the students with respondent No.2-College but respondent No.3 withdrew the said facility from the petitioner on the ground that the petitioner did not had the post graduate qualification to his credit and therefore, the petitioner cannot be allowed to teach as being he not eligible to be appointed as a Lecturer. The said action of withdrawal of the Teacher's Code from the petitioners is under challenge in the present

bunch of writ petitions.

After notice of motion, reply has been filed wherein, the respondents have taken an objection that as per the policy issued by respondent No.3, the Demonstrators, who are working upto 01.07.1989 were to be re-designated as Lecturer and as the petitioners were appointed as Demonstrators after the said date though they have been re-designated as a Lecturer but as they do not have the post graduate qualification, the grant of Teacher's Code to them so as to make them eligible to teach, cannot be claimed as a matter of right as their case is not covered as per the decision of respondent No.3.

As per the respondents, in the Meeting of the Board of Governors of respondent No.3 held on 12.04.2021 (Annexure R3/2, the post graduate qualification in the subject/speciality being taught by the Lecturer is must to get the Teacher's Code and concession was only available to the Demonstrators who were recruited prior to 01.07.1989 and were re-designated as a Lecturer thereafter. Hence, the claim of the petitioners for the grant of Teacher's Code was rightly not accepted by respondent No.3 as the case of the petitioners is not covered by the policy concerned and the act of withdrawing the Teacher's Code from the petitioners is inconsonance with law.

In the replication filed by the petitioners, the petitioners are placing reliance upon the letter of respondent No.3 dated 03.08.2006 wherein, it has been mentioned that all the Demonstrators be re-designated as a Lecturer irrespective of the post graduate qualification or the cut of date of 01.07.1989 as prescribed in the regulation to contend that once the

Demonstrators, who are appointed even after 01.07.1989 and have been re-designated as Lecturer, the benefit as extended to the Demonstrators, who were recruited prior to 01.07.1989, need to be extended to the petitioners also as the cut of date stands relaxed by the said letter by the respondents themselves.

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

The only question which needs to be addressed in the present petitions is whether the petitioners who are working as Lecturers after their re-designation and discharging the duties at the said post as being done by the Lecturer who are directly recruited including teaching and are being paid all the emoluments for the post of Lecturer, can be denied the Teacher's Code on the ground that they do not fulfill the qualification prescribed for the post of Lecturer.

It is a conceded fact that the post of Demonstrators was re-designated as Lecturer by respondent No.3, which direction was followed by all the institutions and the Demonstrators working in the respective institutions were re-designated as Lecturer despite the fact that those Demonstrators did not fulfil the required qualification as prescribed for direct recruitment to the post of Lecturer under the rules governing the service. This means that the relaxation was given to the Demonstrator from possessing the essential qualification while re-designating them as a Lecturer.

Once a relaxation has been given by respondent No.3 while re-designating the Demonstrator as a Lecturer, the same has to be applied in all

the aspects/field and the re-designated Lecturers are to be treated as Lecturer for all intent and purposes.

Even otherwise, once the petitioners have been designated as Lecturer and are performing the duties of Lecturer and are being paid the salary of the Lecturer, they are entitled for all the benefits for which a Lecturer is entitled for including the Teacher's Code. In case, respondent No.3 felt that the Demonstrators are not eligible to teach till they possess the post graduate qualification as required under the rules governing the service, the same should have been incorporated in the re-designation letter itself, which condition is missing while re-designating the petitioners as Lecturers.

Once without any pre-condition, the petitioners were re-designated as a Lecturer, they are entitled to be treated as Lecturers for all intent and purposes and even for the grant of Teacher's Code, the said relaxation needs to be implemented.

Further, the respondents action of withdrawing the Teacher's Code from the petitioners on the ground that they do not have post graduate qualification, is contrary to the letter dated 03.08.2006, a copy of which has been appended as Annexure P-31. As per the said letter, respondent No.3 decided in their meeting held on 21.03.2005, which meeting was held after the appointment of the petitioners in the year 2004, the cut of date of appointment as Demonstrator or the post graduate qualification should not be taken as a ground for denying re-designating the Demonstrator as a Lecturer. Relevant portion of the letter dated 03.08.2006 is as under:-

“With reference to the subject mentioned above, I am to

inform you that Central Council in its meeting held on 21.02.2005 while considering the matter of re-designation of post of demonstrator in Uttar Pradesh decided that all demonstrators should be re-designated as lecturer irrespective the postgraduate qualification and cut off date of appoint i.e. 1.7.1989 as prescribed in the concern regulations.

You are requested to kindly take necessary action accordingly.”

Once, the said cut of date has been ignored while re-designating the petitioners as Lecturer, the same be given effect to even while considering their claim for the grant of Teacher's Code also. Therefore, the claim of the petitioners is covered by the decision of the respondents dated 21.03.2005 (Annexure P-9) itself.

Keeping in view the above, the claim of the petitioners for the grant of Teacher's Code is allowed and the respondents are directed to issue the relevant Teacher Code to be treated as a Lecturer for all intent and purposes.

Learned counsel for respondent No.3 submits that as per the 1986 regulations which prescribed the minimum qualification for the Lecturer, the prescription of post graduate qualification is must and therefore, once the petitioners do not have the post graduate qualification, the petitioners cannot be granted the Teacher's Code.

The said argument is fallacious for the reason that despite the said regulation, which are of the year 1986, the petitioners have been re-designated as a Lecturer by ignoring the qualification mentioned in the 1986 regulations, which prescribes post graduation for being recruited as a Lecturer, however, the petitioners were still re-designated as Lecturer,

hence, the said objection cannot be taken for the grant of Teacher's Code, once respondents themselves have re-designated the petitioners as Lecturers and petitioners are discharging the duties of the said post without any objection from the respondents.

It is not disputed by learned counsel for respondent No.3 that the petitioners have been re-designated as a Lecturer which act is in accordance with the policy of respondent No.3, therefore, once the petitioners are discharging the duties of the post of Lecturer for all intent and purposes, they are entitled for the benefits of the post of Lecturer and the relaxation once granted, same is to be made applicable on all aspects for the post of Lecturer and cannot be limited only to give the designation of Lecturer and not the other benefits.

Keeping in view the above, the prayer of the petitioners for the grant of Teacher's Code is allowed and the respondents are directed to issue appropriate Teacher Code to the petitioners so that, the petitioners do not suffer any prejudice while discharging the duties of the post of Lecturer including the teaching.

Let the order be complied with within a period of six weeks from the receipt of copy of this order.

The present petitions are allowed in above terms.

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

October 29, 2022

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes