

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

**CWP No. 2894 of 2019 (O&M)
Date of Decision:10.03.2023**

Neetu Sharma

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Kapil Kakkar, Advocate and
Mr. Shreesh Kakkar, Advocate
for the petitioner.

Ms. Lavanya Paul, Deputy Advocate General, Punjab

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of the Constitution, *inter alia*, for directing official respondents to appoint the petitioner as Head Master against the seats reserved for Ex-Servicemen (for short “ESM”) / dependents of ESM, along with all consequential benefits from the date, when person lower in merit was appointed as such.

2. Facts are not in dispute.

3. It transpires that Rashtriya Madhyamik Shiksha Abhiyan Authority, Punjab (for short “RMSAA”) issued an advertisement dated 01.10.2013 (P-1) for filling up various posts on contract basis for one year, including 264 posts of Head Master and relevant part of which reads as under:-

“(4) Educational & Professional Qualification:

a) Headmaster

Degree of recognized University with B.T. or B.Ed. or Senior Basic Training with the following experience:

- i) In case of M.A. or M.Sc. with M.Ed. - Six years.
- ii) In case of M.A. or M.Sc. with B.T./B.Ed. - Seven years.
- iii) In case of B.A. or B.Sc. or B.Com with B.T. or B.Ed. - Eight years.
- iv) In case of D.P. Ed. or B.P.Ed. Eight years from the date physical education was introduced compulsory in the schools.
- v) In case of B.A. or B.Sc. or B.Com with M.Ed. - Seven years.

.....

8. Procedure for selection

A) Headmaster

Weightage to the following qualification shall be given for preparing merit:-

Sr. No.	Qualification	Weightage / Marks
1	Graduation	40%
2	B.Ed.	40%
3	Post Graduation	10%
4	M.Phil	5%
5	Ph.D.	5%
	Total	100

The merit will be prepared by multiplying with 0.9 the provisional merit of the candidates prepared after giving the weightage as per the marks obtained by the candidates. Thereafter 10 marks will be for interview which will be included in the merit of the candidate after the interview conducted by the Selection Board and thereafter the final merit will be prepared.

Note : After preparing the provisional merit list, the candidates three times the number of posts will be called for the scrutiny and after the scrutiny the candidates will be

called for interview by the Selection Bard. After the interview, final merit list will be published.

9. General Conditions:

1. These appointments are to be made on contract basis on consolidate salary initially for a period of one year. The offer of appointment can be extended for the next year keeping in view the work and conduct of the candidate.

2 & 3.

4 For the post of Headmaster:

The experience of teaching as Master / Mistresses / Lecturer School cadre for teaching 6th to 12th Classes in Govt. / Govt. Aided schools recognized and affiliated to CBSE/ISCE/PSEB or its equivalent Education Board will be considered. It is necessary to bring the original experience certificate as per proforma Annexure I at the time of scrutiny.

5 to 10.

11. The candidate will also certify that they are fulfilling all the prescribed eligibility conditions for the post before the last date for submission of the application form. The candidate does not become entitled for selection just by submitting application. The selection for the post will be made subject to his eligibility and merit of the candidate at the time of scrutiny and the original documents regarding qualification. In the absence of the documents the candidates will not be considered for selection and appointment.

12 to 21.....

22. Tentative merit will be prepared for scrutiny. Final merit will be prepared after interview. There will not be any waiting list. In case any post had remain vacant then the fresh

advertisement will be issued for filling those posts. ”

10. Procedure for on-Line Application form.

(i) to (v) xxxxx

Important Dates:

- *Firstly the candidate will apply online registration for which the last date is 18.10.2013, 5 pm. The registration date will the last date of submission of application form.*
- *The candidate after registration will generate Bank Challan and can submit the prescribed fee upto 25.10.2013 in the Bank and deposit prescribed application fee.*
- *After depositing the fee and after confirmation of the fee the candidate can submit the online application form for which the last date is 31.10.2013 upto 5 pm.*

3.1 After issuance of the above advertisement, a public notice was issued in continuation thereof and dates were revised as under:-

Important Dates:

- *Firstly the candidate will apply online registration for which the last date is 24.11.2013, 5 pm. The registration date will the last date of submission of application form.*
- *The candidate after registration will generate Bank Challan and can submit the prescribed fee upto 25.11.2013 in the Bank and deposit prescribed application fee.*
- *After depositing the fee and after confirmation of the fee the candidate can submit the online application form for which the last date is 27.11.2013 upto 5 pm. ”*

3.2 The petitioner while claiming to be dependent of an ESM, applied for the post of Head Master, and photocopy of her application form is appended as P-2.

3.3 In terms of the selection criteria extracted above, the provisional merit list (P-3) was prepared on 14.12.2013; according to which, petitioner secured 53.078 marks and her name figured at Sr. No. 29 in the list.

3.4 All the candidates, including petitioner were called for scrutiny of documents; but she was found to be ineligible vide public notice (P-4), in the following manner :-

“1. Candidate has not completed 8 years experience which is required after BA, B.Ed.;

2. B.Ed from Univ. of Jammu on feb-16, 2006. ”

4. Aggrieved against the aforesaid action on the part of official respondents, petitioner submitted representation(s) dated 20.10.2014 & 18.09.2017 (P-8 & P-9 respectively); but did not receive any response; hence, present writ petition.

CONTENTIONS:-

5. (i) It is contended by learned counsel for the petitioner that her case has not been considered only on the ground that she passed B.Ed. examination from University of Jammu; whereas, the other similarly situated candidates, who obtained B.Ed. degree from the same University and were lower in merit, have already been selected & appointed as Head Master(s);

(ii) Petitioner is fulfilling the requisite qualification i.e. M.Sc., B.Ed. with experience of 07 years, 06 months & 13 days; however, her

claim has been rejected only on the premise that she is not fulfilling 08 years experience;

(iii) that action of the official respondents is wholly arbitrary and discriminatory; hence liable to be quashed and set aside.

6. (i) On the other hand, learned State Counsel while opposing the claim of petitioner, submitted that selection process for the post in question was completed long back, inasmuch as the selected candidates had been offered appointments in the month of October 2014 and the present writ petition was filed in the month of January 2019; hence the same is liable for dismissal only on account of delay and laches.

(ii) Further contended that petitioner was not fulfilling the requisite experience of 08 years in terms of the advertisement dated 01.10.2013 (P-1) as well as service rules, namely, the Punjab State Education Class-III (School Cadre) Service Rules, 1978, (for short “Rules of 1978”); hence her case has rightly been rejected after due consideration and the same is reiterated vide order dated 09.12.2022.

7. Heard learned counsel for the parties and perused the records.

8. Before proceeding further, it is necessary to re-capitulate the educational qualification and experience of the petitioner shown in her application form and that would be as under:-

Qualification	All subjects passed	Roll No.	Year of passing	Subjects	Board / University	Marks obtained	Total Marks	Percentage
Graduation	Yes	126355	2001	BOT, ZOO, CHEM, ENG, PUN	GNDU	1316.00	2400.00	54.83
Post Graduation	Yes	820416538	2009	DBA, MIS, JAVA, LINEX	PTU	903.00	1300.00	69.46
B.Ed.	Yes	06908	2006	EIES, PTLP, SMPE, DESI, ENGL, GESE, EMAE	UNIVERSITY OF JAMMU	605.00	1000.00	60.50

Experience:-

Name of School	Category (Govt. Aided / Affiliated)	Years	Months	Days
Adarsh modern high school narot mehra, ghs wan tara singh	Affiliated, govt.	7	6	13

9. It is discernible from the paper-book that petitioner completed B.Ed. from University of Jammu on 16.02.2006 and M.Sc. from Punjab Technical University (PTU), Jalandhar on 05.02.2010. There is no quarrel that during the pendency of present writ petition, the claim of petitioner has been re-examined by the competent authority; but rejected vide order dated 09.12.2022 (**Mark-X**) and the relevant part of the same is as under:-

“ And whereas, in compliance of the above order dated 03.08.2022, the claim of the petitioner was considered as per law and instructions issued by the government from time to time. The background of the case is that the petitioner applied against the 264 posts of Headmaster/Mistress advertised vide advertisement dated 01-10-2013. That the Rashtriva Madhyamik Sikhsha Abhiyan (RMSA) Authority advertised various posts including 264 posts of Headmasters. The petitioner applied in Ex-Serviceman (Dependent) Category with registration no. R001-00043330. A perusal of the advertisement for the post of Headmaster shown at Para 4 of the advertisement it was mentioned that: -

- a) Degree of recognized University with B.T. or B.Ed or Senior basic Training with the following experience:
 - i) In case of M.A. or M.Sc. with M.Ed-Six Years
 - ii) In case of M.A. or M.Sc. with B. T./B.Ed-Seven Years
 - iii) In case of B.A. or B.Sc. or B. Com with B.T. or B.Ed-Eight Years
 - iv) In case of D.P.Ed or B.P.Ed Eight year from date physical Education was introduced compulsory in the Schools.
 - v) In case of B.A. or B.Sc. or B.Com. with M.Ed-Seven Years

And whereas, as per the official record, petitioner had acquired degree of B.Ed and M.Sc. (IT) in 16-02-2006 and 05-02-2010 respectively. The petitioner possesses experience of 7 years, 06 months and 06 days. The candidate possessing degree of M.Sc. and B.Ed, with minimum experience of seven years was required but the petitioner had not acquired the experience of seven years after obtaining the requisite degree i.e.

M.Sc. as it has been acquired prior to having passed the Degree of M.Sc. i.e. 2010. Hence, for the Degree of B.A. and B.Ed, 8 years' of the petitioner was considered, for which, 8 years' experience was necessary as per condition mentioned in the advertisement. The petitioner did not possess necessary 8 years' experience.

And whereas, it need not be emphasized that an experience prescribed for a post is considered only when it is acquired after acquiring minimum academic qualification. But in the instant case, after obtaining her requisite degrees, the petitioner does not fulfill the condition of requisite years' experience as prescribed in the advertisement, since the petitioner was not eligible on the basis of qualification of B.Ed only.

And whereas, once the process of selection is started with issuance of an advertisement, subsequent alteration in its terms and conditions is not permissible in law, as such an alteration may cause prejudice to the rights of those candidates who have already applied for the posts on the basis of their eligibilities acquired as mentioned in the advertisement. It is further submitted that appointment process is over and appointment letters have already been issued to all selected candidates in the month of October 2014. ”

10. As per her application form, petitioner is having experience of 7 years, 6 months & 13 days and which, according to her, is more than sufficient for the post in question.

11. The moot point for consideration of this Court is as to whether petitioner is fulfilling the requisite experience for the post of Head Master in terms of advertisement (supra) as well as Rules of 1978 ?

- (i) There is no quarrel that petitioner has passed M.Sc. Degree on 05.02.2010;
- (ii) last date for submission of the application form was stipulated as 24.11.2013;

- (iii) As per clause 9 (11) of the advertisement (*supra*) (i.e. General Conditions), “(T)he candidate will also certify that they are fulfilling all the prescribed eligibility conditions for the post before the last date for submission of the application form, i.e. 24.11.2013.”
- (iv) in the above scenario, by no semblance, it could be construed that after completing M.Sc. degree, petitioner has gained the experience of 7 years, 6 months & 13 days; rather the same shall be relatable to her B.Sc. degree and in that eventuality, the requirement of experience would be for eight (08) years (*vide clause 4 (a) (iii) of the advertisement, i.e. “in case of B.Sc. with B.Ed. – Eight years”*).
- (v) thus the experience gained by the petitioner before acquiring M.Sc., cannot be counted for the post in question, being posterior to acquisition of the qualification.

12. In support of the above conclusion, reference can also be made to the following judicial precedents:-

- (i) ***Sheshrao Jangluji Bagde Vs. Bhaiyya, AIR 1991 (SC) 76***, The Hon’ble Supreme Court in para-3 of the judgment, *inter alia* observed that “Normally when we talk of an experience unless the context otherwise demands, it should be taken as experience after acquiring the minimum qualifications required and therefore,

necessarily will have to be posterior to the acquisition of the qualification.

(ii) Again in **Indian Airlines Ltd. & others Vs. S. Gopalkrishnan, (2001) 2 Supreme Court Cases 362**, the Hon’ble Supreme Court in para-5 observed as under:-

“5. When in addition to qualification, experience is prescribed, it would only mean acquiring experience after obtaining the necessary qualification and not before obtaining such qualification.....”

13. In view of the above, it is held that petitioner does not fulfill the requisite experience of 7 years, 06 months & 13 days with M.Sc.; hence, her claim has rightly been rejected, being less than eight (08) years with B.Sc., B.Ed.

14. Resultantly, there is no option, except to dismiss the present petition.

15. Ordered accordingly.

March 10, 2023
SN / dk kamra

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether Speaking</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>