

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16360-2010
Reserved on: 09.01.2023
Date of decision: 10.02.2023

REKHA AND ANOTHER

...Petitioners

VERSUS

B.P.S. MAHILA VISHWAVIDYALAYA AND ANOTHER

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Ms. Alka Chatrath, Advocate and
Ms. Divya Sharma, Advocate
for the petitioners.

Mr. Deepak Kundu, Advocate
for the respondents.

JAISHREE THAKUR, J.

1. The instant writ petition has been filed under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of certiorari for quashing order dated 31.05.2010 (Annexure P-4 and Annexure P-5), whereby the petitioners herein were relieved on the onset of summer vacation in violation of the law as laid down by the Supreme Court in *Rattan Lal versus State of Haryana and others*, AIR 1987 SC 478 and for setting aside order dated 03.09.2010 (Annexure P-13 and Annexure P-14), whereby the respondents have declined to offer appointment to the petitioners stating that they were not eligible for appointment as they have not qualified the School Teachers' Eligibility Test (hereinafter referred to be as STET) and further to issue a writ in the nature of mandamus directing the respondents to allow the petitioners to

continue on their respective posts till the regular selection is made against the posts held by them.

2. In brief, the facts as culled out are that petitioner No.1-Rekha has a qualification of Matric, Senior Secondary, M.A. in Hindi and D.Ed., whereas petitioner No.2-Poonam Suhag has a qualification of Matric, Senior Secondary, B.Sc. (Non-Med.) and B.Ed. They were appointed in Kanya Gurukul Senior Secondary School, Sonapat as the respondents decided to fill up various posts by appointing teachers and lecturers on Guest Faculty basis till the regular selections are made. Petitioner No.1 was appointed as a JBT Teacher, whereas petitioner No.2 was appointed as a Science Teacher. On account of ensuing summer vacation, the petitioners were relieved on the closing of the school during summer vacation. When the petitioners along with other Guest Faculty teachers returned after the summer break for rejoining their duties, they were not permitted to do so despite the fact that similarly situated Guest Faculty teachers/lecturers in the stream of English, Chemistry, Biology, Commerce and Sanskrit were allowed to join on 09.07.2010. Two other candidates i.e. Hindi teacher and Hindi lecturer were also allowed to join duties but the claim of the petitioners was not considered. On 28.07.2010, the respondents issued an advertisement in Dainik Bhaskar newspaper, whereby applications were invited for the post of Guest Lecturers and Guest Teachers including the post of Computer Science Teacher, Science Teacher and JBT Teacher i.e. against the posts, which the petitioners had been working for the last one year and six months.

3. Since the action of the respondents was violative of the directions issued by the Supreme Court in *Civil Appeal No.8746 of 2003*, titled as *Hargurpratap Singh and others versus State of Punjab and others*, decided on

07.11.2003, wherein it had been held that the respondents could not displace one adhoc arrangement by another adhoc arrangement, the petitioners preferred *CWP No.13342 of 2010*, titled as *Rekha and others versus B.P.S. Mahila Vishwavidyalaya and another* in this Court . The said writ petition was disposed of on 04.08.2010 on a statement given at the bar by learned counsel for the respondents that the petitioners would be re-engaged in the same capacity on temporary/contractual basis subject to their eligibility. However, despite a statement having been made in the Court that the petitioners would be re-engaged, the respondents refused to appoint the petitioners by impugned order dated 03.09.2010 (Annexure P-13 and Annexure P-14) on the ground that the eligibility criteria of the Directorate of School Education, Haryana, requires qualification of STET and the petitioners herein do not have the necessary qualification. Aggrieved against the action of the respondents, the present petition has been filed.

4. Learned counsel for the petitioners would contend that the petitioners were appointed as Guest Faculty and they continued to work satisfactorily till the time they were relieved by order dated 31.05.2010. This order was passed so that the petitioners would not be paid during the summer vacation, which action was totally in violation of the judgment as rendered by the Supreme Court in *Rattan Lal versus State of Haryana and others*, AIR 1987 SC 478. It is further argued that despite having given a statement in this Court by learned counsel for the respondents that the petitioners would be re-engaged in the same capacity on temporary/contractual basis subject to their eligibility, the same has not been done only on the ground that the petitioners do not have the necessary qualification of having passed STET. It is further submitted that similarly situated persons have been employed by the respondents, who have

not qualified the said test and, therefore, on the basis of parity, they would also be entitled to be taken back in service.

5. *Per contra*, learned counsel for the respondents would urge that the petitioners could not be re-engaged because eligible applicants for the posts of lecturers/teachers were available. It is also argued that as per Chapter 30 of School Cadre (Group-C) Service Rules, 1998; Chapter 32 of Primary School (Group-C) Service Rules, 1994 and Haryana School Education Rules, 2003 as amended from time to time, there is a specific condition that JBT teachers as well as Science Mistresses should have a certificate of having qualified STET. As per para 4 of Education Department letter No.15/59-2005 CO(3) dated 29.11.2005 issued by the Financial Commissioner and Principal Secretary to Government of Haryana, Education Department, it is stated that the candidates for the post of teachers on Guest Faculty are to fulfill all the qualifications prescribed for the said post as laid down in the Service Rules for direct recruitment.

6. He would further submit that the Kanya Gurukul Senior Secondary School, Sonapat-respondent No.2 is a constituent of B.P.S. Mahila Vishwavidyalaya, Sonapat-respondent No.1, which came into existence by an Act of the State Legislature in the year 2006 and it is still in the process of framing its own rules and regulations. Till such time, respondent No.1 framed its own rules and regulations, the rules and regulations of M.D. University, Rohtak were being followed. It is clearly stipulated in clause 'c' of Chapter XXVII of M.D. University Calender, Volume III that the qualification for Guest/Part-time teachers should be the same as those prescribed for the regular teachers of the University. Therefore, once the petitioners did not have the qualification of having passed the STET examination, they could not be

considered for appointment. It is further submitted that the advertisement that was issued and which is also under challenge in the writ petition, clearly stipulated that qualifications were to be as per the Government norms.

7. I have heard learned counsel for the parties and with their able assistance have gone through the pleadings of the case.

8. The facts are not in dispute. The petitioners herein were appointed as Guest Faculty with Kanya Gurukul Senior Secondary School, Sonapat on 16.01.2009 and 24.08.2009 respectively as JBT Teacher and Science Teacher. They were relieved on 31.05.2010 and, thereafter, an advertisement was issued on 28.07.2010 to fill up the said posts. The entire claim of the petitioners is that their services were illegally dispensed with only on account of not having to pay for the summer vacation and even despite a statement given in Court in CWP No.13342 of 2010, that they would be re-engaged, they have not been re-engaged even on contractual basis primarily on the ground that they do not have STET qualification, which qualification is not possessed by other candidates, who were allowed to re-join.

9. As per Appendix-B to rule 7 of Chapter 32 of Primary School (Group-C) Service Rules, 1994, the basic qualification and experience of a JBT Teacher, which petitioner No.1 did not possess, is reproduced as under:-

“ 2. Junior Basic Trained (JBT) Teacher -

(i) Graduate with English as one of the optional/elective subjects.

Provided that individuals who have already done JBT after 10+2 will be eligible for a period of 2 years. Such 10+2 individuals, if recruited, shall be required to comply with the condition of passing graduation within a period of 5 years.

- (ii) *Passed two years Junior Basic Training Course of Diploma-in-Education Training Course from Haryana Education Department or its equivalent recognized by the Haryana Government with special training in child psychology and behaviour of child upto the age of 12 years.*
- (iii) *Matric with Hindi/Sanskrit.*
- (iv) *Certificate of having qualified School Teachers Eligibility Test (STET).*

As per Appendix-B to rule 7 of Chapter 30 of School Cadre (Group-C) Service Rules, 1998, the basis qualification and experience of a Science Master/Mistress, which petitioner No.2 did not possess, is reproduced as under:-

“ 3. Science Master -

- (i) *B.Sc with B.Ed from a recognized University, with any of the two subjects in B.Sc.:-*
 - (1) *Physics* (2) *Chemistry*
 - (3) *Botony* (4) *Zoology*
- (ii) *B. Sc. Education (4 years course) from a recognized University with any of the two subjects out of the following-*
 - (1) *Physics* (2) *Chemistry*
 - (3) *Botony* (4) *Zoology*
- (iii) *Matric with Hindi/Sanskrit.*
- (iv) *Certificate of having qualified School Teachers Eligibility Test (STET).*

10. As per the affidavit dated 10.11.2017 filed on behalf of the respondents, petitioner No.1 was engaged as Guest Faculty with effect from 16.01.2009 on a vacant post being created due to one regular JBT teacher being sent out on deputation. She could not be re-engaged on account of the fact that she did not fulfill the requisite qualification and other eligibility criteria as per

the terms and conditions of letter No.15/59-2005 CO(3) dated 18.09.2006, issued by the Financial Commissioner and Principal Secretary to Government of Haryana, Education Department, which clearly stipulated that the applicant should fulfill all qualifications prescribed for the post as laid down in Service Rules for direct recruitment, which required a candidate to have qualified STET. The regular JBT teacher Ms. Sukhvinder Devi re-joined on 07.08.2010 and, therefore, the petitioner cannot be re-engaged apart from the fact that she does not possess the necessary qualification. Even petitioner No.2 did not have the qualification to be appointed as per the eligibility criteria. One Ms. Poonam Rani was appointed on the post of Teaching Assistant (TGT Science) and on her resignation from the said post on 11.02.2014, Ms. Uma Rani, B.Sc, M.Sc. (Chemistry), HTET (TGT) was engaged as a Teaching Assistant (TGT Science) as she fulfilled all the requisite qualifications. In view of the categorical stand taken by learned counsel for the respondents and the affidavit filed stating that the petitioners herein do not have the necessary qualifications to be appointed or even re-engaged as Guest Faculty teacher on not having the necessary STET certificate, no ground is made out to interfere in this writ petition.

11. The argument as raised by learned counsel for the petitioners that CWP No.13342 of 2010, filed by the petitioners was disposed of by this Court on 04.08.2010, on a statement given at the bar by learned counsel for the respondents that the petitioners would be re-engaged, has no bearing, considering the fact that the said writ petition was disposed of to consider the case of the petitioners and to offer them appointment, if they were eligible. Their matter was considered by the authorities concerned and they were found ineligible on account of not having the requisite STET certificate. Another argument as raised by learned counsel for the petitioners that there was no

requirement of having an STET qualification, which was introduced subsequently, would also be of no consequence considering the fact that the Service Rules itself provide STET as a necessary qualification. Even the aforementioned letter issued by the Financial Commissioner and Principal Secretary to Government of Haryana, Education Department, categorically states that all the applicants must possess the necessary qualifications prescribed for the said post as laid down in Service Rules for direct recruitment.

12. Consequently, the instant writ petition, being devoid of any merit, is hereby dismissed.

10.02.2023
Chetan Thakur

(JAISHREE THAKUR)
JUDGE

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