

**CWP-21146-2015 and
CWP-22002-2015**

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

Date of decision: 21.03.2023

1. CWP-21146-2015

Manju

...Petitioner

Versus

State of Haryana and others

.....Respondents

2. CWP-22002-2015

Neena and others

...Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Sandeep Goyat, Advocate,
for the petitioners in both the petitions.

Mr. Rajesh Gaur, Addl. A. G. Haryana and
Ms. Tanushree Gupta, DAG Haryana.

Mr. Amit Bansal, Advocate for
Mr. Ashe Kumar Goyal, Advocate,
for respondent No.3-UGC.

HARNARESH SINGH GILL, J. (ORAL)

Both these writ petitions can be conveniently disposed of by a
common judgment as they involve the same question of law based on
similar facts.

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In both the writ petitions, the petitioners who are working as Extension Lecturers, seek quashing the practices of the respondents to replace them with the similarly situated persons and not to pay salary to them during summer vacations.

Learned counsel for the petitioners contends that though petitioner in CWP-21146-2015 passed National Eligibility Test (NET) in 2017, yet all the petitioners have been serving as Extension Lecturers in various colleges since 2013/2014. Learned counsel further contends that the issue involved in this petition is identical to the one raised in CWP-14660-2020, decided on 07.12.2022. Learned counsel further submits that the petitioners would move a fresh representation(s) before respondent No.2-Director General, Higher Education Department, Haryana and that the petitioners would be satisfied in case a time bound direction is issued to respondent No.2 to decide such representation(s) in the light of judgment dated 07.12.2022 passed in CWP-14660-2020. Learned counsel also prays that services of the petitioners may not be terminated till the decision is taken on their representation(s).

Learned State counsel state that representation(s) of the petitioners, if moved, would be considered by respondent No.2 in the light of the judgment dated 07.12.2022.

I have heard the learned counsel for the parties.

The Coordinate Bench has already dealt with the similar issue in CWP-14660-2020. A relevant extract of the judgment dated 07.12.2022 while disposing of CWP-14660-2020, would read as under:

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“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 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

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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.....

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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

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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.

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, 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

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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 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

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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.”

In view of the above, both the petitions are disposed of with a direction to respondent No.2 to decide the representation(s), if moved by the petitioners, by passing a speaking order in the light of the judgment dated 07.12.2022 passed in CWP-14660-2020, preferably within four

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months.

Till the decision is taken by respondent No.2 on such representation(s) of the petitioners, they will be allowed to continue in service.

21.03.2023
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No