

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

**CWP-27603 of 2019 (O&M)
and other connected cases
Reserved On: 23.01.2023
Date of decision:30.01.2023**

Deepak Kumar and others

..Petitioners

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. D.S.Patwalia, Senior Advocate, with
Mr. Kannan Malik, Advocate
for the petitioner (in CWP-27603 of 2019)

Mr. Vinod Kumar, Advocate
for the petitioner (in CWP-25324 of 2022)

Mr. Dinesh Kumar, Advocate and
Mr. Arvinder Galav, Advocate
for the petitioners (in CWP-33302 of 2019)

Mr. Rahul Bhargava, Advocate
for the petitioner (in CWP-31714-2019, 5123 and 5117 of 2020)

Mr. Shivam Garg, Advocate
for the petitioner (in CWP-29126 of 2022)

Ms. Divya, Advocate
for the petitioners (in CWP-12940 of 2022).

Mr. D.K.Singal, Additional A.G., Punjab.

ANIL KSHETARPAL, J(Oral)

1. This batch of 8 Civil Writ Petitions No.27603, 33302, 31714 of 2019, 5117, 12940, 5123 of 2020, 29126 of 2022 have come up for final disposal. Though, the petitioners pray for the issuance of a writ of certiorari, however, in substance they seek direction to the respondents to consider their candidature in the recruitment of the Head Teachers and Centre Head

Teachers pursuant to recruitment notice dated 09.03.2019 issued by the office of Director, Education Department, Recruitment Directorate Board-cum-Director General School Education, Punjab.

2. After having heard the learned counsels representing the parties at length, the following issue requires adjudication:-

“Whether the employees of the schools run by or under the superintendence of autonomous statutory bodies/Boards or wholly owned government companies of local bodies will fall within the definition of the Central/State Government Schools for the purpose of fulfilling the requirement of experience from the Central/State Government Schools?”

The relevant facts, in brief, are required to be noticed:

3. On 09.03.2019, a recruitment notice was issued for inviting the applications from the candidates interested in the appointment of 1558 posts of Head Teachers (HT), whereas for 375 posts of the Centre Head Teachers(CHT). The petitioners are stated to have submitted the applications and participated in the selection process. However, when the select list was issued, their candidature was rejected solely on the ground that they do not possess the requisite experience for the post.

4. The relevant clauses of the recruitment notice laying down the Educational Qualification for the post of Central Head Teachers(HT) and Centre Head Teachers(CHT), read as under:--

“2. Educational Qualification(C.H.T.)

XX XX XX

(iii) Should possess teaching experience of working as

Primary School Teacher for a minimum period of four years in a Central/State Government School. However, a prospective candidate must have acquired such experience after acquiring the minimum educational and professional qualifications specified for the posts under these rules.”

“2. Educational Qualifications (H.T):-

(iii) Should possess teaching experience of working as Primary Teacher for a minimum period of three years in a Central/State Government School. However, a prospective candidate must have acquired such experience after acquiring the minimum educational and professional qualifications specified for the posts under these rules.”

5. The petitioners are stated to be teaching in the Adarsh Schools set up under the aegis of the Punjab Education Development Board which is a statutory body constituted under the Punjab Education Development Act, 1998 (hereinafter referred to as 'the 1998 Act').

6. This Bench has analyzed the arguments of the learned counsels representing the parties and with their able assistance perused the paper book.

7. The learned senior counsel representing the petitioners while leading from the front submits that the Punjab Education Development Board is a statutory body, having been constituted under the 1998 Act.

While drawing the attention of the Court to Section 2(c), 3, 5, 7-A and 8 of

the 1998 Act, he contends that the entire management of the Punjab Education Development Board is in the hands of the public servants.

8. Further while referring to Annexure P/8, the guidelines/instructions for the establishment of other schools in the State of Punjab, he submits that the State Government has complete control and superintendence over the Adarsh Schools. While drawing the attention of the Court to clause (iv) of Part-D of the guidelines, he submits that previously the Adarsh Schools were known as the Government schools followed by the name of the private partner and then the name of the place. Moreover, while referring to the appointment letter issued in favour of one of the petitioners by the office of Sub Divisional Magistrate, Budlada, District Mansa, he submits that for all the practical purposes the Adarsh Schools are considered/treated as government schools. Various other learned counsels representing the petitioners while drawing analogy from the expression “State” in Article 12 of the Constitution of India, submit that the Adarsh Schools are the State Government run schools, hence, the candidature of the petitioners has been wrongly rejected by the authority.

9. On the other hand, the learned State counsel while contesting the petitions, has submitted that the requirement of experience as a Primary School Teacher in the Central/State Government Schools is one of the most essential requirement. The schools being run by an autonomous body or Board will not fall within the scope of the Government schools. He submits that the State Government does not have the direct control over the affairs of the Adarsh Schools and the powers of the State are restricted to the general superintendence only and they control over the Board and its employees.

10. At the outset, it becomes important to take note of the relevant provisions of the Act of 1998. Section 2(c), 3, 5, 8 are extracted as under:-

2. (c) “Government” means the Government of Punjab in the Department of Education;

2. (a) '**Adarsh School**' means a school or an institution, established under this Act, with a view to impart quality education to the economically weaker, intelligent and meritorious students, at a free, to be determined by the Board” and

2(dd) “**Public Partner**” means any person, who may be associated by the Board in establishing and running an Adarsh School;

2(ddd) '**Public Private-partnership**' means an arrangement, agreed upon between the Board and a private partner to establish and run as Adarsh School,

3. (1) The Government may, by notification in the Establishment Official Gazette, establish for the purpose of of Board, its carrying out the provisions of this Act, a constitution, Board to be called the Punjab Education powers and Development Board.
duties.

(1) Chief Minister, Punjab	Chairman;
(ii) Minister Incharge of School Education	Vice Chairman;
(iii) Minister Incharge of Higher Education	Member,
(iv) Secretary, Excise and Taxation	Member,
(v) Secretary, Higher. Education	Member;
(vi) Secretary, Finance	Member;
(vii) Secretary, School Education	Member Secretary

(3) The Board shall be a body corporate having perpetual succession and a common seal with powers,

subject to the provisions of this Act, to acquire, hold or dispense of property both movable and immovable and shall, by the said name, sue and be sued.”

5. (1) The Board may, with the prior approval of the Government, create such posts and appoint such officers and other employees thereon, as it may consider necessary for the efficient discharge of its functions.

(2) The conditions of service of officers and other employees referred to in sub-section (1) and their functions and duties shall be such, as may be determined by the regulations made by period and in such manner, as may be prescribed.

7-A(1) Subject to the provisions of any other law for the time being transfer of land in force, any local body or authority or building statutory or corporation or any department of the State Government may, transfer any land or building belonging to or vested in it, to the Board, free of cost or on nominal price for the establishment of Adarsh Schools.

(2) The land or building transferred under sub-section (1), may be utilized by the Board itself for the establishment of Adarsh Schools or the same may be leased out to a private partner on such terms and conditions, as may be agreed upon between the Board and the private partner for the establishment of Adarsh Schools.

8. (1) The fund shall be applied for improving the quality of education in the State of Punjab.

(2) Without prejudice to the generality of sub-section (1) the fund shall be specifically applied for the following purposes, namely:-

(a) To construct building of schools;

(b) To provide infrastructure and amenities such as water supply, basic sanitation, furniture and teaching aids in the schools;

(c) For providing and augmenting facilities such as libraries, laboratories and computer equipment and other vocational aids in the schools; and

(d) Any other purpose as may be considered necessary by the Board for improving the quality of education and in furtherance of the provisions of this Act.”

11. The State Government notified the Punjab Education

Development Rules, 1998 (hereinafter referred to as 'the 1998 Rules'). As

per the guidelines issued by the State Government, the Board is planning to open Adarsh Schools in every block in each district. The management framework of the Adarsh Schools in the State of Punjab has been provided as under:-

“There should be two-tier management system to govern all the Adarsh Schools in the State. At the State level, the over-arching body shall be the aforementioned Punjab Education Development Board, established under the Punjab Education Development Act, 1988.

1) Adarsh Schools can be established either by the Board itself or stand-alone basis or in partnership with reputed private players.

II) That the Board shall be competent to accept gift or donation of land from. Panchayati Raj Institutions (PRI). Local Bodies, Corporations, Departments etc. and even from private individuals and parties, including NRIs and NGOs, for the establishment of Adarsh Schools and would be competent to lease out the same to the selected Private Partners; that the composition of the Board will have an equal number of members from the State Government on the one side and from the Private Partners & Educationists on the other side (to be appointed, however, by the State Government).

iii) That the cost of establishing and operation of the Adarsh Schools shall be the first charge on the Punjab Education Development Fund and that an Adarsh Schools corpus shall be created out of the balance resources in the Fund.

(iv) The nomenclature of the Adarsh School shall be Government followed by the name of the Private Partner then the name of place.

v) If the response from the Private Partners for the establishment of Adarsh School by the PEDB does not come to the desired extent. alternative proposal such as Allocation of Adarsh Schools to the bodies like Punjab School Education Board or reputed Trusts may also be like allowed to be considered by providing them lump-sum Capital Cost to the extent of 100% or Rs. 3.00 Crores whichever is less and operational cost of Rs.75.00 Lacs per annum per School, other things such as no fees from the students, Land on Lease etc remaining the

same.”

12. Thus, it is evident from the reading of the relevant provisions of the 1998 Act that the Board is an autonomous body and is a body corporate as provided under sub-Section (iii) of Section 3 of the 1998 Act. The autonomous bodies are set up wherever it is felt that certain functions are needed to be discharged outside of the government set up, in order to have independence and flexibility in working and discharging functions. Such autonomous bodies are created to avoid the day to day interference of the government machinery and to make the process smooth. As per the dictionary meaning of the word, 'autonomous' itself denotes having the freedom to govern itself and its own affairs.

13. On reading of Section 2(dd) and 2(ddd) of the 1998 Act, it is evident that an Adarsh School can be set up with a private partner and such arrangement shall be known as the public private partnership (PPP). Moreover, as per the guidelines issued by the competent authority, a provision has been made for the two tier management system to govern all the Adarsh Schools in every State. It is provided that the Adarsh Schools can be established either by the Board itself or on the stand alone basis or in a partnership with the reputed partner private players. In these circumstances, the Adarsh Schools set up under the overall supervision of the Board do not fall within the definition of the Government Schools. As per the recruitment notice, the requirement is that a candidate should possess the teaching experience of working as a primary teacher for a minimum period of 3-4 years in a Central or State Government Schools. While providing for such experience in the recruitment notice, the State

Government has excluded not only the private aided schools but also the schools run by the local bodies/ autonomous bodies.

14. As regards the argument of the learned counsel with reference to Article 12 of the Constitution of India, it may be noticed that Article 12 uses the expression “the State” in a totally different context. Moreover, while defining 'the State', Article 12 includes not only the Centre or the State Government but even the Parliament, the legislature of each State and all local and other authorities within the territory of India and under the control of the Government of India. This pictures how the expression 'the State' as defined in Article 12 is to be interpreted. Recently, the requirement of relaxation of age in the recruitment of the employees of the Municipal Corporation was examined by the Supreme Court in **Delhi Subordinate Service Selection Board and another vs. Seema Kapoor AIR 2021 SC 3693**. The question arose “As to whether the employee of an autonomous body i.e. a Corporation is entitled to the age relaxation as a departmental candidate or as a government servant?” While relying upon the judgment passed in **Jai Parkash Wadhwa and others vs. Lt. Governor Delhi Administration and another, 1997 (11) SCC 174**, the Court held as under:-

8. We have heard learned counsel for the parties and find that the order passed by the Central Administrative Tribunal and that of the High Court are not sustainable. Firstly, the High Court has quoted a wrong provision in the order passed relating to subsequent advertisement. Secondly, the benefit of age relaxation is permissible for government servants and departmental candidates. It is not even the stand of the respondent that she is a government servant and, rightly so, as she is employed in an autonomous body i.e. Municipal Corporation established under a specific statute. The expression 'Departmental Candidates' is in respect of the candidates who are working in the concerned Department i.e. Education. The Circular of the

Government of India dated 27.3.2012 has made it explicitly clear that the benefit of age relaxation is only meant for civil employees of the Central Government and not to the employees of the autonomous bodies, public sector undertakings etc. Therefore, the respondent, as an employee of the autonomous body, i.e. the Corporation, is not entitled to age relaxation either as a departmental candidate or as a government servant.”

15. This matter can be examined from yet another perspective.

Article 311 of the Constitution of India lays down that no person, who is a member of the civil service in the Union, All India Service or State Services or holds a civil post under the Union or a State shall be dismissed or removed by the authority subordinate to it or by the authority that appointed him/her. The employees of the Adarsh Schools neither can be called the members of the civil service of the State nor they hold a civil post under the State.

16 In view of the aforesaid discussion, finding no merit, the writ petitions are dismissed.

17. All the pending miscellaneous applications, if any, are also disposed of.

30th January, 2023
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(ANIL KSHETARPAL)
JUDGE

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>