

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

221/2

CWP No.29043 of 2022 (O & M)

Date of Decision : 6.10.2023

*Randhir Singh and others**..... Petitioners**versus**State of Haryana and others**..... Respondents***CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. Ravinder Banger, Advocate, for the petitioners

Ms. Shruti Jain Goyal, Senior DAG, Haryana

TRIBHUVAN DAHIYA J. (ORAL):

This petition has been filed, *inter alia*, seeking a writ of *certiorari* quashing the termination/rejection orders dated NIL/31.8.2022, Annexures P-7 to P-11, vide which it was conveyed to the petitioners that '*their joining has been rejected on job role Art Education Assistant by HKRNL due to less verified experience*'; and a writ of *mandamus* directing the respondent authorities to allow the petitioners to rejoin and continue on the posts held by them, with all consequential benefits from the date of their initial appointment.

2. Facts of the case in brief are, the respondent/Haryana Kaushal Rozgar Nigam Limited (hereinafter referred to as 'the Nigam') has been set-up by the State government with the objective of providing contractual manpower to its entities in the State. In that regard a Policy dated 30.6.2022, namely, Deployment of Contractual Persons Policy, 2022 (hereinafter referred to as 'the Policy'), has been framed and made

applicable w.e.f. 1.4.2022.

2.1. The respondent Department got approval from the government to engage one thousand Art Education Assistants through the Nigam from time to time against non-sanctioned posts on contract basis, since there was shortage of these Assistants. At the time of granting approval, the following essential qualifications was prescribed for the posts:

- i) Matric from Haryana School Education Board or an equivalent qualification recognised by the Haryana School Education Board;
- (ii) 10+2 with Two years Diploma in Art and Craft Examination;
- iii) Knowledge of Hindi upto Matric Standard.

2.2. Pursuant to requisitions sent by the Department, and based on the aforesaid qualification, the petitioners were appointed/deployed as Art Education Assistants in different districts in the Department on 15.8.2022, 17.8.2022 and 22.8.2022; the deployment was upto 31.3.2023.

2.3. However, shortly after joining the posts, the petitioners were abruptly terminated from services vide orders dated NIL/31.8.2022, Annexures P-7 to P-11, conveyed through Whats App messages/letters on the ground of 'less verified experience'. No show cause notice was issued to them, nor any opportunity of hearing was afforded.

2.4. In these circumstances, the instant petition has been filed impugning the orders of termination dated NIL/31.8.2022, Annexures P-7 to P-11.

3. Learned counsel for the petitioners have contended that the petitioners have been terminated from services in violation of the Principles of Natural Justice, without affording any opportunity of hearing. It is further contended that even the ground of termination, i.e., lack of experience, is not sustainable since no experience was required for

the posts they were appointed against. The Policy under which they were recruited, did not require experience as an essential qualification. Therefore, there is no basis for the respondents to terminate their services. Still further, it has been contended that the requisitions sent by the Department dated 25.7.2022, Annexures P-12, and 17.4.2022, Annexure P-13, cannot be the basis to contend that any experience for the posts is needed. As the requisition dated 25.7.2022 requires ten years' experience, whereas requisition dated 17.4.2022/29.10.2022 requires zero to one year experience for the same posts, and this is not denied by the respondents. It is, therefore, apparent that only to recruit the preferred candidates, the condition of experience has been arbitrarily prescribed by the Department which cannot be a basis to terminate the petitioners' services. And as per selection criteria in Para 8.8 of the Policy, in case experienced candidates are not available, merit shall be prepared of other eligible candidates residing in a district shall be prepared; it does not assign any weightage/points for experience.

4. Learned State counsel, on the contrary, contends that the petitioners were recruited/appointed against non-sanctioned posts in the Department under the Policy dated 30.6.2022. The qualification for appointment has been prescribed under Para 8.5 of the Policy which requires that essential educational qualification shall be the same as prescribed in the Annexures or as prescribed by the indenting organisation, which is the respondent Department. And the Department had sent a requisition dated 25.7.2022, Annexure P-12, to the Nigam for recruitment of Assistants prescribing qualification of 10+2 with two years Diploma in Art and Craft with ten years' experience. In terms of Para 5.7

of the Policy, before allowing the contractual manpower to join, the indenting organisation is required to verify the documents relating to requisite qualifications, work experience, verification of character and antecedents, etc. and is entitled to reject the candidature in case required documents are not found correct. Accordingly, on verification of the petitioners' documents, it was discovered that they were lacking in the ten years' experience, therefore, their services were terminated. It is further submitted that Para 8.8 of the Policy prescribing the selection criteria is not attracted in the petitioners' case because it is for preparing merit list of other than experienced candidates. Para 8.6 of the Policy requires that eligibility criteria may include experience also. Therefore, there is nothing illegal about the termination due to less experience, as it is in terms of the Policy only.

5. Learned counsel for the parties have been heard and the case files have been perused.

6. As per undisputed facts on record, the petitioners were appointed as Art Education Assistants under the Policy against non-sanctioned posts created with the approval of the government. The qualification for the same was also prescribed, as reproduced hereinabove, i.e., 10+2 with two years Diploma in Art and Craft. The petitioners were appointed pursuant to due selection and had joined the Department also between 15.8.2022, 17.8.2022 and 22.8.2022. Their services were abruptly terminated without any show cause notice vide communication/orders dated NIL/31.8.2022, on the ground of less verified experience.

7. To consider the arguments of learned counsel for the parties, it is apposite to reproduce relevant Paras of the Policy hereunder:

5.7. Action before or after joining of contractual manpower:- Before the issue of DOL, the Nigam shall verify the documents submitted by the registered candidates. Similarly, on receipt of copy of DOL, the Indenting Organisation before allowing to join the contractual manpower shall verify the documents related to the requisite qualifications, work experience as per eligibility criteria, verification of character and antecedents, etc. as per provision in the instructions in this regard issued by government from time to time. If any of the required document(s) of the recommended person is not found correct, the Indenting Organisation will reject the candidature under intimation to the Nigam and seek fresh recommendation in lieu thereof, if required. Upon joining of the person(s), the Indenting Organisation shall intimate to the Nigam on the portal, after which web-portal will generate an Identity Card to be made available to the deployed person.

5.8. to 8.1. xxxx

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8.2. Deployment of experienced and other manpower against fresh indent:- At the time of deployment of manpower in any Indenting Organisation against the fresh indent of a District-

- (i) first preference shall be given to the experienced candidates of the same Job Role of any Department/Organisation under Haryana Government in order of period of experience and are residing in the same District;
- (ii) failing (i) above, the preference shall be given to the experienced candidates residing in any district of Haryana.
- (iii) failing (i) and (ii) above, the merit list shall be prepared of other eligible candidates of residing in any District of Haryana as per selection criteria specified in Para 8.8.

Note- For the purpose of this para, Chandigarh and Panchkula will be treated as one and the same District.

8.3. and 8.4.

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8.5. Qualification:- Essential education qualification shall be the same as prescribed for the job role in the Annexures or as

line as essential qualification for Art Education Assistant. Therefore, either of the qualification make the incumbent eligible for being appointed for the job role.

9. In this view of the matter, in case the petitioners were appointed as Art Education Assistants only on the basis of essential qualification prescribed in Annexure-C of the Policy, the same cannot be termed illegal or irregular on the ground of less experience, which is not a requirement in terms thereof. The Policy, vide Para 8.6, only requires that eligibility criteria may include experience also; it is not mandatory. Neither the essential qualification prescribed in Annexure-C of the Policy, nor the qualification approved by the government for deployment, required the candidates to possess any experience to be eligible for appointment/deployment. Therefore, the petitioners' services could not have been dispensed with on account of less verified experience. The reliance by learned State counsel on the requisitions sent by the Department for the posts, Annexures P-12 and P-13, cannot be a basis to contend that ten years' experience was prescribed for the post. As one of the requisitions require no experience or up to one year experience, whereas the other requires ten years' experience for the same post. This is patently arbitrary, and such requisitions cannot be the basis to dispense with the petitioners' services, especially when they fulfill the required qualification approved by the government which are in terms of the Policy as well.

10. Further, Para 8.2 of the Policy requires that experienced candidates are to be given preference in appointment, and experience is not an essential qualification prescribed under the Policy. In the absence of experienced candidates, the merit list of other eligible candidates is to

be prepared as per selection criteria specified in Para 8.8. Learned State counsel could not point out from the record that any experienced candidate was available for recruitment, who could have been preferred over the petitioners for appointment. In these circumstances, the respondents' insistence upon experience as an essential qualification/requirement for appointment becomes unsustainable.

11. Additionally, the impugned orders of termination are not sustainable since the same have been passed in violation of the Principles of Natural Justice. After having been appointed as Art Education Assistants, the petitioners' vested right could not have been taken away without issuing show cause notice, considering their response thereto and passing a speaking order. The failure to comply with these basic requirements, renders the termination orders illegal.

12. In view of the discussion, the writ petition is allowed. The impugned orders of termination dated NIL/31.8.2022, Annexures P-7 to P-11, are set aside. The respondents are directed to reinstate the petitioners in service and provide/release all consequential benefits, except arrears of salary, to them within a period of four weeks from receiving a certified copy of this order.

(TRIBHUVAN DAHIYA)
JUDGE

6.10.2023

Ashwani

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No