

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

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CWP-4375-2020 (O&M)  
Date of decision: 01.05.2024

Neelam Bala

...Petitioner

Versus

State of Punjab and Others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

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Present:- Mr. Dinesh Mahajan, Advocate for the petitioner

Mr. Arun Gupta, DAG Punjab

Mr. Aseem Aggarwal and

Mr. Harsh Aggarwal, Advocates for respondent Nos.4 and 5

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**AMAN CHAUDHARY. J. (ORAL)**

1. The prayer in the present petition is for setting aside of the order dated 29.01.2020/30.01.2020 passed by respondent No.3, whereby the candidature of the petitioner was rejected on the post of Head Teacher and for considering her appointment to the same.
2. Learned counsel contends that the petitioner applied for the post of Head Teacher in response to advertisement dated 08.03.2019, for appointment of 1558 Head Teachers and 375 Centre Head Teachers. She had acquired the teaching experience of three years, whereafter, her name figured in the merit list, however, was later shown as withheld, on the premise that she gained experience while working on part time contractual basis in Kendriya Vidyalaya, who have affirmed this fact in the certificate, Annexure P-5 and the written statement. No specific

distinction has been drawn in the advertisement, as also in the Rules, as to whether the teaching experience has to be obtained while working in a particular capacity, but for stating it to be that as a Primary School Teacher in Government school. The issue as involved in the present petition, has already been dealt with and decided by this Court, in **Sahil Pruthi vs. State of Punjab and others**, CWP-12617-2020, decided on 12.03.2024, wherein the services of the petitioner therein, who had applied pursuant to the very same advertisement, were terminated on the ground that the experience of 6 months, acquired by him were on part time basis in Kendriya Vidyalaya KMS wala, Ferozepur, relevant paras whereof read thus:

“7. The issue posed in the present matter is as to whether the experience gained on part-time basis as a primary teacher was countable towards the three years’ experience required as per the Rules/advertisement.

8. It is pertinent to refer to the relevant portion of ‘The Punjab State Elementary Education (Teaching Cadre) Group C Service Rules, 2018’ (hereinafter referred to ‘2018 Rules’), as regards the experience, which reads thus:

“(i) xx

(ii) xx

(iii) should possess teaching experience of working as Primary School Teacher for a minimum period of three years in a Central/State Government School...”

9. On a bare perusal of the aforesaid, it is manifestly clear that the experience required has not been qualified to be only on ‘regular’ basis.

10. The issue involved herein is no longer *res integra*, as in **Sec., Eng. Department, U.T. Administration, Chandigarh vs. Vipin Gupta And another**, CWP-12679-2010 decided on 25.10.2010, the Division Bench astutely clarified that, “The expression ‘working experience’ cannot be construed to mean that he must have gained the experience while working on a permanent substantive post on which he has been appointed on regular basis. In other words, long term regular promotion would not be necessary to gain experience of working because whether a person works on a

post in his capacity as ad hoc/current duty charge holder/temporarily his nature of duties continues to be the same which any regularly promoted person would require to discharge.” Reiterating the aforesaid dictum the Division Bench in **Chief Engineer, UT. vs. Ram Sarup Walia And Others**, CWP-77-2012 decided on 06.01.2012, while discussing the conspicuous absence of the term "regular" in the discourse elucidated that “...In our view, 'the working experience' cannot be construed to mean that he must have gained the regular experience while working on a permanent substantive post on which he has been appointed on regular basis.”

11. In **Dr. Ravinder Pal Kaur vs. State of Punjab and others**, (1979) 2 SLR 645 while observing that there exists minimal difference in effect to teaching experience acquired through ad hoc appointments versus regular positions and held that, “There is hardly any difference so far as teaching experience is concerned whether gained on ad hoc appointment or on regular appointment... As the Statutory Rules do not confine the teaching experience to one gained on regular appointment, the experience gained by the petitioner as Assistant Professor Radiology on ad hoc basis from May 11, 1973 to February 19, 1976, cannot be ignored to determine her eligibility for appointment as Professor in Medical College, Patiala.”

12. The Division Bench in **D.P. Mehta (Dr.) vs. P.G.I. and its Governing Body**, C.W.P. No. 2948 of 1996 decided on 16.5.1996 defined ‘experience’ according to the Webster 3rd New International Dictionary as "being engaged in a particular activity; direct observation of or participation in events, encountering, undergoing or living through things in general as take place in the course of time." It also held that experience means "an actual living through something and coming to know it first hand rather than through hearsay or report" emphasizing that performance of duties firsthand is enough to constitute experience.

13. In **Rai Singh vs. Kurukshetra University, Kurukshetra**, CWP-2246-2008 decided on 18.08.2008, the Division Bench observed that the employees appointed on contract and ad-hoc basis, were to be treated equally, as the mere fact that nominal breaks or lesser pay were given or increments were not granted, was no ground to treat the said service differently.

14. The judgment in **Baljit Kaur** (supra), was pronounced along the same lines. It was concluded that since the rule in question only provided for the length of teaching experience and did not prescribe that the same should be as a whole timer or in a particular institution, therefore only

teaching experience is required, which the petitioner had to her credit at the time of making application for selection/appointment. Leaning on this reasoning, the Court passed directions to select the petitioner as Headmistress on the basis of merit.

15. Ironically, the petitioner was ousted having been found short of 6 months experience out of the required three years, which he though had of about 11 months but as part time primary teacher in KVS, which ostensibly was certified by the principal of the school by referring to the terms and conditions of the appointment to be the same as on regular basis.

16. Keeping in mind the focal aspects of the instant case and in light of the enunciation of law referred to hereinabove, those working by way of a stopgap arrangement, are all 'ad hoc' appointments, the nomenclature of which may be, part time, contractual, guest etc. The aspect that needs to be seen is the sphere of their duties, responsibilities and the quantum of work. Any which way, it cannot be said that the petitioner did not possess the requisite experience. Thus, this Court has no hesitation in arriving at the conclusion that it was erroneous on the part of the respondents to terminate his services. Sequentially, the impugned orders deserve to be and are hereby set aside.”

3. This Court in **Jyoti Bala vs. State of Punjab and others**, CWP-14513-2020, decided on 12.03.2024, while dealing with a matter wherein the clarification given in the meeting dated 16.09.2019 headed by the Secretary, School Education, Punjab, was that experience only from a school from State of Punjab was to be considered, found the same to be untenable and directed that petitioner therein be appointed, the relevant para whereof reads thus:

“7. The submission of the learned State counsel that the meaning of service in the ‘State’ as per 2018 Rules, of which the experience is required, is liable to be construed as acquired only from the Government schools of the respondent-State, is on the anvil of the clarification given by an administrative authority, being in teeth with the fundamental proposition of service jurisprudence, that administrative instructions cannot supplant the statutory rules, as held in **State of Haryana vs. Shamsheer Jang Bahadur**, (1972) 2 SCC 188, reiterated on numerous occasions including **S. Sivaguru vs. State of Tamil Nadu**, 2013 (7) SCC 335. The power to issue these is even otherwise, vested only in the authority that is competent to

frame the statutory rules under proviso to Article 309 of the Constitution of India, in absence of rules. [See **Ajay Kumar Bhuyan vs. State of Orissa**, (2003) 1 SCC 707]”

4. In **Gurpreet Kaur and others vs. State of Punjab and others**, CWP-31017-2019, decided on 08.04.2024 and two connected petitions, this Court in a case wherein also the contention raised by the State was that the experience gained as PTA teacher, part time basis, Guest faculty, etc. was not countable in view of the clarification being given in the meeting dated 16.09.2019 headed by the Secretary, School Education, Punjab, was rejected and the petitions were allowed granting appointments by observing thus:

“14. The convening of a meeting, subsequent to the commencement of the selection process, whereby the qualifications as required by the Rules are sought to be altered, would amount to changing the Rules of the game after the whistle has blown.”

5. Learned State counsel, despite his best efforts, is unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law.

6. In view of the aforesaid, the present petition is allowed. The petitioner be considered and if found eligible as per merit, be appointed. Needful be done within a period of two months.

7. Pending applications, if any, also stand disposed of.

(AMAN CHAUDHARY)  
JUDGE

01.05.2024  
M.Kamra

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