

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

259

CWP-10421-2022 (O&M)
Date of decision: 21.02.2024

Parveen Kumar and Others

....Petitioners

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. R.K. Arora, Advocate for the petitioners

Mr. Charanpreet Singh, AAG Punjab

AMAN CHAUDHARY. J.

1. The present civil writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of the impugned orders dated 06.05.2022/07.05.2022, rejecting the claim of the petitioners for their absorption in the Government Service upon taken over of the SD High School, Mour Mandi, Bathinda.

2. Learned counsel submits that the petitioners were working on different posts i.e. teachers and Class-IV, appointed between 1999 to 2012 in the SD High School, Mour Mandi, Bathinda. The said school was taken over by the Government vide order dated 29.04.2013, Annexure P-5 and as per terms thereof though the staff on aided posts was to be taken into service, however, regarding those working against unaided posts, the decision was to be taken as per the policy. Their case having been rejected on the ground of their initial appointment

not being through a process of issuance of advertisement, was consequently brought before this Court in CWP-866-2014, wherein vide judgment dated 05.03.2020, Annexure P-14, the order was set aside, they were allowed to continue and a direction issued that the claim of each employee shall be considered in terms of the policy dated 09.04.1975. However, yet again it has received the same fate vide the impugned order.

3. Learned State counsel being unable to controvert the above, submits that liberty be granted to the appellate authority to pass a fresh order.

4. Heard learned counsel on either side.

5. It is apposite to refer to the conditions mentioned in Annexure P-5, the relevant of which read thus:

“For the time being the staff working against the Aided posts in the school, will be taken into the service of the Government on Ad-hoc basis.

Regarding staff working against the un-aided posts, later on after considering all the aspects of the matter by the Administrative Department, **the decision will be taken as per policy.**”

6. This Court in the previous round of litigation, had while disposing of the writ petition filed by the petitioners, directed thus:

“9. Let the respondents, on consideration of **the claim of each of the employees**, who are working against the un-aided posts, be considered as per the policy dated 09.04.1975, Annexure P-3 within a period of three months from today.

10. The interim order which has been passed by this Court on 07.05.2014 shall operate qua the petitioners till a decision is taken by the competent authority with regard to the absorption or otherwise petitioners shall also be entitled to the remuneration/salary in pursuance to the order dated

07.05.2014, if already not paid till the date a decision is taken by the competent authority with regard to the absorption or otherwise of the petitioners.”

7. Purportedly in compliance to the aforesaid, an order dated 06.05.2022, Annexure P-15, as impugned in the present case, was passed and rejected *albeit* without considering the claim of each of the person and on the same very ground that was previously taken to deny the benefit, it being that proper procedure was not followed by the Management at the time of initial appointment of the petitioners.

8. In wake of the above, it would be worthwhile to refer to the portion of para 5 of the policy dated 09.04.1975, as relevant to the present case, which reads thus:

“Government will not be bound to recruit and members of the staff in Government service. Government may retain **only such members of staff as are considered suitable by the appropriate recruitment selection agency of the Government...**”

9. A perusal of the impugned order, Annexure P-15, reveals that it is not the suitability of the petitioners, that was considered, as was the mandate of the aforesaid policy but their initial appointment, which was made the basis, despite the fact that even this Court in the previous lis had categorically directed that claim of each petitioner was to be considered, which having not been done, it cannot be said that the order has been passed in letter and spirit of the direction. Consequently, the same deserves to be and is set aside.

10. In view of the peculiarity of facts and circumstances of the case, the present petition is disposed of with a direction to the respondents to have a relook

at the matter by taking into consideration the qualification possessed by each of the petitioners at the time of their initial appointment to assess their suitability in terms of the policy, within a period of four months and if found entitled, grant them absorption in service forthwith. However, the claim of the petitioners regarding minimum of the pay-scale is left open.

(AMAN CHAUDHARY)
JUDGE

21.02.2024
M.Kamra

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