

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

245

CWP-12617-2020
Date of Decision: 12.03.2024

Sahil Pruthi ...Petitioner

Versus

State Of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. H.C. Arora, Advocate for the petitioner
Mr. Manipal Singh Atwal, DAG, Punjab
Mr. Harsh Aggarwal and
Mr. Aseem Aggarwal, Advocates for respondent No.6

AMAN CHAUDHARY. J.

1. Prayer in the present writ petition filed under Articles 226/ 227 of the Constitution of India, is for quashing of the revised list, Annexure P-8 qua petitioner, as also the impugned orders of termination and further direct respondents to restore him to the post of Head Teacher, with all consequential benefits.
2. Learned counsel submitted that the petitioner being eligible was appointed as a Head Teacher in 2019, but his services were wrongly terminated only on account of the fact that about 6 months of the required 3 years experience, while working on part time basis in Kendriya Vidyalaya KMS wala, Ferozepur could not be counted, even though there was no such condition in the advertisement. He relied on **Baljit Kaur vs. State of Punjab and others**, CWP-421-2008 decided on 21.04.2009.
3. Learned State counsel opposed the petition stating that termination order was rightly passed, the petitioner having part time service, as against on regular basis, as was the requirement of the Rules.

4. Heard learned Counsel on either side.
5. It is axiomatic that the petitioner was appointed as a Head Teacher on 06.09.2019, in general category, pursuant to the advertisement issued for filling up of 1558 vacancies of post of Head Teacher and 375 as Centre Head Teachers. His services were terminated vide order dated 13.08.2020, which was stayed by this Court on 24.08.2020, it being by way of a non-speaking order and on liberty having been granted, a fresh order of termination was passed on 01.09.2020, on the ground that he did not possess experience in terms of the advertisement. However, the same was not implemented and he has been treated to be on duty w.e.f. 27.08.2020, as per the statement of the learned State counsel, as recorded in the interim order dated 25.09.2020.
6. The Principal of the Kendriya Vidyalaya KMS wala, Ferozepur, has filed a short reply by way of an affidavit dated 06.08. 2021, reproducing the terms and conditions of his appointment, the relevant of which read thus:
- “3) That the "teacher" appointed on contractual basis will discharge the following duties:
- a. Regular classroom activity/ copy checking.
- b. Invigilation Duty/ Evaluation work.
- c. Helping students and colleagues in preparation and organization of different curricular/ Co-curricular activities in the Vidyalaya.
- d. All other works assigned by the Principal.
- XX XX XX
- 6) Working hours shall be same as for regular teacher.
- XX XX XX”
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

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.

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.

17. The present petition stands allowed.

(AMAN CHAUDHARY)
JUDGE

12.03.2024
G Arora

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