



**CWP-10209-2020 (O&M) & -1-
connected cases**

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

243 (03 cases)

**CWP-10209-2020 (O&M)
Date of Decision :13.11.2024**

Amarjeet Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CWP-13417-2020 (O&M)

Nidhi Sharma

...Petitioner

Versus

State of Punjab and others

...Respondents

**CM-16271-CWP-2024 in/&
CWP-13440-2020 (O&M)**

Chanpreet Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

**Present: Mr. Innayat Khullar, Advocate for the petitioners
in CWP-10209-2020.**



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Mr. Ranjit Singh Kalra, Advocate
for the petitioners in CWP-13417-2020.

Mr. Gaurav Sharma, Advocate for the petitioners
in CWP-13440-2020.

Ms. Alka Chatrath, Advocate with Mr. Nikhil Singh, Advocate
for the respondents No.125 to 133 and 136 in CWP-13440-2020

Mr. Satnam Preet Singh Chauhan, DAG, Punjab

Mr. H.C. Arora, Advocate for respondent No.4
in CWP-10209-2020 & for respondent No.5
in CWP-13417-2020.

Mr. Sukhdev Raj Kamboj, Advocate for
respondents No.71,73,111 & 117 in CWP-13440-2020.

Mr. Naveen Batra, Advocate for respondents No.20 & 106
in CWP-10209-2020.

Mr. Parvesh K. Saini, Advocate
for respondents No.56,74,80,82 to 84, 97, 112,118,122 & 123
in CWP-13440-2020.

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Harsimran Singh Sethi, J. (Oral)

CM-16271-CWP-2024 in CWP-13440-2020

As prayed for, application is allowed.

Short reply filed on behalf of respondents No.71,73,111,117 is
taken on record.

Main cases

In the present petitions, the grievance being raised by
petitioners is that the respondents had issued an advertisement for
appointment to the post of D.P.E, copy of which has been appended with the
present petition as Annexure P/4 and as per the said advertisement
Educational qualification required for the post should be as per the Punjab



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State Education Service Rules, 1978 (in short, '1978 Rules') as amended from time to time and also as per the Level-2 of the 2nd Schedule (sub regulation (2) of regulation (4) of the Notification issued by the N.C.T.E, New Delhi, dated 12.11.2014 (Annexure P/2).

Learned counsel for the petitioners further submits that the selected candidates whose candidature was initially withheld, have been cleared though, they do not fulfill the qualification as prescribed in the Notification of the N.C.T.E, dated 12.11.2014 (Annexure P/2) hence, the said candidates have been selected contrary to the provisions of the advertisement in question and their selection is liable to be set aside.

Upon notice of motion, the respondents have filed reply wherein, the respondents have stated that all the selected candidates fulfilled the requisite criteria as per the advertisement as well as the rules governing the service. As per the respondents, though, initially the candidature of 197 candidates was withheld but a Committee was constituted and was presided over by the Secretary School Education to go through the rules as well as Notification of the N.C.T.E., dated 12.11.2014 (Annexure P/2) and ultimately out of 197 candidates, 122 candidates were cleared by the said Committee to be eligible and only the eligible candidates have been considered for appointment hence, the claim of the petitioners that selected candidates are not eligible to be appointed on the post in question is contrary and illegal.

The same stand has been taken by the private respondents as well.

I have heard learned counsel for the parties and have gone



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through the record with their able assistance.

In the present petitions, the allegations being alleged by the petitioners are that the candidature of the private respondents was initially withheld by the respondents themselves on the ground of non-eligibility but later on the same was cleared, hence they are not eligible to be competed for the post in question keeping in view the provisions of the advertisement (Annexure P/4).

On being asked to point out as to on what account the selected candidates do not fulfill the qualification, a general statement has been made that as the respondents themselves had withheld their candidature, this fact proves that the private respondents were not eligible. The said oral averments are not supported by any documentary proof that the selected candidates do not possess the eligibility hence, same cannot be accepted so as to set aside the selection and appointment of the private respondents to the post of D.P.E in pursuance to the advertisement (Annexure P/4).

The relevant averment made by the respondent-State in para-4 of their preliminary submissions is as under:-

“4. That with regard to Annexure P-6 about the list of 197 withheld cases of the candidates, 122 candidates have been cleared by Committee presided over by the Secretary School Education, as the degrees of 122 candidates were as per the Notification of the N.C.T.E., dated 12.11.2014 (Annexure P/2)”

Hence, the respondents are on record to say that a Committee was constituted to look into the candidature of 197 candidates with regard to their eligibility, which committee was presided over by Secretary School Education, candidature of 122 candidates was cleared by the said Committee



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being eligible and an averment has been made that all those 122 candidates of which the private respondents are also a part are eligible even as per the N.C.T.E Notification, dated 12.11.2014 (Annexure P/2). No document has been shown to this Court by the petitioners to prove that the said averment in the reply is incorrect or false. In the absence of any document to controvert the said stand of the respondent-State, no benefit can be given to the petitioners merely on the oral argument of the learned counsel for the petitioners.

Once, the said averment of the State has gone un rebutted, the said argument of the learned counsel for the petitioners cannot be accepted.

Not only this, it is a conceded fact by the learned counsel for the parties that as per the 1978 Rules, the minimum qualification for appointment to the post of D.P.E has been prescribed is a graduation degree with training in advanced physical training course or diploma, which qualification is fulfilled by all the selected candidates. Even if, it is assumed for the sake of argument that any selected candidates do not fulfill the qualification as per the Notification of the N.C.T.E, dated 12.11.2014 (Annexure P/2) then also, no benefit can be given to the petitioner as the qualification which is a statutory qualification as provided under the rules governing the service, is fulfilled by the selected candidates. As per the principle of law settled by the Hon'ble Supreme Court of India in **Civil Appeal No.152 of 2022, titled as, The Employees State Insurance Corporation. vs. UOI and others, decided on 20.01.2022** in case, any advertisement prescribes a qualification which is contrary to the statutory rules, the statutory rules will hold the field and not the advertisement.



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Learned counsel for the petitioners has not been able to dispute that all the selected candidates fulfilled the qualification as prescribed under the statutory rules i.e. 1978 Rules hence, no grievance can be raised by the petitioners qua the selection and appointment of the private respondents.

Hence, it has already been held hereinbefore in *The Employees State Insurance Corporation (supra)* that the statutory qualification mentioned in 1978 Rules is the qualification, which is required to be fulfilled by the candidates and all the selected candidates fulfilled the said statutory qualification.

At this stage, learned counsel for the petitioners submits that in case, only the statutory qualification mentioned in the rules were to be taken into account, a large number of candidates, who do not fulfill the qualification as prescribed by the N.C.T.E., in its Notification dated 12.11.2014 (Annexure P/2) but are eligible as per statutory qualification could have applied for the post and those candidates have been discriminated against.

The said argument needs no consideration as all the petitioners have participated in the selection process and no candidate who does not fulfill the qualification as prescribed in the Notification of the N.C.T.E., dated 12.11.2014 (Annexure P/2) has approached this Court that he did not apply for the post in question merely believing the above mentioned principle of law hence, the petitioners who have competed and fulfilled the qualification, cannot raise any grievance in this regard.

Keeping in view the facts and circumstances noticed hereinbefore, no ground for interference by this Court is made out and the



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writ petitions are accordingly dismissed.

Civil miscellaneous application pending, if any, is also disposed of.

A photocopy of this order be placed on the file of connected cases.

November 13, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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