

LPA-1783-2024 (O&M)

2024:PHHC:136426-DB



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

1. **LPA-1783-2024 (O&M)**
Date of Decision: October 18, 2024

Saroj Bala and othersAppellants

Versus

State of Punjab and others Respondents

2. **LPA-1808-2024 (O&M)**

Mahavir Singh and othersAppellants

Versus

State of Punjab and others Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr. Vikas Chatrath, Advocate for the appellants.

Ms. Anu Chatrath, Additional Advocate General, Punjab.

LISA GILL, J.

1. This order shall dispose of two appeals i.e. LPA Nos. 1783 and 1808 of 2024. Both the appeals were taken up together for consideration and adjudication at request and with consent of learned counsel for parties, as the issue involved in both the appeals is identical and arising out of common

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impugned order dated 11.07.2014 passed by the learned Single Bench whereby writ petitions in question alongwith five other writ petitions were decided.

2. Appellants have raised the issue regarding eligibility conditions for the post of Elementary Trained Teacher (ETT), applications for which were invited vide advertisement dated 06.03.2020. Candidates having degree of B.Ed or 18 months diploma in Elementary Education were eligible to seek appointment to the post of ETT in terms of guidelines/notification dated 28.06.2018 of National Council for Teachers Education (for short – ‘NCTE’). Hon’ble the Supreme Court vide its decision dated 11.08.2023 in the case of **Devesh Sharma versus Union of India, 2023 (SC) 633 2023** struck down notification dated 28.06.2018 issued by NCTE with the result that candidates with B.Ed degree or 18 months diploma course were rendered ineligible for the post of ETT. Only candidates possessing Bachelor’s degree from a recognized University or institution with at least 50% marks as per guidelines of University Grants Commission (UGC) and possessing two years Elementary Teacher’s Training course from a recognized University or Institution or two years Diploma in Elementary Education were, thus, eligible for the post of ETT. Appellants (writ petitioners) in the instant matters claimed that they were in-service candidates serving private institutions having 18 months Diploma in Elementary Education. Thus, having qualified written test and infact selected, they could not be ousted on the basis of subsequent judgment of Hon’ble the Supreme Court in **Devesh Sharma’s** case (supra).

3. It is a matter of record that advertisement dated 06.03.2020 was issued by respondent – State of Punjab, inviting applications for 1664 posts of ETT with last date of submission of forms being 23.03.2020. Advertised posts

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were increased to 2364 vide corrigendum dated 23.06.2020 with last date for submission of forms being extended to 09.07.2020. Terms and conditions including educational qualifications prescribed for the post were maintained. Written test for the post of ETT was conducted on 29.11.2020. Appellants (writ petitioners) had applied for the posts claiming to be eligible and qualified. They took written examination and were successful therein. Provisional merit list was issued.

4. Number of writ petitions with lead case being **CWP-3363-2021** titled as **Daljit Kaur and others versus State of Punjab and others** were filed challenging the process in respect to the method adopted for evaluating merit of candidates, especially with regard to non-grant of five marks to candidates possessing B.Ed qualification. Said writ petition alongwith the others were decided on 08.11.2021 wherein advertisement dated 06.03.2020 was set aside holding that it had not been issued by the competent authority and the process undertaken pursuant thereto was vitiated on various grounds. Said decision dated 08.11.2021 was challenged vide LPA-1174-2021, which was, however, withdrawn with liberty to approach learned Single Bench by way of Review petition. Said Review petition was dismissed on 20.10.2023. LPAs were thereafter filed for challenging decision dated 08.11.2021 as well as order dated 20.10.2023. LPA-1898-2023 was allowed on 19.12.2023 by the Division Bench of this Court while noting the stand by some of respondent/writ petitioners therein to the effect that they sought to withdraw the writ petition itself and none of the parties to the lis were disputing the criteria laid down in advertisement dated 06.03.2020 for selection to 2364 posts of ETT teachers. In the meantime, order dated 11.08.2023 had been passed by Hon'ble Supreme Court in the case

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of **Devesh Sharma** (supra). Application seeking clarification was filed by State in LPA-1898-2023 in view of developments in question. This application was dismissed on 15.03.2024. Pursuant to opinion of learned Advocate General, Punjab on the matter, speaking order dated 05.06.2024 (impugned in writ petition) was passed, noting the judgment of Hon'ble the Supreme Court in **Devesh Sharma's** case (supra) and **Jaiveer and others versus State of Uttarakhand and others 2023 SCC Online SC 1584**, wherein it had been held that B.Ed degree or 18 months diploma in Elementary Education cannot be considered to be valid qualification while treating it to be equivalent to two years diploma. It was, thus, declared that Department shall implement the said parameters in the recruitment of 2364 posts in question of ETT cadre. Aggrieved therefrom, writ petitions in question were filed by appellants (writ petitioners) which were dismissed by learned Single Bench vide impugned decision dated 11.07.2024.

5. It is to be noted at this stage that LPA-1689-2024 and two others filed by candidates holding B.Ed. degree and aggrieved of order dated 11.07.2024 were dismissed by this Court on 23.09.2024, However, learned counsel for appellants vehemently argued that present appeals are distinguishable, inasmuch as appellants herein are in-service candidates working against unaided post, hence, entitled for selection and appointment in terms of judgment of Hon'ble the Supreme Court in the case of **Jaiveer Singh** (supra) as well as order dated 19.12.2023 in LPA-1898-2023 and order dated 15.03.2024 passed in CM-1117-LPA-2024 and CM-1128-LPA-2024 in LPA-1898-2024 (**Raman Kumar and others versus State of Punjab and others**). The aspect of entitlement of in-service candidate, it was submitted has not been considered by

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learned Single Bench, therefore, decision dated 23.09.2024 in LPA-1689-2024 (Jagjit Singh and others versus State of Punjab and others) would have no bearing on the present appeals. It was further submitted that appellants' category was duly considered eligible as undertaken by the Department in its stand in earlier litigation before this Court. Counselling for advertisement had begun and it was only on account of interim order granted by this High Court in CWP-3363-2021 i.e. Daljit Kaur's case (supra) that the matter kept hanging fire. In such a situation, selection has to be treated as final. Further reference was made to judgment of Hon'ble the Supreme Court in **Shashi Bhushan Prasad Singh versus The State of Bihar 2024 SCC Online SC 2698** to submit that preparation of final select list signals conclusion of the appointment process. Judgment, it is submitted, is not a statute, therefore, cannot be applied as such. Therefore, appointment should have been made in terms of advertisement dated 06.03.2020 read in conjunction with judgments of this Court in Raman Kumar's case (supra) and CWP-19720-2020 (Jalandhar Singh and others versus State of Punjab and others). Terms and conditions so advertised could not be varied at a subsequent stage. Thus, in terms of stand of respondent – State in Raman Kumar's case (supra), appellants have a right to appointment. It was, thus, prayed that these appeals be allowed, impugned order dated 11.07.2014 be set aside and writ petitions be allowed as prayed for.

6. Learned counsel for respondents has refuted the arguments as raised on behalf of learned counsel for appellants while submitting that matter is squarely covered against appellants in view of decision dated 23.09.2024 in LPA-1689-2024 (Jagjit Singh and others versus State of Punjab and others) and connected matters arising out of same impugned order dated 11.07.2014.

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7. We heard learned counsel for parties at length and have gone through the files with their able assistance.

8. Factual aspect, as narrated in the foregoing paras, is not in dispute. As per the terms and conditions of advertisement dated 06.03.2020, candidates fulfilling the criteria prescribed by NCTE were considered eligible for appointment to the post in question. Eligibility condition for ETT teacher as per Punjab State Elementary Education (Teaching cadre) Border Area Group C Service Rules, 2018 reads as under:-

“1. Should possess Bachelor's Degree from a recognized university or institution with atleast 50% marks as per guidelines of the University Grants Commission;

2. Should possess two years Elementary Teachers Training course from a recognized university or institution or two years Diploma in Elementary Education (D. EI. Ed.) or qualifications as per guidelines of the National Council for Teachers' Education.”

9. Hon’ble the Supreme Court in the case of **Devesh Sharma** (supra) admittedly set aside notification dated 28.06.2018 on the basis of which eligibility was conferred upon present appellants having secured 18 months Diploma in Elementary Education. Almost identical arguments as raised in the case of **Jagjit Singh** (supra) have been raised before us in the present appeals, with learned counsel being at pains to submit that point of distinction in the present case is that though appellants had secured 18 months Diploma in Elementary Education, they were in-service candidates on unaided posts and that their claim would stand protected in terms of judgment of Hon’ble the Supreme Court in the case of **Jaiveer Singh** (supra) and that this aspect was never considered by learned Single Bench.

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10. In our considered opinion, there is no merit in the arguments as raised on behalf of the appellants. Hon'ble the Supreme Court in the case of **Jaiveer Singh** (supra) categorically held as under:-

“41. In view of what has been held by this Court hereinabove, we find that the High Court erred in holding that 18 months Diploma conducted by NIOS through ODL mode is equivalent to the 2 years regular Diploma, particularly so, when there was no material placed on record to even remotely hold that such a qualification was recommended by the Expert Body NCTE. On the contrary, the communication dated 6th September 2019 of NCTE, the directives of MHRD so also the recognition order dated 22nd September 2017 clearly go on to show that the 18 months Diploma was provided as a one time window to the in-service teachers to acquire the minimum qualifications between the 2017 Amendment Act and the outer limit of 1st April 2019. In our considered view, the High Court has totally erred in holding that the 2 years Diploma is equivalent to 18 months Diploma.”

11. Reference by learned counsel for appellants to the observation of Hon'ble Supreme Court in para 42 of **Jaiveer Singh's** case (supra) to the extent that order dated 22.09.2017 provides window for in-service teachers to complete their course prior to 01.04.2019, can be of no avail to the appellants. Issue as sought to be raised before us has been succinctly considered by learned Single Bench as under:-

“45. It may be noticed that the Hon'ble Supreme Court of India in categorical terms has recorded a finding that the candidates having 18 months diploma in Elementary Education cannot equate themselves with the two years diploma in Elementary Education required for appointment to the post of ETT. The reliance placed by the candidates having 18 months diploma in Elementary Education

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on a Circular dated 06.11.2019 by the NCTE was not accepted by Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India after noticing the Circular issued by the NCTE dated 06.11.2019 held that the candidates who have already been appointed and are working with the Government on the basis of 18 months diploma in Elementary Education were given a chance to obtain required qualifications prior to 01.04.2019. The Hon'ble Supreme Court of India held that no candidate other than the one who have already been appointed and are working, with the 18 months diploma in Elementary Education, can be allowed to continue in service or to be treated eligible for the post of ETT.

46. The argument of the learned counsel for the petitioners is that as the petitioners are also working with the State, they have been saved by the Hon'ble Supreme Court of India while passing the order in Jaiveer Singh and others' case (supra). The said argument cannot be accepted. The petitioners are not working on regular basis with the Government of Punjab and are rather seeking eligibility to compete for the post in question as advertised for regular appointment. The argument of the learned counsel for the petitioners concede that the petitioners are working in the Private Schools but submit that they should be treated as in-service candidates so as to grant them the benefit of exemption as granted in the judgment in Jaiveer Singh and others' case (supra), even though they possess 18 months diploma and not two years diploma, which is required for appointment to the post of ETT. That being the factual position accepting the said prayer of the petitioners will amount to granting eligibility to candidates having 18 months diploma in Elementary Education and the same will be contrary to the findings recorded by the Hon'ble Supreme Court of India in Jaiveer Singh and others' case (supra) and hence, the same cannot be accepted. Petitioners while working with Private Institutions cannot be treated as employees of Government of Punjab so as to grant them eligibility as envisaged in Jaiveer Singh and others' case (supra).

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47. Learned counsel for the petitioners submitted that one of the candidates having 18 months diploma in Elementary Education had filed writ petitions before this Court claiming eligibility and keeping in view the NCTE guidelines, the respondents accepted the claim of the petitioners to be eligible, hence, no summer salt can be taken by the State to deny the same benefit, which was already agreed before this Court while hearing CWP No. 19720 of 2020 titled as Jalandar Singh and others Vs. State of Punjab, decided on 17.02.2021.

48. It may be noticed that the judgment in Jaiveer Singh and others' case (supra), is much after the undertaking given by the State before this Court in Jalandar Singh and others' case (supra). At the time of undertaking in Jalandar Singh and others' case (supra), 18 months diploma in Elementary Education was considered a valid qualification, hence, any undertaking given before the judgment of the Hon'ble Supreme Court of India in Jaiveer Singh and others' case (supra) cannot bind the State. The settled law on the issue which has already attained finality, has to be adhered by the State while conducting the selection process, hence, in light of the judgment of the Hon'ble Supreme Court of India in Jaiveer Singh and others' case (supra), any undertaking given by the State prior to the judgment in Jaiveer Singh and others' case (supra), cannot give any right to the petitioners to claim eligibility on the basis of 18 months diploma in Elementary Education."

12. Argument raised on behalf of appellants that once consented order has been passed in LPA-1898-2023, it is not open to the respondents to retract from the same, has been considered and rejected in order dated 23.09.2024 in LPA-1689-2024. Relevant portion of which reads as under:-

“ Yet another argument raised on behalf of the appellants that respondent-State was estopped from adopting the course as has been done in the present case is also devoid of any merit. Once a categoric

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and specific judicial pronouncement came into being, it was not open to the State to have acted in a manner which would be in complete violation of the said judicial pronouncement by the highest Court of the country. The State cannot be held bound by the 'undertaking' given before the Division Bench on 19.12.2023, in the wake of directions issued by Hon'ble the Supreme Court. It is to be noted that State had duly filed the applications for review and clarifications before the Division Bench. In the given factual matrix, learned Single Bench has correctly proceeded to dismiss the writ petitions filed by the present appellants. The plea that once the lis stood decided by passing of order dated 19.12.2023 and it cannot be rendered ineffective by passing a speaking order is rejected in view of the discussion as above. Equally devoid of merit is the argument raised on behalf of appellants that as there is a change in the terms and conditions of advertisement dated 06.03.2020, fresh advertisement should have been issued. This aspect and argument has been succinctly considered by learned Single Bench in para 40 and 41 of impugned order dated 11.07.2024 and correctly rejected.”

13. In the given factual matrix and in view of categoric judicial pronouncements in the case of **Devesh Sharma and Jaiveer Singh** (supra), appellants cannot derive any benefit by reference to the cases of **Shashi Bhushan Prasad Singh** (supra), **Neelima Shrivastva versus State of UP and others 2021 (3) SCT 622** and **Suresh Pal versus State of Haryana 87 AIR SC 2027**.

14. Keeping in view the facts and circumstances as above as well as detailed decision dated 23.09.2024 in LPA-1689-2024 and other connected cases, we do not find any ground whatsoever to interfere in these appeals.

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15. Learned counsel for appellants is unable to point out any illegality infirmity or perversity in impugned order dated 11.07.2014 which calls for interference by this Court.

16. No other argument has been raised.

17. Keeping in view the facts and circumstances as above, both the appeals are dismissed being devoid of any merit.

18. Pending application(s), if any, stand(s) disposed of as well.

(LISA GILL)
JUDGE

October 18, 2024
Rts

(SUKHVINDER KAUR)
JUDGE

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