

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Reserved on : 19.01.2024
Date of Decision : 30.01.2024

1. CWP No. 18522 of 2023 (O&M)

Amandeep Sagar and others		...Petitioner
	Versus	
State of Punjab and others		...Respondents

2. CWP No. 19528 of 2023 (O&M)

Veena Rani and others		...Petitioner
	Versus	
State of Punjab and others		...Respondents

CORAM: HON’BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. R. S. Kalra, Advocate, for the petitioners.

Mr. Charanpreet Singh, Assistant Advocate General, Punjab.

Mr. Rajiv Atma Ram, Senior Advocate, assisted by
Mr. Brijesh Khosla, Advocate and
Ms. Shreya Kaushik, Advocate for the respondents No.4, 7, 8, 10, 11,
15, 17, 18, 20, 21, 22, 23, 25, 26, 28, 29, 32 to 34, 43, 46, 49, 55, 57
to 60 and 63.
for the intervener No.5, 6, 9, 12, 13, 14, 16, 19, 24, 27, 30, 31, 35 to
42, 44, 45, 47, 48, 50, 51, 52, 53, 54, 56, 61, 62, 64, 65.

Mr. H.S. Saini, Advocate, for respondents No.6, 12, 13, 16, 21, 26,
30, 31, 43, 47, 49, 51, 57, 61 and 63 in CWP-18522-2023
for respondents No.4 to 33 in CWP-19528-2023

SANJEEV PRAKASH SHARMA, J.

This order of mine will dispose of the aforesaid two writ petitions as
common questions of law and facts are involved therein. However the facts have
been extracted from CWP No. 18522 of 2023.

2. The petitioners have preferred these writ petitions with the following
reliefs:-

Issue a writ in the nature of Mandamus directing the respondents to issue the appointment letters to the present petitioners who are fully eligible and meritorious in the recruitment examination for the post of master/ mistress in physical education as advertised vide advertisement dated 08.01.2022 from the date, the candidates whose results were declared along with the present petitioners in other subjects, have been granted benefit of appointment alongwith all consequential benefits;

Issue a writ in the nature of Prohibition restraining the respondents from changing the criteria of selection i.e. removing the eligibility condition of clearance of Punjab State Teacher Eligibility Test-II which was a mandatory condition stipulated in the advertisement dated 08.01.2022 especially in the light of the fact that selection has already been completed and only appointment letters are to be issued;

Issue a writ in the nature of Mandamus directing the respondents to conclude the selection and upload the list of eligible candidates to the post of master/ mistress in physical education/ DPE strictly in terms of the eligibility conditions as stipulated in the advertisement dated 08.01.2022;

Issue a writ in the nature of Mandamus summoning the records of the case especially whereby attempt is being made to change the criteria not only after the selection process has commenced but has been concluded and only final appointment letters have been issued to the eligible scrutinized candidates, as the respondents are delaying the appointment of the petitioners at the behest of candidates who have not cleared Punjab State Teacher Eligibility Test-II which was a mandatory eligibility condition under the advertisement and further issuing a writ in the nature of certiorari quashing such decision as none has been put in public domain and only appointment letters are issued to respective individuals on their personal portals, in light of the fact that the rules of the game cannot be changed once the game has begun; and

the respondents may be restrained from changing the selection criteria and granting benefit of appointment to persons who are not possessing PSTET-II which is the essential qualification stipulated in the advertisement dated 08.01.2022 (Annexure P-5).

3. The facts as adverted by the petitioners in the petition are that an advertisement was issued for filling up the posts of masters/ mistresses in different streams in terms of the Punjab Educational (Teaching Cadre) Group-C Service Rules, 2018 and in terms of the Punjab Educational (Teaching Cadre) Border Area Group C Service Rules, 2018 with reference to the schools which fall in the border area. The petitioners had applied for the posts of Physical Education Master/ Mistress in terms of advertisement dated 08.01.2022 vide which 168 posts of Physical Education Masters/ Mistresses were advertised. The selection was to be conducted on the basis of written test of State level. Cut off date for age was fixed as 01.01.2021. The last date for submission of fee and application form was fixed as 30.01.2022. Apart from the educational qualifications, it was further laid down in the advertisement that for the posts of Master/ Mistress, the candidates should have passed the Punjab State Teacher Eligibility Test-2 (PSTET-2) conducted by the Punjab Government under the RTE Act. An amendment to the advertisement was issued on 24.01.2022 and the educational qualification for Physical Education masters/ mistresses was modified. Passing of PSTET-2 condition remained intact even after the amendment of the educational qualification. Syllabus was issued vide public notice dated 28.04.2022.

4. The petitioners participated in the selection process and successfully cleared the written test securing the marks as stated in the tabulated chart in para 15 of CWP No.18522 of 2023. Their documents were scrutinized after calling them by public notice dated 19.12.2022 limiting those candidates who had cleared

the Punjab State Teacher Eligibility Test-2 (PSTET-2). The petitioners submitted their self declaration forms stating themselves to be eligible possessing requisite qualifications as per the advertisement. No appointment letters were issued to them. While appointment letters were issued to the candidates who applied for the subjects of English, Hindi, Mathematics, Punjabi, Science and Social Science, etc. it is stated that the petitioners have approached the respondents for issuance of appointment letters to them as they had already been selected and placed in the merit list and counselling had also been done. Thereafter, the State Government started the process of changing the criteria of making appointment and deleting the conditions of passing of Punjab State Teacher Eligibility Test-2 (PSTET-2) only for the purpose of appointment as Physical Education Master/ Mistress feeling aggrieved. The petitioners have then come before this Court.

5. It was submitted that for the post of Physical Education Teacher, the requirement of passing of Teacher Eligibility Test was being done away which would result in revising the merit list after the final merit list had already been prepared and considering the aspects and with reference to the judgment of **Sivanandan C.T. and others vs High Court of Kerala and others** 2023 INSC 709, decided on 12.07.2023, the respondents were directed to restrain the station heads not to allow the candidates to join and give posting to the concerned persons and take work from them. The said interim order has sought to be vacated by moving an impleadment application on behalf of those candidates who have although passed/ cleared the written test but have not passed the Punjab State Teacher Eligibility Test-2 (PSTET-2).

6. Learned counsel for the petitioners submits that the Respondent-State has attempted to change the criteria after the examination is over. He submits that

the Respondent-State has issued a corrigendum-cum-public notice dated 26.08.2023 (Annexure P-18) after the filing of the writ petition and have now deleted the condition of passing the Punjab State Teacher Eligibility Test-2 (PSTET-2) for candidates who are applying for the post of Physical Education Master/ Mistress.

7. It is submitted by learned senior counsel for the respondents that there is no PSTET conducted by the State Government for Physical Education subject, hence, the condition has been rightly deleted from the advertisement. Learned senior counsel for the respondent candidates has also invited attention to the notification dated 12.11.2014 vide Second Schedule of the National Council for Teacher Education Act, 1993, for determination of minimum qualifications for persons to be recruited as Physical Education Teachers in Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulations, 2014 and submits that teachers who teach classes from 1st to 5th are called ETT Teachers, those who teach classes from 6th to 10th are called TGT, while the teachers who teach classes from 11th to 12th are called PGT /School Lecturers in Punjab. The requirement of passing the State Teacher Eligibility Test is only limited to the teachers who are teaching class 8th in terms of RTE Act. For teaching secondary school classes and for 11th and 12th, the teachers are only required to possess Bachelor's degree in Physical Education or equivalent, as mentioned in the Second Schedule of the National Council for Teacher Education Regulations of 2014 which have been brought into force in supersession of the earlier Regulations of 2001. There is no requirement of passing the teachers eligibility test by the NCTE and therefore, requiring the candidates to pass the teachers eligibility test is required to be ignored. Realising the mistake, the State, the Special Secretary,

Department of School Education, Punjab, asked the clarification from the NCTE vide letter dated 27.06.2023. The NCTE vide reply dated 17.07.2023 clarified that with regard to teachers of Music/ Home Science, Urdu and Art & Craft for Classes IX to XII, the qualifications laid down in the First Schedule of the NCTE Regulations of 2014 notified on 12.11.2014 as amended on 14.10.2022 should be adhered to. With regard to Physical Teachers for class 9 to 12, TET is not one of the essential qualifications. It was reiterated that TET would be mandatorily required to be eligible for consideration of appointment of education teachers for classes 1 to 8.

8. Learned counsel for the respondent candidates further submits that masters who teach Physical Education in secondary high school from 9th and 10th classes would, therefore, be exempted from the TET qualification. After receiving the clarification, the Government of Punjab ordered on 28.05.2023 that Government is of the considered view that the Punjab State Teacher Eligibility Test-2 (PSTET-2) is not mandatory for 168 posts of Physical Education Masters/ Mistresses and it directed to issue a corrigendum–cum-public notice and finalise the merit list based on the marks scored in the subject specified test of 150 marks. He, therefore, submits that the corrigendum notified by the State Government will have now to operate. It has been further stated that in Punjab for the first time, the Punjab State Teacher Eligibility Test for Physical Education was conducted in 2023 and therefore as stated in the advertisement requiring candidates to pass the Punjab State Teacher Eligibility Test for the subject of Physical Education was an impossibility to perform.

9. It is submitted that even the petitioners possess TET qualification in a subject which is not required for teaching Physical Education. It is further

submitted that even the petitioners have passed the Punjab State Teacher Eligibility Test in a subject not relating to Physical Education, and therefore, the petitioners cannot disallow the candidates, who have scored higher marks than them in the written examination for consideration for appointment. Learned senior counsel has relied on the doctrine of impotentia, and submits that the stay should be vacated and the writ petition itself shall be dismissed. He relies on the judgments in **Re.Special Reference No. 1 of 1974 relating to Presidential Poll** dated 05.06.1974 AIR 1974 (SC) 1682, **Industrial Finance Corporation of India vs The Cannonore Spinning and Weaving Mills Limited** AIR 2002 (SC) 1841, **Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal and others** AIR 2020 (SC) 4908 and **Indore Development Authority vs Manoharlal and others** 2020(8) SCC 129.

10. Learned counsel for the petitioners, however, has reiterated that the requirement under the advertisement was necessarily required to be adhered to and those who were ineligible under the terms of advertisement cannot claim eligibility subsequently based on a corrigendum issued by the advertising authority after the selection process is complete. As per the original conditions of advertisement, the respondent candidates could not have even applied for the post as they knew that they did not possess the requisite qualification of passing the Teachers Eligibility Test. The respondent candidates had not challenged the condition of advertisement and have participated in the selection process. The candidates who have not cleared the TET have been declared ineligible and accordingly only the list of candidates who had to their credit qualification of the Punjab State Teacher Eligibility Test-2 (PSTET-2), alone could be given appointment under the advertisement. The corrigendum has been issued after the selection process was over and only appointments were required to be given.

11. Learned counsel for the petitioners relies on the judgments in **Dr. Abhishek Vyas vs State of Rajasthan** 2019 (2) RLW 1049 and **Lalit Kishore vs State of Rajasthan** 2021 (1) RLW 603 (authored by me). He further submits that the State can provide additional qualification higher than the required qualification by the council and in support he relies on judgment **State of Tamil Nadu and another vs S. V. Bratheep (Minor) and others** 2004 (4) SCC 513.

12. I have considered the submissions of learned counsel for the parties and law as cited at bar.

13. The candidates have applied under an advertisement where the qualifications were required to be possessed as on the last date of submission of application form. The respondent State added a qualification in the advertisement for all candidates to have passed the Punjab State Teacher Eligibility Test-2 (PSTET-2), who may apply for many subjects. Thus, the requirement of passing the Punjab State Teacher Eligibility Test-2 (PSTET-2) is independent of the individual requirement for the various posts of different subjects.

The contention of learned counsel for the respondents of the said requirement of passing the Punjab State Teacher Eligibility Test-2 (PSTET-2) not to be qualified for the purpose of appointment as Master/ Mistress in Physical Education is, therefore, not liable to be accepted on the basis of theory of impotentia. Further this Court notices that the respondent candidates who participated in the selection process did not ever challenge the conditions of the advertisement. It is not their case that advertisement could not have added a qualification more than laid down by the NCTE under its Regulations 2014. While this Court finds that the NCTE has in its Regulations 2014 in the Second Schedule dispensed with the requirement of passing of Teachers Eligibility Test for teaching

in class 9 and above. But it cannot be said that the advertisement requiring a candidate to pass the Punjab State Teacher Eligibility Test-2 (PSTET-2) additionally is unjustified, more so, as it was not challenged before participation by any of the candidates.

EFFECT OF CORRIGENDUM

14. It appears that the respondents who participated in the selection process having found themselves ineligible in terms of the advertisement submitted a representation to the Government of Punjab to remove the condition of passing the Punjab State Teacher Eligibility Test-2 for the recruitment of 168 Physical Education Teachers. The Government constituted a Committee headed by Director, Education Recruitment Directorate to examine the matter which reached to the conclusion vide its report dated 28.04.2023 with a finding that passing of PSTET-II is not compulsory for the recruitment of Physical Education Masters. The Secretary to Government of Punjab, Department of School Education thereafter on 25.08.2023 has taken pain to reach to the conclusion that a mistake has happened while interpreting and applying the rules and has stated in its order that the provisions of law i.e. Punjab Educational (Teaching Cadre) Group C Service (1st Amendment) Rules, 2020 and the NCTE Regulations 2014 as clarified by the NCTE cannot be overridden by wrongful interpretation and considering the public interest of thousands of candidates who applied for 168 posts, directed to issue public notice-cum-corrigendum and finalise the merit list based on the candidates' marks scored in subject-specified test of 150 marks without treating the requirement of passing PSTET-II as mandatory.

15. The aforesaid order has been noticed only to lament on the manner in which the State irresponsibly performs its functions and creates litigation. The

advertisement was issued on 08.01.2022. The result was declared on 06.10.2022 for the post of Physical Education Teacher. Scrutiny of documents was conducted on 19.12.2022 but the respondent State did not make any corrections or issued corrigendum in the advertisement before declaration of the result. After the final selections were done, at the behest of those candidates who have passed the written examination but were originally ineligible under the advertisement, the concerned officer of the State Government has proceeded to declare the requirement as a mistake committed. If it is found that the advertisement was wrongful or *de hors* the rules, the same has to be withdrawn, that too, before the selection is over. However, those candidates alone cannot be given advantage by changing/ deleting the conditions of advertisement after the selection process is over with the sole purpose to give benefit to few persons alone. If the condition of passing the PSTET-II examination would have been deleted from the original advertisement, there would be many aspirants who may not have even applied on account of their not possessing the qualification of PSTET-II. Such candidates would be, therefore, deprived, while candidates, those who were originally ineligible under the advertisement, would be given an additional advantage. Such a course adopted is an anathema to the rule of law and violative of Article 14 of the Constitution of India. The candidates who were originally ineligible cannot be given an additional advantage compared to those who have not applied keeping in view the conditions of the advertisement. It is surprising that ineligible candidates who applied, have been heard and an order has been passed by the State Government to support such persons. Such action deserves to be deprecated and can safely be termed as arbitrary and capricious.

16. Learned counsel for the petitioners has also pointed that in a similar case relating to Music Teachers where the candidates who did not possess the PSTET qualification and had scored higher marks were left out from appointment, while only those Music Teachers, who possess PSTET qualification, were given appointment under the same advertisement.

17. This Court notices that the corrigendum issued by the respondent State is only limited to the subject of Physical Education although if the NCTE Regulations of 2014 are required to be followed, the same would apply even to the other candidates applying for the post of masters in Music and other subjects. This Court also finds that the respondents have conducted PSTET exam in the year 2023 in various subjects including that of Physical Education. It is informed that some of the respondent candidates have participated in the said test and passed PSTET-2023. If there was no requirement of PSTET in appointment of Physical Education Masters, there was no purpose to have conducted TET in the subject of Physical Education by the State Government. The attempt of the State Government authorities appears to be more in creating litigation than reducing the same.

18. The *doctrine of impotentia* has no application in matters relating to appointments and selection which are governed by the rules and the advertisement issued therein and the conditions of advertisement, if a person does not possess the said qualification, he or she ought to have challenged the said conditions and cannot be allowed to participate and subsequently state that he could not have possibly fulfilled the said qualification, the theory of impossibility has no place in service jurisprudence.

19. Learned counsel for the petitioners has placed before this Court orders passed by the State Government requiring passing of PSTET as essential

qualification for the purpose of promotion. Even candidates who did not possess qualification of PSTET have not been included in the seniority list prepared for promotion of non-teaching cadre to teaching cadre. Directions dated 16.10.2023 in this regard have been placed on record issued by the Assistant Director to all the District Education Officers which reflect the manner and approach of the officer of the State Government, which is apparently partisan and chaotic and is deprecated.

20. It is, thus, held that the conditions of the advertisement cannot be said to be *de hors* the rules. The appointing authority can add additional qualification more than which has been laid down by the NCTE in its regulations for appointing teachers in their department. Hence, the requirement of passing PSTET-II laid down in the advertisement originally cannot be said in any manner to be illegal or unjustified. The corrigendum-cum-public notice dated 26.08.2023 issued after the declaration of the final result is declared an attempt to change the rule after the game has already been played, and therefore, has to be held illegal in view of the law settled by Hon'ble the Supreme Court in Sivanandan C. T. (supra), K. Manjusree vs State of Andhra Pradesh 2008 (3) SCC 512 and subsequent judgments Dr. Abhishek Vyas, Lalit Kishore including the judgment of Hon'ble the Supreme Court in Government of NCT Delhi and others vs Pradeep Kumar and others 2019 (10) SCC 120, judgments of this Court in CWP No. 26795 of 2016 - Shikha Rani and another vs State of Haryana and others decided on 25.10.2017, Rekha vs State of Haryana 2018 (1) SCT 529, Suman vs State of Haryana and others 2018 (3) SCT 649 and Arvinder Singh and others vs State of Punjab and others 2022 (2) PLR 135. The corrigendum-cum-public notice dated 26.08.2023 would, therefore, be held inoperative and only those candidates who

are eligible in terms of the original advertisement shall be entitled to be appointed on the post of Physical Education Teachers.

21. If the posts remained unfilled, the State Government is always free to advertise the unfilled posts by issuing a fresh advertisement. Conditions in the said advertisement can be laid down in terms of the decision of the State Government, however, the action of the State Government in tinkering with the conditions of an advertisement which stood already acted upon, clearly is held to be illegal. Accordingly, the decision of the State Government dated 25.08.2023 is quashed and set aside.

22. Cost of Rs. 50,000/- is imposed on the State authorities to be recovered from the officer concerned for creating this litigation to be paid to the petitioners.

22. The writ petitions are accordingly allowed. The respondent-State shall now take steps according to the result forthwith and issue necessary orders within a period of one month in favour of the petitioners, if they are otherwise found suitable.

23. All pending applications shall stand disposed of.

24. No costs.

30.01.2024
vs

(SANJEEV PRAKASH SHARMA)
JUDGE

Whether speaking / reasoned	:	Yes	/	No
Whether Reportable	:	Yes	/	No