



In the High Court of Punjab and Haryana at Chandigarh

(104 + 238)

**CM-8916-CWP-2024 in/and
CWP No.33175 of 2019(O&M)
Date of Decision: 23.07.2024**

Rajesh Kumar

.....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Tanveer Singh, Advocate for
Mr. Rahul Bhargava, Advocate for the petitioner.

Mr. Amarpreet Singh Bains, Assistant Advocate General,
Punjab for the respondents.

Harsimran Singh Sethi, J. (Oral)

CM No.8916-CWP of 2024

This application under Section 151 CPC has been filed seeking
preponement of the main petition.

Since the main petition is listed for today, the present
application has rendered infructuous and is disposed of accordingly.

CWP No.33175 of 2019

1. In the present petition, the grievance being raised by the
petitioner is that the petitioner is competing for the post of Head Teacher in
the reserved category of Backward Class in pursuance to the advertisement
(Annexure P-1) and despite the fact that the petitioner has secured more
marks than the last selected candidate, in the reserved category of Backward



Class, the petitioner has been declared ineligible to compete for the post in question, which act on the part of the respondent-Department is arbitrary and illegal.

2. Learned counsel for the petitioner submits that the petitioner is eligible for the post in question in all respects keeping in view the advertisement (Annexure P-1) issued, hence, the respondent - Department be directed to consider and select the petitioner in the reserved category of Backward Class as Head Teacher w.e.f. the date candidates lower in merit have been selected and appointed on the post in question.

3. After notice of motion, the respondents have filed the reply wherein it has been mentioned that the educational qualification prescribed in the advertisement (Annexure P-1) is in accordance with the rules governing the service and as per the advertisement in question, the candidates should possess teaching experience for a period of three years in a Central/State Government School in order to be considered eligible for the post in question.

4. Learned counsel for the respondents submits that as the petitioner was working in a private aided institution, the said experience cannot be taken into account as a valid experience so as to be considered eligible to the post in question keeping in view the requirement of the rules governing the service, which was also mentioned in the advertisement (Annexure P-1).

5. I have heard learned counsel for the parties and have gone



through the records with their able assistance.

6. Learned counsel for the petitioner has not been able to dispute the fact that the qualifications, which are part of the rules governing the service qua appointment to the post of Head Teacher, were prescribed in the advertisement (Annexure P-1), so as to be eligible for the post in question. As per the said requirement, the teaching experience of three years in the State or Central Government School was required, whereas, the petitioner does not have the said experience, as the petitioner was working in a privately managed aided institution. Hence, the petitioner cannot claim that the petitioner is working in a State Government or a Central Government School so as to be considered eligible for the post in question.

7. With regard to the argument of the learned counsel for the petitioner that 95% grant-in-aid is being received by the aided institution from the Government, and therefore, by working in the aided institution, the petitioner should be considered eligible for the post in question, it may be noticed that the High Court does not have any power to amend the rules governing the service as it exist. There is no challenge to the rules governing the service. Learned counsel concede the factum that while working in a privately managed aided institution, the Managing Committee is the employer and not the State. That being so, the plea that 95% grant-in-aid is being received from the Government, even qua the post for which the petitioner is working, will not help the petitioner to gain eligibility keeping in view the prescribed conditions in the rules governing the service as well



as advertisement in question.

8. At this stage, learned counsel for the petitioner submits that the Co-ordinate Bench of this Court while passing order in CWP No.14513 of 2020 decided on 12.03.2024 titled “**Jyoti Bala Vs. State of Punjab and others**” as well as in CWP No.31017 of 2019 decided on 08.04.2024 titled “**Gurpreet Kaur Vs. State of Punjab and others**”, also dealt with the question of eligibility qua the experience and held that even an employee working on a temporary post is entitled for consideration.

9. A bare perusal of the judgments in **Jyoti Bala’s case** (supra) and **Gurpreet Kaur’s case** (supra) would show that the petitioners in the said petitions were working in a Government Institution, but the objection of the State was that they were not being paid by the Government. The Co-ordinate Bench held that once, the requirement was only of experience of working in a Government Institution, which condition the petitioners therein fulfilled, the objection that they should have also been paid by the Government, had been over-ruled, whereas in the present case, it is the other way around, the petitioner in the present petition is being paid 95% salary by the Government but he is working in a privately managed aided institution. Hence, once the petitioner is not working in a Government Institution, the judgments in **Jyoti Bala’s case** (supra) and **Gurpreet Kaur’s case** (supra) will not come to the rescue of the petitioner so as to claim eligibility for the post in question.

10. Learned counsel for the petitioner further submits that a



clarification dated 13.03.2019 (Annexure P-10) has been issued by the respondents themselves qua the experience certificate to be considered valid for the post. A bare perusal of Annexure P-10 would show that only the Teacher working with the Central Government or State Government Institution as well as the employees working in the Government Institution under the Sarv Shiksha Abhiyan, RMSA or any other Society, have been made eligible for the post in question.

11. The interpretation being given to Annexure P-10 that any one working in any society, irrespective of the nature of the society is eligible, cannot be accepted especially when it is a conceded case that the petitioner is working in a privately managed aided institution and the petitioner is the employee of a management of said institution and not the State.

12. Not only this, the Co-ordinate Bench while passing order in CWP No.27603 of 2019 decided on 30.01.2023 titled “**Deepak Kumar and others Vs. State of Punjab and others**” held that the employees working in the aided institution cannot claim parity with the employees working in Government Institutions and the benefit being claimed therein, was specifically denied.

13. Hence, keeping in view the judgment in **Deepak Kumar and others’ case** (supra), as the employees working in privately managed Government aided institutions have not been held at par with the employees working in Government Institutions to claim benefit, the petitioner also cannot claim parity so as to be considered eligible for the post.



- 14. No other point has been raised.
- 15. Keeping in view the facts and circumstances as recorded hereinabove, no ground for interference by this Court is made out and the present petition is accordingly dismissed.
- 16. Pending miscellaneous application, if any, also stands disposed of.

JULY 23, 2024
d.gulati

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned

Whether reportable

:

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Yes/No

Yes/No