

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

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CWP-34147-2019 (O&M)
Date of Decision: 08.05.2024

Daljinder Singh

...Petitioner

Versus

State of Punjab and others

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Kapil Kakkar, Advocate for the petitioner.

Mr. Arun Gupta, DAG, Punjab

AMAN CHAUDHARY, J. (Oral)

1. The prayer in the present petition is for quashing the letter dated 10.10.2019, Annexure P-8 passed by respondent No.3 rejecting his representation and further to consider his claim for appointment to the post of Principal.
2. Learned counsel submits that the petitioner, being aspirant to the post of Principal had applied under the SC category pursuant to advertisement dated 08.03.2019, as he had the requisite 5 years' experience of working as Lecturer in the Government Senior Secondary School, Kalal Majra (Barnala), experience certificate dated 04.07.2019 is appended as Annexure P-9. Upon having cleared the written test on 28.06.2019, a list of shortlisted candidates for scrutiny of documents was uploaded, wherein his name figured at Sr. No.85, however, in yet another list uploaded on 15.07.2019, he was shown at Sr. No.11 with the remarks that 'not having a requisite Teaching experience as Master/Lecturer in any Govt. School'. The copies of lists have been appended as Annexure P-5. He refers to the impugned letter dated 10.10.2019, Annexure P-8 regarding the representation submitted by him to respondent No.3-PPSC, which, after consideration, was stated to be filed. A reference is made to the clarification issued by the Secretary School

Education Department on 13.03.2019, Annexure P-2 regarding the post of Principal, issued 5 days after the advertisement and the same reads thus:

“(A) Principal:- Prescribed teaching experience of Headmasters, Head Mistresses, Lecturers, Vocations Masters or Vocational Lecturers, Masters/Mistresses of the candidates should be from any Government School. In this manner, as per the provisions mentioned in the Rules, the experience gained by the candidates while working on the above said posts in RMSA, Sarv Sikhiya Abhiyan or in the Government Schools under any Society, will be accepted as valid experience.”

3. In the written statement, the plea taken to oust the petitioner of consideration is that as per the experience certificate, Annexure P-9, he had served school from 01.08.2003 to 24.10.2008 on a temporary basis, whereas the experience required was on regular. In this regard, it is submitted that neither in the rules of the Punjab Educational Service (School and Inspection General Cadre) Group ‘A’ Service Rules, 2018, nor in the advertisement, it has been mentioned that experience should have been gained while working on a regular basis. This issue has already been decided by this Court in **Gurpreet Kaur vs. State of Punjab and others**, CWP-31017-2019 and connected cases, decided on 08.04.2024, relevant paras whereof read thus:-

“7. Apropos the above, it would be pertinent to refer to the qualifications and experience as required by Punjab State Elementary Education (Teaching Cadre) Group C Service Rules, 2018 (hereinafter referred to ‘2018 Rules’), 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. However, a prospective candidate must have acquired such experience after acquiring the minimum educational and professional qualifications specified for the posts under these rules.”

8. In **Dr. Ravinder Pal Kaur vs. State of Punjab and others**, (1979) 2 SLR 645, it was observed that teaching experience is not confined to one gained on regular appointment and when compared to that acquired through ad hoc appointments, there exists minimal difference, interposing that, “There is hardly any difference so far as teaching experience is concerned whether gained on ad hoc

appointment or on regular appointment...”

9. The Division Bench of this Court in **D.P. Mehta (Dr.) vs. P.G.I. and its Governing Body**, 1997 (1) RSJ 501, was of the view that in standard parlance, the term experience is interpreted as "an actual living through something and coming to know it first hand rather than through hearsay or report". According to Webster 3rd New International Dictionary, 'experience' means "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 is accentuated that direct execution of duties is sufficient to qualify as requisite experience.

10. It may be profitable to refer to **Sec., Eng. Department, U.T. Administration, Chandigarh vs. Vipin Gupta And another**, CWP-12679-2010, decided on 25.10.2010, wherein the Division Bench observed 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, emphasized the significance of accumulated experience rather than the specific nature of employment status, by observing 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. A gainful reference may be made to the case of **Rakhi Sharma vs. Lt. Governor and others**, (1998) 47 DRJ 127, wherein the salary of the petitioner, appointed as teacher by the PTA was increased at par with the ones paid to similarly situated persons, at regular scales available to a primary school teacher, on the ground that they were all doing similar work, thereby placing them on an equal footing. It was observed that, “Petitioner has performed work like any other teacher, so she must be paid like any other teacher. 'Equal pay for equal work' has been a well settled principle of law. It is illegal and arbitrary to pay Rs. 500/- or Rs. 600/- p.m. only for performing full work of teacher to the petitioner. I direct that the petitioner be paid full salary, which is paid to the primary school teacher doing similar work from the date of her appointment till the date of this order within a period of 2 months. She will be paid in the same manner if respondents keep the petitioner in the School.”

12. Evidently, the respondent-State has not been able to demonstrate and is thus beyond the pale of doubt, of there being any difference in the duties performed by the petitioner

or other teachers, who are not paid under the PTA scheme.

13. Discernible, as it is from the Rules and advertisement, that the emphasis therein is on experience of a candidate as a primary teacher in a Govt school. As such, neither nomenclature of the post held, be it Guest, Part-time, Ad hoc or Contractual, much less the funds from which the salary is paid can matter.

14. The convening of a meeting, subsequent to the commencement of the selection process, whereby the qualifications as required by the Rules are sought to be altered, would amount to changing the Rules of the game after the whistle has blown.

15. On a conspectus analysis of the facts of the case, the submissions of learned State counsel cannot be countenanced inasmuch as, paramount importance is to be attached to the minimum three years' experience in Government school, which the petitioners possessed, though being paid under the PTA fund.

16. Ex-consequenti, the present petitions are hereby allowed. The respondents are directed to appoint the petitioners, subject to their merit positions in the selection, within a period of two months from the date, a certified copy of the judgment is received by them. Needless to clarify that they shall be entitled to only notional seniority, pay fixation etc, but not actual monetary benefits."

4. This Court in **Jyoti Bala vs. State of Punjab and others**, CWP-14513-2020, decided on 12.03.2024, dealt with a similar issue, wherein the experience garnered by the petitioner therein as 'Guest Faculty' was not countable towards the required one and observed thus:

"10. Moving ahead, to the third question, of teaching experience required of working in primary schools, the word 'regular', is conspicuous by its absence, in the Rules *ibid*.

11. ...Further, in CWP-2246-2008 titled as **Rai Singh vs. Kurukshetra University, Kurukshetra**, decided on 18.08.2008, it was held that appointment on contract basis is also a type of adhoc service. Even the mere fact that nominal breaks are given or lesser pay is given or increments are not granted, is no ground to treat the said service differently. Denial of benefit to those working on contract basis, cannot be held to be any rational basis, as they stand on same footing as employees appointed on adhoc basis.

12. This Court in **Baljit Kaur vs. State of Punjab**, CWP-421-2008 decided on 21.04.2009, observed and held that, "...It is now admitted position on record that the petitioner secured the highest marks on the basis of laid down criteria in Female B.C. Category. The certificate issued in favour of the petitioner indicates that the petitioner had the requisite

experience though the certificate indicates that the petitioner was a part-time Lecturer. The statutory rule only prescribes seven years teaching experience. It is not provided under the Rules that the experience should be as a whole timer or in a particular institution. Only teaching experience is required which the petitioner had to her credit at the time of making application for selection/ appointment.”

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15. The irresistible conclusion arrived at is that the term ‘Guest faculty’ is a misnomer, as an employee working in a stopgap arrangement, be it as part time, contractual, guest etc, are all in effect ‘ad hoc’. The aspect to be seen is the sphere of their duties, responsibilities and the quantum of work in terms of classes taken and subjects taught, regarding which evidently, a certificate in this case, of the Head Teacher, Govt. Primary School, Budhi Medi (Sirsa) had been produced, which remained unrefuted, stating therein that as a J.B.T. Teacher, the subjects of regular teacher and guest teacher remained same.”

5. Learned State counsel despite his best efforts, has been unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgment or cite any contrary law. However, he submits that the State be granted liberty to verify the appointment and experience certificate.

6. In view of the aforesaid, the present petition is disposed of directing respondents to consider and appoint the petitioner, subject to his merit position in selection and verification of his appointment/experience certificate, within a period of three months. In case of issuance of appointment letter, it is clarified that he shall be entitled to only notional seniority, pay fixation etc, but not actual monetary benefits.

08.05.2024
ashok

(AMAN CHAUDHARY)
JUDGE

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