

CWP-6154-2021 and other connected matters

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

1. CWP-6154-2021
Reserved on: 28.01.2025
Date of decision: 17.03.2025

INDU AND OTHERS
...Petitioners
Versus
STATE OF PUNJAB AND OTHERS
...Respondents

2. CWP-7421-2021
KULRAJ KAUR
...Petitioner
Versus
STATE OF PUNJAB AND OTHERS
...Respondents

3. CWP-23126-2021
BHUPINDER SINGH
...Petitioner
Versus
STATE OF PUNJAB AND OTHERS
...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Argued by: Bikramjit Singh Patwalia, Advocate with
Mr. Gaurav Jagota, Advocate
for the petitioners (in CWP-6154-2021).

Mr. Vivek Sharma, Advocate
for the petitioner (in CWP-7421-2021).

Mr. Maninder Singh, Sr. DAG, Punjab.

Mr. Birinder Pal, Advocates and
Mr. Charanbir Singh, Advocate
for respondent No.4.

SURESHWAR THAKUR, J.

1. Since a common question of law is involved in all the writ petitions, thereby all the writ petitions are amenable to become decided through a common verdict.

For the sake of brevity the facts are taken from CWP-6154-2021

2. Through the instant writ petition, the petitioners have prayed for the issuance of a writ in the nature of mandamus, directing the respondents to, in order of merit, thus offer appointments to the petitioners as Masters/Mistress, in pursuance to the advertisements (Annexures P-4 to P-6) rather in their respective subjects, especially keeping in view the fact that persons lower in merit, have now been selected and offered appointment. The petitioners have further prayed for the issuance of a writ in the nature of Certiorari, thus for quashing the Public Notice dated 25.02.2021 (Annexure P-18) along with the provisional select list for the subjects of Punjabi, Hindi and Social Studies, inasmuch as, that the same does not reflect the names of the petitioners, who are in fact candidates securing higher marks than those who are now being offered appointment, and, also since they are ranked much higher in merit than to those who have been offered appointments against the advertised vacancies.

3. The petitioners have further prayed that they may be granted appointment to the post of Masters/Mistress w.e.f. the date, the persons

who were appointed in February 2021, by treating the petitioners as their batch mates and thereby grantings them all other consequential benefits including seniority and all other entitlements as admissible with effect from the date such other persons have been appointed.

4. The brief facts of the case are that the Government of India initiated the Sarva Shiksha Abhiyan (SSA) in early 2002-2003 with an aim, for providing primary education in a time bound manner, in pursuance to Article 21-A of the Constitution of India. The aim of the Sarva Shiksha Abhiyan was to educate all children between the age of 14 to 16 and by providing free education in a systematic manner. In pursuance thereof in the year 2004, the then State Project Director, Sarva Shiksha Abhiyan, Punjab, wrote to all District Education Officers in Punjab, wherebys instructions became imparted for appointment of Sikhya Providers. In pursuance of the said instructions the petitioners were appointed as Sikhya Providers under the SSA between the years 2005-2009.

5. The respondents issued advertisement(s) in the year 2020, thus for appointment(s) of Masters and Mistresses in the department of Education for Border areas. It is submitted that all the petitioners applied for the appointment as Masters/Mistress under 3 subjects i.e. Hindi, Punjabi and Social Studies. The petitioners applied under the Ex-Servicemen (General) category.

6. A perusal of the advertisement reveals, that under Clause 5, as regards age limit, rather envisagings occur qua the upper age limit for

the employees of Punjab, other States and Government of India, thus being 45 years. The said clause becomes extracted hereinafter.

“5. Age Limit:-

(i) The age of the candidate should be between 18 to 37 years as on 01.01.2019.

(ii) Upper age limit of the employees of Punjab State, Other States, and, Union Territories States shall be 45 years.”

7. Subsequently, the respondents again issued a corrigendum dated 20.10.2020 whereby a slight amendment thereto was made, thus in the original advertisement, to the extent, that those who were appointed as Sikhya Provider(s) under the SSA, were given relaxation for passing the Punjab State Eligibility Test (TET), as also thereby the date qua makings of online applications became extended upto 29.10.2020.

8. That at the time when the first corrigendum was issued, the respondents also issued another set of corrigendum dated 25.10.2020, whereby the total number of vacancies as earlier advertised, rather were increased, by including the backlog vacancies and the increased vacancies were now sought to be filled up, in pursuance to the recruitment process.

9. Accordingly roll numbers were issued to all candidates including the petitioners. For the subjects of Punjabi, Hindi and SST, the written examination was conducted on two dates i.e. on 27.12.2020 and on 09.01.2021. All the petitioners participated in the written examination under the Ex-serviceman (General Category) and were very hopeful of securing high results.

10. Once the written test was conducted by the respondents in

the month of January/February, 2021, thereupons the respondents uploaded the meritorious candidates list of all categories, and, a perusal of the same would reveal that the names of the petitioners were reflected in the meritorious candidates' list, wherebys they were to be offered appointment after scrutiny of documents.

11. Since the names of the petitioners was in the merit list and they were hopeful for appointment, thereupon the respondents vide public notice dated 26.1.2021, called the eligible candidates for scrutiny of documents on different dates w.e.f. 31.1.2021.

12. It is averred, that the verification and scrutiny of documents was done on 1.2.2021 and on 2.2.2021. As per the information with the petitioners only those candidates were called for verification and scrutiny of documents who had qualified in the merit list.

13. After the scrutiny of documents, the respondents vide public notice dated 25.2.2021, uploaded the provisional selection list for the different subjects for appointments to the posts of Master/Mistress. A perusal of the select list would reveal, that under the general Ex-servicemen category, the names of the petitioners are not reflected, whereas, persons lower in merit have been reflected as selected candidates. Moreover, they were offered appointment letters on the very next date i.e. on 26.2.2021.

14. The petitioners immediately on coming to know, that they have not been offered appointment nor their names have been reflected in the final list, despite theirs securing higher marks, thus approached the respondents repeatedly by visiting their office and also submitted

representations dated 26.2.2021 whereby the Director became intimated of the said fallacy.

15. The respondents, despite the representations given by the petitioners, have not intimated any reasons nor any action has been taken with regard to the fact, that the names of the petitioners were not reflected in the select list, despite theirs being meritorious candidates, rather they shockingly issued public notices respectively dated 26.2.2021 and dated 27.2.2021 vide which the persons lower in merit and who did not receive appointment on 26.2.2021, yet have been called in the office of the respondents to receive their appointment orders and all unfilled vacancies are sought to be filled as per the list enclosed therein.

16. What has transpired after the petitioners visited the office of the respondents, is that, probably the names of the petitioners, is not being considered for appointment as they are not being treated as employees of the State Government, Union Government, whereupon the benefit of age relaxation as per Clause 5 of the advertisement uptill the age of 45 years, thus is not being made applicable to the petitioners and to other Sikhya Providers under the Sarva Shiksha Abhiyan (SSA).

17. Therefore, the fulcrum of the lis is centered upon Clause 5 as regard the age limit, clause whereof is re-extracted hereinafter, whereby the relaxation of age of 45 years is made applicable only to those teachers who were employees of Punjab, other States and Union Territory.

“5. Age Limit:-

(i) The age of the candidate should be between 18 to 37 years as on 01.01.2019.

(ii) Upper age limit of the employees of Punjab State, Other States, and, Union Territories States shall be 45 years.”

18. For determining the said controversy, it is relevant to extract Annexure P-1, which embodies the instructions imparted by the State Project Director, Sarv Sikhiya Abhiyan, Punjab, to all District Education Officers (Ele. Edu.), Punjab.

“Subject: Instructions with regard to the appointment of B.R.P. under Sarv Sikhiya Abhiyaan.

On the above subject, you are hereby informed that two education officials are to be appointed against one B.R.P. The instructions with regard to their appointment are as under: -

1. From which school, B.R.P. would be appointed, in that school, two education officials will be appointed in his place by the PSVK of that village.

2. The education officials will be of the same village. If not available in that village then the same can be appointed from the nearby village.

3. The appointment of the education official will be made purely on the basis of merit and the merit will not be amended under any circumstances.

4. The age of the education official should be between 20 to 35 years.

5. Science and Maths graduate will be given preference.

6. The honourarium will be given on the basis of the academic qualification as per the following:-

Graduate Rs.250/- per month

Graduate + B.Ed. Rs.300/- per month

Post Graduate + B.Ed. Rs.350/- per month

7. PSVK has all the rights to take the decision to

appoint/relieve the education official, but the evaluation of the work of the education official will be made by PSVK.”

19. Moreover, it is also relevant to extract the letter issued to all Block Primary Education Officer, District Roopnagar, by the District Education Officer (Ele. Edu.) Roopnagar, contents whereof beomes extracted hereinafter.

“Subject: *Regarding appointment of B.R.P.*

In respect of the above subject, as per State Project Director, Sarv Sikhiya Abhiyaan, Chandigarh Memo No.17/5- 2008/ SSA/21107-126 dated 21.07.2008, as per the enclosed list, the teachers of your block have been appointed as B.R.P. These B.R.Ps. will work in the schools till further orders and in lieu of every B.R.P., three volunteers may be appointed.”

20. The (supra) scheme is floated by the Government of India, wherebys it also appears that the funds became sourced from the Government of India. However, the said scheme was to be implemented by the Education Departments of the various Federal Units in the Union of India. It is in pursuance to Annexure P-1, thus Annexure P-2 (appointment letter) became issued. Though appointment letters are issued by the Chairperson, Rural Education Development Committee (SSA). However, since preceding the issuance of appointment letters, thus a direction was issued by the District Education Officer (Ele.Edu.) Roopnagar, to engage B.R.P. Resultantly when the salaries/wages of the Sikhya Providers, who became engaged thus under a scheme floated, and funded by the Government of India, besides also became implemented by the Education Department in the State of Punjab. Moreover, when

preceding the issuance of appointment letters, the selected Sikhya Providers but also underwent the rigor of a rigorous screening test, whereupon their eligibility to become selected was as such also determined.

21. Therefores and moreover, the impact of wages, being paid by the Central Government, vis-a-vis the scheme to be implemented by the State Governments concerned, especially appertaining vis-a-vis, the age relaxation clause, thus underlining the fact that only qua those who are the employees of Punjab Government, Other States, and, Union Territories rather are to be afforded, the benefit of age relaxation clause, but is that, the Sikhya Providers being deemed to be under the employment of the Central Government or of the Government of Punjab. As such, they were to be bestowed the benefit of age relaxation. Conspicuously since a through a corrigendum issued on 20.10.2020, they were exempted from undertaking Punjab State Eligibility Test (TET), whereupons their experience, as Sikhya Providers, besides concomitantly the time spent in theirs acquiring the relevant experience, but was not required to be discounted in affording to them the relaxation of upper age limit. The said benefit which however has been untenably denied, whereupons discrimination becomes perpetrated upon them vis-a-vis those who are appointed against substantive posts respectively by the State Governments and by the Union Government.

22. In case the said is not done, therebys the aim and objective of the scheme floated by the Government of India, wheretos funds also became provided by the Government of India, through the relevant

budgetary provisioning becoming made, besides when the scheme(s) were to be implemented and also became implemented, by the State Government concerned, thus leading to the Sikhya Providers becoming appointed to teach the students in the government schools, thus for ensuring the upliftment of the cause of education, through education, become imparted in the remote locales concerned. Since therebys the salutary Constitutional provisions carried in Article 21-A of the Constitution of India, do also become achieved, thereupons the denial of relief to the present Sikhya Providers but would militate against the Constitutional objective, as enshrined in Article 21-A of the Constitution of India.

23. Now in case this Court leans to the view, that the said Constitutional objective is to be furthered, which is the aim and objective of the (supra) floated scheme, besides also when the Sikhya Providers were serving in government schools functioning within the State of Punjab, therebys as but a natural corollary theretos, they are deemed to be in the employment of the Government of Punjab or of the Government of India, wherebys they were to be bestowed the benefit of age relaxation. The said is also to be bestowed, as unless it is bestowed, therebys reiteratedly the experience in teaching gained by the Sikhya Providers would become completely effaced, whereas, with the said being not permitted to be effaced qua the employees of the Government of India or the State Governments, therebys prima facie it would result, in an ill invidious classification becoming created rather within the same

homogeneous class of teachers, and, to all of whom parity of treatment vis-a-vis age relaxation is to be afforded.

24. Though, in the reply furnished to the instant writ petition, respondents No.1 to 3 contend, that Sikhya Providers who were appointed under the (supra) scheme, were appointed to impart teachings to primary school students, yet when there is a requirement in the instant subject advertisement, that they were to be holding prior experience of imparting education to the students undertaking education at levels above primary level, thus thereby the petitioners are yet disqualified.

25. However, the said contention is neither borne from the subject advertisement nor is borne out from any rule, thereby the said contention is rejected.

26. Moreover, when through a notification issued on 26.02.2020, the Sikhya Providers are specified to be Primary School Teachers, notification whereof stands extracted hereinafter.

“2. In the Punjab State Elementary Education (Teaching Cadre) Group 'C' Service Rules, 2018 (hereinafter referred to as 'said rules'), in rule 2, in sub rule (1), after clause (g), the following shall be inserted, namely:-

*“(gg) **'Primary School Teacher'** means a person appointed under these rules and includes Sikhyia Provider, Education Provider, Education Volunteer, Education Guarantee Scheme Volunteer (EGSV), Alternative and Innovative Education Volunteer (AIEV) and Special Training Resource Volunteer (STRV), who teach classes Ist to Vth in any Government School under the control of the Director.”*

27. Resultantly, the impact of the above, is that, thereby also respondents conceding that the Sikhya Providers are deemed to be primary school teachers, whereby they were to be also afforded the

benefit of age relaxation. Moreover, the further impact thereof, is that, the present petitioners are to be also endowed the benefit of the (supra) rules, as, if the said is not done but on the untenable premise, that they were yet to be acquiring prior experience of teaching students above the primary level, thereby also there would be an ill invidious discrimination inter se the teachers teaching primary level students, and, those teaching students above the primary school level. More so, when the foundation qua further prosperity in academic pursuits, thus is the skilled teachings imparted at levels upto the primary level.

28. Therefore, the petition is allowed, whereupons the petitioners are declared entitled to be selected to the posts concerned. The respondents concerned, are directed to issue appointment letters to the petitioners against vacant posts. It is clarified that in case the posts are not vacant, then their seats be reserved/be kept in the waiting list, vis-a-vis the upcoming vacancies, as and when they occur which but are expected to occur in the shortest possible time. The elongated period of time wherein the instant writ petition remained subjudice, may not stand in the way of the respondents implementing the said directions.

29. Disposed of accordingly with the aforesaid observations.

30. The miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

17.03.2025

Ithlesh

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

(VIKAS SURJ)
JUDGE