

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 4501-4502 OF 2021

Ashu Chopra and Ors.

Appellant(s)

VERSUS

The State of Punjab & Ors.

Respondent(s)

WITH

CIVIL APPEAL NO(S). 7417-7418/2014

ORDER

What is challenged before this Court is a Judgment and Order dated 08.01.2010, passed by the Division Bench of Punjab and Haryana High Court which had declared Rule 3 of the Punjab State Education Class III (School Cadre) Service Rules, 1978 as violative of Article 16 clause 2 of the Constitution of India. Under the rules, there was a separate cadre for women and men teachers in government schools. The validity of these rules were under challenge before the Punjab and Haryana High Court and vide its judgment and order dated 08.01.2010, the Division Bench had held that the rules are indeed violative of Articles 14, 15 and 16 of the Constitution of India. While doing so, however, it clarified that the principles which have been laid down in the judgment will only be applied prospectively, meaning thereby that all such previous appointments which have taken place under these rules shall not be made invalid on the basis of the law declared by the Court. What has been laid in the judgment will only be applicable

for future appointments which shall now be made on the basis of the merits and on the basis of what has been discussed in the judgment.

Rules 3, 11 and Appendix "A" of Punjab State Education Class III (School Cadre) Service Rules, 1978 read as under :-

"The Punjab State Education Class III (School Cadre) Service Rules, 1978-

"3. The service shall have two branches, namely, Men Branch and Women Branch and shall comprise the posts shown in Appendix 'A' of these rules.

Provided that nothing in these rules shall affect the inherent right of Government to add or to reduce the number of such posts or to create new posts with different designation and scales of pay whether permanently or temporarily.

11. The seniority in each cadre of Service shall be determined on the basis of continuous length of service on a post in that cadre of the service:

Provided that -

XX XX XX XX XX XX"

Appendix "A" (See Rule 3)

S.No	Designation of Post	Grade	Men			Women		
			Total (i)	Permanent (ii)	Temporary (iii)	Total (iv)	Permanent (v)	Temporary (vi)
1	Headmaster (15%)	-	73	73	-	-	-	-
2	Headmistress (15%)	-	-	-	-	18	-	18
3	Headmaster	-	605	100	505	-	-	-
4	Headmistress	-	-	-	-	328	56	272
5	Lecturer (Men)	-	917	-	917	-	-	-
6	Lecturer(Women)	-	-	-	-	577	-	577
7	Master or Block Education Officer	-	10542	5592	4950	-	-	-
8	Mistress or Block Education Officer	-	-	-	-	5425	2120	3305
9	J.S.T. Mistress	-	-	-	-	139	139	-

After discussing the relevant position of law particularly on Articles 14, 15 and 16 of Constitution of India and the law laid down by the Apex Court, it was stated by the Division Bench as under :-

“Clause (3) of Article 15 of the Constitution empowers the State Government to make special provision for women and children to uplift their economic and social status. Therefore, fixing posts for women per se cannot be said to be violative of either Article 15 or 16 of the Constitution of India. Such reservation is a horizontal reservation and not vertical reservation as in the Rules. The horizontal reservation for women is in tune with the constitutional mandate and not the vertical reservation. Therefore, creation of vertical reservation for women is not sustainable.

The policy decision of the State Government that girl students studying in exclusively girls schools should be taught by women teachers can not be said to bad. In fact, the argument of learned counsel for the petitioners is that such reservation is permissible and justified in view of Article 15(3) of the Constitution. Therefore specified number of posts in exclusive girl's schools can be filled from amongst the women candidate. Such policy decision cannot be said to unjustified. However, whether the extent of number of posts reserved for women is justified or not or it violates the other provisions of the Constitution has not been examined as no such argument was raised before us.

However, in respect of the posts which are said to be meant for men category, we are of the opinion that women cannot be excluded from competing against the posts specified to be filled up from amongst men. Neither Article 15 nor Article 16 contemplates reservation of posts in favour of men. Such posts are required to be filled in on the basis of merit alone and if on the basis of merit women are meritorious, they are entitled to be appointed against the posts described as reserved for men to the extent of posts meant for women.

As per the judgments mentioned above, a combined merit list of all the candidates is required to

be prepared. If on such merit, women candidate are not selected to the extent of posts reserved for them, only then women lower in merit will be selected and appointed to fill up the requisite posts meant for such women candidates. Such course alone will be an act of horizontal reservation and in accordance with the mandate of Articles 14 to 16 of the Constitution of India.

Therefore. we read down Rule 3 and the Appendix A to mean that posts other than the posts meant for female candidates are required to be filled up on the ba' is of merit without any classification on the basis of sex. Thus the words - Headmaster, Lecturer (Male) and Masters wherever they appear in the Rules will include the persons of both sexes. However, such declaration of law is without examining the extent of reservation in favour of women and that whether such extent of reservation violates any law.

It is since the year 1955, Rules prescribe separate cadre of men and women. Such cadres have been found to be not tenable. Therefore, principles laid down in this judgment shall be applied prospectively. All the previous appointments shall not be reopened or can be said to be invalid on the basis of law declared by this judgment but all future appointments shall be made on the basis of merit in the manner discussed above."

There is no occasion for us here to interfere with the findings arrived at by the Division Bench of Punjab and Haryana High Court. Rather we uphold the findings on the question of law determined by the High Court.

We have also been informed that subsequent to the delivery of the said judgment, the state of Punjab had filed a review petition seeking clarification as to whether the judgment would be applicable to the selections already been made by the State Government though, appointment orders have not been issued in such cases. The Court vide its order dated 08.01.2010 rejected the

review petition making it absolutely clear that it would be applicable to all future appointments.

We make this clarification in view of the fact that there are some appellants before us who though were "selected", prior to the delivery of the said judgment i.e., on 08.01.2010 but were not given appointment letters. Their prayer before this Court is that the judgment of the Division Bench of Punjab and Haryana High Court should not be applicable to the selections which had already been made prior to 08.01.2010.

These appellants are appellant Nos. 107 to 124 in Civil Appeal No(s). 7417-7418 of 2014 : *Rajesh Kumar and Ors.* who were impleaded as appellants in this case vide an order dated 09.05.2014. The remaining appellants i.e., appellant Nos. 1 to 106 in Civil Appeal No(s). 7417-7418 of 2014 : *Rajesh Kumar and Ors.* and the five appellants in Civil Appeal Nos.4501-4502 of 2021: *Ashu Chopra and Ors.* are on a different footing and we find that there is a special equity in their favour and therefore, they need to be protected.

These are the appellants who were not only selected prior to the delivery of the said judgment on 08.01.2010 but, in their case appointment letters had also been issued on different dates, (some of these we have been told were even prior to 08.01.2010) and subsequently, they had also joined their service as teachers in government primary schools. All the same, after the delivery of judgment in *Neelam Rani Vs. State of Punjab* on 08.01.2010, the appellants were apprehending that their services will be terminated in view of the law laid down by the Division Bench of the Punjab and Haryana High Court particularly, in view of the fact that

Government had issued fresh advertisement inviting fresh application for the post on which appointment had already been made in their favour. They were hence constrained to file the present two appeals before this Court in which leave was granted, and vide order dated 21.03.2012 status quo was ordered. They have been teaching since 2010-11, and there has been no break in their service.

Now, to bring their services to an end in term of the judgment of the Punjab and Haryana High Court dated 08.01.2010, would not only cause hardship to these appellants but we are also of a considered view that under the facts of the case, which we have discussed above, these appellants also have a special equity in their favour. Moreover there is no dispute as to their qualification, etc.

Under these circumstances, the interim orders dated 21.03.2012 passed in *Ashu Chopra and Ors.* and 13.12.2011 passed in *Rajesh Kumar and Ors.* only for appellant Nos. 1 to 106, which are orders for status quo, are made absolute, and these appellants shall not be disturbed from their service. Their appointment will be treated as an appointment made in accordance with law.

We also further clarify that the appellant Nos. 107 to 124 in *Rajesh Kumar and Ors.* are on a different footing as they were never appointed; only selected. All the same, we say nothing on the merit of their case for the reason that these appellants have filed a Writ Petition, which is still pending before the Punjab and Haryana High Court and no decision on this has been taken and the case had been adjourned sine die, for the reasons of the pendency of the

present appeal before this Court. Now since we have disposed of the appeal, there petition can be taken up and matter should be decided on its merits. The appellants would be at liberty to move an application before the Punjab and Haryana High Court for an early hearing.

The present appeals stand disposed of with the above terms.

Pending application(s), if any, shall stand disposed of.

..... J.
[SUDHANSHU DHULIA]

..... J.
[J.B. PARDIWALA]

NEW DELHI;
MARCH 15, 2023.

ITEM NO.101

COURT NO.11

SECTION IV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 4501-4502/2021

ASHU CHOPRA AND ORS & ORS.

Appellant(s)

VERSUS

THE STATE OF PUNJAB AND ORS & ORS.

Respondent(s)

([TOP OF THE BOARD]

IA No. 194940/2019 - INTERVENTION/IMPLEADMENT)

WITH

C.A. Nos. 7417-7418/2014 (IV)

(IA No. 113127/2018 - DELETING THE NAME OF PETITIONER/RESPONDENT

IA No. 181471/2018 - EXEMPTION FROM FILING O.T.

IA No. 58818/2015 - I.A NOS. 127-128

IA No. 95592/2014 - IA NO. 125-126 OF 2014

IA No. 181470/2018 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

Date : 15-03-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSHU DHULIA

HON'BLE MR. JUSTICE J.B. PARDIWALA

For Appellant(s)

Mr. Neeraj Kumar Jain, Sr. Adv.

Mr. Umang Shankar, AOR

Mr. Siddhartha Jain, Adv.

Mr. Akash Elango, Adv.

Mr. Aniket Jain, Adv.

Mr. Sanjay Singh, Adv.

Ms. Shobha Gupta, AOR

Mr. R. K , Chopra, Sr. Adv.

Mrs. Reeta Dewan Puri, Adv.

Mr. Manish Dhingra, Adv.

Mr. P. N. Puri, AOR

For Respondent(s)

Mr. Karan Bharihoke, AOR

Dr. Surender Singh Hooda, AOR

Mr. P. D. Sharma, AOR

Mr. Abinash Kumar Mishra, AOR

Mr. Ajay Pal, AOR

Mr. Mayank Dahiya, Adv.

Ms. Sugandh Rathor, Adv.

Ms. Bhupinder, Adv.

Ms. Aashna Gill, Adv.

Ms. Kaveeta Wadia, AOR

Ms. Sruthi Venugopal, Adv.

Mr. Tarun Gupta, AOR

Mr. Vinod Sharma, AOR

Mr. Somanatha Padhan, AOR

M/S. Delhi Law Chambers, AOR

Mr. Somanatha Padhan, AOR

UPON hearing the counsel the Court made the following
O R D E R

The present appeals stand disposed of in terms of the signed order which is placed on the file.

Pending application(s), if any, shall stand disposed of.

(SNEHA DAS)
SENIOR PERSONAL ASSISTANT

(VIDYA NEGI)
ASSISTANT REGISTRAR