

ITEM NO.55

COURT NO.6

SECTION IVB

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

Petition(s) for Special Leave to Appeal (Civil) No(s).29755/2010

(From the judgement and order dated 06/04/2010 in CWP No.13045/2009 of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

MAHENDER KUMAR & ORS. Petitioner(s)
VERSUS
STATE OF HARYANA & ORS. Respondent(s)

(With prayer for interim relief and office report)
WITH SLP(C) NO. 24882 of 2010
(With appln.(s) for intervention and permission to file rejoinder affidavit and with prayer for interim relief and office report) with
I.A.No.1162 (Appln.for intervention)
SLP(C) NO. 24884 of 2010
(With appln.(s) for deletion of the name of petitioner and office report)
SLP(C) NO. 24883 of 2010
(With office report)
SLP(C) NO. 25010 of 2010
(With office report)

Date: 21/02/2012 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioner(s) Mr.Shish Pal Laler, Adv.
Mr.N.P.Midha, Adv.
Mr. Balbir Singh Gupta,A.O.R.(Not Present)

For Respondent(s) Mr.P.P.Rao,Sr.Adv.
For RR Nos.1 & 3 Dr. Monika Gusain,Adv.
Mr.Hari Om Yaduvanshi, Adv.

For RR No.4 Mr.D.S.Chauhan, Adv.
Mr.Rajinder Juneja, Adv.

For RR No.2 Mr. John Mathew,Adv.
Mr. Kamal Mohan Gupta,Adv.

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

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The IA No. 38 for deleting the name of petitioner no. 2852, i.e., Chaman S/o Dharamvir in SLP(C) No. 24884 of 2010 is allowed in terms of the prayer.

These petitions are directed against order dated 06.04.2010 passed by the Division Bench of the Punjab and Haryana High Court whereby the exemption granted to the Guest Faculty (Lecturers / Teachers) from passing the requirement of School

Teachers Eligibility Test (for short, 'STET') for the purpose of regular appointment to Group 'B' posts and the grant of weightage of 24 marks in lieu of the experience gained by working as Guest Faculty was quashed.

With a view to ensure that the education of students does not suffer due to non-availability of teachers the Government of Haryana, Department of Education framed policy for recruitment of Guest Faculty. For this purpose detailed guidelines were issued on 18.9.2006. After one year and two months, the State Government issued instructions vide circular dated 17.11.2007 to all the concerned officers to stop engaging Teachers on the Guest Faculty basis. On 2.12.2008, the Government issued guidelines for temporary adjustment of displaced Guest Teachers by way of stop gap arrangement. By circular dated 2.3.2009, the Government amended the terms and conditions enshrined in letters dated 29.11.2005, 16.12.2005 and 27.9.2006 for engaging the Teachers on Guest Faculty.

In furtherance of the requisition received from the concerned department, the Haryana Public Service Commission (for short, 'the Commission') issued advertisement no. 3 which was published in newspapers on 18.6.2009 for recruitment of 1317 Temporary Lecturers (School Cadre), HES-II (Group-B) were as under:

"Essential Qualification:

1. Essential Qualifications for the Lecturers of all Subjects except Lecturer in Chemistry, History, Maths and Pol. Science:

(i) Post Graduate Degree in relevant subject from recognized university alongwith at least 50% marks. a

(ii) Certificate of having qualified School Teacher's Eligibility Test.

(iii) Matric with Hindi / Sanskrit."

The relaxation clauses contained in the advertisement did not provide for exemption to any class / category of candidates from passing STET. However, after 15 days of the publication of

advertisement, the Commission issued corrigendum dated 3.7.2009 incorporating therein the decision taken by the State Government to give exemption to the Guest Teachers from passing STET and age relaxation apart from giving additional 6 marks for six months' experience subject to the maximum of 24 marks. The relevant portions of the corrigendum are reproduced below:

"Besides as per the decision of the State Government the guest teachers applying for these posts will be given exemption from passing the School Teachers Eligibility Test (STET) and age relaxation in the upper age limit in additional weightage for having served the department as guest teacher will be given as under:

"No weightage will given to a person served for less than six months. For	who the	has six
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months experience 6% additional marks to be given and one percent additional will be given for every additional month of engagement subject to maximum 24 marks."

Necessary Stipulation:

In case the Hon'ble Punjab and Haryana High Court does not agree to the grant of relaxation to the guest teachers, the same will not be given to them at the time of final selection."

Respondent no. 2, viz., Ashok Kumar challenged the corrigendum in Writ Petition No. 13045 of 2009 mainly on the ground that the so-called policy decision taken by the State Government to exempt the Teachers engaged as Guest Faculty from passing STET and grant of weightage of additional marks is ultra vires the provisions of the Haryana State Educational Lecturer School Cadre (Group 'C') Service Rules, 1998 (for short, 'the Rules') and Articles 14 and 16 of the Constitution because that would amount to indirect regularisation of the services of the Teachers who were engaged as the Guest Faculty.

In the counter filed by the State Government the exemption granted to the Guest Faculty from clearing the STET was justified on the premise that such test had not been conducted in the State for many years. The grant of weightage of additional marks was also defended on the premise that the members of the Guest Faculty had acquired sufficient experience by working as Lecturers / Teachers.

The Division Bench of the High Court referred to the policy framed by the State Government to recruitment to Guest Faculty, the relevant provisions of the Rules, the orders passed in Writ Petition Nos. 2743/2006, 387/2007 and 5289/2007 filed by

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Teachers appointed as the Guest Faculty and observed:

"31. A reading of orders passed by this Court, as referred to above, makes it very clear that entry of guest faculty teachers was de-hors the regular selection process. It was limited to few candidates. All eligible candidates were not allowed to compete for those posts. The nature of service was contractual. However, despite knowing terms and conditions of their appointment, the guest faculty teachers dragged the State of Haryana into avoidable litigation and on account of their action, even the process of selection of regular teachers was delayed. If at this stage, relaxation in age, exemption from passing STET and weightage upto 24 marks towards experience gained as guest faculty teachers is given to them, it would amount to appointing those very candidates in regular service, who, in the first instance, entered it through a selection process which was not regular and open to all. Obviously, it would mean a grave discrimination to the other more deserving candidates. Most of the guest faculty teachers have service of more than two years to their credit, they are sure to get 24 marks at the time of selection and by that process they are bound to exclude others who are more meritorious from entering in service. The grant of 24 marks in the marks obtained by all the candidates, including the guest faculty teachers, as per criteria, in a fiercely competitive field with thousands of applicants would virtually rule out non guest faculty candidates. This virtually amounts to regularization of guest faculty teachers in service, which was deprecated and proscribed by the Hon'ble Supreme Court in Uma Devi's case (supra), wherein it was held that persons, who got employment without following a regular procedure and at times enter through backdoor are not entitled to get permanence in service."

We have heard Shri Shish Pal Laler, learned counsel appearing for the petitioners, Shri P.P.Rao, learned senior counsel appearing for the State, learned counsel for the Commission and learned counsel for respondent no. 4 and scrutinised the record.

It is not in dispute that the essential qualifications enumerated in the advertisement issued by the Commission were in

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consonance with the requirement of the Rules as amended vide

Notification dated 24.7.2008.

In other words, the certificate of having qualified School Teacher's Eligibility Test was an integral

part of the essential qualifications. Rule 17 of the Rules does empower the State Government to relax any of the provisions of the Rules with respect to any class or category of persons but the exercise of power under that rule is hedged with the condition that while granting relaxation, the State Government must record reasons for doing so. Before the High Court, the State Government did not produce any document to show that it had exercised power under Rule 17 and passed a reasoned order for granting exemption to the Teachers engaged as the Guest Faculty from the requirement of having qualified STET. Even before this Court, no such document has been produced. Therefore, the High Court was right in taking the view that the essential qualification prescribed under the rules could not have been relaxed by issuing a corrigendum in the advertisement issued by the Commission.

Shri P.P.Rao, learned senior counsel relied upon the judgment in K.V.Rajalakshmi Setty and another vs. State of Mysore and another (1967) 2 SCR 70 to show that one time ad hoc concession given to teachers could be treated as legitimate and the exercise of power by the Government does not result in violation of Article 14 and 16 of the Constitution.

We have carefully gone through the judgment but do not find any proposition of legality that a qualification prescribed under the rules framed under Article 309 of the Constitution can be relaxed simply by issuing a corrigendum in the advertisement issued by the Commission.

Insofar as the grant of weightage of additional marks is concerned, we are in complete agreement with the High Court that this was an indirect methodology adopted by the State to ensure regularisation of the Guest Faculty Teachers who had earlier failed to convince the High Court to issue a mandamus to the State Government to frame a policy for regularisation of their services.

In the result, the special leave petitions are dismissed.

As a sequel to dismissal of the special leave petitions,

all other pending I.As. are disposed of as having become
infructuous.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master