

Bhupinderpal Singh & Ors vs State Of Punjab & Ors on 1 May, 2000

Equivalent citations: AIR 2000 SUPREME COURT 2011, 2000 AIR SCW 1888, 2000 LAB. I. C. 1980, 2000 (3) UPLBEC 1909, 2000 (4) SCALE 1, 2000 (5) SCC 262, (2000) 5 JT 557 (SC), 2000 (5) JT 557, 2000 (6) SRJ 277, (2000) 2 LAB LN 870, (2000) 2 SCT 826, (2000) 2 SERVLR 608, (2000) 3 UPLBEC 1909, (2000) 4 SUPREME 644, (2000) 4 SCALE 1, (2000) 2 ESC 1442, (2000) 4 ANDH LT 27, (2000) 85 FACLR 902, 2000 SCC (L&S) 639

Author: R.C. Lahoti

Bench: S.R.Babu, R.C.Lahoti

PETITIONER:
BHUPINDERPAL SINGH & ORS.

Vs.

RESPONDENT:
STATE OF PUNJAB & ORS.

DATE OF JUDGMENT: 01/05/2000

BENCH:
S.R.Babu, R.C.Lahoti

JUDGMENT:

R.C. Lahoti, J.

This common judgment shall govern the disposal of C.A. No.6750/1999, C.A. No. 6751/1999, C.A. No. 6752/1999, C.A. No. 6753/1999 & C.W.P. No.356/1999 filed in this Court.

Vide advertisement dated 12.1.1996, the Departmental Selection Committee (Teaching), Education Department, Punjab invited applications for appointment of 3025 teachers. The relevant part of the notification is extracted and reproduced hereunder :- xx xx xx

1. Applications on prescribed form given below are invited for various categories of teachers. Applications must be reached on or before dated 15.02.1996.

xx xx xx xx Sr.No. 1. Masters/Mistresses (S.S. & Allied) Total number of posts : 3025 Pay Scale : 1640-2925 Subject Subject Code Number of posts i) Social Studies 0201 3000 ii) Fine Arts 0203 10 iii) Music 0204 10 iv) Home Science 0205 05 Total 3025
_____ Educational Qualification :

i) For Social Studies Masters/Mistresses : B.A./B.Ed.

with the combination of two subjects out of the following seven subjects History Economics Political Science Geography Public Administration Psychology Sociology with relevant teaching subject in B.Ed.

ii) For Fine Arts Masters/Mistresses : B.A. in Fine Arts with B.Ed.

iii) For Music : B.A. in Music with B.Ed.

iv) For Home Science : B.A./B.Sc. Home Science with B.Ed. (Applicant must have relevant teaching subject in B.Ed.) xx xx xx xx Note :- 1) All the applicants must have passed Punjabi at the level of Matriculation.

2) For all categories of teachers the minimum age is 18 years and maximum limit of age is 36 years on the dt. 01.01.96. Age concession will be admissible under rules to the reserved classes.

On 7th October, 1996 a corrigendum was issued whereby the upper age limit was increased to 42 years as on 1.1.1996. The corrigendum read as under :- In the advertisement for selection of School Master/Mistresses published on 12.01.96 and for ETT/JBT teachers on 08.01.96, upper age limit has been increased upto 42 years as on 01.01.96. Those candidates who could not apply earlier due to overage may now apply. Application complete in all respects as per advertisements dated 12.01.96 and 8.1.96, must reach before 30.10.96 at the following office with requisite fee.

A large number of applications were filed. It appears that some of the applicants did not fulfill the requisite educational eligibility qualifications on the date of making of the applications and not even on 15.2.1996 i.e. the last date for making applications appointed by the advertisement dated 12.1.1996. However, the fact remains and has not been disputed during the course of hearing before this Court that by 30.10.1996, the last date for making the applications, as appointed by the corrigendum dated 7.10.1996, they had all acquired the requisite educational eligibility qualifications. There may be a case or two where the applicants had acquired the requisite educational eligibility qualification on the date of interview. The fact remains that the applications filed by all such applicants were scrutinised, found in order and entertained as validly filed applications. Call letters were issued. The appellants before us, who had also approached the High Court by filing several writ petitions, were all selected. Some were allowed to join and given posting orders. There are others who were not allowed to join pursuant to letters of appointment and were not given posting orders by the District level officers on the ground that they were not qualified for appointment on the last date appointed for making applications i.e. 15.2.1996.

On 17.3.1997 the Director of Public Instructions issued a memo to all Circle Education Officers to the following effect :- Government have decided that the candidates who have acquired requisite qualification at the time of interview and have been selected by the Selection Committee be issued P.P.Os immediately. Accordingly, you are hereby directed that all such candidates who have been issued appointment letters be issued P.P.Os. immediately and intimation be sent to the undersigned.

While above controversy was going on, there was another development. Two candidates, Rajesh Kumar & Paramjit Singh, had filed a writ petition registered as C.W.P. 7159/1997 wherein they had laid challenge to the process of selection on the ground that ineligible persons were selected while the two petitioners who were eligible and more meritorious than some of the persons selected, were not so selected and their names did not figure in the list of selected candidates as released by the Director of Public Instructions (Schools), Chandigarh on 30th December, 1996. By its judgment dated 22.5.1997 the High Court dismissed the petition forming an opinion that the cut off date for determining the eligibility of the applicants by reference to the advertisement was 15.2.1997 and if anyone was not educationally qualified so as to be eligible to make an application on 15.2.97, his application could not have been entertained. As to the corrigendum dated 7.10.96 the High Court formed an opinion that it had the effect of extending the cut off date by reference to which age eligibility was to be determined but rest of the eligibility requirements were to be judged by reference to 15.2.96. The memo dated 17.3.97 was beyond the power of the Government, in the opinion of the High Court and could not have been issued. The High Court thus found the petitioners before it not entitled to any relief and directed the petition to be dismissed.

It appears that there was yet another writ petition, C.W.P. 7322 of 1997 laying challenge to the same recruitment process. By an interim order dated 24.10.97 passed therein the Division Bench had directed a list to be prepared of the candidates who did not possess the requisite academic qualifications on the last date fixed for the receipt of the applications and were yet selected and/or appointed. On 18.2.98 the High Court passed a detailed order directing the Secretary, Department of Education to look into the matter and have an enquiry conducted into the alleged illegalities committed by the Departmental Selection Committee. The relevant part of the order read as under:-

Prima facie it appears that the Departmental Selection Committee has made large scale selections of those candidates who were not qualified up to the last date fixed for receipt of the applications and this has been done in blatant violation of the law declared by the Supreme Court xxx xxx xxx xxx Keeping in view the enormous nature of the illegalities committed by the Departmental Selection Committee, we direct the Financial Commissioner-cum-Secretary to the Government of Punjab, Department of Education, to personally look into the matter and get an enquiry conducted about the illegalities committed by the Departmental Selection Committee. The responsibility of officers who may have manipulated the selection of ineligible candidates may also be fixed and, if considered necessary, case should be registered with the police against the guilty officials. Such an enquiry be got conducted and finalised within two-and-a-half months.

Put up for hearing on 11.5.1998.

An enquiry was set up pursuant to the orders of the High Court. That enquiry has been completed on 24.12.1998. However, the above said interim orders passed by the High Court, have persuaded the Government to take at least two steps. Firstly, the memo dated 17.3.97 has been subsequently recalled. Secondly, such of the candidates who, though selected had not joined till then, were not allowed to join.

In this state of affairs several petitions came to be filed before the High Court. C.W.P. 2830/98, 4633/98, 5657/98, 12495/98, 7322/97 & 13005/98 have been filed by the petitioners mostly selected but not permitted to join. Some of them are such candidates who have been selected and have also been joined but whose appointments are proposed to be terminated by the State Government in view of the interim orders passed by the High Court. All these petitions have been directed to be dismissed. C.W.P. 2513/98 was filed by a petitioner who complained that she was denied the opportunity of joining in the process of recruitment having been considered to be ineligible though one of the respondents in the petition filed by her was considered and selected. Another similar petition registered as CWP 18992/97 was filed by a candidate who was not called for interview having been considered to be ineligible. These petitions have also been dismissed holding the petitioners therein not entitled to any relief in view of their own ineligibility. The petitioners in C.W.P. 2513/98 and 18992/97 have not pursued the matter further though some of the respondents therein have come up in appeal feeling aggrieved by their ineligibility also having been adjudged by the judgment of the High Court though they were selected.

All these petitions having been disposed of by the High Court by a common judgment dated 21.9.98 several appeals referred to herein above have been filed in this Court. C.W.P. 356/99 has been filed in this Court by four petitioners submitting that in view of the judgment dated 21.9.98 delivered by the High Court it would be futile for them to approach the High Court. All the petitioners were eligible for applying for the advertised jobs by 30.10.96, the extended date for making applications. All the four petitioners have been selected. The petitioners no. 1, 2 & 3 were holding other Government jobs which they have resigned in view of their having been selected as teachers.

Avtar Singh, petitioner no.1, was JBT teacher working with the Punjab Government. He has resigned from the previous job on 3.11.97 to join the new job. Sukhbir Singh, petitioner no.2, was serving as Panchayat Secretary wherefrom he has resigned consequent upon his having been selected as a teacher. Ramakant Katara, petitioner no.3, has also similarly resigned from a Government service to take up the employment as a teacher. Jatinder Kaur, appellant in CA 6752/99 has joined as teacher on 6.1.98 and is continuing in such employment.

Sushil Kumar and Gagandeep Kaur, the appellants in Civil Appeal No. 6753/99 have, consequent upon their appointment, joined as teachers respectively on 15.12.97 & 14.10.97 and they are working ever since then.

All the appeals and the writ petitions have been taken up for hearing analogously. The only question arising for decision in this case is by reference to which date the eligibility of the several candidates is to be judged and the consequences flowing from failure to satisfy the eligibility test in the facts & circumstances of the case.

Placing reliance on the decisions of this Court in *Ashok Kumar Sharma Vs. Chander Shekhar & Anr.* JT 1997 (4) SC 99; *A.P. Public Service Commission Vs. B. Sarat Chandra & Ors.* 1990 (4) SLR 235; *The Distt. Collector and Chairman, Vizianagaram (Social Welfare Residential School Society) Vizianagaram and Anr. Vs. M. Tripura Sundari Devi* 1990 (4) SLR 237; *Mrs. Rekha Chaturvedi Vs. University of Rajasthan & Ors.* JT 1993 (1) SC 220; *Dr. M.V. Nair Vs. Union of India & Ors.* 1993 (2) SCC 429; and *U.P. Public Service Commission, U.P., Allahabad & Anr. Vs. Alpana* JT 1994 (1) SC 94, the High Court has held (i) that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice.

In view of several decisions of this Court relied on by the High Court and referred to herein above, it was expected of the State Government notifying the vacancies to have clearly laid down and stated the cut off date by reference to which the applicants were required to satisfy their eligibility. This was not done. It was pointed out on behalf of the several appellants/petitioners before this Court that the practice prevalent in Punjab has been to determine the eligibility by reference to the date of interview and there are innumerable cases wherein such candidates have been seeking employment as were not eligible on the date of making the applications or the last date appointed for receipt of the applications but were in the process of acquiring eligibility qualifications and did acquire the same by the time they were called for and appeared at the interview. Several such persons have been appointed but no one has challenged their appointments and they have continued to be in public employment. Such a loose practice, though prevalent, cannot be allowed to be continued and must be treated to have been put to an end. The reason is apparent. The applications made by such candidates as were not qualified but were in the process of acquiring eligibility qualifications would be difficult to be scrutinised and subjected to the process of approval or elimination and would only result in creating confusion and uncertainty. Many would be such applicants who would be called to face interview but shall have to be returned blank if they failed to acquire requisite eligibility qualifications by the time of interview. In our opinion the authorities of the State should be tied down to the principles governing the cut off date for testing the eligibility qualifications on the

principles deducible from decided cases of this Court and stated herein above which have now to be treated as the settled service jurisprudence.

It is clear from the facts of the case that not only the applicants, thousands in number, but the authorities too were also belabouring under an identical wrong impression. That is why the applications were entertained and the applicants called for interview though not eligible by reference to the last date for receipt of applications. The selection process is complete. Even the appointment letters have been issued. The controversy arose because several officers of the Education Department at the District level refused to join the selected candidates in spite of their being armed with appointment letters. Admittedly with a stray exception of one or two, all the applicants have acquired the requisite eligibility qualifications by 30.10.96, the extended date for making applications. From the corrigendum dated 17.10.96 it cannot be clearly spelled out that though the age requirement was to be determined by reference to 30.10.96, other eligibility requirements, i.e. those relating to education, were to be tested by reference to 15.2.96 and not 30.10.96. At least the corrigendum did not specifically say so. There are no malafides alleged. It has not been the case of anyone aggrieved and certainly not a finding arrived at by the High Court that satisfaction of eligibility requirement by reference to the last date of making of the applications was not rigorously insisted on by the authorities of Education Department or the Selection Board for the purpose of accommodating or obliging any favoured candidate or candidates. The enquiry set up pursuant to the orders of the High Court has also not brought out any finding enabling such an inference being drawn. The action on the part of the Selection Board and the authorities of the Education Department, though mistaken and unsustainable in law, was bonafide and a result of loose practice prevalent till then which has been discontinued now. In our opinion it would cause grave injustice to the several appellants before us if their selection and appointment were struck down and they were now asked to seek employment elsewhere. Most of them, if not all, must have crossed the upper age limit for seeking public employment and the ghost of unemployment is likely to chase them for the rest of their lives. It is not the case of the State Government that the entry of the several appellants before us as teachers in the Education Department, would be a disservice or cause any discontentment in the services or any other problem.

A copy of the report dated 24.12.1998 which is an outcome of the enquiry held in compliance with the order of the High Court dated 18th February, 1998 in CWP 7322/97 has been placed on the record of CWP 356/99. According to the Report there were 1015 candidates who were ineligible though selected. The break-up is as under:-

1. Candidates not fulfilling prescribed qualifications by 15.2.1996 (due date) 939
2. Candidates whose subject combination was not appropriate 75
3. Candidates who have not passed Punjabi 15
4. Candidates possessing degrees from un-recognised Universities 13
5. Candidates whose diploma was not from recognised Institution 1

6. No. of candidates having more than one type of ineligibility 28 ----- 1015 -----

(Note : Figures and total as given in the report) It is also stated in the enquiry report that total number of candidates issued appointment letters and joined was 305 while total number of candidates issued appointment letters but not joined was 277. There were another 433 candidates who, though selected, were not issued appointment letters.

It was conceded during the course of hearing that candidates belonging to category-1 had acquired the requisite eligibility qualifications by the extended date. As to category-3 it was conceded that the candidates had given Punjabi examination before the cut off date and though the results were not declared but their answer books were evaluated before 30.10.1996 and the results were formally declared after the cut off date and they had passed the requisite examination in Punjabi. The appellants and the petitioners before us are either in category-1 or in category-3. In our opinion in view of the appointment letters having been issued, the selection and appointment of such candidates should not be disturbed and that order we make under Article 142 of the Constitution to do complete justice in the facts and circumstances of the cases before us as already stated.

For the foregoing reasons all the appeals are allowed. The judgment of the High Court, to the extent of which it has dismissed the writ petitions filed by such petitioners who were the selected candidates, is set aside. CWP 356/99 filed in this Court is also allowed. It is directed that such of the selected candidates as have already been issued appointment letters shall forthwith be issued posting orders at the earliest, say within a maximum period of two months from the date of this order. Those who have already been posted shall continue with their appointments. The appeals and the writ petition are disposed of accordingly. No order as to the costs.