

The State Of Haryana vs Sandeep Singh on 6 May, 2019

Equivalent citations: AIRONLINE 2019 SC 2654, AIRONLINE 2019 SC 2306

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Bench: Hemant Gupta, Dhananjaya Y. Chandrachud

REPORT

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4546 OF 2019
(@ SLP(C) NO. 11295 of 2019)
(@ DIARY NO. 42671 OF 2018)

STATE OF HARYANA AND ANOTHER

..... APPELLA

VS.

SANDEEP SINGH AND OTHERS

.....RESPON

JUDGMENT

Hemant Gupta, J.

The challenge in the present appeal is to an order dated 03.12.2014 passed by the Division Bench of High Court of Punjab and Haryana in an intra court appeal under Clause X of the Letters Patent.

2. The grievance of the respondents (hereinafter referred to as “writ petitioners”) in the writ petition filed under Article 226 of the Constitution is that the post of Drawing Teacher had been converted to Trained Graduate Teacher (TGT) under Rule 9(5) of the Haryana School Education (Group C) State Cadre Service Rules, 2012. Two juniors to 1 2012 Rules the writ petitioners have been promoted as Elementary School Headmasters, therefore, the writ petitioners are also entitled to get promoted from the day their juniors were promoted.

3. The contention of the writ petitioners is that they possess senior secondary qualification with 2 years Diploma in Art & Craft and that they also possess qualification of B.A. and B.Ed. Initially,

services of the writ petitioners were governed by Haryana State Education School Cadre (Group C) Service Rules, 1998 which have since been replaced by the 2012 Rules. In terms of Rule 9 (5) of 2012 Rules, the Classical & Vernacular (C&V) Cadre Teachers, such as the writ petitioners, are deemed to be converted to TGT in the relevant subject though no further recruitment shall be conducted to these categories of C&V Teachers. The contention of the writ petitioners is that they fulfil the qualification prescribed for the post of Elementary School Headmaster, therefore, they are entitled to be considered for promotion to the said post based upon seniority in terms of Rule 11 of 2012 Rules.

4. The stand of the State is that the writ petitioners are not entitled for promotion to the post of Elementary School Headmaster as they do not fulfil the requisite qualification for appointment to the post of TGT under 2012 Rules.

5. The learned Single Bench relying upon Rule 9(5) of 2012 Rules held that the C&V Teachers stand converted to TGT Cadre, therefore, 2 1998 Rules they would be entitled to consideration for promotion to the post of Elementary School Headmaster. It was held as under:

“As per Rule 9 of the 2012 Rules, for promotion to the post of Elementary School Headmaster, 85% posts have been kept reserved for promotion from amongst the TGTs. Since the petitioners now belong to the TGT Cadre, they would be entitled to consideration for promotion to the post of the Elementary School Headmaster provided they fulfil the qualifications for the post, for which they are claiming promotion. The eligibility for promotion to the post of Elementary School Headmaster is B.A. B.Ed. and since the petitioners fulfil the requisite qualifications for the said post, they are entitled to be considered for promotion to the said post according to their seniority, which has to be determined by the respondents as per Rule 11 of the 2012 Rules.”

6. The intra court appeal preferred by the State was dismissed for the reason that once C&V Teachers have been considered as the members of TGT Cadre they cannot be denied the promotion post of Elementary School Headmaster against 85 per cent quota earmarked for TGTs.

7. Learned Counsel for the appellant argued that Rule 9(5) of 2012 Rules only gives a notional designation of TGT to C&V Teachers appointed under 1998 Rules and that the Rule 9(5) of the 2012 Rules cannot be read in isolation. It is contended that under 1998 Rules, there were C&V Teachers and Masters. The equivalent post of TGT in the 1998 Rules is Master, which is promotion post of C&V Teachers such as the writ petitioners. A cumulative reading of various provisions of 2012 Rules does not contemplate to treat C&V teachers as TGT, the Master being a promotion post for C&V Teachers.

8. The minimum educational qualification for C&V Teachers in terms of 1998 Rules in the subject of Drawing was Matric from Haryana School Education Board or

equivalent qualification recognized by the Haryana School Education Board as well as 2 years Diploma in Art and Craft Examination, whereas, for the promotion to the post of Art Master, the minimum qualification is B.A. with Art as one of the Elective Subject and B.T./B.Ed from a recognized University or Matric/10+2 with 5 years Degree/Diploma from a recognized University.

9. It is contended that TGTs under 2012 Rules are defined to mean the teachers appointed in the relevant subject after framing of 2012 Rules and also include Masters appointed before the notification of these Rules. It is only the Master who falls within the definition of TGT under the 2012 Rules, whereas, the C&V Teachers are converted to TGT notionally as dying Cadre to avoid anomalous situation of the C&V Teachers without being in any Cadre.

10. The qualification for an appointment of TGT is Graduation; B.Ed and certificate of having qualified Haryana Teachers Eligibility Test(HTET)/ School Teachers Eligibility Test(STET). The writ petitioners cannot be treated to be the members of TGT Cadre under 2012 Rules as the post of Master is equivalent to the Post of TGT, which is in fact, a promotion post for C&V Teachers under the 1998 Rules.

11. On the other hand, the learned Senior Counsel for the writ petitioners supported the reasoning given by the High Court that once the C&V Teachers are converted to TGT, therefore, they have to be treated as the members of TGT Cadre itself and Rule 9(5) of the 2012 Rules cannot be given any other meaning as the language of the Rules leaves no manner of doubt that the C&V Teachers are now to be deemed to be part of TGT cadre.

12. The relevant Rules need to be extracted at this stage to appreciate the respective contention of the parties. The relevant provisions of the 1998 Rules read as under:

“6. (1) Appointments to the posts in the Service in case of Middle School Headmaster, Social Studies Master, Science Master, Mathematics Master, Agriculture Master, Commerce Master, Demonstrator in Physical Education (P.T. Master), Home Science Master, Art Master and Music Master shall be made by Joint Director Schools.

(2) Appointments to the posts in the Service in case of Sanskrit Teacher, Hindi Teacher, Punjabi Teacher, Physical Training, Instructor, Art and Craft Teacher (Drawing Teacher), Tailoring Teacher and Tabla Player shall be made by the respective District Education Officers of the concerned district.

*** **

9. (1) Recruitment in the Service shall be made:-

(a) in the case of Middle School Headmaster,

(i) by promotion from amongst Master; or *** **

(b) in the case of Social Study Masters-

(i) 50% by promotion from amongst J.B.T. and C&V Teachers; and

(ii) 50% by direct recruitment; or

(iii) by transfer of deputation of an official already in service of any State Government or the Government of India;

(c) in the case of Science Master:-

(i) 20% by promotion from amongst the J.B.T. and C&V Teacher; and

(ii) 80% by direct recruitment; or

(iii) by transfer or deputation of an official already in service of any State Government of India;

(d) in the case of Mathematics Master:-

(i) 20% by promotion from amongst J.B.T. an C&V Teachers; and

(ii) 80% by direct recruitment; or

(iii) by transfer or deputation of an official already in the service of any State Government or the Government of India;

(e) *** **

(o) in the case of Art and Craft Teacher (Drawing Teacher)

(i) by direct recruitment; or

(ii) by transfer or deputation of an official already in the service of any State Government or the Government of India;

*** **

APPENDIX -B (See Rule-3)

Sr. No.	Designation of Posts	Academic qualifications	Academic qualifications
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		and experience if any for direct recruitment	and experience if any for appointment other than by direct recruitment
1-8	***	***	***
9.	Art Master	(i) B.A. with Art as one of the Elective Subject and B.T/B.Ed from a recognized university. OR Matric/10+2 with 5 years degree/diploma in arts from a recognized university; and (ii) knowledge of Hindi upto Matric Standard	(i) B.A with Art as one of the Elective subject and B.T./B.Ed from a recognized university. OR Matric/10+2 with 5 years degree/diploma in arts from a recognized university; and (ii) Knowledge of Hindi upto Matric Standard (iii) 3 years experience on the post of JBT and C&V Teacher.
10-	***	***	***
15.	Art and Craft Teacher (Drawing Teacher)	(i) Matric from Haryana School Education Board or an equivalent qualification recognized by the Haryana School Education Board; (ii) 2 years Diploma in Art and Craft Examination conducted by the Haryana Industrial Training	(i) Matric from Haryana School Education Board or an equivalent qualification recognized by the Haryana School Education Board; (ii) 2 years Diploma in Art and Craft Examination conducted by the Haryana Industrial Training Department or

Department or	an equivalent
an equivalent	qualification
qualification	recognized by
recognized by	the Haryana
the Haryana	School
School	Education
Education	Board;
Board;	(iii) Knowledge
(iii) Knowledge	of Hindi upto
of Hindi upto	Matric Standard.
Matric	
Standard.	

“

13. The similar qualifications exist for appointment to the other categories of C&V Teachers and of promotion to the post of Masters.

14. The 1998 Rules were repealed when the 2012 Rules were notified on 11th April 2012. The relevant extracts from such Rules are as under:

“2. In these Rules, unless the context otherwise requires,-

(a) *** ** *

(e) “direct recruitment” means an appointment made otherwise than by promotion from within the Service or by transfer of an official already in the Service of the Government of India or any State Government.

*** ** *

(h) “TGT” means Trained Graduate Teacher in the relevant subject appointed after notification of these rules and shall include masters appointed before notification of these rules;

(i) “PRT” means Primary Teacher appointed after notification of these rules and shall include junior basic (JBT) teachers appointed before notification of these rules.

*** ** *

3. The Service shall comprise of the posts shown in Appendix A to these rules;

Provided that nothing in these rules shall affect the inherent right of Government to make additions to or reductions in, the number of such posts or to create new posts with different designations and scales of pay, either permanently or temporarily.

*** **

7. No person shall be appointed to any post in the Service, unless he is in possession of qualifications and experience specified in column 3 of Appendix B to these rules in the case of direct recruitment on contract basis and those specified in Column 4 of the aforesaid Appendix in the case of persons appointed other than by direct recruitment on contractual basis:

Provided that in case of on contractual basis direct recruitment, if the required number of candidates of Scheduled Caste, Backward Class, other backward classes, Ex-Servicemen and physically Handicapped having not the required the experience are not available against the vacancies reserved for them, then relaxation in experience upto the limit of fifty percent may by order, for reason to be recorded in writing, given at the discretion of the recruiting agency.

* **

9. (1) Recruitment in the Service shall be made:-

(a) In the case of Elementary School Head Master:-

(i) 85% by promotion from amongst TGTs;

and

(ii) 7% by promotion from Hindi teachers;

and

(iii) 7% by promotion from Sanskrit teacher; and

(iv) 1% by promotion from Punjabi teacher; or

(v) by transfer or deputation of an official already in service of any State Government, Government of India or from the Haryana State Education School Cadre (Group C) Service;

(b) to (k) *** **

(l) In the case of TGT Art,--

(i) 67% by direct recruitment on contract basis; and

(ii) 33% by promotion from amongst Primary Teachers (PRTs)/Classical & Vernacular (C&V) Teachers; or

(iii) by transfer or deputation of an official already in service of any State Government, Government of India;

*** ** (5) The present Classical & Vernacular (C&V) Cadre consisting of the posts of Sanskrit Teachers, Hindi Teachers, Punjabi Teachers, Physical Training Instructors (PTIs), Art & Craft Teachers (Drawing Teachers), Tailoring Teachers and Tabla Players and governed by the Haryana State Education School Cadre (Group C) Service Rules, 1998 shall be converted to TGT in relevant subject and no further recruitment shall be made to these categories when the present incumbent on the notification of these rules vacate the post on his promotion, retirement or any other purpose. (Emphasis Supplied) *** ** APPENDIX A (See Rule 3) S Designation Number of Posts Scale of Pay N of Posts Permanent Temporary Total Pay Grade Band Pay 1 Elementary 5207 5207 9300- 4800 School 34800 Head Master 2 TGT Social 5513 3307 8820 9300- 4600 Studies 34800 3 TGT 3014 1579 4593 9300- 4600 Science 34800 4 TGT 2566 2129 4695 9300- 4600 Mathematics 34800 5 TGT English 9300- 4600 34800 6 TGT Hindi 9300- 4600 34800 7 TGT 9300- 4600 Sanskrit 34800 8 TGT Punjabi 9300- 4600 34800 9 TGT Urdu 1 0 1 9300- 4600 34800 10 TGT 918 179 1097 9300- 4600 Physical 34800 Education 11 TGT Home 167 129 296 9300- 4600 Science 34800 12 TGT Art 0 1 1 9300- 4600 34800 13 TGT Music 58 33 91 9300- 4600 34800 APPENDIX B (See Rule 7) SN Designation of Academic Academic qualifications and Posts qualifications experience, if any, for and appointments other than by experience, if direct recruitment on any, for direct contract basis recruitment on contract basis

1. Elementary - By Promotion:-

School Head (i) B.A./B.Sc. and 2-year Master Diploma in Elementary Education; OR B.A./B.Sc. with at least 50% marks and 1-year Bachelor in Education (B.Ed.); OR B.A./B.Sc. with at least 45% marks and 1-year Bachelor in Education (B.Ed.), in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard;

OR Senior Secondary (or its equivalent) with at least 50% marks and 4 year Bachelor in Elementary Education (B. El.

Ed.); OR Senior Secondary (or its equivalent) with at least 50% marks and 4 year B.A. Ed.; OR B.A/B.Sc. with at least 50% marks and 1-year B.Ed. (Special Education);

(ii) 5 year experience in regular capacity as Hindi/Sanskrit/Punjabi Teacher/TGT.

(iii) At least 3 weeks in-service training in administrative and accounts module.

2- *** **

12. TGT Art (i) B.F.A/B.A By Promotion:-

and 2-year Diploma in Elementary Education; OR B.F.A/B.A with at least 50% marks and 1-year Bachelor in Education (B.Ed.); OR B.F.A/B.A with at least 45% marks and 1-year Bachelor in Education (B.Ed.); in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard; OR Senior Secondary (or its equivalent) with at least 50% marks and 4 year Bachelor in Elementary Education (B.El. Ed.);OR Senior Secondary(or its equivalent) with at least 50% marks and 4 year BA. Ed ; OR B.F.A/B.A with at least 50%

(i) B.F.A/B.A and 2-year Diploma in Elementary Education; OR B.F.A/B.A with at least 50% marks and 1-year Bachelor in Education (B.Ed.); OR B.F.A/B.A with at least 45% marks and 1-year Bachelor in Education (B.Ed.), in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard; OR Senior Secondary (or its equivalent) with at least 50% marks and 4 year Bachelor in Elementary Education (B. El. Ed.); OR Senior Secondary (or its equivalent) with at least 50% marks and 4 year B.A. Ed.; OR B.F.A/B.A with at least 50% marks and 1-year B.Ed.(Special Education); AND

(ii) In case of B.A. Arts, at least 50% marks in Fine Art as an Elective subject,
 (iii) In case of B.Ed., Fine Art as a teaching subject from a recognized University;
 (iv) 3 year experience as Primary Teacher (PRT)/Classical & Vernacular (C&V) Teacher.
 (v) Certificate of having qualified Haryana Teacher Eligibility Test (HTET)/School Teachers Eligibility Test (STET).

marks and 1-year B.Ed. (Special Education); AND
 (ii) in case of B.A. Arts, at least 50% marks

in Fine Art as an
Elective subject,
(iii) In case of
B.Ed., Fine Art
as a teaching
subject from a
recognized
University;
(iv) Certificate of
having qualified
Haryana Teacher
Eligibility Test
(HTET)/ School
Teachers Eligibility
Test (STET).
(v) Matric with
Hindi/Sanskrit or
10+2/B.A./M.A.
with Hindi as one
of the subject.

”

15. We find that the High Court has taken a simplistic view on the bare reading of Rule 9 (5) of 2012 Rules to hold that with the commencement of 2012 Rules, the C&V Teachers become part of TGT Cadre and as part of the TGT Cadre, they become entitled for promotion to the post of Elementary School Headmaster from the day their juniors were promoted to such post.

16. The appointment of the writ petitioners as C&V Teacher is prior to the commencement of 2012 Rules. The 1998 Rules contemplate direct recruitment to the post of Master and to various other disciplines, commonly called as C&V Teachers. In fact, the post of Master is a promotion post for C&V Teachers in terms of Rule 9 of the 1998 Rules.

The qualification for the post of Art Master by way of direct recruitment and promotion is Graduate or Matric/10+2 with 5 years Degree/Diploma. However, for promotion the additional qualification is 3 years' experience on the post of JBT and C&V Teachers.

17. The post of TGT is contemplated to be filled up by direct recruitment and by promotion from amongst primary teachers/C&V Teachers. Column 3 of the Appendix B of 2012 Rules prescribes the academic qualifications and experience for direct recruitment on contract basis whereas, Column 4 prescribes academic qualifications and experience for appointment other than by direct recruitment on contract basis. The qualifications for filling up the post of TGT by way of promotion are B.F.A/B.A and 2-year Diploma in Elementary Education; or B.F.A/B.A with at least 50% marks and 1-year Bachelor in Education (B.Ed.); or B.F.A/B.A with at least 45% marks and 1-year Bachelor in Education (B.Ed.); in accordance with the NCTE (Recognition Norms and Procedure) Regulations

issued from time to time in this regard; or Senior Secondary (or its equivalent) with at least 50% marks and 4 year B.A. Ed. Etc. and 3 years' experience as Primary Teacher (PRT)/Classical & Vernacular (C&V) Teacher. Thus, the post of TGT is a promotion post for C&V Teachers as well.

18. Therefore, the reading of the entire 2012 Rules shows that the Masters appointed under 1998 Rules alone were holding equivalent post to that of the members of the cadre of TGT. It is such category alone who are entitled to be promoted to the post of Elementary School Headmaster in terms of the qualifications prescribed in Appendix B particularly in view of Rule 2(h) and Rule 7 of the 2012 Rules. TGT means a Trained Graduate Teacher in the relevant subject appointed after notification of the 2012 Rules and include the Masters appointed before the notification of these Rules. Therefore, the Masters appointed in terms of 1998 Rules are only the Trained Graduate Teachers in terms of 2012 Rules. The post of Master under the 1998 Rules or the Post of TGT under the 2012 Rules is in fact promotion post for the C&V Teachers.

19. The entire argument of the appellants is based upon the expression used that C&V Teachers governed by 1998 Rules shall be "converted to TGT in relevant subject". The question is whether such C&V Teachers stand upgraded to the post of TGT though, their promotion channel under 1998 Rules was to the post of Master which alone has been treated as TGT as defined in Rule 2(h) of the 2012 Rules and in view of express language of Rule 7 which mandates that the appointment shall be made to the post of TGT only in accordance with the qualifications prescribed in 2012 Rules.

20. The reading of the Rules would show that C&V Teachers are treated to be TGT so as to avoid anomalous situation where the C&V Teachers after the commencement of 2012 Rules would not be governed by any set of Rules. Therefore, the expression that such C&V Teachers stand converted to TGT is only to facilitate their service conditions to be governed by the 2012 Rules rather than to upgrade the C&V Teachers as members of TGT Cadre. The feeder and the promotional cadre cannot be treated at par by virtue of the expression used in Rule 9(5) of 2012 Rules that the C&V Teachers shall be converted to TGT. Such conversion is only for a limited purpose of 2012 Rules being extended to them and that such C&V Teachers do not become member of the "cadre" eligible for promotion as Elementary School Headmaster. Rule 9(5) of 2012 Rules does not use the word "cadre". Therefore, such teachers cannot be treated to be part of TGT cadre. Such interpretation is further supported by the fact that C&V Teacher is a dying cadre and no further recruitment is to be made in these categories.

21. Such C&V Teachers, if eligible, can seek appointment by way of a direct recruitment or other than by direct recruitment in terms of the academic qualifications and experience contained in Appendix B of 2012 Rules but they cannot be treated en masse as members of TGT Cadre. The State may consider to provide opportunity to such teachers for appointment as TGTs.

22. The TGTs are engaged to provide elementary education. The purpose of the Rules is better served by ensuring education to the students of primary schools in the State by Trained Graduate Teachers rather than C&V Teachers who were being engaged earlier. It is upgradation of qualification of teachers to be engaged for teaching the students of the primary schools for appointment as TGTs. Therefore, the interpretation which sub serves cause of education is to be

preferred as against the interpretation leading to anomalous result, more so it is not warranted by the cumulative reading of the 2012 Rules.

23. In view of the above, we find that the order passed by the High Court that C&V Teachers become member of the TGT Cadre after the commencement of 2012 Rules in fact violates the cumulative reading of the 2012 Rules and defeats the cause of the primary education in the State guaranteed by Article 21A of the Constitution.

24. Consequently, the appeal is allowed and the order passed by the High Court is set aside.

.....J. (Dr. Dhananjaya Y. Chandrachud)
.....J. (Hemant Gupta) New Delhi May 6, 2019