

Civil Writ Petition No.7626 of 2015 & other connected matters { 1 }

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.7626 of 2015

Date of Decision: May 27th, 2015

Gurmail Kaur & others

...Petitioners

Versus

State of Haryana & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Anurag Goyal, Advocate.
Mr.Jasbir Mor, Advocate.
Mr.Lalit Rishi, Advocate.
Mr.Sanjiv Gupta, Advocate.
Mr.R.K.Malik, Senior Advocate with
Mr.Tejpai Dhull, Advocate.
Mr.Sajjan Singh Malik, Advocate.
Mr.Vikram Singh Ahlawat, Advocate.
Ms.Anu Chatrath Kapur, Senior Advocate with
Ms.Rumpa Ghorai Sahai, Advocate.
Mr.Suresh Kumar Kaushik, Advocate.
Mr.Ajay Chaudhary, Advocate.
Mr.S.N.Pillania, Advocate.
Mr.Amit Rao, Advocate.
Mr.Anil Sharma, Advocate.
Mr.Akshay Kumar Goel, Advocate.
Mr.Vikram Sheoran, Advocate.
Mr.Arun Yadav, Advocate &
Mr.Naveen Sheokand, Advocate,
for the petitioners.
Mr.D.S.Nalwa, Addl.A.G.Haryana,
for the State.
Mr.H.N.Mehtani, Advocate,
for the HPSC.

AMIT RAWAL, J.

By this common order, I intend to dispose of writ petitions

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bearing No.21734 of 2012 (Sandeep Versus State of Haryana & others), 24757 of 2013 (Bal Rishi Versus State of Haryana & others), 24859 of 2013 (Shiv Kumar & others Versus State of Haryana & others), 50 of 2014 (Raman Kumari & others Versus State of Haryana & others), 102 of 2014 (Jitender Singh & others Versus State of Haryana & others), 1040 of 2014 (Parveen Kumar Versus State of Haryana & others), 1067 of 2014 (Balbir & others Versus State of Haryana & others), 1556 of 2014 (Rajesh Kumar & others Versus State of Haryana & others), 1760 of 2014 (Ravinder Singh & others Versus State of Haryana & another), 1842 of 2014 (Sandeep Kumar Versus State of Haryana & others), 4589 of 2014 (Pardeep Kumar Versus State of Haryana & others), 4848 of 2014 (Surender Kumar Versus State of Haryana & others), 5568 of 2014 (Naresh Kumar & others Versus State of Haryana & others), 6501 of 2014 (Harvinder Kaushal & others Versus State of Haryana & others), 8297 of 2014 (Pawan Kumar Versus State of Haryana & others), 9035 of 2014 (Shikha Sharma Versus State of Haryana & others), 9253 of 2014 (Abheyender Singh Versus State of Haryana & others), 11631 of 2014 (Krishan Kumar Versus State of Haryana & others), 22095 of 2014 (Amit Bindra & others Versus State of Haryana & others), 22168 of 2014 (Tarun Kaushik & others Versus State of Haryana & others), 22470 of 2014 (Ramesh Kumar & others Versus State of Haryana & others), 22517 of 2014 (Nar Singh & others Versus State of Haryana & others), 22653 of 2014 (Surender Kumar & others Versus State of Haryana & others), 24132 of 2014 (Pardeep & others Versus State of Haryana & others), 25805 of 2014 (Sandeep Sindhu & others Versus State of Haryana & others), 25811 of 2014 (Bijender Singh & others Versus State of Haryana & others), 25993 of

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2014 (Satish Kumar Versus State of Haryana & others), 26014 of 2014 (Parmod Kumar Versus State of Haryana & others), 26065 of 2014 (Surender Singh Versus State of Haryana & others), 26098 of 2014 (Rajesh Chaudhary & others Versus State of Haryana & others), 3985 of 2015 (Devender Kumar & others Versus State of Haryana & others), 7584 of 2015 (Satish Kumar Versus State of Haryana & others), 7616 of 2015 (Sandeep Kumar Versus State of Haryana & others), 8437 of 2015 (Bharat Bhushan & others Versus State of Haryana & others), 9071 of 2015 (Vinod Kumar & others Versus State of Haryana & others), 9068 of 2015 (Satish Kumar Versus State of Haryana & others), 10517 of 2015 (Parshant Sharma Versus State of Haryana & others) as the common question of law and facts involved in all the writ petition is the same. The facts are being taken from Civil Writ Petition No.7626 of 2015.

The sole question, which arises for consideration in all the aforementioned writ petitions, is as to whether the respondent authorities can withhold the appointment letters by taking the aid of the judgment in **Kartar Singh Versus Union of India and others, 2013(1) RSJ 224** rendered by the Division Bench of this Court despite there being an interim order of the Hon'ble Supreme Court dated 14.12.2012 in Special Leave Petition (Civil) Nos.35793-35796 of 2012, whereby the aforementioned judgment has been challenged.

The petitioners are stated to have obtained their M.A. Degree from various Deemed Universities, namely, Rajasthan vidyapeeth Udaipur, Rajasthan, IASE Sardar Sahar, Rajasthan, Bangalore University, Bangalore and Vinayaka Missions University, Salem, Tamilnadu and they are

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aggrieved against the action of the respondents taken vide order dated 18.1.2014 (Annexure P-9), whereby the Principal Secretary to Government Haryana, School Education Department, Chandigarh ordered that since the matter with regard to candidates having obtained their qualifications from the aforementioned Universities is subjudice in the Hon'ble Apex Court and they will be informed separately, however, all other Post Graduate Teachers (PGTs), who have been selected by the Haryana School Teacher Selection Board, Panchkula in various subjects of Geography, Mathematics, Physics, History, Sociology, Commerce, Chemistry, Psychology, Home Science, Urdu, Punjabi and Political Science and have been recommended for appointment to the department were being called for counselling and later on have been issued appointment letters. Few of the petitioners, though have been issued appointment letters and joined, but thereafter, they have not been granted extension owing to the fact that they have obtained the Post Graduate Degree from the aforementioned Deemed Universities, which, according to the respondents are not recognized and as well as owing to the dictum rendered in Kartar Singh's case (supra).

It would be apt to give brief preface of the controversy before advertizing/answering the aforementioned question posed.

The Haryana School Teachers Selection Board caused an advertisement on 7.6.2012 bearing Advertisement No.1 inviting applications for filling up the posts of PGTs HES-II (Group-B) Service in different subjects. The aforementioned applications were invited through online and closing date of the submission of the applications through website was 28.6.2012. All the petitioners, who were eligible for the posts

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in question, applied for the same through online, mentioning therein, details of their qualifications before the cut off date. The Director General-cum-Principal Secretary to Government of Haryana, Department of School Education had framed the rules regulating the recruitment and conditions of service of the persons for appointment in Haryana State Education School Cadre (Group-B) Services by notifying the rules on 11.4.2012 (hereinafter called the Haryana State Education School Cadre (Group-B) Service Rules, 2012) and as per the aforementioned rules, for seeking appointment to the post of PGT (English), the person should have passed M.A.English with at least 50% marks and B.Ed. from recognized University and Matric with Hindi/Sanskrit or 10+2/B.A./M.A. with Hindi as one of the subject and a Certificate of having qualified Haryana Teacher Eligibility Test (HTET)/ School Teachers Eligibility Test (STET) and consistent good academic record.

Vide notification dated 2.7.2012, the aforementioned rules have been amended, whereby Rule 3 has been amended and the teachers working in the privately managed Government Aided, recognized and Government Schools were ordered to be exempted from having the qualification of HTET/STET and B.Ed., in case they have worked as teachers for a minimum period of four years on the date of enforcement of these rules.

All the petitioners were called for interview, which was to be held on different dates and the result was declared on different dates, i.e., 30.12.2013, 1.4.2014, 16.12.2013, 3.4.2013 and 11.3.2013. On the basis of the result, the merit list was prepared and the candidates, who were selected and have been recommended for appointment to the department, were

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directed to appear for counselling held on 19.1.2014 and 20.1.2014 for the purpose of allotting place of posting by the Department. Vide same order dated 18.1.2014, respondent No.2 clarified that the candidates, who have passed qualifications from the aforementioned Universities were not required to come for counselling owing to the pendency of the matter in the Hon'ble Supreme Court and a notice on the website of the Department of School Education, Haryana to this effect was also flashed vide Annexure P-10.

The petitioners are aggrieved by the aforementioned letter/notice flashed on the website, which has been annexed by way of different annexure in different writ petitions. However, since the aforementioned case is taken as a lead case, the same has been attached as Annexures P-9 and P-10. The contents of the same are extracted herein below:-

ANNEXURE P-9

“GOVERNMENT OF HARYANA

EDUCATION DEPARTMENT

ORDER

No.6/4-2013 HRL (4) Dated Chandigarh, the 18.1.2014

All the Post Graduate Teachers (PGT's) who have been selected by the Haryana School Teacher Selection Board, Panchkula in the subject of Geography, Mathematics, Physics, History, Sociology, Commerce, Chemistry, Psychology, Home Science, Urdu, Punjabi and Political Science and have been recommended for appointment to the department, their counseling shall be held on 19.01.2014 and 20.01.2014 at Panchkula as per the schedule issued by the department vide order No.6/4-2013 HRL(4) dated 17.01.2014 which is available at the website of the department i.e.

www.schooleducationharyana.gov.in. All concerned are directed to attend the said counseling on the scheduled date and time as no further opportunity will be granted to them and in case of their inability to report for counseling, they will be allotted place of posting by the department and no request for change will be entertained lateron.

However, it is made clear that the candidates having passed their qualifications from the Rajasthan Vidyapeeth Udaipur, Rajasthan, IASE Sardar Sahar, Rajasthan, Bangalore University Bangalore and Vinayaka Mission University Salem, Tamil Nadu need not come for the counseling as the matter regarding the status of these universities is subjudice in the Hon'ble Apex Court. Also the absentees who were not present at the time of document verification, need not come for counseling. All of these will be informed separately lateron.

SURINA RAJAN

PRINCIPAL SECRETARY TO GOVT. HARYANA

SCHOOL EDUCATION DEPARTMENT

CHANDIGARH

Endst.No. Even

Dated Panchkula, the 18.01.2014

A copy is forwarded to the following for information and necessary action:-

1. *PS/PSSE*
2. *PS/DGEE*
3. *PS/DSE*
4. *Officers/Officials concerned (H.Q.)*

Additional Director Admn.

For Director School Education

Haryana Panchkula."

ANNEXURE P-10

DEPARTMENT OF SCHOOL EDUCATION HARYANA

NOTICE

1. *Those who have obtained their Post-Graduate and B.Ed*

Degree from the following Universities:-

- i) JRN Rajasthan Vidyapeeth (Deemed University, Partap Nagar, Udaipur (Rajasthan).
- ii) Vinayaka Mission's Research Foundation (Deemed University) Salem, Tamilnadu.
- iii) Bangalore University, Bangalore.
- iv) IASE Deemed University, Sardarsahar, Rajasthan.

II. Further, the candidates who have been selected on the basis of four years teaching experience and have not passed the School Teacher Eligibility Test (STET)/Haryana Teacher Eligibility Test (HTET).

Appointment orders of these two categories have not been issued and their cases are being examined separately.”

Learned counsel appearing on behalf of the petitioners in all the writ petitions have raised the following submissions in order to point out that the action of the State is not only discriminatory but is arbitrary, illegal, fallacious and an act of aberration:-

- a) The reason for denial of appointment and counselling to the petitioner is because of the pendency of the matter with regard to the status of the aforementioned Universities in the Hon'ble Supreme Court, owing, to the judgment rendered in Kartar Singh's case (supra), though the ratio decidendi culled out in Kartar Singh's case is not applicable to the facts and circumstances of the present cases as it dealt with granting of degree in technical and professional courses and not with regard to the general studies, like Post Graduation;
- b) The aforementioned judgment has been challenged in the

Hon'ble Apex Court vide Special Leave Petition (C) Nos.35793-35796 of 2012 (supra), whereby vide interim order dated 7.12.2012, the Hon'ble Supreme Court has clarified that the students, whose Degrees and Diplomas have been declared null and void by the High Court in the impugned order may apply for either employment or for admission if the cut-off dates are going to expire before 21st January, 2013. The said order makes it ample clear that for the purpose of admission and employment, the judgment passed by the High Court would not come as embargo/ rider/hurdle and the candidates would be at liberty to apply for employment and the import of the order of the Hon'ble Supreme Court does not indicate that any application can be submitted but the employment can be denied;

c) Owing to the aforementioned order, the action of the respondents in not issuing the appointment letters, much less, denying the counselling as indicated in the impugned letter dated 18.1.2014 and notice flashed on the website, thus, are absolutely contrary to the order of the Hon'ble supreme Court at this stage;

d) As per the notice flashed on the website, it is discerned that the candidates, who were selected on the basis of four years experience and had not passed the HTET/STET, their cases along with other cases were said to have been examined separately, but yet the persons who have experience of four

years have been given appointment leaving aside the case of the petitioners for appointment;

e) One time exemption of HTET/STET for the candidates who have worked for a minimum of four years till 11.4.2012 in privately managed Government Aided, recognized and Government Schools was challenged by one Shivani Gupta vide Civil Writ Petition No.15929 of 2012 before this Court, i.e., in essence the amendment dated 2.7.2012 caused in the aforementioned rules and the said writ petition was finally dismissed vide order dated 21.12.2012 by observing that the relaxation of STET/HTET could be given if a candidate had four years experience. The aforementioned judgment had been challenged in the Hon'ble Supreme Court, where notice has been issued vide order dated 19.2.2013, which reads thus:-

“Issue notice, returnable six weeks hence.

Let notice be served, both in the usual course and also by way of Dasti service.

In the meantime, any appointments made in terms of the interview already conducted, will abide by the result of this Special Leave Petitions.”

Despite the pendency of the Special Leave Petition in the Hon'ble Supreme Court, the appointments have been given to the candidates by mentioning in the appointment letter that the “appointment shall be subject to the final outcome of the Special Leave Petition No.7820 of 2013 and other

connected SLPs pending for adjudication before the Hon'ble Supreme Court". Few of the appointment letters have been annexed with the present writ petition as Annexures P-17 and P-18 and, thus, it is submitted that the respondents are adopting the pick and choose policy and by causing wholesale discrimination in not issuing the appointment letter by putting the condition vis-à-vis the pendency of the SLP Nos.35793-35796 of 2012, whereby the judgment rendered in Kartar Singh's case (supra) has been challenged;

f) All the Universities are Deemed Universities, including the JRN Rajasthan Vidyapeeth University, Udaipur, Rajasthan and in this regard various letters of the University Grants Commission (for short "UGC") have been attached and from the various letters of the UGC, it is evident that the UGC had been granting permission which has been extended from time to time to offer academic qualifications in various subjects from the Deemed Universities through study centres. Copy of one of the letter dated 1.8.2014 issued by the UGC to the Director, Secondary Education, Haryana Directorate of School Education, has been annexed as Annexure P-21, wherein there is a mention of all the Universities.

g) It has been further submitted that the then Additional Chief Secretary to Government Haryana, School Education Department, Chandigarh, vide letter dated 26.9.2014, sought clarification regarding the academic qualification/post

graduation in various subjects from the Deemed Universities through study centre and in response to the aforementioned letter, the UGC vide letter dated 13.10.2014 submitted that the qualification obtained by the candidate may be treated valid provided the admissions were taken to the Universities during the period of valid recognition and the programmes were offered from the Headquarters/Main Campus of the Deemed to be University only and regarding the validity of the degrees obtained through distance mode for the purpose of employment, it was clarified that the Government of India vide Gazette Notification dated 1.3.1995 decided that all the qualifications awarded through Distance Education by the Universities established by an Act of Parliament or State Legislature, Institutions deemed to be Universities under Section 3 of the UGC Act, 1956 and the institutions of National Importance declared under the Act of Parliament stand automatically recognized for the purpose of employment to posts and services under the Central Government, provided it has been approved by Distance Education Council, Indira Gandhi National Open University and wherever necessary by All India Council for Technical Education, New Delhi;

h) A reference has been made to a public notice dated August, 2013, whereby the UGC has caused a public notice making details of the fake Universities in the Country and as per the said public notice, none of the aforementioned

Universities are falling in the aforementioned list.

i) Similar reference has been given to Annexure P-27, a list of Institutions, which has been downloaded from the website of the UGC, i.e., list of Institutions which have been declared as Deemed to be Universities and, thus, a prayer has been made that letter dated 18.1.2014 (Annexure P-9) and notice dated Nil (Annexure P-10) be quashed and the respondents be directed to call the petitioners for counselling and appoint them by giving place of posting.

The State has filed reply and the pith and substance of the reply has been culled out in paragraph 4, which reads thus:-

“That with reference to the interim directions dated 14.12.2012 issued by the Hon’ble Supreme Court of India in Kartar Singh’s case, it is submitted that respondent Department is of the view that the above directions are applicable only in case of those petitioners who are before the Hon’ble Supreme Court and who sought permission for admission or employment on the basis of above qualification. However, in those cases also, there are no orders of the Hon’ble Supreme Court that they had to be given appointment or admission. On the contrary, the last date for submission of application i.e. 15.7.2012 had already expired before passing of the interim directions. These interim directions, therefore, are not applicable to the petitioners. There is no stay against the orders of this Hon’ble High Court in Kartar Singh’s case

and therefore, cases of the petitioners are to be dealt with accordingly. Accordingly, detailed speaking orders are being passed cancelling the candidature of such selected PGTs and the exercise will be completed within one month.”

Mr.D.S.Nalwa, learned Additional Advocate General, Haryana appearing on behalf of the State submits that in view of the judgment rendered in Kartar Singh's case (supra), the Division Bench of this Court had an occasion to deliberate upon the technical degrees awarded by the distance education study centre and after discussing all the circulars and letters issued from time to time by the UGC has held that the degrees granted for technical/professional courses are not recognized by the aforementioned Universities and, thus, prays that since the matter is pending subjudice before the Hon'ble Supreme Court, the petitioners have rightly been not called for counselling and issued appointment letters. He has further made an attempt to draw parity in respect of the present cases with the judgment rendered in Kartar Singh's case by submitting that the Post Graduation Course also falls on the same footing vis-à-vis degrees qua technical education/professional courses and, therefore, submitted that the State is justified in not calling the petitioners for counselling, much less, the question of issuance of appointment letters does not arise at all. He, thus, prays that the writ petitions are liable to be dismissed on this short ground alone.

I have heard the learned counsel for the parties and appraised the paper book.

No doubt, the Division Bench of this Court, while deciding the

question posed before it, as to whether the degrees in respect of technical course/professional course awarded by the aforementioned Universities, has held that the same are not valid on the premise that the Deemed University can only start study centre outside the headquarters in the area where there is reasonable consideration of students but such study centre cannot be established beyond the territorial limits represented at the time of grant of such status in the Memorandum of Association except with the permission of the UGC and the State Government where the study centre is to be located and since the aforementioned Universities had never obtained the permission from the Commission or the State Government before opening the study centre, therefore, the qualification possessed from the aforementioned Universities cannot be treated to be valid, but the fact remains that the aforementioned judgment has been assailed by the effected party in the Hon'ble Supreme Court and as per interim order dated 14.12.2012, the Hon'ble Supreme Court, as an interim measure, clarified that the students, whose Degrees and Diplomas have been declared null and void, may apply for either employment or for admission. In view of the stand taken in paragraph 4 of the reply (reproduced above), this Court is made to believe that the State is denying the issuance of appointment letters to the petitioners on the premise that the interim directions apply only to those petitioners, who are before the Hon'ble Supreme Court and sought permission for admission or employment on the basis of the above qualification. The aforementioned reply rather goes against the State for the simple reason that Kartar Singh's judgment is only applicable to those persons who had approached the Hon'ble Supreme Court and, thus, in

essence the judgment rendered in Kartar Singh's case is not the judgment in rem but in personam and, therefore, the petitioners are entitled to issuance of appointment letters. However, conversely in case this Court is made to believe that the interim order is only applicable to those who had approached the Supreme Court and not to the present petitioners, then I would disagree with the aforementioned contention/submission on the premise that once in the impugned letter dated 18.1.2014, the respondent-State has taken a stand that the persons, who had obtained the degrees from the aforementioned Universities, shall not be called for counselling, much less, issued any appointment letter owing to the matter being subjudice before the Hon'ble Supreme Court, therefore, for all intents and purposes, the judgment in Kartar Singh's case (supra) is the judgment in rem and not in personam.

The clarification issued by the UGC on 13.10.2014 does not require any interpretation for the reason that the Government of India vide its Gazette Notification dated 1.3.1995 had decided that all the qualifications awarded through Distance Education by the Universities established by an Act of Parliament or State Legislature shall be automatically recognized. Even otherwise also, the letter dated 1.8.2014 issued by the UGC clearly envisages that all the Universities from where the students have obtained their academic qualifications in various subjects through study centres are recognized, though the matter is subjudice before the Hon'ble Supreme Court. The alleged discrimination on the part of the respondent-State does not stop here inasmuch in regard to the petitioners who had challenged the imposition of condition of exemption from sitting in

the test, i.e., HTET/STET. The matter has been taken to the Hon'ble Supreme Court and despite pendency of the Special Leave Petition, vide Annexures P-17 and P-18, the candidates had been issued the appointment letters by putting a condition that the "appointment shall be subject to the final outcome of the Special Leave Petition", thus, the respondent-State has shackled the fate of petitioners in not following the said procedure by issuing the appointment letters to the petitioners. The relevant portion of the condition imposed in appointment letter in regard to the matter pending against the judgment rendered in Shivani Gupta's case is extracted herein below:-

"The appointment will be subject to the final outcome of SLP No.7820 of 2013 and other connected SLPs pending for adjudication in the Hon'ble Supreme Court of India, CWP No.18693, 20344, 17656 of 2012 pending in Hon'ble Punjab and Haryana High Court."

There is another facet to this controversy. Some of the petitioners have attached copy of the certificate issued by the respective University stating therein that such students are not only bonafide students of the University, but their academic Post Graduation Course/enrolment was directly from the University. In essence, he/she had completed the degree through distance mode directly from the University. Even the petitioners falling in the aforementioned category have been denied the appointment letters for the reasons that they have acquired the Post Graduation Degree from the aforementioned Universities.

The argument of Mr.Nalwa, though in the first impression,

appeared to be attractive, but on going through the relevant paragraphs in Kartar Singh's judgment, it leaves no manner of doubt that the Division Bench of this Court has only pondered upon the controversy with regard to the awarding of the degree by the aforementioned Universities in respect of "technical/professional courses" and not with regard to the general study, i.e., Post Graduation Course as the pith and substance of the judgment pertains to only degrees of technical/professional courses.

There is another reason to disbelieve the plea of the respondents on the premise that prior to the pronouncement of the judgment in Kartar Singh's case, many candidates, who have obtained the Post Graduation Degree from the aforementioned Universities have been given the appointment letters.

In view of what has been observed above, Annexures P-9 and P-10 are hereby quashed. Writ petitions are accordingly allowed. The respondents are directed to issue appointment letters to the petitioners by putting a condition in the same manner as has been put while issuing appointment letters to the candidates who have challenged the exemption clause vis-à-vis sitting in HTET/STET examination forthwith. The respondents are also directed to issue re-appointment letters to the petitioners, whose services have been dispensed with by putting the same condition.

May 27th, 2015
ramesh

(AMIT RAWAL)
JUDGE