

Punjab-Haryana High Court

Harbhajan Singh And Ors., Karnail ... vs State Of Punjab And Ors. on 3 February, 2003

Author: S Nijjar

Bench: S Nijjar, H Gupta

JUDGMENT S.S. Nijjar, J.

1. This order will dispose of CWP Nos. 12300 of 2000, 12316 of 2000, 14074 of 2000, 13551 of 2000, 15374 of 2000 and 14699 of 2000, as the law points involved in these writ petitions are the same. For the sake of convenience, the facts are being taken from CWP No. 12300 of 2000.

2. The petitioners in these petitions seek a writ of mandamus directing the respondents to interview the petitioners for the posts of Head Teachers/Centre Head Teachers. The petitioners who at the relevant time were working as JBT/Head Teachers in different government schools in the State of Punjab, either did not apply or having applied did not appear at the interview for the posts of Head teachers/Centre Head Teachers/BPEO, being beyond the maximum age of 45 years on the relevant date i.e. 1.1.1996.

3. An advertisement had been issued on 8.1.1996 by the State of Punjab for filling up 2059 Posts of Head Teachers, 375 posts of Centre Head Teachers and 57 posts of BPEOs in Government Primary Schools of Punjab Education Department. The applications were invited from eligible candidates upto the age of 45 years as on 1.1.96. Since the petitioners were overage they either did not make any application in response in the aforesaid advertisement or having applied did not appear for interview. Some of the teachers working in the government schools filed CWP No. 7369 of 1996 seeking a direction from this Court to the respondents to re-fix the upper age limit in terms of Rule 19 of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 (hereinafter referred to as "the 1994 Rules"). This writ petition was decided by this Court on 14.1.1997. The prayer of the petitioners therein for quashing the upper age limit fixed in the advertisement was rejected. However, a direction was issued to the respondents-authorities to consider the request of the petitioners and other similarly situated persons for re-fixation in the requirement of age in terms of Rule 19 of the 1994 Rules. It was further directed that while taking a decision in this regard, the competent authority shall take into consideration that no regular appointment has been made to the posts of Head Teacher, Centre Head Teacher and Block Primary Education Officer during the last one decade or so. The competent authority was directed to take decision in this regard at least 15 days before the actual selection is made by the Departmental Selection Committee. Pursuant to the directions given by this Court, a decision was taken by the respondents to re-fix the age limit from 45 years to 52 years. At the time of taking the decision, the respondents took note of the fact that if the upper age limit is not re-fixed, then the senior teachers having more experience would not be considered for the higher posts and juniors will steal a march over the seniors. On the basis of the aforesaid decision, a notice was issued on 27.8.2000, in continuance of the advertisement dated 8.1.1996 to the remaining candidates who were not invited at that time or who had applied, but did not present themselves for interview on 12.9.2000 and 13.9.2000. However, no invitation to appear for interview was sent to the petitioners in the present petitions. They, therefore, made a representation to the respondents on 4.9.2000. when no action was taken by the respondents, the petitioners have filed the present writ petition.

4. It is submitted by the learned counsel for the petitioners that the petitioners have been working in government schools for the periods ranging from earlier to 1978. However, in the notice dated 27.8.2000, the claim of the petitioners for being considered on the posts had been excluded in the following terms:-

"As per Rule 19 of Punjab Civil Services (General and Common Conditions of Services) Rules, 1994, the Government allows relaxation in age from 45 years to 52 years to the teachers (who are already in Govt./Private aided schools). The said order shall be applied for those candidates only who had applied for the said posts in pursuance of the advertisement issued by the Education Department on 8.1.96."

5. Learned counsel for the petitioners submitted that the restriction of the eligibility only to those candidates who applied for the post on 8.1.1996 is wholly unreasonable, arbitrary and, therefore, violative of Article 14 of the Constitution of India.

6. Written statements have been filed by the respondents. The claim put forward by the petitioners has been controverted. On the basis of the averments made in the written statements, Mr. Sran has submitted that only those employees who had applied for the posts in response to the advertisement dated 8.1.1996 would be considered under the notice dated 27.8.2000. he submitted that there is rationality in the decision taken by the Government as the candidates who did not apply initially in response to the advertisement dated 8.1.1996, had slept over their rights and cannot now be permitted to join the candidates who had been vigilant and applied in response to the earlier advertisement. He further submitted that the petitioners did not make any grievance before the authorities till the representation submitted on 4.9.2000. Thus no relief can be granted at such a belated stage.

7. We have considered the submissions made by the learned counsel for the parties and have gone through the paper books.

8. The very purpose of the re-fixation in the rule is to give benefits to the senior teachers working in the government schools or private aided schools to compete for the higher posts. The justification given for relaxation specifically notices that unless such a relaxation is given, the juniors will steal a march over the seniors. It is also to be noticed that those persons who did not apply in response to the advertisement dated 8.1.1996 cannot be said to have given up their rights. They were clearly ineligible to apply on the basis of the upper age limit being fixed at the age of 45 years. Therefore, it would have been an exercise in futility for the petitioners to make an application in response to the aforesaid advertisement. Furthermore, when some of the teachers agitated the claim for being considered for appointment in CWP No. 7396 of 1996, this Court consciously (SIC) directed the authority to consider the request of the petitioners therein and other similarly situated persons for relaxation in the requirement of age in terms of Rule 19 of the 1994 Rules. Therefore, it cannot be said that the petitioners would not be entitled to take the benefit of the relaxation which has been granted on the basis of the specific directions given by this Court. We find no reason for creating two classes amongst the teachers who are otherwise similarly situated. Such a classification would be wholly irrational having no nexus with the object sought to be achieved. It would be violative of the

equality clause contained in Articles 14 and 16 of the Constitution of India.

9. In view of the above, this writ petition is allowed. The respondents are directed to issue another public notice inviting applications from all those teachers working in government/private aided schools having the necessary qualifications and below the upper age limit of 52 years as on 1.1.1996. No candidate shall be rejected on the ground that he/she had earlier not applied in response to the advertisement dated 8.1.1996 or having applied, did not appear for the interview. Let the necessary public notice be issued by the respondents within a period of four weeks from today. No costs.

10. Copy of this order be given dasti under the signature of Special Secretary of this Court.