

(2015) 04 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 16865 of 2013 (O and M)

Karpal Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Citation : (2015) 04 P&H CK 0030

Hon'ble Judges : Rakesh Kumar Jain, J.

Bench : Single Bench

Advocate : S.K. Arora, for the Appellant; Ashish Sharma, A.A.G, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—The petitioner has challenged the order dated 24.6.2011 (Annexure P-15) declining his claim for regularization, to direct respondents No. 1 to 3 to absorb the petitioner from the date the other employees were absorbed, to issue him the appointment letter considering him eligible on the basis of his initial appointment as the minimum educational qualification was not prescribed at that time.

2. In short, the petitioner has been working as a Chowkidar-cum-Mali in the Kanya High School, Khanauri Mandi, District Sangrur [for short "the School"] w.e.f. 1.8.1988 and is 7th Class pass. The Government took over the school on 15.5.2000 with its eligible staff on certain conditions, in which one of the conditions was that the staff posted in this school shall be adjusted, who would fulfill the educational qualification. According to the respondents, the minimum qualification for Class IV post has been fixed as 8th Class pass and since the petitioner had studied only upto 7th Class and was being paid salary out of P.T.A fund, therefore, the case for his absorption was declined.

3. Learned counsel for the petitioner has argued that when the petitioner was appointed on 1.8.1988 in Class IV post, there was no such qualification and if

any qualification has now been prescribed it would apply to the employee who would be appointed thereafter. He has referred to a Division Bench judgment of this Court in the case CWP No. 2899 of 2003 titled as "Swaran Kaur and others Vs. State of Punjab and others" decided on 30.7.2008.

4. On the other hand learned counsel for the respondents has submitted that the school was taken over with certain conditions which are reproduced as under: -

"(a) Before taking over this school under the Government the compliance of all terms and conditions be ensured which are normally imposed while taking over the private schools under the Government charge.

(b) The pay scales of the posts sanctioned for this school shall be at par with the approved ones by the Government. Pay scales for the identical posts.

(c) The staff posted in this school shall be adjusted in respect of those who fulfill the educational qualification and experience with good service record. They will be taken over against the created posts while being appointed.

(d) The staff taken over as above will be considered as Government employees w.e.f. the date of their adjustment against these posts under Government and they will not be entitled to any benefit viz seniority, pay scale, pension, gratuity and other retirement benefits in respect of the service rendered by them earlier to their becoming Government servant.

(e) The entire employees of the school will have to undertake the word (under training) that they accept the above terms and conditions.

(f) At the time of taking over, Government will not be responsible for any earlier payments. The responsibility of earlier payments shall be of the Management of school. The management of the school shall be apprised of accordingly in advance.

(g) The grant in favour of the school, if any, may be treated as stopped and the expenditure to be incurred will be under Head "2202-General Education-02-Secondary Education-109-Government Secondary School (Non-Plan) for the year 2000-2001 will be met out of the sanctioned Budget and the expenditure on these created posts for the year 2000-01 (Non-Plan) shall be your responsibility.

(h) The land of this school including building and other property etc. shall be transferred in the name of the Govt. immediately.

(i) The further action for creation of these posts shall be in accordance with the provisions of Punjab Rules of Business.

(j) The continuity of the posts year wise shall be taken up with the Finance Department."

5. It is submitted that as per Clause (c) of the aforesaid conditions, the minimum educational qualification was must for the purpose of adjustment of the employees of the School and as the petitioner was not having the required

qualification, therefore, he has not been considered for adjustment/absorption. It is further submitted that the respondents are not concerned that when the petitioner was appointed by the School on 1.8.1988, he was only 7th Class pass and there was no such condition, because the condition has been imposed by the Government at the time of taking over and after his adjustment, he would be considered as a Government employee. It is further submitted that the judgment relied upon by the petitioner in the case of Swaran Kaur (Supra) is not applicable to the facts and circumstances of the present case and prayed that the present writ petition may be dismissed.

6. I have heard learned counsel for the parties and perused the record.

7. There is no dispute that the petitioner was appointed on 1.8.1988 and was 7th Class pass but at the time when the School was taken over by the Government, the minimum qualification of Class "D" post, including the post of Chowkidar-cum-Mali, was middle standard pass which the petitioner does not possess. Thus, the question would be "as to whether the argument raised by the petitioner that he has been working in the School from the past many years when it was taken over by the Government would be a rational ground to overlook the Rules?

8. In the case of Swaran Kaur (Supra), the Government had taken over the school, namely, Chanan Devi Memorial Girls High School, Saleem Tabri, Ludhiana in which the petitioners therein were also Class IV employees. Although, the respondents therein had the objections that the petitioners therein do not fulfill the qualification for appointment as Class IV posts on the date of taking over the school as envisaged under the Punjab State Class IV Service Rules, 1963 [for short "the Rules"] but writ petition was initially allowed by the Division Bench on the concession made by the State, who further sought a review which was dismissed by this Court and ultimately, the matter reached upto Supreme Court where the order of the Division Bench was set aside and the matter was remanded back with the observation that this Court had not considered the effect of the Rule. Accordingly, the matter was reheard by the Division Bench.

9. In the said case, the petitioners were appointed on 1.10.1992 whereas the school was taken over on 12.10.1993 and Rule 5(d) of the said Rules provide that no person shall be recruited to the service by the direct recruitment unless he possess the requisite knowledge of the regional language and of English as may be prescribed by the Government from time to time, provided that the appointing authority may, if it is of the opinion that the candidate is otherwise fit to discharge his duties satisfactorily, relax any of the qualifications prescribed under this clause.

10. While interpreting Rule 5(d) of the Rules, this Court observed that the rule does not provide that the person seeking appointment as Class IV should possess qualification of middle or matric pass because all that was required was the knowledge of the language.

11. In view thereof, it was held that once only the knowledge of the language

was prescribed and not the qualification of middle or matric, the rejection of the case of the petitioners in that case was found to be illegal and appropriate direction was issued for their absorption.

12. In the present case, the facts are altogether different because on 21.5.1998, instructions were circulated that the Government has decided that the minimum qualification for appointment against Class IV post shall be 8th Class pass and no post of Class IV shall be filled without the said qualification. The school was taken over by the Government on 15.5.2000 and since the rule was already in existence of the minimum qualification of 8th class pass for Class IV Service, therefore, the petitioner cannot be allowed to urge that when he joined the services in private School in 1988, the qualification of 8th Class pass was not there, therefore, he cannot be deprived of his right of absorption/adjustment by way of taking over the School by the Government.

13. Insofar as, the judgment relied upon by the petitioner in the case of Swaran Kaur (Supra) is concerned that also is not applicable to the facts and circumstances of the present case because in that case the petitioners were appointed on 1.10.1992 and the School was taken over on 12.10.1993. Meaning thereby, the only qualification was of Punjabi and English language and not the qualification of 8th Class or Matric pass. In that background, this Court had held that the respondents cannot ask for the qualification of 8th Class pass.

14. Thus, in view of the aforesaid discussion, I do not find any merit in the present petition and the same is hereby dismissed.