
(2013) 01 P&H CK 0043

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17410 of 2012 (O and M)

Rajvinder Kaur

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 08-01-2013

Acts Referred:

Right of Children to Free and Compulsory Education Act, 2009 — Section 2(d), 23

Citation : (2013) 169 PLR 558

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Advocate : S.S. Goraya, Ms. Alka Chatrath, Mr. Ramesh Goyal, Mr. Rajbir Sehrawat, Mr. Sunil Nehra, DAG, Haryana, Mr. Sukhdip Singh Brar, A.A.G. Punjab and Mr. Naveen S. Bhardwaj, Mr. K.K. Gupta, Mr. Satyawan Ahlawat and Mr. D.K. Khanna, for the Appellant;

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—Identical questions of law and fact are raised in these five CWP Nos. 17410 of 2012 (Rajvinder Kaur Versus State of Haryana & others), 23735 of 2011 (Rajinder Kumar Versus State of Haryana & another), 15865 of 2012 (Atam Parkash & others Versus The State of Haryana & others), 22476 of 2012 (Amandeep Garg Versus State of Punjab & others), 22485 of 2012 (Devinder Singh & others Versus State of Haryana & others) and accordingly these petitions are being disposed of together through this common order. For ease of discussion, facts have been noticed from CWP No. 17410 of 2012. The petitioners in all these writ petitions seek quashing of the result of Teacher Eligibility Test held by the State of Haryana on the ground that all these petitioners being belonging to Backward Class or Physically Handicapped Category are entitled to relaxation upto 5% in the qualifying marks as are allowed to candidates belonging to reserved category of SC/ST and OBC, which concession has been denied to them.

2. National Council of Teachers Education (for short "NCTE") has laid down

minimum qualifications for a person to be eligible for appointment as a Teacher through a notification issued on 31.3.2010. This is pursuant to the provisions made in Right of Children to Free and Compulsory Education Act, 2009 (for short "the Act"), where a provision has been made for minimum academic qualification for appointment as a Teacher in Classes I to VIII. Notifications accordingly were issued on 23.8.2010 (Annexures P-2) and 29.7.2011(Annexure P-3) laying down minimum qualifications for a person to be eligible for appointment as a Teacher in Classes I to VII. It is provided that a person to be eligible for being appointed as such a Teacher, he must pass the Teacher Eligibility Test (TET), which is to be conducted by appropriate Government in accordance with guidelines framed by the NCTE. As per the petitioners, a provision is made for relaxation upto 5% in the qualifying marks, which is to be allowed to candidates belonging to reserved categories such as SC/ST/OBC/PH.

3. School Board of Education, Haryana issued the procedure/guidelines for Haryana Teacher's Eligibility Test, 2011 on 6.7.2011. The examination for Haryana Teachers Eligibility Test was held on 5.11.2011 and 6.11.2011. The petitioner in CWP No. 17410 of 2012 had applied for HTET Test, 2011 in the category of Backward Class. She was issued Roll number 2448222. Result was declared and the petitioner was shown to have secured 84 marks and, thus, was declared as failed candidate in the Examination, 2011. The candidates, who secured less marks than the petitioner but were from scheduled caste category, however, were declared pass in view of the 5% relaxation in qualifying marks allowed to such reserved category candidates. Aggrieved against this result, the petitioner submitted a representation to Director, Board of School Education, Haryana seeking this relaxation of 5% being a Backward Class Category candidate and has ultimately filed the present petition to seek cancellation of her result as declared and a direction to declare her as a pass candidate.

4. In CWP No. 23735 of 2011, the petitioner has approached this court seeking same relief and declaration to the effect that he has qualified the HTET Examination held in 2011 as he would be entitled to 5% relaxation in the qualifying marks being from physically handicapped category and as such entitled to the protection under The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

5. In CWP No. 22485 of 2012, three petitioners belonging to physically handicapped category and have approached this court seeking relaxation of 5% marks in HTET Examination on the grounds as already noticed.

6. Petitioner in CWP No. 22476 of 2012 is again a physically handicapped candidate and has prayed for 5% relaxation in qualifying marks like other petitioners noted above.

7. In CWP 15865 of 2012, five candidates belonging to Backward Class Category claim similar relief of 5% in HTET qualifying marks and for direction to issue the corrected result accordingly.

8. Thus, two types of reserved categories candidates belonging to physically handicapped category and backward class category have approached this court through the bunch of these writ petitions seeking similar relief of relaxation of 5% qualifying marks in HTET Examination. 2011 held by the State of Haryana.

9. The State has filed reply opposing the prayer made in these petitions. As per the State, it is wrong to allege that any action by the State is contrary to the guidelines issued by NCTE. Reference is made to NCTE Notification dated 29.7.2011 laying down minimum qualifications for different categories of teachers and 5% relaxation having been allowed in the academic qualifications and not in the Teachers Eligibility Test as is mentioned by the petitioners. The reference is made to this policy instruction, relevant part of which is as under:-

Relaxation upto 5% in the qualifying marks shall be allowed to the candidates belonging to the reserved categories such as SC/OBC/PH.

10. As; per the respondents, the petitioners have misconstrued this notification which is only for relaxing 5% marks in qualifying examination and not in the Teachers Eligibility Test. The guidelines issued by NCTE on 11.2.2011 (Annexure R-1) are again referred to In support of this plea. As per these guidelines, a person who secures 60% marks in TET Examination will be considered to have passed the said examination. However, as per the guidelines State Government has been empowered to extend concession to the person belonging to different strata of the society. Plea is that the power to provide relaxation in TET Examination is left to the State Government and NCTE has nowhere provided that a candidate belonging to OBC or a physically handicapped category is to be given concession of 5% in the passed marks for TET Examination. The relevant portion of the guidelines in this regard, as refereed to in the reply, can be noticed as under:-

Qualifying marks

9. A person who scores 60% or more in the TET exam will be considered as TET pass. School managements (Government, local bodies, government aided and unaided) (a) may consider giving concessions to persons belonging to SC/ST, OBC, differently abled persons etc., in accordance with their extant reservation policy;

(b) should give weightage to the TET scores in the recruitment process; however, qualifying the TET would not confer a right on any person for recruitment/employment as it is only one of the Eligibility criteria for appointment.

11. As per the State, it is not mandatory to provide relaxation to every class of persons, but is within the discretion of the State to decide as to which class may be given relaxation.

12. The State Government had initially issued notification on 31.10.2011 (Annexure R-II) providing for relaxation to candidates belonging to Scheduled Caste category only, A notification has now been issued on 3.10.2012 (Annexure

R-III) whereby relaxation of 5% has been allowed to scheduled castes and differently abled/physically challenged categories and they are to be treated as pass if they secure 55% or more marks in the Haryana Teachers Eligibility Test. The plea accordingly is that benefit of relaxation will be available to the candidates belonging to differently abled/physically challenged categories appearing in the exam to be conducted after the date of said notification. In the said notification, separate relaxation of 5% in minimum qualifying marks in B.A./B.Sc./B.Com/Senior Secondary level would be admissible for scheduled caste, backward class and differently abled/physically challenged categories as is provided by NCTE. The claim of the petitioners in these petitions is contested accordingly so far as the case of physically handicapped category is concerned. It is pleaded that this concession would not be available to those candidates, who have appeared in TET Test, 2011, but now would be available to those, who would appear in the test to be conducted after issuance of notification (Annexure R-II).

13. The candidates belonging to Backward Class category have prayed for grant of relaxation of 5% as is allowed to OBC, whereas the case of physically handicapped categories is slightly different as they have now been allowed the concession, which, according to the respondents would not be retrospective in nature and would apply to the test which is held henceforth after issuance of notification (Annexure R-III) referred to above. The simple stand of the respondents in the cases filed by the candidates belonging to Backward Class categories is that they have not been allowed 5% concession in HTET Examination, which has been allowed to only SC/OBC/ST categories and now to physically handicapped categories candidates. Accordingly, it is stated that the prayer made in these petitions cannot be allowed.

14. The counsel appearing in the writ petitions filed on behalf of physically handicapped category candidates, thus, mainly relied upon the notification issued on 3.10.2012, which, according to them would apply retrospectively as the Government has not issued this as a fresh notification but has substituted para No.(i) and para (viii) of the earlier notifications issued on 15.7.2011 and 31.10.2011. Mr. Nehra appearing for the State would equally emphasis that the notification has been amended and would apply with effect from the date of this amendment there being no indication in either in the notification or otherwise that this will apply retrospectively.

15. The counsel appearing for the petitioners has placed heavy reliance on the judgment passed by this court in Civil Writ Petition No. 21387 of 2011 (Shabir Khan & another v. The State of Punjab & others) decided on 29.2.2012. The Court in this writ petition was dealing with the notification issued by the State of Punjab, but the issue was also regarding relaxation upto 5% in the qualifying marks being allowed to SC/ST/OBC/PH categories as per the guidelines issued by the NCTE. The issue before the court was also concerning the substitution of para 3 of the principal notification dated 23.8.2010 by a subsequent notification dated

29.7.2011. The principal notification did not provide for any relaxation or reservation. Notification substituting the principal notification had been issued subsequent to the TET test held by the State of Punjab and accordingly it was pleaded that this notification cannot come to the aid of such petitioners, who had appeared in the TET Examination prior to the issuance of the notification. What really weighed with the court in this case was that the power to lay down minimum qualification, so far as minimum qualification of eligibility for appointment of Teacher is concerned, was delegated by the Central Government to the NCTE. The NCTE had decided to give 5% relaxation to SCs/STs etc. on 16.3.2011 and this decision as such was taken before the first advertisement was published for holding the test. The advertisement was issued on 26.4.2011. The court accordingly observed that rules for relaxation had been laid down before the holding of the test and the examination was conducted on 3.7.2011. Observing that the Punjab Government was appointed as an appropriate Government only to conduct the test in accordance with the guidelines framed by the NCTE, the NCTE had issued guidelines to all the State Governments for conducting TET Test. The guidelines dated 11.2.2011 provided as under:-

Qualifying marks

9. A person who scores 60% or more in the TET exam will be considered as TET pass. School managements (Government, local bodies, government aided and unaided)

(a) may consider giving concessions to persons belonging to SC/ST, OBC, differently abled persons etc., in accordance with their extant reservation policy;

(b) should give weightage to the TET scores in the recruitment process; however, qualifying the TET would not confer a right on any person for recruitment/employment as it is only one of the Eligibility criteria for appointment.

16. Subsequently, however, on 16.3.2011, Council changed the rules and decided to extend 5% relaxation to SCs/STs etc. category candidates. On 29.7.2011, second notification was issued by NCTE substituting the reservation policy to be read into the principal notification. The court has accordingly held that substituting notification dated 29.7.2011 would relate back to the principal notification dated 23.8.2010, which required the TET to be conducted by the appropriate Government in accordance with the guidelines framed by NCTE for the purpose and not by the State Government guidelines. This was found to be a mistake on the part of the State Government. The court accordingly accepted the argument of the counsel that notification dated 29.7.2011 should at least relate back to 16.3.2011 well before the process started on 1.4.2011 when letter was issued by NCTE laying down fresh norms for teacher qualification. The court also found that Punjab Government apparently had picked up the unamended/old guidelines and planted them in the prospectus issued by Director, SCERT Punjab. These were the reasons which apparently persuaded the court to hold that the notification, which was issued substituting the earlier notification, would relate

back to the date of earlier notification. Even in the original notification relaxation was provided after the date of notification laying down the guidelines and the pass percentage. The relaxation was only allowed initially to SCs/STs category candidates and so the substituted notification was held to relate back to original notification when relaxation was allowed to OBC category candidates.

17. Let us examine the situation in the present case. The Central Government had issued a notification on 31.3.2010 in exercise of powers conferred by sub-Section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009, (for short, "the Act") authorizing the NCTE as the academic authority to lay down minimum qualifications for a person to be eligible for appointment as a Teacher. NCTE thereafter issued notification on 23.8.2010 laying down minimum qualifications for a person to be eligible for appointment as a Teacher in Classes 1 to VIII. As per this notification, minimum education qualifications are provided for those who seek appointment as a Teacher for Class I to V. They are to have Senior Secondary (or its equivalent) with at least 50% marks and 2 years Diploma in Elementary Education or some alternative educational qualification; in addition to passing the Teachers Eligibility Test to be conducted by the appropriate Government. Similarly, persons seeking appointment in Classes VI to VIII are to have a qualification of B.A/B.Sc. and 2 years Diploma in Elementary Education (B.Ed.) or BA/B.Sc. with at least 50% marks and 1 year Bachelor in Education (B.Ed.) or BA/B.Sc. with at least 45% marks and 1 year Bachelor in Education (B.Ed.) in accordance with NCTE (Recognition Norms and Procedure) Regulations or Senior Secondary with requisite qualification etc. in addition to passing Teacher Eligibility Test. Significantly, this notification makes an exception in respect of Teacher appointed before the date of said notification, who need not to acquire the minimum qualification specified in the said notification and also in respect of Teacher appointed after the date of notification in certain cases where an appropriate Government, or the local authority or a school has issued an advertisement to initiate process for appointment of Teachers prior to the date of notification, then such appointments may be made in accordance with NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulation, 2001.

18. On 10.6.2011, NCTE issued another notification pursuant to power granted to it by virtue of notification dated 31.3.2010 making some amendment in the notification dated 23.8.2010, referred to above. Again minimum qualifications for appointment of Teacher for Classes I to V and Classes VI to VIII are laid down in addition to the requirement of passing Teachers Eligibility Test. Vide this notification, relaxation upto 5% in qualifying marks is provided for those candidates belonging to reserved category such as SCs/STs etc. The reasons for providing relaxation of 5% in the qualifying marks can be noticed from a communication dated 1.4.2011 initiated by NCTE to all the Secretary/Commissioner (Education) of the State Governments. NCTE had received representations from the State Governments and other Stakeholders that in respect of SCs/STs etc. relaxation upto 5% in qualifying marks should be allowed

since such relaxation is permissible by the NCTE for admission to various Teachers Education Courses. The matter was accordingly considered by the Council and it was decided that relaxation upto 5% in the qualifying marks would be available to SCs/STs in accordance with the extent policy of the State Governments/U.Ts and other School Managements.

19. Thereafter the Board of School Education, Haryana had issued procedure/guidelines for Haryana Teachers Eligibility Test, 2011. Qualifying marks as provided in this notification is 60% and there is no provision for any negative marking. As per the Note contained in the paragraph laying down minimum qualification, it is provided that "relaxation of 5% in minimum qualifying at BA/B.Sc./B.Com./Secondary Secondary level is admissible for SC and Differently abled Candidates". Apparently, thus, relaxation of 5% is provided for in the qualifying examination and not in the TET Examination. Then comes the notification dated 29.7.2011 making amendment in the notifications dated 25.8.2010 and 23.8.2010 laying down minimum qualifications for the person to be eligible for appointment as a Teacher, which are referred to as the principal notifications. Sub-para (i) of para 1 of the Principal Notification is substituted. This related to minimum qualification for Classes I to V and Classes VI to VIII. Relaxation of 5% in the qualifying marks is allowed to candidates belonging to reserved category such as SC/ST/OBC/PH. There is no mention to the relaxation which is to be provided in HTET Examination. The relaxation of 5% marks is introduced for the first time through a notification dated 33.10.2011, whereby the Governor of Haryana has ordered substitution in para No. 1 of the notification dated 21.7.2011. This notification provides that a person who secures 60% or more and in case of a person belonging to scheduled caste category who scores 55% or more in HTET Examination will be considered as HTET pass and weightage shall be given to HTET scores in the recruitment process. It is, thus, clear that the earlier relaxation given in the notifications was for marks in the qualifying examination as were provided for in the notification and relaxation of 5% marks is first time allowed through this notification dated 31.10.2011. This was again by way of substituting the notification issued on 29.7.2011, which regulated the complete procedure and guidelines for holding HTET Examination starting from eligibility to the conclusion of the HTET test. On 3.10.2012, paragraph (i) and (viii) of Haryana Government Notifications dated 15.7.2013 and 31.10.2011 are substituted to read as under:-

(i) A person who scores 60% or more and in the case of person belonging to scheduled castes and differently abled/physically challenged categories who scores 55% or more marks in the Haryana Teacher Eligibility Test (HTET), will be considered as HTET pass. However, qualifying HTET would not confer a right on any person for recruitment/employment as it is only one of the Eligibility conditions for appointment. In addition, the candidate will have to fulfill other additional qualifications/conditions prescribed from time to time as per Service Rules, while applying for the said post. (viii) Relaxation of 5% in minimum qualifying marks at B.A./B.Sc./B.Com./Senior Secondary level is admissible for

scheduled castes, backward class and differently abled/physically challenged categories.

20. Thus, the person belonging to scheduled caste and differently abled physically challenged categories candidates, who secures 55% or more marks in HTET Test will be considered as HTET pass.

21. One will have now to see the affect of this substitution. First one may have to see the wording of this notification. The State counsel has pleaded that there is nothing in the notification to indicate that it is to operate retrospectively and hence, it would apply prospectively to the new test to be held in 2012 after this notification. Considered in the background as noticed above, the original notification regulating the test held in the year 2011 is substituted by providing a relaxation for passing the HTET Examination in case of scheduled caste category candidates. The HTET Test 2011 was held on 5.11.2011 and 6.11.2011. The notification dated 31.10.2011 providing for relaxation for 5% marks for scheduled caste category was introduced prior to the test. As observed by this court in CWP No. 21387 of 2011 (Supra), the rules of the game were changed even prior to the game. There was no relaxation in the original notification regulating the test as such issued on 29.7.2011 for scheduled caste category candidates for them to pass the test. Before the start of test, 5% relaxation is allowed to them. Test thereafter is held in November, 2011 and the Governor has now issued a notification on 3.10.2012 substituting in the original notifications dated 15.7.2011 and 31.10.2011 to provide that all such categories of candidates as pass who had scored 55% or more marks in HTET Examination and are belonging to scheduled caste and differently abled/physically challenged category. Mind you it is not any relaxation being provided. A pass percentage for those candidates who are scheduled caste or differently abled/physically challenged is laid in notification issued on 31.10.2011 by substituting the same on 30.10.2012. It is not for relaxation that this notification is issued. The affect of this notification is to declare all those candidates pass who have appeared in 2011 Test by providing that if they belong to differently abled/physically challenged category and have scored 55% or more then they will be considered at HTET pass. It would have been a different matter if this notification had made a provision for relaxation for HTET category candidates for a test to be held. One was then required to see whether the affect of this notification is to apply prospectively or this is to operate retrospectively. Here the wording of notification is quite clear. It has held that all those candidates who have appeared in HTET Exam and are belonging to differently abled and physically challenged categories will be considered as HTET pass, if they had scored 55% or more marks in the said examination. The clear intention of this notification is to pass all those candidates belonging to differently disabled/physically challenged categories in the test which is held pursuant to notification dated 31.10.2011. That would be the affect of substitution of the words in the original notification. Intention is clear that this notification is to apply retrospectively, even if it is taken to be an amendment.

22. This notification, to my mind, is clearly meant to apply retrospectively to the test held for the year 2011, if it had been otherwise in any manner the wording of the notification could not have been what it is. As has been generally viewed that it is for the legislature within certain limits to amend the provisions of the Act retrospectively and to declare what the law shall be deemed to have been. This principle would emerge from the judgment in the case of State of Tamil Nadu Vs. Thirumagal Mills Ltd., etc., relied by the State counsel. The Court in this case was dealing with the tax law amendment being prospective or retrospective. In this case, definition of word "business" was substituted in T.N. General Sales Tax Act, 1959 by amending Section 2(d) of the Act. The matter before the court was whether amendment is effected prospectively or it would be retrospective in nature. The court has held that substituted amendment would not be retrospective. The court observed that the definition of "business" was substituted by the Second Amendment Act of 1964, but it was not made retrospective by the usual words that it should be deemed to have been always substituted or was in any other language employed to show that the substantive provision, namely, the definition of "business" was being amended retrospectively. The principle, which is laid down on the basis of some judgment, noticed is that validation of a tax law has been declared to be illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed. It is noticed that sometimes that is done by providing for jurisdiction where jurisdiction had not been properly vested before. Sometimes this is achieved by re-enacting retrospectively a valid and legal provision and then by fiction making the tax already collected to stand under re-enacting law. As already noticed, the wording of the substituted notification gives a clear indication that it is to apply to the test already held and is meant to pass all those candidates who have scored 55% or above marks and belonged to differently disabled/physically challenged categories.

23. Thus, all the petitioners, who have appeared in this test in the category of physically handicapped have clearly made out a case for being declared as pass if they had secured 55% or more marks in HTET Examination by virtue of this notification. However, the candidates belonging to Backward Class Category may not get this advantage as there is no such relaxation provided for the candidates belonging to Backward Class Category. In fact, a judgment passed by Division Bench of this Court was directly staring at the petitioners and some of them have escaped by virtue of this" notification. In CWP No. 23224 of 2011, decided on 17.7.2012, the court held as under:-

This petition has been filed with a prayer for issuance of writ of mandamus directing respondents No. 1 to 3 to relax qualifying marks from 60% to 45% in "Teachers Eligibility Test 2011" in case of disabled persons category in the State of Haryana.

It is not in dispute that seats are reserved for handicapped persons under the provisions of The Persons with Disability (equal opportunity) Protection of Rights

and Full Participation Act, 1995. However, at the time of hearing, counsel for the petitioner has failed to show any rule or regulation providing that such a relaxation can be granted for qualifying test/examination. No case is made out for issuing directions. Dismissed.

24. But for the notification dated 3.10.2012, which has come to the rescue of such category of candidates, no case was made out for any relaxation. Since now all those candidates are to be treated as pass by virtue of this notification, this judgment may not be relevant due to this subsequent development but would apply to the case of those categories of candidates, who do not have support of this notification, like the Backward Class Category candidates. Accordingly CWP Nos. 23735 of 2011, 22485 of 2012 and 22476 of 2012 are allowed and their result shall be redone by considering them to have passed the examination if they had secured 55% or above in HTET Examination. The Writ Petition Nos. 17410 of 2012 and 15865 of 2012 filed by Backward Class Category candidates are, however, dismissed.