

**(2023) 08 SHI CK 0111**  
**In the High Court Of Himachal Pradesh**  
**Case No : CWPOA No.2892, 2859 Of 2020**

Ravinder Kumar And Ors

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

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**Date of Decision :** 21-08-2023

**Acts Referred:**

Constitution Of India, 1950 — Article 14, 16, 226, 309

**Citation :** (2023) 08 SHI CK 0111

**Hon'ble Judges :** Satyen Vaidya, J

**Bench :** Single Bench

**Advocate :** Nitin Thakur, Anup Rattan, Pushpender Jaswal, Gautam Sood, Rahul Thakur, Priyanka Chauhan, Sanjeev Bhushan, Rajesh Kumar, Vinay Sharma, Balwant Singh Thakur

**Final Decision :** Dismissed

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## Judgement

Satyen Vaidya, J

1. All these petitions are being decided by a common order as the identical question of facts and law are involved. For the sake of convenience, the facts involved in CWPOA No. 2892 of 2020 are being referred.

2. By way of these petitions, petitioners have assailed notification dated 23.08.2016, issued by amending the 'Himachal Pradesh Higher Education Department, Post Graduate Teachers, Class-III (Non- Gazetted), Recruitment and Promotion Rules, 2010', to the extent it prescribes the essential qualification of teaching experience of five years or more as a Computer Teacher in schools of Himachal Pradesh, for appointment to the post of Post Graduate Teacher (Informatics Practice) {for short 'PGT (IP)' }.

3. The grievance of the petitioners against above amendment, as set out in the petition, is on two counts. Firstly, petitioners allegedly have suffered disqualification for being considered for appointment to the post of PGT (IP) as they do not hold requisite experience and secondly, it has been alleged that the

rule has been so framed to suit a particular class, which initially had succeeded in securing public employment in violation of the mandate of Articles 14 and 16 of the Constitution of India.

4. As per petitioners, the subject of information technology was introduced in the educational curriculum in the schools run by State Government, for the first time in the year 2001. The teaching faculty was appointed by adopting a process of outsource. At the time of appointment of teaching faculty, no selection process adhering to the tenets of Articles 14 and 16 of the Constitution of India, was adopted. Now, with a purpose to accommodate all such persons, the condition of teaching experience of five years in schools in Himachal Pradesh has been incorporated as one of the essential conditions for seeking appointment to the post of PGT (IP).

5. Petitioners have also challenged the recruitment notice dated 08.09.2017, issued by the official respondents for initiating process of recruitment for the post of PGT(IP) which provides for selection by way of interview only, which according to the petitioners, is not a legitimate and fair process for selection.

6. The official respondents have contested the claim of the petitioners on various grounds, some of them being the objections as to locus-standi of petitioners and maintainability of petition in light of the provision of Administrative Tribunal Act. On merits, it has been submitted that the decision to make recruitment to the post of PGT (IP) through the process of interview held by Director of Higher Education, was a result of policy decision taken by the Council of Ministers on 05.08.2017 as one time relaxation in R&P Rules. The decision of Council of Ministers taken on 05.08.2017 was ratified by another decision of the Council of Ministers dated 22.08.2017. As regards, the essential condition of five years or more teaching experience in the schools in Himachal Pradesh, it has been submitted that the post of PGT (IP) involved imparting of education in a technical subject and also since the said post was exempted from professional qualification of B.Ed., the prescription of teaching experience of five or more years was not unjustified. It has been submitted that the teaching experience so prescribed is not for a particular category but is applicable to all throughout the State whether he had gained the experience by teaching as a faculty with the agencies to whom the work was outsourced or otherwise. The official respondents have also taken a shelter of order dated 05.06.2014, passed by a Division Bench of this Court in LPA No. 352 of 2016, wherein while making adjudication on the claim of some outsourced I.T. teachers, direction was issued to the State Government to explore the possibility of framing the policy in order to redress the grievance of the writ petitioner/appellant therein.

7. The private respondents have also filed their separate replies. Their grounds of objection are almost pari- materia to the objection raised by official respondents. Additionally, the private respondents have tried to propagate their claim on the basis of long services rendered by them as outsourced employees and the experience gained on its basis.

8. I have heard learned counsel for the parties and have also gone through the record of the case carefully.

9. The objections with respect to the locus standi of petitioners as also the maintainability of the petition for want of requisites as per Administrative Tribunal Act, have lost relevance with the passage of time. The petition was initially filed before H.P. State Administrative Tribunal, which by a subsequent decision of government came to be abolished in the State. The original application filed before the H.P. State Administrative Tribunal, came to be transferred to this Court for adjudication, which necessarily has to be adjudicated in exercise of jurisdiction under Article 226 of the Constitution of India. Keeping in view the scope of jurisdiction of this Court under Article 226 of the Constitution of India, the above noted objections have either been rendered infructuous or require no adjudication.

10. The objection of the petitioners regarding adoption of the proposed mode for selection of candidates to the post of PGT (IP) by way of interview only also needs not detain this Court for much longer for the reasons that the official respondents have claimed such decision to be a policy decision of the government taken by Council of Ministers and the petitioners herein have made no serious attempt to challenge such policy decision on the available grounds and there is no prayer seeking quashing of such decision.

11. The only question that arises for determination is whether the incorporation of five years or more teaching experience in the schools in Himachal Pradesh and essential qualification for the post of PGT (IP) violates the mandate of Articles 14 and 16 of the Constitution of India?

12. The contours of the powers of this Court to judicially review an administrative action of providing service condition for a particular category of posts are well defined. In *P.U. Joshi and Others Vs. Accountant General, Ahmedabad and Others*, (2003) 2 SCC 632, it has been laid down as under:-

"10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by

appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

13. Similarly in Chandigarh Administration through the Director Public Instructions (Colleges), Chandigarh Vs. Usha Kheterpal Waie and Others, (2011) 9 SCC 645, the reiteration of otherwise settled principles has been made as under:-

"22. It is now well settled that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment. Courts and tribunals can neither prescribe the qualifications nor entrench upon the power of the concerned authority so long as the qualifications prescribed by the employer is reasonably relevant and has a rational nexus with the functions and duties attached to the post and are not violative of any provision of Constitution, statute and Rules. [See J.Rangaswamy vs. Government of Andhra Pradesh - 1990 (1) SCC 288 and P.U. Joshi vs. Accountant General - 2003 (2) SCC 632]. In the absence of any rules, under Article 309 or Statute, the appellant had the power to appoint under its general power of administration and prescribe such eligibility criteria as it is considered to be necessary and reasonable. Therefore, it cannot be said that the prescription of Ph.D. is unreasonable."

14. In Chief Manager, Punjab National Bank and Another Vs. Anit Kumar Das, (2021) 12 SCC 80, it has been held as under:-

"17.3 Thus, as held by this Court in the aforesaid decisions, it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the Courts to consider and assess. A greater latitude is permitted by the Courts for the employer to prescribe qualifications for any post. There is a rationale behind it. Qualifications are prescribed keeping in view the need and interest of an Institution or an Industry or an establishment as the case may be. The Courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications. However, at the same time, the employer cannot act arbitrarily or fancifully in prescribing qualifications for posts. In the present case, prescribing the eligibility criteria/educational qualification that a graduate candidate shall not be eligible and the candidate must have passed 12th standard is justified and as observed hereinabove, it is a

conscious decision taken by the Bank which is in force since 2008. Therefore, the High Court has clearly erred in directing the appellant Bank to allow the respondent original writ petitioner to discharge his duties as a Peon, though he as such was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement.”

15. Thus, this Court in normal circumstances is not to interfere with the service conditions of a particular post incorporated by the employer in exercise of its rule making power under Article 309 of the Constitution. The only caveat is that the exercise of such power should be bonafide and should not violate the constitutional right of equality in public employment or should not be colorable exercise of power by the State Authorities.

16. In the given facts of the case in hand, the reason assigned for experience in teaching for five or more years is being sought to be defended on the premise that Informatics Practices (IP) being a technical subject required experienced teachers in the interest of better teaching and also the post of PGT (IP) had been exempted from professional qualification of B.Ed. The reason so assigned cannot be said to be alien to the object of imparting computer education to the students in the schools.

17. It has been contended during the course of hearing on behalf of the official respondents that though the subject of computer education was introduced in Government Schools in the State in 2001, but the State Government had not been able to provide regular teaching faculty. The cadre of PGT (IP) has been created vide impugned amendment, dated 23.08.2016, in the 'Himachal Pradesh Higher Education Department, Post Graduate Teachers, Class-III (Non-Gazetted), Recruitment and Promotion Rules, 2010.' The services of outsourced teaching faculty was being availed hitherto and a large number of outsourced teachers have already gained sufficient experience, which can be utilized by the State Government in the better interest of education to the students. It was also contended that even otherwise the State Government has legal obligation to provide education to the students, which in the context of futuristic requirements, include computer education. In discharge of its legal obligation, the State has already provided schools in remote and far-flung areas of the State and many more such schools are required to be opened in future to expand the field of education. Since the State has its peculiar geographic and demographic conditions and in such background the restrictions as to experience of teaching in schools in Himachal Pradesh has relevance. In case of enlarging the area for candidates having experience pan India, there is every probability that the State may get the candidates for the post of PGT (IP) for short terms only, who may either flee away for being unable to negotiate the difficult prevailing conditions or on getting better avenues anywhere else.

18. Reliance has been placed on judgment passed in *Satya Dev Bhagaur and Others Vs. State of Rajasthan and Others*, (2022) 5 SCC 314, wherein the Hon'ble Supreme Court has upheld the imposition of service conditions in the

State of Rajasthan for appointments to the post of Nurse Compounder Junior Grade, whereby the requirement of experience on similar work under the State Government was prescribed. Such condition has been held to be reasonable keeping in view the varied tribal and arid zones available in the State of Rajasthan.

19. On careful scrutiny of the arguments raised on behalf of the respondent/ State at the touch stone of the constitutional guarantee of equality in public employment, I have found the classification made by the State to be reasonable. The object of the State is to provide computer education to the students in the schools run by the State. A special cadre of teachers has been created. The State is not unjustified in preempting only temporary or protem induction on the post of PGT (IP) in case the competition is thrown wide open throughout the country. Indisputably, the State of Himachal Pradesh being a hilly State has a large tract of difficult areas. It has almost 1/3rd of its area under a tribal belt. The climatic conditions also have their own peculiar features, which can deter any person not so acquainted with the conditions, to leave the job. In such events, on one hand, the education to the students will suffer adversely and on the other, the State will not be able to achieve the object. In this view of the matter, administrative decision of the State has a clear intelligible differentia and cannot be said to be violative of Articles 14 and 16 of the Constitution of India.

20. Though, the State has not been very vocal by in proclaiming its intent of imposing condition noted above of five or more years experience for the benefit of teachers, who have already worked for almost ten years for teaching the students in Government Schools on petty remunerations as outsourced employees, yet it can be inferred from the fact that the State has tried to take shelter of judgment passed in LPA No. 352 of 2016. That being so, it also cannot be said to be violating the right of equality in so far as it helps the State in achieving the objective of providing computer education to students in its schools. The selection's shall only be from the candidates who fulfill all the requirements of R&P Rules.

21. In view of above discussion, there is no merit in these petitions and the same are accordingly dismissed.

22. Pending miscellaneous application(s), if any, shall also stand disposed of.