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(2014) 05 P&H CK 0031

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 10325 of 2013

Sandeep Singh and Others — APPELLANT

Vs

State of Haryana and Others — RESPONDENT

Date of Decision : 20-05-2014

Acts Referred:

Citation : (2014) 176 PLR 404

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : R.N. Sharma, Advocates for the Appellant; Harish Rathee, Sr. DAG, Advocates for the Respondent

Judgement

Augustine George Masih, J.—Petitioners have approached this Court claiming promotion to the post of Elementary School Headmaster as the post of Drawing Teacher has been converted to Trained Graduated Teacher (hereinafter referred to as ''TGT'') under Rule 9(5) of the Haryana School Education (Group C) State Cadre Service Rules, 2012 (hereinafter referred to as 2012 Rules'') (Annexure P-3) from the date the persons junior to the petitioners in the TGT Cadre stand promoted. It is the contention of the counsel for the petitioners that the petitioners possess the requisite qualifications for promotion to the post of Elementary School Headmaster. They have done their Senior Secondary School with two years diploma in Art and Craft, Apart from this, they also possess the qualification of B.A. and B.Ed. He contends that initially the services of the petitioners were governed by the Haryana State Education School Cadre (Group C), Service Rules, 1998 (hereinafter referred to as ''1998 Rules''), which Rules have now been repealed by the 2012 Rules. He further contends that the recruitment in the service and the method of recruitment is provided for in Rule 9 of the 2012 Rules. As per Sub-Rule (5) of Rule 9, Art and Craft Teachers (Drawing Teachers) along with other Classical and Vernacular Cadre Teachers, whose services were governed by the 1998 Rules, shall be converted to the TGT in the relevant subject. No further recruitment shall be made to these categories

when the present incumbent on the notification of the Rules vacate the post either on their promotion, retirement or any other purpose. He, on the basis of this Rule, contends that as the petitioners now have become a part of the TGT Cadre, therefore, are entitled to consideration for promotion to the post of Elementary School Headmaster. The qualifications prescribed for the said post are fulfilled by the petitioners and, therefore, are entitled for consideration for promotion to the said post. He contends that the seniority in the Cadre is governed by Rule 11 of the 2012 Rules, according to which, the seniority inter-se of the members of the service is to be determined by the continuous length of service on any post in the service. On this basis, he contends that since the persons junior to the petitioners have already been promoted in the TGT Cadre, they would be entitled to promotion to the post of Elementary School Headmaster with effect from the date their juniors have been promoted.

2. Counsel for the respondents, on the other hand, contends that the petitioners are not entitled to consideration for promotion to the post of Elementary School Headmaster. He contends that the petitioners do not fulfil me requisite qualifications for appointment to the post of TGT and in this regard, he has referred to the 1998 Rules to contend that they do not possess the requisite qualifications for appointment in the TGT Cadre. Reference has also been made to the 2012 Rules to contend that the petitioners do not possess the qualifications for promotion to the post of TGT (Art), as has been mentioned in para-4 on merits of the written statement. Prayer has, thus, been made for dismissal of the writ petition.

3. I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the records of the case.

4. The fact that the 1998 Rules stand repealed by the 2012 Rules is not disputed. If the 2012 Rules now hold the field, the said Rules have to be given effect to. The method of recruitment to the service has been provided for under Rule 9 and sub-rule (5) of the 2012 Rules, reads as follows:--

"(5) The present Classical & Vernacular (C&V) Cadre consisting of the posts of Sanskrit Teachers, Hindi Teachers, Punjabi Teachers, Physical Training Instructors (PTIs), Art & Craft Teachers (Drawing Teachers), Tailoring Teachers and Tabla Players and governed by the Haryana State Education School Cadre (Group C), Service Rules, 1.998 shall be converted to TGT in relevant subject and no further recruitment shall be made to these categories when the present incumbent on the notification of these rules vacate the post on his promotion, retirement or any other purpose."

5. A perusal of the above would show that the post of Art and Craft Teacher (Drawing Teacher), which post is held by the petitioners as an effect and impact of sub-rule (5) of Rule 9, shall stand converted to TGT in the relevant subject. Since the petitioners, by the operation of sub-rule (5) of Rule 9, now belong to the TGT Cadre, it cannot be said that the petitioners do not possess the

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qualifications for appointment to the post of TGT. Now what is required to be seen is whether under the 2012 Rules, petitioners would be entitled to consideration for promotion to the post of Elementary School Headmaster?

6. As per Rule 9 of the 2012 Rules, for promotion to the post of Elementary School Headmaster, 85% posts have been kept reserved for promotion from amongst the TGTs. Since the petitioners now belong to the TGT Cadre, they would be entitled to consideration for promotion to the post of the Elementary School Headmaster provided they fulfil the qualifications for the post, for which they are claiming promotion. The eligibility for promotion to the post of Elementary School Headmaster is B.A. B.Ed. and since the petitioners fulfil the requisite qualifications for the said post, they are entitled to be considered for promotion to the said post according to their seniority, which has to be determined by the respondents as per Rule 11 of the 2012 Rules.

7. In view of the above, the present writ petition is allowed. Petitioners are held entitled to consideration for promotion to the post of Elementary School Headmaster. Let a seniority list be now prepared as per Rule 11 of the Haryana School Education (Group C) State Cadre Service Rules, 2012 and in case, the petitioners fall within the quota of 85% earmarked for the TGTs according to their seniority, their claims for promotion to the post in question be considered and orders of their promotion be passed, if found eligible as per the Statutory Rules. The said exercise be completed by the respondents within a period of four months'' from the date of receipt of certified copy of the order.

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