

Before Anil Kshetarpal, J.

SATBIR SINGH —*Petitioners*

versus

STATE OF HARYANA AND ORS—*Respondents*

CWP No. 38102 of 2018 (O&M)

February 2, 2021

Constitution of India, 1950, Article 226 —Post of Trained Graduate Teachers(TGT) (Physical Education) - Exemption from appearing in test (HTET) (Haryana Teachers Eligibility Test) as one time measure —Exemption granted in first recruitment after notifying 2012 rules — Present recruitment is second recruitment — Present petitioners given several opportunities to appear in said examination in 2017 and 2018 — Held HTET (Haryana Teachers Eligibility Test) should have been qualified by the candidates by 2018 to become eligible for interview— The candidates cannot claim exemption as a matter of right—Petition dismissed.

Held that there is also no doubt that by amendment in the 2012 Rules, the State Government after recognizing the initial difficulties, did grant exemption for the first recruitment which had taken place after notification of the 2012 Rules. However, even under Rule 19-A of the 2012 Rules, the transitional provision requires that such persons shall have to qualify the Haryana Teachers Eligibility Test (HTET) and B.Ed. by 01.04.2015. This date was extended upto 01.04.2018 by a subsequent amendment. It is also not in dispute that Haryana Teachers Eligibility Test (HTET) examinations have been held in the year 2017 as well as in the year 2018 but none of the petitioners could clear the same. It is also settled that the exemption cannot be claimed as a matter of right. The State in its reply has pointed out that such exemption was granted in the first recruitment held after notifying the 2012 Rules and the present recruitment is the second recruitment. Still further, the candidates were given opportunities to appear in the Haryana Teachers Eligibility Test (HTET) examination in the year 2017 as well as in 2018, i.e. twice before conducting the interviews. It may be noted here that the petitioners have applied for recruitment as TGT in various subjects. The requirement of clearing Haryana Teachers Eligibility Test (HTET)/State Teachers Eligibility Test is common to all the subjects.

(Para 14)

Suresh Kumar Kaushik, Advocate
Jasbir Mor, Advocate,
Rajat Mor, Advocate,
M.S.Virk, Advocate
S.K. Kagsar, Advocate
Shiv Kumar Bishnoi, Advocate
Tejpal Dhull, Advocate
Ajay Shekhawat, Advocate
Ashok Bhardwaj, Advocate
Sushil Jain, Advocate
for the petitioner(s).

Kirti Singh, D.A.G., Haryana.

K.K.Gupta, Advocate
for respondent no.3
(in CWP No.40573 and 40653 of 2018)

Rajesh K. Sheoran, Advocate
for the respondent-Education Board.

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(1) Hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

(2) By this order, Civil Writ Petition No.38102, 40573, 38247, 40674, 38221, 40449, 40640, 38137 and 40653 of 2018, 6, 19, 20, 3353, 4384, 10268 and 14516 of 2019, shall stand disposed of.

(3) Through this petition, the petitioners call in question the decision of the respondents not to call them for interview for the post of Trained Graduate Teachers (TGT) (Physical Education) (Category No.2), pursuant to recruitment notice dated 28.06.2015. The basic issue which requires determination is “whether the petitioners fulfill the eligibility criteria as laid down in the recruitment notice and the rules made under the proviso to Article 309 of the Constitution of India.

(4) Before answering the question, it would be appropriate to note the eligibility criteria in the recruitment notice and the Rules. A recruitment notice was published on 28.06.2015 by the Haryana Staff Selection Commission, inviting online applications for 1919 posts of Trained Graduate Teachers(TGT)(Group-C Services). As per the recruitment notice, the eligibility was as under:-

“Eligibility:-

- a) Matric with Hindi/Sanskrit or 10+2/B.A./M.A. with Hindi as one of the subject.
- b) Certificate of having qualified Haryana Teacher Eligibility Test (HTET)/School Teachers Eligibility Test (STET) of respective subject for the post applied, conducted by Board of School Education Haryana, Bhiwani.

Note-The candidates those who are having/passed HTET till the date of interview after advertisement will be allowed for interview on the basis of acquiring HTET(Test) till the date of interview.

- c) Essential qualification (EQ) is given with each post.”

(5) The State of Haryana has in the exercise of powers under proviso to Article 309 of the Constitution of India has made the Rules, namely, the Haryana School Education (Group-C) State Cadre Service Rules, 2012 (hereinafter referred to as the '2012 Rules') which came to be notified on 11.04.2012. Part-II thereof provide for recruitment to the service. Rules 4, 17 and relevant part of the Appendix 'B' are extracted as under:-

“4. (1) No person shall be appointed to any post in the Service, unless he is,-

- (a) a citizen of India; or
- (b) a subject of Nepal; or
- (c) a subject of Bhutan:

Provided that a person belonging to any of the categories (b) or (c) shall be a person in whose favour a certificate of eligibility has been issued by the Government.

A person in whose case a certificate of eligibility is necessary may be admitted to an examination or interview conducted by the recruiting agency but the offer of appointment may be given only after the necessary eligibility certificate has been issued to him by the Government.

No person shall be appointed to any post in the Service by direct recruitment on contract basis unless he produces a certificate of character from the Principal Academic Officer

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of the university, college, school or institution last attended, if any, and similar certificate from two other responsible persons, not being his relatives, who are well acquainted with him in his private life and are unconnected with his university, college, school or institution.”

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“Power of Relaxation-17. Where the Government is of the opinion that it is necessary or expedient to do so, it may by order, for reason to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons.”

Appendix 'B'

	<p>Graduate with Bachelor of Physical Education (B.P.Ed.) or its equivalent from a recognized University;</p> <p>(ii) Matric with Hindi/Sanskrit University; 10+2/B.A./M.A. with Hindi as one of the subject;</p> <p>(iii) Certificate of having qualified Haryana Teacher Eligibility Test (HTET)/ School Teachers Eligibility Test (STET).</p>	<p>Graduate with Bachelor of Physical Education (B.P.Ed.) or its equivalent from a recognized University;</p> <p>(ii) Certificate of having qualified Haryana Teacher Eligibility Test (HTET)/ School Teachers Eligibility Test (STET);</p> <p>(iii) 3 years experience as Physical Training Instructor (PTI).</p> <p>By Transfer/ deputation:</p> <p>(i) Graduate with Bachelor of Physical Education (B.P.Ed.) or its equivalent from a recognized University;</p> <p>(ii) Matric with Hindi/Sanskrit or 10+2/B.A./M.A. with Hindi as one of the subject;</p>
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10			<p>(iii) 5 years teaching experience as TGT Physical Educatin.</p> <p>(iv) Certificate of having qualified Haryana Teacher Eligibility Test (HTET) / School Teachers Eligibility Test (STET).</p>
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(6) The requirement of passing the HTET examiantion is common to all the posts of various subjects.

(7) In order to remove the initial difficulties, the Government vide notification dated 02.07.2012, added Rule 19-A which reads as under:-

“19 A. Transitional provision:- The person fulfilling the conditions enunciated under note (i) or (ii) (a) of Appendix B to these rules and possess the qualifications under Column 3 mentioned against the respective posts in the Haryana State Education Lecturer School Cadre (Group C) Service Rules, 1998, shall also be eligible for recruitment as a one time measure:

Provided that such person shall have to qualify the Haryana Teachers Eligibility Test (HTET) and B.Ed by Ist April, 2015 and if he fails to do so, his appointment shall stand terminated automatically without giving any further notice”.

3. In the said rules, in Appendix B, for note (i), the following note shall be substituted namely:--

“(i) That in case of direct recruitment, the teachers working in privately managed Government aided, recognized and Government Schools, are exempted from having qualifications of Haryana Teachers Eligibility Test or School Teachers Eligibility Test and B.Ed as described in column 3, if they have worked as a teacher for a minimum period of

four years on the date of enforcement of these rules”.

4. In the said rules, in Appendix B, for note (ii), the following note shall be substituted namely:-

“(ii) (a) A person who has passed Haryana Teachers Eligibility Test or School Teachers Eligibility Test without the qualification of B.Ed., before the notification of these rules, shall also be considered eligible for the post of PGT in the case of direct recruitment as one time measure in the first recruitment to be held after amendment of these rules.

(b) The condition of 'Consistent Good Academic Record' wherever appearing in Appendix B, under column 3 of these rules shall not be made applicable during the first recruitment made under these rules, in the case of candidates eligible under note (i) or (ii)(a)”.

(8) Thereafter, once again on 12.09.2014 by amending the Rules, the period for qualifying the Haryana Teachers Eligibility Test (HTET) was extended upto 01.04.2018.

(9) All these petitioners on account of their failure to clear Haryana Teachers Eligibility Test (HTET) or State Teachers Eligibility Test (STET) have not been called for interview. The respondents have taken a stand that Haryana Teachers Eligibility Test (HTET) examinations have been held in the year 2017 as well as in the year 2018. No doubt, the petitioners cleared the recruitment written examination and therefore, called for scrutiny of documents, however, in the absence of eligibility certificate (HTET/STET), have been declared to be ineligible.

(10) It may be noted here that in CWP No.40573 of 2018 (Rakhi Rani vs. State of Haryana and others), the petitioner claims that she has cleared the Haryana Teachers Eligibility Test (HTET) in January, 2019.

(11) This court has heard learned counsels for the parties at length and with their able assistance perused the paper book.

(12) Learned counsels for the petitioners contend that it is provided in the rules itself that there would be exemption from appearing in the test as a one time measure. They, hence, contend that the respondents are not justified in insisting on clearance of the Haryana Teachers Eligibility Test (HTET). They further contend that the Haryana Teachers Eligibility Test (HTET) examination was held

for the first time in the year 2017.

(13) On the other hand, learned counsels representing the respondents have pointed out that Haryana Teachers Eligibility Test (HTET) examination is common to all the subjects and the candidate is required to choose the subject. They further contend that none of the petitioner cleared the Haryana Teachers Eligibility Test (HTET) examination till the interviews for the recruitment were held in December, 2018. Hence, it was contended that the petitioners have correctly been not allowed to appear in the interview.

(14) On careful reading of the 2012 Rules, it is crystal clear that the candidates were required to get a certificate of eligibility before they are admitted to an examination or interview for the post of TGT. No doubt, the State has the enabling power to relax any provision of the Rules. There is also no doubt that by amendment in the 2012 Rules, the State Government after recognizing the initial difficulties, did grant exemption for the first recruitment which had taken place after notification of the 2012 Rules. However, even under Rule 19-A of the 2012 Rules, the transitional provision requires that such persons shall have to qualify the Haryana Teachers Eligibility Test (HTET) and B.Ed. by 01.04.2015. This date was extended upto 01.04.2018 by a subsequent amendment. It is also not in dispute that Haryana Teachers Eligibility Test (HTET) examinations have been held in the year 2017 as well as in the year 2018 but none of the petitioners could clear the same. It is also settled that the exemption cannot be claimed as a matter of right. The State in its reply has pointed out that such exemption was granted in the first recruitment held after notifying the 2012 Rules and the present recruitment is the second recruitment. Still further, the candidates were given opportunities to appear in the Haryana Teachers Eligibility Test (HTET) examination in the year 2017 as well as in 2018, i.e. twice before conducting the interviews. It may be noted here that the petitioners have applied for recruitment as TGT in various subjects. The requirement of clearing Haryana Teachers Eligibility Test (HTET)/State Teachers Eligibility Test is common to all the subjects.

(15) Keeping in view the aforesaid facts, since the petitioners were not eligible, therefore, no fault can be found in the decision taken by the Haryana Staff Selection Commission.

(16) As regards the case of Rakhi Rani, it is apparent that she cleared the Haryana Teachers Eligibility Test (HTET) examination in January, 2019, whereas the interview was held in December, 2018. Thus, on the date of interview, Ms. Rakhi Rani was not eligible.

(17) Keeping in view the aforesaid facts, no ground to issue the writ as prayed for is made out.

(18) Hence, dismissed.

Payel Mehta