

*Before Mehtab S. Gill & Rakesh Kumar Jain, JJ.*

**MAHESH KUMAR AND ANOTHER,—Petitioners**

**versus**

**STATE OF PUNJAB AND OTHERS,—Respondents**

CWP NO. 385 OF 2007

9th April, 2008

***Constitution of India, 1950—Arts. 14 & 226—Appointment of candidates to post of Headmasters lower in merit than petitioners—Cl. E (2) of advertisement required experience of 7 years in case of M.A. Or M.Sc. with B.T./B.Ed.—Petitioners having more than 7 years experience on date of applying for post—State interpreting that experience of 7 years should be subsequent to completion of B.Ed.—Similarly situated persons appointed—Violation of Art. 14—Word ‘with’ used in Cl. E(2) of advertisement does not mean 7 years experience after passing of B.Ed.—Petition allowed, respondents directed to consider petitioners for appointment in view of their merit percentage.***

***Held***, that respondents No. 6 to 8 were similarly situated with the petitioners but they have been tried to be protected by the official respondents in the affidavit dated 29th March, 2008 on the ground that although the said private respondents have passed their examinations in B.Ed. in the year 2004, 2003 and 2000 but they have proved their eligibility in terms of their requisite experience as a trained teacher at the time of submitting their application forms and by submitting their experience certificate. According to the petitioners, all the documents muchless certificates pertaining to their educational qualifications were placed before the competent authority, who had after scrutiny assessed the percentages of both the petitioners at 65.68% and 68.56% respectively but thereafter ignored them by taking refuge to the mis-interpretation of Clause E(2) of the advertisement by saying that the experience of 7 years has to be counted after passing of B.Ed. though the same has not been counted in the case of private respondents herein. Therefore, the petitioners have alleged violation of Article 14 of the Constitution

of India having been discriminated at the hands of the official respondents which is unsustainable in the eyes of law being unconstitutional.

(Para 12)

*Further held*, that interpretation of Clause E (2) of the advertisement is illegal and erroneous because the word “with” does not mean 7 years experience after passing of B.Ed. The word used “with” in clause E(2) of the advertisement means as well and does not mean that the experience should have been taken after passing the requisite educational qualification. Therefore, the reasoning adopted by the official respondents for rejecting the claim of the petitioners is patently illegal, therefore, the order rejecting representations of the petitioners deserves to be quashed.

(Para 13)

Jagdeep Bains, Advocate, *for the petitioners*.

P.C. Goyal, Senior D.A.G. Punjab, *for respondent Nos. 1 to 4*.

Surmukh Singh, Advocate, *for respondent Nos. 5 to 7*.

**RAKESH KUMAR JAIN, J.**

(1) Two petitioners have approached this Court invoking its extra ordinary jurisdiction under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari for quashing the order Annexure P-32, whereby the representations of the petitioners dated 28th November, 2006 (Annexure P-30 and P-31), have been wrongly rejected and also a writ in the nature of mandamus seeking a direction to the respondents to consider and appoint the petitioners to the posts of Headmasters (Male) in the General Category for having higher merit percentage as compared to other candidates shown in the same category who were having low percentage.

(2) *Vide* advertisement dated 1st October, 2006, Secretary, Department of School Education, Punjab, offered 431 posts of Headmasters for male/female in the ratio of 50-50, out of which 215 posts were offered for General Category in the ratio of 50% to male which came out to be 107 posts.

(3) The salient features of the advertisement pertaining to post of Headmaster are as under :—

**Basic Qualification and professional qualification :**

(4) Degree of any U.G.C. Recognized University with B.T. or B.Ed. Or Senior Basic Training with the following sentence :

- (1) In case of M.A. or M.Sc. with M.Ed.—Six years.
- (2) In case of M.A. or M.Sc. with B.T./B.Ed.—Seven years.
- (3) In case of B.A. or B.Sc. or B.Com with B.T., or B.Ed.—Eight years.
- (4) In case of D.P.Ed. or B.P.Ed.—Eight Years from the date physical Education was introduced compulsory in the school.
- (5) In case of B.A. or B.Sc. or B.Com. with M.Ed.—Seven Years.

**Mode of Selection :**

The recruitment shall be strictly made to respective categories on merit, without a recruitment test or interview marks. Merit will be prepared by adding the percentage of marks obtained in basic minimum prescribed academic qualification and basic minimum prescribed professional qualification.

Merit shall be computed by Centre for Development of Advanced Computing, a Scientific Society of Ministry of Communications and Information Technology, Government of India (C-DAC).

**General Conditions :**

1. The candidates applying for post must ensure that they fulfill all the eligibility conditions. If on verification at any time before or after appointment it is found that they do not fulfill any of the eligibility conditions or it is found that the information furnished is false or incorrect their candidature will be cancelled.
2. Reservation under ex-servicemen quota is admissible to the *bona fide*/Ex-servicemen or their dependents. Such ex-

servicemen/dependent before issue of appointment letter, shall have to produce a certificate issued by the competent authority appointed by the Government.

3. Candidates seeking reservation under Freedom Fighter Quota will include his/her children/grand children. They shall, before the issue of appointment letter, produce such requisite certificate issued by the competent authority.
4. Candidates seeking reservation under sports quota, before the issue of appointment letter, shall have to produce a certificate that they belong to the State of Punjab. They shall also be required to produce before issue of appointment letter a certificate indicating that they have won 1st, 2nd or 3rd position in team or individual events in the State Level Championship in any of the discipline affiliated to Punjab Olympic Association organized by the State Level Federation. In case of reputed Non Olympic disciplines such as Cricket and Tennis, winner should have attained any of the 1st three positions in a State-Level Association Affiliated to the concerned National Federation. The sports certificate duly graded by the Director of Sports Punjab shall be a pre-requisite of issue of appointment letter in the case of candidate who applies under sports quota category.
5. Candidates seeking reservation meant for the members of Backward Classes of Punjab State only shall have to produce Backward Class Certificate as prescribed by the State Government issued by the competent authority before the issue of appointment letter.
6. Candidates seeking reservation under Handicapped Quota shall have to produce a Medical Certificate of 40% permanent/partial disability of upper or lower, extremity, deformity but otherwise fit for civil employment against the post applied for issue by the competent authority before issue of appointment letter. This certificate must be issued from the following authorities :—
  - (a) Class-I Medical Officer of any Government Medical Institution/Hospital.

- (b) PMO, CMO/Civil Surgeon of the District or Place of which the applicant is permanent resident.
7. The candidate must have passed Matriculation examination with (not legible) as one of the compulsory or elective or any other equivalent examination in Punjabi Language.
  8. Age between 18 to 37 years as on 1st January, 2006.
    - (a) Relaxation in age by 5 years for SC/ST and other Backward Classes.
    - (b) Relaxation in age up to 40 years for widow/legally separated/divorced women.
    - (c) To the extent of 10 years for physically handicapped persons on production of Medical Certificate from the competent authority.
    - (d) Ex-servicemen as per Punjab Government Recruitment Rules, 1982 as amended from time to time.
    - (e) 45 years for persons already in the employment of Punjab Government other State Government or the Government of India.
  9. Only those Government employees shall be eligible to be issued appointment letters who are certified by the Head of Department as not having any pending disciplinary proceedings or undergoing punishment under Punjab Civil Services (Punishment and Appeal) Rules, 1970 or any other applicable Rules as the case may be, not undergoing any trial/prosecution or any other material disqualification in terms of integrity and professional misconduct.
  10. The candidate must possess prescribed Educational Qualification and Professional Qualification for the post applied for on or before the last date of receipt of application. The cut off date for all intents and purposes for eligibility determination is the date on which the application is filed and not any later date such as the date of any document

verification or the date of issue of appointment letter or the date of joining.

11. Lower and upper age shall be determined as on 1st January, 2006.
12. The benefit of reservations is admissible to the domicile of Punjab only.
13. The calculation details of reserve posts indicated in this advertisement may marginally change in view of Punjab Government Department of Personal and Administrative Reforms Letter No. 8/30/96-3 PP-1/17240 dated 21st August, 1997.

**Qualification of the petitioners :**

(4) Petitioner No. 1. possesses the following educational qualification:—

Qualification Details	Passing Year	University Board	Subject passed	Marks Obtained	Total Marks
Matric	1991	PSEB, Mohali	Eng., Hindi, Punjabi, Math, Science, Social Studies	621	800
SSC/ Intermediate	1993	PSEB, Mohali	Eng., Punjabi, Punjabi (Elective) History, Physical Education	264	450
B.A.	1996	Kurukshetra University, Kurukshetra	English, Hindi, Punjabi, History	768	1200
M.A.	1998	Mahatma Gandhi, Kashi Vidyapith, Varanasi (U.P.)	MBA (Marketing Management)	1927	2800
B.Ed.	2004	The University of Kashmir, Srinagar (U.P.)	Teacher of Hindi, Teaching of History & Civics".	741	1100

Petitioner No. 2 possesses the following educational qualification :—

Qualification Details	Passing Year	University Board	Subject passed	Marks Obtained	Total Marks
Matric	1991	PSEB Mohali	Eng., Hindi, Punjabi, Math Science, Social Studies	635	800
SSC/ Intermediate	1993	PSEB, Mohali	Eng., Punjabi, Punjabi (Elective) History, Physical Education	290	450
B.A.	1996	Kurukshetra University, Kurukshetra	English, Hindi, Punjabi, History	836	1200
M.A.	1998	Guru Jambheshwar Univeristy Hisar, (Haryana)	MBA (Marketing & Human Resource Management)	1764	2700
MA	2001	Punjabi University	Punjabi		
B.Ed.	2004	The University of Kashmir, Srinagar (U.P.)	Teacher of Hindi, Teaching of History & Civics.	742	1100
B.A. Part II & III, (Sanskrit Elective	2004	Kurukshetra University Kurukshetra	Political Science & Sanskrit.”	230	400

**Experience of the petitioners :**

Petitioner No. 1 possessed the experience as per experience certificate Annexure P-18.

“Date of joining the School : 29-1-1999 as JBT  
: 23-8-2004 as Sanskrit

Total Service Experience : 8 years approx.”

Petitioner No. 2. possessed the experience as per experience certificate Annexure P-20 :—

“Date of joining the School : 08-10-2004

Total Service Experience : 07 years 04 months”

(5) Pursuant to the advertisement, both the petitioners applied for the post of Head Masters in General Category male by submitting on line applications between 23rd November, 2006 to 8th November, 2006. On the receipt of application forms on 13th November, 2006, C-DAC, Mohali issued compilation of the scrutiny of the eligible candidates. The forms of the petitioners were in order and they were also found eligible. They were issued scrutiny forms by Secretary after verifying their respective percentage having merits at 65.68% and 68.56% respectively. Result was declared on 21st November, 2006 which was published in the Chandigarh Tribune on the same day, but the names of the petitioners were conspicuous by its absence, though the last selected candidate in their category had merit at 64.90%, which was obviously lower than the percentages obtained by the petitioners. According to the petitioners, objections were raised by them by meeting C-DAC, Mohali as well as sending two e-mails to him for appointing candidates lower in merit, but no response was received, therefore, the petitioners were compelled to file C.W.P. No. 18733 of 2006 in which notice of motion was issued and on the asking of the Court, Additional Advocate General, Punjab, accepted the notice in the Court. Thereafter, *vide* order dated the 27th November, 2006, their writ petition was disposed of with a direction that if the petitioners approach Director Public Instructions, Secondary Education, Punjab, with a detailed representation, then their claim shall be adjudicated by a well reasoned speaking order, the order that has been passed in C.W.P. No. 18733 of 2006 is being reproduced as under :—

“Notice of motion.

On our asking, Mr. Ashok Aggarwal, Additional Advocate General, Punjab, accepts notice on behalf of respondent Nos. 1 to 3.

Learned counsel for the respondents on instructions from Mr. Ram Singh, Law Officer, Office of the D.P.I., Secondary Education, Punjab, states, that if the petitioners approach the D.P.I., Secondary Education, Punjab, with the details, as have been depicted in the instant writ petition, within two days from today, their claim will be adjusted upon within ten days thereafter, by passing a well reasoned speaking

order, if the claim of the petitioners is to be rejected. Alternatively, the petitioners will be issued offers of appointment.

In view of the statement made by learned counsel for respondents Nos. 1 to 3, the instant writ petition is disposed of, with a clear direction, that the statement made on behalf of the respondents shall be binding on the respondents.

A copy of this order be given *dasti* to the learned counsel for the petitioners on payment of usual charges.”

(6) Pursuant to the aforesaid order, the petitioners submitted their detailed representations on 28th November, 2006 which are attached with this writ petition as Annexures P-30 and P-31 respectively. *Vide* the impugned order dated 14th December, 2006, respondent No. 3 rejected the representations of the petitioners. The impugned order dated 14th December, 2006 is attached by the petitioner as Annexure P-32.

(7) It has been *inter alia* pleaded in the writ petition that respondents have wrongly interpreted Clause E(2) of the advertisement Annexure P-1 in the impugned order to the effect that experience of 7 years should be subsequent to the completion of B.Ed. Though, there is no denial that both the petitioners have put in more than 7 years experience on the date when they had applied for the advertised posts.

(8) Notice of motion was issued on 19th January, 2007. Thereafter, the petitioners moved C.M. Nos. 14480-81 of 2007, *vide* which they sought to place on record documents Annexure P-33 to P-45 and also moved an application under Order 1 Rule 10 of C.P.C. for impleading Sukhwinder Singh, Rakesh Sharma and Gurdial Singh respectively as respondent Nos. 5 to 7 in the array of parties on the ground that though they were similarly situated yet they have been selected and appointed, by illegally rejecting the claim of the petitioners. *Vide* order dated 6th September, 2007, both the applications aforesaid were allowed and documents Annexures P-33 to P-45 were taken on record. The aforesaid persons were impleaded as party respondents as respondent No. 5 to 7.

(9) On 11th January, 2008, written statement was filed on behalf of respondent Nos. 1 and 2, whereas respondent Nos. 3 and 4 adopted the written statement filed by respondent Nos. 1 and 2. On 1st February, 2008, respondent Nos. 5 and 7 adopted the written statement filed by the State.

(10) In the written statement filed on 11th January, 2008 by respondent Nos. 1 and 2 which was followed by short affidavit, dated 1st February, 2008 and 29th March, 2008 filed by Director, Public Instructions (S.E.) School Punjab, it has been pleaded that the petitioners have passed their B.Ed examinations in the year 2004, therefore, their requisite experience of 7 years as required is not possible. It was basically highlighted that experience of B.Ed. cannot be counted towards experience in view of Clause E(2) of the advertisement which provided that " in case of M.A. Or M.Sc. With B.T./B.Ed.-Seven Years".

(11) We have heard learned counsel for both the parties and have perused the record with their assistance.

(12) Documents Annexures P-18 and P-20 are the experience certificates issued by the Headmasters of respective Schools of the petitioners wherein total service experience of petitioner No. 1 is shown to be 8 years and that of petitioner No. 2 as 7 years and 4 months, therefore, as on the relevant date, they had the prescribed experience. In the detail of the academic qualification reproduced above, both the petitioners are shown to have passed B.Ed. in 2004. In the document Annexure P-34, the appointment of candidate Sukhwinder Singh arrayed as respondent No. 5 is shown to have experience of 8 years but had passed B.Ed. in the year 2004,. As per document Annexure P-38, respondent No. 6 Rakesh Kumar is shown to have experience of 8 years but had passed B.Ed. in the year 2003, and as per document Annexure P-2, respondent No. 7 is shown to have experience of 11 years and B.Ed. in the year 2000. All the added respondents deserve to be declared unqualified and ineligible as they do not possess 7 years experience as claimed by the official respondents on 1st October, 2006 after passing B.Ed. Course. Therefore, they were similarly situated with

the petitioners but they have been tried to be protected by the official respondents in the affidavit, dated 29th March, 2008 on the ground that although the said private respondents have passed their examinations in B.Ed. in the year 2004, 2003, and 2000, but they have proved their eligibility in terms of their requisite experience as a trained teacher at the time of submitting their application forms and by submitting their experience certificate. According to the petitioners, all the documents much-less certificates pertaining to their educational qualifications were placed before the competent authority, who had after scrutiny assessed the percentages of both the petitioners at 65.68% and 68.56% respectively but thereafter ignored them by taking refuge to the mis-interpretation of Clause E (2) of the advertisement by saying that the experience of 7 years has to be counted after passing of B.Ed., though the same has not been counted in the case of private respondents herein. Therefore, the petitioners have alleged violation of Article 14 of the Constitution of India having been discriminated at the hands of the official respondents, which in our view, is unsustainable in the eyes of law, beingun constitutional.

(13) Interpretation of Clause E (2) of the advertisement is further illegal and erroneous because the word "with" does not mean 7 years experience after passing of B.Ed. In this regard reliance is placed upon a decision of the Hon'ble Supreme Court in the case of **A.K. Raghmani Singh and others versus Gopal Chandra Nath and others (1)** , in which some-what similar situation had arisen as the condition involved in that case was with respect to eligibility of "Executive Engineer (Civil)/Mechanical and Surveyor of Works possessing Degree in Civil/Mechanical Engineering or its equivalent from a recognised Institution with six years regular service in the grade". The argument was raised that eligibility criteria requires six years regular service after educational qualification was obtained. The Hon'ble Supreme Court interpreting the word "with" used in the eligibility criteria held that the word "with" used to connect two nouns, it means

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(1) 2000(2) S.C.T. 465

"accompanied by : having as an addition or accompaniment. Frequently used to connect two nouns, in the sense 'and' as well". Applying the aforesaid definition to the eligibility criteria, it was held that it requires the prescribed educational qualification and six years experience as well. It was also held that it is not justified in reading a qualification into the conjunctive word and imply the word 'subsequent' after the word 'with'. It was, thus held that it would be unreasonable to distinguish between the nature of the regular service after obtaining the necessary educational qualification or and prior to that, if the eligibility criteria was fulfilled, even if the requisite experience has been obtained before obtaining the ducational qualifications. The aforesaid view was followed by the Division Bench of the Himachal Pradesh High Court in the case of **State of Himachal Pradesh and another versus Piar Chand and another (2)**, we also subscribe the same view as has been taken by the Hon'ble Supreme Court and the Himachal Pradesh High Court in the aforesaid authorities and held that the word used "with" in clause E(2) of the advertisement means as well and does not mean that the experience should have been taken after passing the requisite educational qualification. Therefore, the reasoning adopted by the official respondents for rejecting the claim of the petitioners is patently illegal, therefore, the order Annexure P-32 deserves to be quashed.

(14) In view of the above discussion, the present writ petition is allowed. The order Annexure P-32 is quashed and the official respondents herein are directed to consider the petitioners for appointment to the post of Headmasters in general category (Male) in view of the their merit percentage of 65.68% and 68.56% respectively as compared to other candidates in their categories who with their lower percentage have been appointed, the aforesaid direction shall be carried out within two months after the receipt of a certified copy of this order. There shall, however, be no order as to costs.

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**R.N.R.**