

174

I.L.R. PUNJAB AND HARYANA

2015(1)

*Before Rajesh Bindal, J.*

**NANAK CHAND**—*Petitioner*

*versus*

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

**CWP No. 4274 of 2011**

April 24, 2014

*Punjab State Education Class III (School Cadre) Service Rules, 1978 - Appendix B - Promotion - Petitioner working as workshop attendant sought promotion to post of social study master - Reliance placed by him on instructions dated 25.4.1972 and 26.9.2001 - Held, according to 1978 Rules workshop attendant is not a feeder Cadre for promotion to post of Master - Instructions issued by Government being contrary to Rules not sustainable - Directions issued that in future, instructions be issued after getting same vetted from law department - Provisions in statutory rules should be specifically mentioned in instructions.*

*Held*, that it is not in dispute that in terms of the Punjab State Education Class III (School Cadre) Service Rules, 1978. Workshop Attendant is not a feeder cadre for promotion to the post of Master. In the absence thereof, no direction can be issued to the State to consider and promote the petitioner to the post of Master. The instructions issued by the Government, which are contrary to the Rules, do not supersede the statutory provisions of the Rules.

(Para 5)

*Further held*, that in future, if any instructions are to be issued, the same shall be first got vetted from Law Department, which shall specifically deal with and mention in the instructions the provisions in the statutory Rules, *vis-a-vis* instructions.

(Para 14)

Surmukh Singh, S. K. Rattan and Madhav Pokhrel, Advocates  
*for the petitioner.*

Ms. Sudeepti Sharma, Deputy Advocate General, Punjab.

NANAK CHAND v. STATE OF PUNJAB  
AND OTHERS (*Rajesh Bindal, J.*)

175

**RAJESH BINDAL J.**

(1) Compliance report by way of affidavit of Sanjay Kumar, Principal Secretary to Government of Punjab, Department of General Administration and Coordination dated 23.4.2014 and additional affidavit of Dr. Kamal Kumar, Director of Public Instruction (Secondary Education), Punjab filed in court, are taken on record.

(2) This order will dispose of CWP Nos. 4274 and 24106 of 2011 and 9974 of 2012, as common questions of law and facts are involved.

(3) However, the facts have been extracted from CWP No. 4274 of 2011.

(4) The petitioner herein is working as Workshop Attendant and is seeking promotion to the post of Social Study Master. For the purpose, reliance has been placed upon the instructions dated 25.4.1972 and 26.9.2001. A reference has also been made to an earlier order passed by the authorities, whereby promotion to similarly situated employees had been given.

(5) It is not in dispute that in terms of the Punjab State Education Class III (School Cadre) Service Rules, 1978 (for short, ‘the Rules’), Workshop Attendant is not a feeder cadre for promotion to the post of Master. In the absence thereof, no direction can be issued to the State to consider and promote the petitioner to the post of Master. The instructions issued by the Government, which are contrary to the Rules, do not supersede the statutory provisions of the Rules. The same are extracted below:

“APPENDIX B

Sr. No.	Designation of posts	Minimum qualifications and teaching experience	Method of recruitment	
			Direct appointment	Promotion
xx		xx	xx	
3(1)(a) to (f)		xx	xx	xx
(g)	Social Studies Master/Mistress	B.A. with subject combination as approved by Government from time to time with B.T. or B.Ed. OR Senior Basic Trained (including service of D.P.Ed. and B.P.Ed. as Master/Mistress with at least three years actual teaching experience)	Seventy five per cent	Twenty five per cent (i) Fifteen per cent from trained graduate amongst JBT or ETT; and (ii) Ten per cent from trained

176

I.L.R. PUNJAB AND HARYANA

2015(1)

Sr. No.	Designation of posts	Minimum qualifications and teaching experience	Method of recruitment	
			Direct appointment	Promotion
				graduate from amongst the classical and vernacular teachers.
XX		XX		XX"

(6) It has been stated in the affidavit dated 24.7.2013 filed by Roop Lal Roop, District Education Officer (SE), Kapurthala that the Rules were amended vide notification dated 8.7.1995, which provided for promotional avenues to the Workshop Attendants. The case of the petitioner can be considered for promotion to the promotional post, as mentioned in the amended Rules in terms of the qualification and experience required. Twenty-five per cent each of the posts of Work Experience Teacher, Vocational Teacher (Carpentry), Vocation Teacher Motor Mechanical and Vocational Teacher (Radio Mechanic) have been reserved to be filled by way of promotion from Workshop Attendants having requisite qualification and experience. The relevant Rules are extracted below:

## "APPENDIX B

Sr. No.	Designation of posts	Minimum qualifications and teaching experience	Method of recruitment	
			Direct appointment	Promotion
1 to 8 (i)	xx	xx		xx
(ii)	Work Experience Teachers	Essential (i) Matric (ii) Two years certificate course from ITI or National Council of Vocational Training (NCVT) or National Apprenticeship Course (NAC) in Radio and T.V. Mechanic or +2 Vocational pass in R&M of Radio and TV Mechanical, Electrical Furniture Making trade Course from recognised State Board of Education. Preferential-Three years teaching/Practical working experience in the concerned trade.	Seventy-five per cent.	Twenty five per cent of posts from amongst workshop attendants who fulfil the requisite qualification.
(iii)	Vocational Teacher (Carpentry)	Essential-(i) Matric (ii) Certificate course from	Seventy-five per cent	Twenty five per cent of posts from

NANAK CHAND v. STATE OF PUNJAB  
AND OTHERS (*Rajesh Bindal, J.*)

177

Sr. No.	Designation of posts	Minimum qualifications and teaching experience	Method of recruitment	
			Direct appointment	Promotion
		ITL National Council of Vocational Training (NCVT)/ National Apprenticeship Course (NAC) in carpentry trade or +2 vocational pass in furniture making and designing from any recognised State Board: Preferential-(iii) Three year teaching/practical working experience in the concerned trade.		amongst workshop attendants who fulfil the requisite qualification.
(iv)	Vocational Teacher (Motor Mechanical)	Essential: (i) Matric (ii) certificate course in motor mechanic from ITI National Council of Vocational Training (NCVT)/ National apprenticeship course (NAC) or +2 vocational pass in auto engg. tech. trade from State Board of Education. Preferential: Three years teaching/practical experience in the concerned trade.	Seventy-five per cent	Twenty five per cent of posts from amongst workshop attendants who fulfil the requisite qualification.
(v)	Vocational Teacher (Radio Mech.)	Essential: (i) Matric (ii) Certificate course in Radio & T.V. Mechanic from ITI/National Council of vocational Training (NCVT)/National apprenticeship Course (NAC) or +2 vocational pass in R&M Radio and T. V. trade from State Board of Education. Preferential: Three years teaching/practical experience in the concerned trade.	Seventy-five per cent.	Twenty five per cent of posts from amongst workshop attendants who fulfil the requisite qualification.
xx		xx		xx”

(7) Considering the aforesaid factual matrix, the petitioner cannot claim promotion from the post of Workshop Attendant to that of Social Studies Master, hence, his claim to that extent is rejected. However, as there in the Rules itself, promotional avenues have been provided to the Workshop Attendants, the case of the petitioner and all other similarly situated employees be considered for promotion as per the quota prescribed in case he fulfils the requisite qualification and have the experience.

(8) The writ petitions are disposed of accordingly.

(9) The matter cannot be left at this stage. This Court in CWP No. 4208 of 1996—Gurdeep Singh Gill v. State of Punjab and others, decided on 21.3.1996, while dealing with the prayer of the petitioner therein for promotion as Art and Craft Teacher from the post of Workshop Attendant in terms of the circular dated 25.4.1972, opined that once the State had decided to frame the rules in exercise of its power under the Constitution of India for recruitment of teachers, that field must be deemed to have been occupied by those rules. If the rules do not provide for promotion to the post of teachers from a particular post, it is not open to the Government to issue administrative instructions to create new source of recruitment. Any such instructions are liable to be ignored being contrary to the statutory rules. Despite this fact, even subsequent to the aforesaid judgment, the State had issued instructions dated 26.9.2001, 17.4.2003 and 2.5.2003 providing for promotional avenues to certain employees, who were not part of the feeder cadre for a post as per the statutory notified rules. On 4.2.2014, this court had passed the following order:

“The claim made by the petitioners in the present cases is regarding their promotion from Workshop Attendants to that of Masters. It is not in dispute that Punjab State Education Class III (School Cadre) Service Rules, 1978, do not provide for Workshop Attendants as a feeder cadre for the promotion to the post of Masters. Learned counsel for the petitioners have placed reliance upon instructions issued by the Government on 25.4.1972, 26.9.2001, 17.4.2003 and 2.5.2003. In fact, all these instructions have been issued in contravention to the statutory rules governing the post of Masters. An identical issue has already considered by this Court in CWP No. 4208 of 1996, decided on 21.3.1996. Gurdeep Singh Gill v. State of Punjab and others, wherein it was opined that where the Government has decided to frame rules in exercise of its power under the Constitution of India or an Act for recruitment to the post of teachers that field must be deemed to have been occupied by those rules. If the rules do not provide for promotion to the post of teachers from Class IV post, it is not open to the Government to issue administrative instructions to create any source of recruitment/promotion. Instructions issued on 25.4.1972 were under consideration in the aforesaid judgment.

NANAK CHAND v. STATE OF PUNJAB  
AND OTHERS (*Rajesh Bindal, J.*)

179

In view of the aforesaid Division Bench judgment of this Court, prima facie, the instructions issued subsequently providing for additional sources for promotion to the post of Masters, which is not provided for in the statutory rules, are clearly violative of law laid down by this Court.

Let Ms. Anjali Bhawra, Principal Secretary, Education, appear in person in Court, on the next date of hearing and explain why the State has issued instructions which run contrary to Rules and the law laid down by this Court.”

(10) In the affidavit of Dr. Kamal Kumar, Director of Public Instruction (Secondary Education), Punjab filed today, it is stated that instructions dated 26.9.2001 and 2.5.2003, which are in knowledge of the department, have been withdrawn with immediate effect vide letter dated 6.3.2014. It is further stated that vide letter dated 22.4.2014, it has been decided that till such time necessary provisions are made in the service rules, no promotion should be made keeping in view the instructions issued. Further, it is stated that efforts are being made to trace out other instructions, which have not been included in the service rules. As and when these come to their notice, the same shall be withdrawn.

(11) In the affidavit of Sanjay Kumar, Principal Secretary to Government of Punjab, Department of General Administration and Coordination, which has been filed today, it is stated that instructions have been issued to all the departments concerned on 22.4.2014 to the following effect:

“3. That vide the above mention instructions dated 22.4.2014 (R-1) all the concerned have been instructed as under:

1. That it is brought to your notice that all the instructions/circulars issued till date which are contrary to the statutory Rules in Departments should not be implemented.
2. That it should be brought to the notice of all the concerned officers/officials so that all the instructions/ circulars issued till date which are contrary to statutory Rules be withdrawn.
3. That in future, if any instruction/circular is to be issued that should be in accordance with the law.”

(12) Be that as it may, no doubt, the aforesaid two affidavits have been filed on behalf of the State, but still the fact remains that despite

180

I.L.R. PUNJAB AND HARYANA

2015(1)

specific judgment pertaining to the Education Department being there dealing with the issue that no promotion should be made on the basis of administrative instructions if the statutory rules do not provide for such a promotion, still the instructions were issued on 26.9.2001, 17.4.2003 and 2.5.2003. The same has not only resulted in creating avoidable litigation but shows conduct of the officer issuing instructions that he has no respect for the judgment of this court. The action of the officer concerned is *prima facie* contemptuous.

(13) Learned counsel for the State seeks time to apprise the court about the officer, who had approved issuance of these instructions so as to proceed against him in accordance with law.

(14) It is directed that in future, if any instructions are to be issued, the same shall be first got vetted from Law Department, which shall specifically deal with and mention in the instructions the provisions in the statutory Rules, vis-a-vis instructions.

(15) The cases be listed for the purpose on 1.5.2014.

---

***J.S. Mehndiratta***

***Before Ajay Tewari, J.***

**SUDESH KUMARI—Petitioner**

*versus*

**STATE OF HARYANA AND OTHERS—Respondents**

**CWP No. 4663 of 2011**

August 23, 2013

***Constitution of India, 1950 - Arts. 14 and 226 - Retiral benefits - DW CRA Scheme, 2005 - Petitioner appointed as Craft Teacher on 01.05.1976 at Panchayat Samiti, Karnal - Her service was regularized by order dated 13.05.1985 - State of Haryana started DW CRA Scheme on 2005 creating additional post of Gram Sevika in each Block - Petitioner and 45 other regular Craft Teachers were transferred to Development Department on ad hoc basis - Services of petitioner as Gram Sevika were not regularized on account of non-availability of record but services of some teachers junior to petitioner were regularized as Gram Sevikas - Petitioner retired on 31.01.2010 - Retiral benefits denied to petitioner on ground that her services as Gram Sevika had***