

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No.6090 of 2010

Date of decision: 30th March, 2011

Tilak Raj

... Petitioner

Versus

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RANJAN GOGOI, CHIEF JUSTICE
HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA**

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. R.K.Malik, Senior Advocate with
Mr. Jagbir Malik, Advocate for the petitioner.

Mr. Hawa Singh Hooda, Advocate General, Haryana with
Mr. Anil Rathee, Additional Advocate General, Haryana.

Mr. H.N. Mehtani, Advocate for respondent No.3.

Mr. Vikas Kuthiala, Advocate for respondent No.5.

RANJAN GOGOI, CJ (ORAL)

The specific challenge made in this writ petition is against the decision of the respondents, as evident from a press note dated 27.03.2010 (Annexure P-5), for extension of the services of guest teachers appointed on contract basis in various government schools of the State of Haryana. Such extension is proposed for a period of one further year with effect from 01.04.2011.

The facts that can be gathered from the pleadings made in the writ petition and the affidavits on record, particularly the affidavit dated 20.03.2011 filed by the Financial Commissioner and Principal Secretary to

the Government of Haryana, School Education Department (hereinafter referred to as, 'the departmental Secretary') and the supplementary affidavit dated 24.03.2011 filed by the same authority can be summarized as follows:

To tide over the huge shortage of teachers, at different levels, in the schools of Haryana, a policy decision was taken by the State on 17.12.2005 for appointment of guest teachers. In terms of the aforesaid policy, appointments were to be made, at the first instance, from retired teachers who belong to the same village. Such guest teachers were to be allocated limited duties by specifying the number of classes that they would be required to hold. Remuneration was to be paid to them, on the basis of classes held, at specified rates for each class or lecture. Under the policy dated 17.12.2005, guest teachers were to continue till the end of academic year i.e. 31.03.2006. The first batch of guest teachers came to be appointed on 21.12.2005. Apprehending termination of their services on expiry of the period stipulated in the policy guidelines dated 17.12.2005, a writ petition i.e. Civil Writ Petition No.2743 of 2006 was filed before this Court. By an order dated 20.03.2006, the said writ petition was disposed of by this Court by leaving it open to the State Government to expedite the process of regular recruitment and till such time that the same is completed, it was directed that the guest faculty should remain in place. In the aforesaid order dated 20.03.2006, the Court had also directed that the continuance of guest teachers is subject to the availability of work and, in case, the number of students in a school did not justify the continuance of guest teachers it will not be essential for the respondents to continue such engagements. However, it was made clear by the Court that the services of guest teachers shall not be dispensed with to accommodate other teachers by way of an adhoc or any other kind of temporary arrangement.

It appears that the engagement of more guest teachers and continuance of those already appointed was decided upon by the State for the next academic year also i.e. 2006-07 by memo dated 18.09.2006 (Annexure P-1). At this stage, what is to be noticed by the Court is the manner in which the guest teachers came to be engaged by the State and the proportion to which such engagements had extended. The position can be summarized by observing that no known or legally acceptable norms were fixed for appointment of guest teachers, whose entry into service was through means which can be termed to be, at the least, questionable. The number of guest teachers kept on swelling, possibly on the basis of needs of the time as perceived by the State. In recruiting the guest teachers, it also appears, that the basic eligibility norms in terms of educational qualifications and other related conditions were thrown to the wind. In this manner, guest teachers were continued to be appointed or those appointed were allowed to continue until a set of instructions came to be issued on 02.03.2009 (Annexure P-3), whereby engagement on contract basis for a period of one year on a consolidated salary was visualized. Some kind of legitimacy, therefore, was sought to be conferred by the State to the status of the guest teachers, which is further evident from an advertisement that came to be published contemplating grant of 24 extra marks to a guest teacher at the time of his selection for regular appointment. All these came to be challenged before this Court once again in a civil writ petition registered and numbered as CWP No.13045 of 2009. The said writ petition was answered by this Court by an order dated 06.04.2010 by which exemption from passing the School Teachers Eligibility Test (hereinafter referred to as, 'the STET') and grant of 24 extra marks was interfered with by this Court. The aforesaid order of this Court dated 06.04.2010 is now pending in appeal before the Hon'ble Apex Court, wherein an interim order has been passed to the effect that the exemption of guest teachers from

For Subsequent orders see COCP-2242-2011, COCP-2152-2011, RA-CW-166-2015 and 2 more.

passing the STET and grant of 24 extra marks will continue to hold the field and the guest teachers may participate in the process of regular recruitment that had been initiated in the meantime by having the benefit of the aforesaid two norms. However, it was directed by the Hon'ble Apex Court that the result of the selection shall not be finalized until further orders.

At this stage, notice must be had to three advertisements dated 18.06.2009, 13.08.2009 and 13.08.2009 inviting applications for 1503 posts of guest lecturers; 2956 posts of masters and 9647 posts of JBT teachers. It is to the aforesaid selections that the order of the Hon'ble Apex Court passed in the appeal referred to above would have application. The advertisements in question, in the meantime, have been brought to their logical end and except the selection process for the posts of guest lecturers, the other two processes have been finalized resulting in appointment of 1765 number of masters and 8405 number of JBT teachers.

Notwithstanding the aforesaid regular appointments made, a large number of guest teachers still continue to work in the said capacity and there was a further need for teachers. The State, therefore, contemplated continuance of the remaining guest teachers and for appointment of more guest teachers. This was to operate for the academic year beginning on 01.04.2011. Enraged by the said decision of the State and contending that when a large number of qualified persons are available in the open market there is no justification for continuance or further appointment of guest teachers, this Public Interest Litigation has been filed seeking the directions already noticed.

Confronted with a situation where the Court was called upon to balance the need for education by ensuring availability of sufficient number of teachers to run and man all the schools and at the same time to ensure transparency in the appointments in public posts, the Court had required certain specific information, detailed in its earlier order dated 21.03.2011, to

be laid before it. Pursuant thereto, the affidavit dated 20.03.2011 of the departmental Secretary had been filed. In the aforesaid affidavit, it has been stated that even if 14126 vacancies pursuant to the selections already held (in terms of advertisements dated 18.06.2009 and 13.08.2009) are to be filled up, the number of posts held by the guest teachers in various streams will be 15405. Out of the aforesaid 15405 guest teachers, 10152 were eligible at the time of their initial engagement. By the expression "initial engagement" what the State wanted to convey is that all such guest teachers had not passed the STET, which fact should be overlooked as the STET was introduced by a notification dated 17.04.2008 i.e. after the appointments of guest teachers were made. Of the remaining guest lecturers, masters, Classical & Vernacular (C&V) teachers and Junior Basic Teachers (JBT), in the affidavit filed, it was mentioned that 71, 277, 160 and 4745 (total 5253) teachers were not qualified. The lack of qualification of the JBT teachers, it was explained, was on account of their having a BA/B.Ed. degree whereas the requirement is Matriculation and a Diploma in School Education. It was further stated in the aforesaid affidavit that if the aforesaid 5253 guest teachers were to be refused an extension beyond 31.03.2011, in addition to the 10152 eligible teachers there would be a further requirement of 9674 teachers. If however, the JBT teachers numbering 4745 are to be given an extension beyond 31.03.2011, the actual requirement would come down to that extent i.e. $9674 - 4745 = 4929$. The aforesaid affidavit having been considered by the Court, a further question arose with regard to the precise stand that the State wanted to take in respect of the ineligible guest teachers of different categories numbering 5253. To answer to the aforesaid issue and the further connected issue, namely, how long the process of regular recruitment, if initiated, would take, the same officer i.e. the departmental Secretary had filed a further affidavit dated 24.03.2011.

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The affidavit dated 24.03.2011 discloses that as the JBT teachers are really “overqualified” (Graduates with B.Ed. against the requirement of Matriculation with Diploma in School Education), the State is inclined to continue their appointments beyond 31.03.2011 and at the same time take steps to fill up all vacant posts on a regular basis. It has been explained to the Court that the STET introduced with effect from April 2008 is now to assume the form of a Teachers Eligibility Test (hereinafter referred to as, ‘the TET’) as a result of implementation of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as, ‘the Right to Education Act’). The requirement of holding such a test has been introduced by the National Council for Teacher Education. All prospective teachers will have to clear the aforesaid TET and only thereafter they would be eligible to submit applications for regular appointment. Until the TET is conducted by the State and the result thereof is declared, no regular appointment can be made.

At the resumed hearing of the matter yesterday i.e. 29.03.2011, taking into account the aforesaid facts stated in the two affidavits of the departmental Secretary, the Court had desired to note what would be the possible timeframe within which the TET and, thereafter, the process of regular selection can be finalized by the State. Pursuant to the aforesaid query made by the Court, Mr.Hawa Singh Hooda, the learned Advocate General of the State had prayed for a brief adjournment and at the resumed hearing on the same day, i.e. yesterday, he placed before the Court a tentative schedule for holding the TET and a schedule for simultaneous direct recruitment of teachers on a regular basis against available vacancies and such additional vacancies that may now be required to be filled up in view of the provisions of the Right to Education Act. The aforesaid two schedules may be extracted hereinbelow:

For Subsequent orders see COCP-2242-2011, COCP-2152-2011, RA-CW-166-2015 and 2 more.

Tentative S.T.E.T. Schedule of Examination

(A) Pre-Examination:

Sr. No.	Activity to perform	Execution Dates
1.	Approval of prospectus from Govt.	By 7.4.2011
2.	To select the agencies either by inviting short tenders or collection of sealed rates through authorized committee, for printing of prospectus and OMR application forms	By 4.4.2011
3.	Printing and supply of prospectus/envelopes & OMR applications at Board's H.Q. Expected application can be 2.50 lacs.	6.4.2011 to 26.4.2011
4.	Sale of prospectus and collection of applications through DCC's or other authorized source.	15.4.2011 to 2.5.2011
5.	Collection of applications category-wise & preparation of batches after every 3 rd day and supply to agency for processing. Envelopes are to be opened by agency.	20.4.2011 to 5.5.2011
6.	Finalization of building for centers after inspection & getting approval.	6.4.2011 to 25.4.2011
7.	Applications delivery to agency for processing.	22.4.2011 to 9.5.2011
8.	Data checking, corrections, editing and cropping of images i.e. photo, sign, address.	13.5.2011 to 25.5.2011
9.	Allotment of centers & Roll numbers.	23.5.2011
10.	Center-wise question paper packing reports.	23.5.2011
11.	Printing of answer sheets (OMR) with barcodes aprox. 5.0 lacs in quantity.	Parallel process 10.5.2011 to 31.5.2011
12.	Printing of question papers with answer sheet clubbed with question paper packet and center-wise packing.	Parallel process 20.5.2011 to 10.6.2011
13.	Supply of Admit Cards and signature chart center-wise to Board's office.	3.6.2011
14.	Dispatch of admit cards.	6.6.2011 to 9.6.2011
15.	Downloading of admit cards from Board's website.	From 13.6.2011
16.	Date of examination for Elementary Teachers (for class 1-5).	25.6.2011 Saturday
17.	Date of examination for Masters	26.6.2011 Sunday
18.	Date of examination for Elementary Teachers (for class 6-8).	27.6.2011 Saturday
19.	Date of examination for Lectures.	28.6.2011 Sunday

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(B) Post-Examination:

1.	Collection of answer sheets after examination	At night on day of examination
2.	ICR scanning of answer sheets and cropping of & sign by agency.	29.6.2011 to 10.7.2011 (all categories)
3.	OMR scanning of answer sheets by two different agencies.	Parallel process 1.7.2011 to 15.7.2011
4.	Collection of scanned data to identify errors and subsequent editing to prepare result.	17.7.2011
5.	Rectification of errors if any.	18.7.2011 to 21.7.2011
6.	Compilation of result/declaration of result.	23/25.7.2011
7.	Printing of certificates	25.7.2011 to 28.7.2011
8.	Dispatch of certificates	28.7.2011 to 30.7.2011

Notes:

1. Subject-wise printing of question papers and center-wise packing can start only after finalization of database.
2. Haryana Open School and D.Ed. examinations will start in the last week of April and will continue till second week of May.
3. Results of Secondary and Senior Secondary Examinations are scheduled to be processed and declared during this time. Therefore, staff of the Board will be busy in the process of declaring results and preparing various reports in this regard and will not be available if STET is to be conducted in these days.

Requisition Schedule for recruitment

The department has to undertake the following processes before finalizing the requisitions for recruitment:

- a) Rationalization of teachers i.e. adjustment of teachers according to workloads.
- b) Assess the impact of RTE 2009 on the total requirement of teachers.
- c) Effecting transfers as per Departmental Transfer Policy.

It is envisaged that the above processes shall be completed by 31st of May 2011. The department shall then place requisitions with

the recruiting agencies and urge the agencies to complete their recruitment process by 31st December 2011 so that the newly appointed teachers can be trained and put in place by the start of academic session i.e. 1st of April 2012.

Category	Date by which requisition shall be sent	Timeframe for finalization of recruitments by recruiting agency
JBT/ Masters/ Lectures	By 30 th June 2011	By 31 st December 2011

Learned counsel for the PIL petitioner is correct in his submissions that the guest teachers are backdoor entrants and the State has been virtually encouraging an unacceptable practice. The norms for appointment of guest teachers, as originally set out by the policy guidelines dated 17.12.2005, were thrown to the winds at the time of recruitment. Instead a process of handpicking candidates for appointment had been resorted to. Slowly but steadily vested rights, though limited, had been conferred by making such engagements on contract basis for a fixed duration against a consolidated pay. Such actions of the State amount to perpetuation of an illegality which cannot be permitted on the touchstone of Articles 14 and 16 of the Constitution of India. Learned counsel has also pointed out that a large number of eligible persons (more than 51000) are waiting for regular appointment, which is being delayed by the State. Therefore, according to the learned counsel for the petitioner, any further extension of the tenure of the guest teachers or their fresh appointment should be interdicted by the Court. An apprehension has also been expressed that many of the eligible candidates, by the time the regular recruitment process is put in place, will become overaged to seek employment under the State.

On the other hand, the learned Advocate General, Haryana, has pointed out that in the months of June and August, 2009 a process for

filling up over 14000 vacancies has been initiated and in the month of December 2010/January 2011, 8405 number of JBT teachers have been appointed whereas in the month of February 2011 nearly 3000 masters have been appointed. The recruitment for lecturers is at the final stages and would be completed soon. Learned Advocate General has, therefore, urged that it cannot be said that the State is unmindful of the situation. Mr.Hooda has further urged that any discontinuance or termination of the guest teachers at this stage will have an adverse effect on the functioning of the schools. It is also submitted that in view of the Schedule for holding the TET and the regular process of selection, as laid before the Court, the State should be permitted to continue with the existing guest teachers until completion of the requisite tests and the regular recruitment process, which, in any case, the State is committed to bring to an end by the end of the next academic year i.e. 31.03.2012.

The task before the Court, undoubtedly, is one of the striking the right balance between the need for education and the need for upholding the fundamental rights of a large section of the citizens under Articles 14 and 16 of the Constitution of India. Besides, the Court has to ensure that appointments in public posts are made on the basis of legally settled norms. The extent to which regular posts are now being held by the guest teachers has already been noticed. The number, indeed, is very high, i.e. 15405. Even that huge number may not be sufficient as the affidavits of the departmental Secretary would indicate. There is an immediate need of about 5000 teachers in addition to the guest teachers already in place. In the future, for due implementation of the Right to Education Act, the number may increase. In such a situation, we are of the view that any dispensation of the services of the guest teachers, at this stage, would have a deleterious effect on the running of the schools. In fact, the possibility of many such schools being forced to close down cannot be ruled out. Such a

consequence would not be in the interest of anybody, least of all, the students of the schools.

At the same time, the Court cannot overlook the manner in which the guest teachers have entered service; how they have continued and how a large number of eligible persons are still waiting for regular appointment. The State, during the long years that have elapsed from 2005, ought to have taken timely steps to resolve the situation. Such actions have not been forthcoming. However, what is needed at this hour is to find out ways and means so as to ensure that the cause of education does not suffer and at the same time unacceptable practices are discontinued and the rights of the citizens are assured.

The Schedules that have been laid before the Court by the learned Advocate General Haryana with regard to the different phases of the TET and the simultaneous process of regular recruitment could be a satisfactory option. Perusing the aforesaid two Schedules, we have noticed that the same have been prepared with meticulous care. The rights of the different rival groups and the competing interests that have surfaced in the case can be adequately taken care of by a strict adherence to the aforesaid Schedules. We are, therefore, of the view that this PIL should now be disposed of in terms of the directions indicated below:

- (1) While it will be open to the State to extend the tenure of the guest teachers, at all levels, such extensions shall not be beyond 31.03.2012. In fact, on the expiry of the said date i.e. 31.03.2012, the services of all the guest teachers shall be understood to have lapsed in terms of the present order and it will not be open for the State to continue any such guest teacher in service;
- (2) There will be no further appointment of guest teachers during the next academic year starting from 01.04.2011 and the

shortfall, if any, in the number of teachers will have to be met with by the State by undertaking a precise and accurate exercise of posting and re-posting of teachers according to the needs of each school.

- (3) The Schedule for holding the TET examination laid before the Court, which has been extracted in the present order, shall be strictly adhered to without any deviations and any departure from the said Schedule which has the effect of compromising the terms of the present directions will be viewed by the Court as an action liable to be dealt with in the exercise of its contempt jurisdiction;
- (4) The Schedule for holding the regular selections laid before the Court and incorporated in the present order will also be similarly adhered to and any deviations therefrom will be viewed in a similar manner;
- (5) The timeframe mentioned in the above Schedules shall be construed to be the outer limits of the time allowed by this order and it will always be open for the State to complete the process on dates earlier than those indicated in the aforesaid time schedule.

Having dealt with the issues arising in the writ petition in the above manner, we are of the view that no further orders will be called for at this stage. We, therefore, dispose of the PIL in the above terms.

(RANJAN GOGOI)
CHIEF JUSTICE

(KANWALJIT SINGH AHLUWALIA)
JUDGE

March 30, 2011
rps