

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Mahabir Singh Sindhu.

ARVINDER SINGH and others - Petitioners,

Versus

STATE OF PUNJAB and others - Respondents.

CWP Nos. 14169-2016 and other connected cases

Service matter - Change of advertisement conditions after 5 years - Game had already started; the respondents changed the rules of game in midway; but that was not permissible in law - Department of School Education Government Policy - Advertisement invited for selection to the posts in question on contract basis initially for a period of three years, with a rider that in case the work & conduct of the applicant(s) is found to be satisfactory, then he or she may be considered for regular appointment - Despite this factual position, the respondents did not finalize the selection for 05 (five) years - Thus, it seems that respondents were not taking the selection process seriously; rather they forgot the same - Ultimately, after consuming half a decade, respondents abruptly issued the impugned public notice dated 30.06.2016, thereby imposing a condition of passing written test for becoming eligible to the post(s) in question without any valid justification - While issuing the impugned public notice inserted altogether a new condition of passing the written test with minimum 50% marks (relaxable of 5% for reserved category), which was never intended at the time of issuing the advertisement - As a result thereof, this Court is of the opinion that neither under the *regula regulans*; nor as per the dicta laid down in *K.Manjusree v. State of Andhra Pradesh* (2008) 3 SCC 512 not empowered to change the selection criteria.

[Para 12]

Held, the selection criteria given in the advertisement clearly stipulates that “weightage of higher qualification shall be given in concerned subject” to the candidates. Thus, there remains no doubt that as per initial criteria mentioned in the advertisement, selection for the posts in question was to be made while granting weightage to the candidates who were fulfilling the minimum eligibility condition on the basis of higher qualification(s). The respondents while issuing the impugned public notice inserted altogether a new condition of passing the written test with minimum 50% marks (relaxable of 5% for reserved category), which was never intended at the time of issuing the advertisement. As a result thereof, this Court is of the opinion that neither under the *regula regulans*; nor as per the dicta laid down by Hon’ble Supreme Court in *Manjusree’s case* (supra), the respondents were legally empowered to change the selection criteria at such a belated stage. . [Para 12]

Held further, In view of the above discussion, there remains no doubt that the game had already started; the respondents changed the rules of game in midway; but that was not permissible in law. Since the recourse taken by the respondents is found to be legally impermissible, therefore, their action amounts to negation of the rule of law. As a result thereof, there is no option except to allow the writ petition(s). Consequently, the writ petitions are allowed; the impugned public notice dated 30.06.2016 is hereby quashed and set aside. [Para 13]

Cases referred to:-

1. (2001)10 SCC 51, *Maharashtra State Road Transport Corpn. v. Rajendra Bhimrao*.
2. (2013)4 SCC 540, *Tej Prakash Pathak v. Rajasthan High Court*.
3. (2005)2 SCC 673, *Central Board of Dawoodi Bohra Community v. State of Maharashtra*.

Mr. Rajiv Atma Ram, Sr. Advocate assisted by Mr. Arjun Pratap Atma Ram, for the petitioner No.1 in CWP-14486-2016. Mr. Puneet Jindal, Sr. Advocate assisted by Mr. Kunal Mittal, for the petitioners in CWP-14334-2016. Ms. Alka Chatrath, for the petitioner(s) in CWP-5129-2018. Mr. Sunny Singla, for the petitioner(s) in CWP-14169-2016 & 18523-2021. Mr. Neeraj Yadav, for Mr. Raj Karan Singh Verka, for the petitioner(s) in CWP-6892-2021.

None for the remaining petitioner(s) in CWP-14486-2016. None for the petitioner(s) in CWP-1246-2018. Ms. Harsimrat Rai, DAG, Punjab for the respondent(s). Mr. K.L. Singla, for respondent No.3 in CWP-14486-2016.

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Mahabir Singh Sindhu, J. - (23rd December, 2021) - Above 07 (seven) writ petitions have been filed under Article 226 of the Constitution, inter-alia for quashing the impugned public notice dated 30.06.2016; vide which respondents imposed a condition to pass written test with minimum 50% marks (relaxable to 5% for reserved category) for selection to the posts of 646 Physical Training Instructors (for short, PTIs), initially on contract basis for a period of 03 (three) years.

2. Since challenge in all the writ petitions is to the notice dated 30.06.2016, therefore, same are being disposed off by this common order.
3. Although writ petitions are shown in *seriatim*, but with consent of parties and for convenience of all concerned, facts are noticed from CWP No.14486 of 2016-*Gurlabh Singh & Ors. v. State of Punjab and ors.*
4. The Department of School Education, Government of Punjab issued an advertisement dated 07.05.2011, for filling up various posts viz. 25 Lecturers Physical Education; 645 DPEs (Master Cadre) as well as 646 posts of PTIs and relevant part of which reads as under:-

“PUNJAB GOVERNMENT

SCHOOL EDUCATION DEPARTMENT

Recruitment for appointment of School Teachers on Contract basis.

Eligible candidates are being invited to apply online on prescribed proforma available on <http://recruitment.cdacmohali.in> from dated 09.05.2011 to 30.05.2011 till 05.00 p.m. personally or through Service Centers for the vacant posts in Education Department, Punjab, as under:-

Description of Posts- Teaching Cadre:

1. Name of Post : Salary payable	Basic Qualifications	Lecturer Physical Education/Number of Posts-25 Initial salary of Rs. 16,290/- lump sum shall be paid in the scale of Rs.10300-34800+4200 grade pay. Master of Physical Education
2. Name of Post : Salary payable	Basic Qualifications	DPE(Master Cadre)/ Number of Posts-645 Initial salary of Rs.14,430/- lump sum shall be paid in the pay scale of Rs.10300-34800+3600 grade pay. In addition to Graduation from a recognized University must have passed Advance Physical Education Training Course Degree or Diploma.
3. Name of Post : Salary payable	Basic Qualifications	Name of Post: P.T.I./ Number of Posts-646. Initial salary of Rs.13,500/- lump sum shall be paid in the pay scale of Rs.10300-34800+3200 grade pay. Must have passed 10+2 and Diploma in C.P.Ed. from any recognized institute

COMMON ELIGIBILITY TEST:

For above posts applicants must have passed T.E.T. Test under R.T.E. Act as per N.C.T.E. Guidelines.

SELECTION CRITERIA:

As per criteria, weightage of higher qualification shall be given in concerned subject only.

The schedule of Counselling for concerned categories will be uploaded on the Website <http://recruitment.cdacmohali.in>.

GENERAL CONDITIONS:

1.
2. These appointments for all categories will be on contract basis on payment of lump sum salary, initially for a period of three years. In case the work and conduct of applicant is found satisfactory, then he/she will be considered for regular appointment.

3. to 13.

14. Joint merit list will be prepared for male and female applicants. 15. Preference shall be given to applicants who have attained educational qualifications on regular basis.

16.

HOW TO FILL UP THE ON-LINE APPLICATIONS:

1 to 4.....

5. Those candidates, who will be called for Counselling after the initial scrutiny, their information will be uploaded after 10.00 a.m. on the Website:

<http://recruitment.cdacmohali.in>. Vide this process, their original Certificates will be checked. In this regard, date and place of Counselling will be informed through Punjabi, Hindi and English newspapers.”

5. Later on, after making some changes in terms and conditions, respondents issued a public notice dated 24.01.2014, thereby inviting fresh applications for above two segments i.e. 25 posts of Lecturer Physical Education and 645 DPE (Master Cadre), but restricted the cut-off date for acquisition of requisite qualification as on 30.05.2011.

Aggrieved against above action, some aspirants filed CWP-10727-2014 titled as *Suresh Kumar & others v. State of Punjab and another* and other connected matters and which were allowed on 26.02.2015, with the following observations:-

“To the mind of this Court, this process can be termed to be *de novo* and cannot by any stretch of imagination be termed as in continuation of earlier process of 07.05.2011. Had it been so, then the persons, who had applied earlier would not have been required to apply afresh and their amounts against the processing fees also did not warrant any return.

Evidently the intention of the respondents was to do fresh selection process, which they undertook in 2014 and if that is so pegging the date of acquisition of qualification of date on 30.05.2011 would be clearly arbitrary as it would effect all eligible candidates, who have acquired the qualification upto 2014 when the public notice Annexure P-2 was given out. The respondents by placing an interpretation of the process being a continuation of 2011 public notice would oust the incumbents who acquired the qualification subsequently after 2011, which in the opinion of this Court is not permissible in law.

Consequently, the writ petitions are accepted and the respondents are directed to initiate the fresh process of selection by inserting a public notice and taking into consideration the eligible candidates, who have acquired the qualification upto the date which is close approximately to the intended public notice. The aforesaid observation would result in cancellation of entire process so far undertaken by the respondents.”

In compliance of above order, the ongoing selection process for 25 posts of Lecturer Physical Education as well as 645 DPE (Master Cadre) was cancelled by respondents vide public notice dated 05.05.2015. Even as on today, parties are not aware as to whether the

selection for above two segments has been finalized or not?

It is necessary to mention here that selection process for 646 posts of PTIs was not the part of public notice dated 24.01.2014; nor it had been subject matter of challenge in CWP No. 10727 of 2014 and other connected case(s).

6. After consuming a period of 05 (five) years, the respondents issued present impugned public notice dated 30.06.2016, whereby it was decided that applicant(s) will have to appear in written test of 200 marks and the candidate(s) obtaining 50% marks will be eligible (relaxable 5% to reserved category). For reference, public notice dated 30.06.2016 is reproduced hereunder:-

“OFFICE OF DIRECTOR, EDUCATION RECRUITMENT

DIRECTORATE, PUNJAB

Government Model Sr. Sec. School, Phase 3/B-1, SAS Nagar

Website (www.educationrecruitmentboard.com)

PUBLIC NOTICE

Punjab Government School Education Department published advertisement in different newspapers for recruitment to the posts of PTI Teachers inviting on-line applications on <http://recruitment.cdacmohali.in> from 09.05.2011 to 30.05.2011 till 05:00 P.M. The applicants will have to appear in written test of 200 marks (Aptitude100 marks and Subjectwise-100 marks). The candidates obtaining 50% marks will be eligible and relaxation of 5% marks will be given to reserved category candidates. The level of aptitude test would be equal to 12th class and related subject shall have the level of C.P.Ed. The syllabus for the written test has been uploaded on the web-site of the department on www.educationrecruitmentboard.com. The written test will be taken as per the following schedule:-

Subject	Date	Session	Time	Duration
P.T.I.	29.07.2016	Evening	2.30 p.m. to 5.50 p.m.	3 Hours 20 Minutes.

The related candidates are informed to download their admit cards from the official website of the Department www.educationrecruitmentboard.com for the written test.

Sd/-

Director Education Recruitment Directorate,
Punjab”

Aggrieved against the above action of the respondents, these writ petition(s) have been filed.

7. CONTENTIONS:

On behalf of petitioners:

The advertisement was issued on 07.05.2011. All the petitioners being duly eligible for the posts in question applied well in time. As per criteria mentioned in the advertisement, selection was to be made on the basis of educational qualification after granting weightage of higher qualification to the candidate(s). Respondent No.3 -CDAC, who was to process the data for generation of result for selection, duly prepared the merit list on the basis of criteria mentioned in the advertisement and handed over the same to concerned quarter along with complete records. After a period of more than 05 (five) years, respondents while issuing the impugned public notice, changed the selection criteria and introduced altogether a new condition for passing the written test with 50% marks (relaxable to 5% for reserved category), which was not permissible in law.

BY RESPONDENTS:

Learned state counsel submitted that impugned public notice for conducting written test has been issued in continuation of the initial criteria given in the advertisement. She further submitted that written test has been introduced to get better candidates who would be more meritorious and the only fear of the petitioners is that they will have to face competition for the on-going selection process. Learned counsel for respondent No.3 did not dispute the factum of data of applicant(s) generated and uploaded on their website.

8. Heard both sides and perused the paper-book.

9. To decide the matter in controversy, sole point for consideration of this court, would be as under:-

“Whether in view of the facts and circumstances of the present case, the impugned public notice dated 30.06.2016 thereby introducing the condition of passing written test for selection of 646 posts of PTIs is legally sustainable?”

10. *Legal precedents*:- The Hon’ble Supreme Court in, *Maharashtra State Road Transport Corpn. and others v. Rajendra Bhimrao Mandve and ors.*¹ (2001) 10 SCC 51(para-5) inter-alia held that

“It has been repeatedly held by this Court that the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced.”

Again in *K.Manjusree v. State of Andhra Pradesh* (2008) 3 SCC 512, the Hon’ble Supreme Court after considering case law on the point, in paras 32 & 33 thereof, held as under:-

“32. In *Maharashtra SRTC v. Rajendra Bhimrao Mandve*, this Court observed that “the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced”. In

this case the position is much more serious. Here, not only the rules of the game were changed, but they were changed after the game had been played and the results of the game were being awaited. That is unacceptable and impermissible.

33. The Resolution dated 30.11.2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee wants to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the Selection Committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview."

In view of the above, it can be safely concluded that once the selection process has commenced, the criteria cannot be altered by the authorities concerned; until and unless there is some enabling provision under the relevant rules to that effect.

11. In the present case, applications were invited by respondents vide advertisement dated 07.05.2011 for selection to the posts in question on contract basis initially for a period of three years, with a rider that in case the work & conduct of the applicant(s) is found to be satisfactory, then he or she may be considered for regular appointment.

As per official records, against 646 posts of PTIs, total 5303 applications were received by the respondents. It is specifically averred by petitioners in para 4 of the writ petition that after due verification of the applications, their names were uploaded on the website by respondent No.3. The above factual aspect of the matter has not been controverted by respondents No.1 & 2 in their reply. Even during the course of arguments also, learned State counsel was not able to deny this fact; rather the same is duly established from the tabulation (P-3). Still further, learned counsel for respondent No.3 also did not dispute the factual assertion to that extent.

12. Admittedly, as per advertisement, the post(s) in question are to be filled up on contract basis initially for a period of 03 (three) years and the selected candidates would be entitled for salary on lump sum basis. Despite this factual position, the respondents did not finalize the selection for 05 (five) years. Thus, it seems that respondents were not taking the selection process seriously; rather they forgot the same. Ultimately, after consuming half a decade, respondents abruptly issued the impugned public notice dated 30.06.2016, thereby

imposing a condition of passing written test for becoming eligible to the post(s) in question without any valid justification.

On repeated asking, learned State counsel was not able to show any enabling provision under the Service Rules for taking such a recourse; nor she could produce any legal precedent to that effect. Although, learned state counsel tried to justify their action that impugned public notice has been issued in continuation of the criteria already specified; but from perusal of the advertisement, it is nowhere discernable that there was any such indication in this regard. On the contrary, the selection criteria given in the advertisement clearly stipulates that “weightage of higher qualification shall be given in concerned subject” to the candidates. Thus, there remains no doubt that as per initial criteria mentioned in the advertisement, selection for the posts in question was to be made while granting weightage to the candidates who were fulfilling the minimum eligibility condition on the basis of higher qualification(s). The respondents while issuing the impugned public notice inserted altogether a new condition of passing the written test with minimum 50% marks (relaxable of 5% for reserved category), which was never intended at the time of issuing the advertisement. As a result thereof, this Court is of the opinion that neither under the *regula regulans*; nor as per the dicta laid down by Hon’ble Supreme Court in *Manjusree’s case* (supra), the respondents were legally empowered to change the selection criteria at such a belated stage.

13. Also necessary to mention here that Hon’ble Supreme Court in *Tej Prakash Pathak v. Rajasthan High Court and others*² (2013) 4 SCC 540 after noticing earlier Division Bench judgment (*Subash Chander Marwaha’s case* (1974) 3 SCC 220) referred the matter to larger Bench, while observing as under:-

“14. Unfortunately, the decision in *Subash Chander Marwaha* does not appear to have been brought to the notice of Their Lordships in *Manjusree*. This Court in *Manjusree* relied upon *P.K. Ramachandra Iyer v. Union of India, Umesh Chandra Shukla v. Union of India and Durgacharan Misra v. State of Orissa*. In none of the cases, was the decision in *Subash Chander Marwaha* considered.

15. No doubt it is a salutary principle not to permit the State or its instrumentalities to tinker with the “rules of the game” insofar as the prescription of eligibility criteria is concerned as was done in *C. Channabasaviah v. State of Mysore*, etc. in order to avoid manipulation of the recruitment process and its results. Whether such a principle should be applied in the context of the “rules of the game” stipulating the procedure for selection more particularly when the change sought is to impose a more rigorous scrutiny for selection requires an authoritative pronouncement of a larger Bench of this Court. We, therefore, order that the matter be placed before the Hon’ble Chief Justice of India for appropriate orders in this regard”.

However, the reference made in *Tej Prakash Pathak’s case* (supra) is still pending before Hon’ble Supreme Court.

Since the judgment in *Manjusree’s case* (supra) was rendered by a bench of 03 Hon’ble

Judges; whereas *Subash Chander Marwaha's* case (supra) is a division bench judgment, thus, as on today, Manjusree's case is holding the field. A fortiori, reference in this regard can be made to *Central Board of Dawoodi Bohra Community and another v. State of Maharashtra and another*³ (2005) 2 SCC 673, wherein it was held by Hon'ble Supreme Court that "The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength."

In view of the above discussion, there remains no doubt that the game had already started; the respondents changed the rules of game in midway; but that was not permissible in law. Since the recourse taken by the respondents is found to be legally impermissible, therefore, their action amounts to negation of the rule of law. As a result thereof, there is no option except to allow the writ petition(s). Consequently, the writ petitions are allowed; the impugned public notice dated 30.06.2016 is hereby quashed and set aside.

14. Before parting with this order, it is quite baffling to note that respondents while issuing the advertisement dated 07.05.2011 restricted the applicants only from the State of Punjab as is clear from clause 1 of general conditions of the advertisement, which reads as under:-

"1. The applicant must be permanent resident of Punjab."

On the face of it, the above interdict is running dehors the mandate of article 16 of the Constitution, yet the State authorities preferred to incorporate the embargo against seeking public employment on the basis of residence for the reasons best known to them. Since no one has come forward to challenge the above clause, therefore, this aspect of the matter is left to be examined by the Chief Secretary, Government of Punjab, for taking the same to logical end and he shall submit his report to this court within 03 (three) months, positively, after the receipt of certified copy of this order. Photocopy of this order be placed on the file(s) of other connected cases. Pending application(s), if any, shall also stand disposed off. Copy of this order be sent to the Chief Secretary, Government of Punjab, for information and necessary action.

R.M.S.

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Petition disposed of.