

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

Date of Decision: August 05, 2011

Naresh Kumar

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

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

Present: Ms.Anu Chatrath, Advocate,
for the petitioner.

Mr.Sunil Nehra, Sr.DAG, Haryana,
for the State.

RANJIT SINGH, J.

This order will dispose of Civil Writ Petition Nos. 4587, 4606, 4613, 4623, 4636, 4676, 4700, 4764, 4750, 4790, 4834,,4927,5044, 5047, 5130, 5144, 5149, 5157, 5161, 5278, 5283, 5306, 5335, 5389, 5428, 5436, 5490, 5503, 5530, 5533, 5582, 5614, 5639, 5647, 5655, 5668, 5676, 5677, 5711, 5722, 5855, 5859, 5861, 5863, 5869, 5877, 5882, 6023, 6024, 6103, 6111, 6191, 6355, 6388, 6612, 6614, 6616, 6648, 6866, 6982, 7055, 7062,7063, 7138, 7141, 7157, 7257, 7494, 7662, 7696, 7767, 7813, 8110,8115, 8120,8203, 8498, 8561, 8567, 8570, 8701, 8638, 8726, 8730, 8798,8911, 9028,

9030, 9040, 9064, 9065, 9068, 9075, 9078, 9085, 9099, 9122, 9151, 9157, 9185, 9188, 9204, 9210 , 9218, 9219, 9220,9221, 9251, 9273, 9294, 10971, 10975, 10976, 11006, 11277 and 11278 of 2011,

Despite comprehensive directions issued by 1st Division Bench of this Court concerning the Guest Teachers appointed by the State of Haryana, the problems still continue to haunt this Court. Number of writ petitions came up for hearing before this Court even subsequently, when some of the Guest Teachers were sought to be terminated or were terminated. Referring to a statement given by the Advocate General of the State, before the 1st Division Bench, the counsel appearing in those subsequent writ petitions had pleaded that they should be allowed to continue till alternative arrangement is made or at any date, till the next academic session, i.e., upto 31.3.2012. Though the present set of nearly 116 Guest Teachers have again approached this Court, impugning the show cause notices issued to them for their termination mainly on the ground that they were not fully qualified at the time of their respective appointments. Some of the petitioners, in this bunch, have been served with a show cause notice on the ground that their appointment was made by ignoring the ban imposed on such employment. All these writ petitions have been heard together and are being disposed of through this common order as the cause espoused in these petitions being similar/common. For the ease of discussion and order, the facts have been taken from Civil Writ Petition No.4587 of 2011.

The petitioner in this case was appointed as S.S. Master (Guest Teacher). He has now been served a show cause notice

dated 26.2.2011 by Head Master-respondent No.4. In all these cases, the petitioners have approached only against the show cause notices. However, it is being made out that show cause notice is a mere formality and in fact, termination would follow as a matter of routine. In majority of these cases, the grounds on which the services of such petitioners are sought to be terminated is that subject combination at graduate level as required for the post of S.S.Master or the other respective subjects at the time of their initial appointment was contrary to the one laid down by the Director, Secondary Education, Haryana, in letter dated 11.2.2001. The plea of the petitioners in all these cases is that this show cause notice suffers from non-application of mind inasmuch as that such notices could have been issued only to those teachers who may be suffering any deficiency on the date of issue of this notice they cannot be terminated on this ground at this belated stage as they have acquired the requisite qualification by now. It is submitted that all such teachers have now varying experience of nearly 4 years or so and sending them out of services on the basis that they did not have the requisite qualification at the time of their appointment would be unfair. The petitioner has prayed for stay of the operation of the show cause notice and for maintaining the status-quo.

In all these writ petitions, notice of motion was issued and status-quo with regard to service of the petitioners was ordered to be maintained in the meantime. These writ petitions, thus, have come up for hearing.

The pleadings are not complete in all the cases but in some of the cases the State has filed reply. Since the facts in each

case would not require elaborate consideration and the issue is common, there is hardly any need to complete the pleadings and all these writ petitions, in my view, can be disposed of at this stage as common question of law is same/similar/ identical.

The first hurdle that the petitioners in these cases would face is about the maintainability of writ petitions against issuance of show cause notice. Concededly, all these petitioners have invoked the jurisdiction of this Court against the issuance of a show cause notice and final order is yet to follow. The counsel appearing for the parties did not raise any serious dispute on this aspect of law about the maintainability of the writ petitions against show cause notice.

Mr.Nehra in this regard has pressed into service judgment in the case of **The Special Director and another Vs. Mohd.Ghulam Ghouse and another 2004 (1) JT 206**. The Hon'ble Supreme Court has clearly observed in this case that writ against show cause notice for initiating departmental proceedings is not to be entertained unless the court is satisfied that the same is totally nonest in the eye of law for absolute want of jurisdiction of the authority to even investigate into the facts. The court has further observed that even if the question of jurisdiction has been raised, the writ court should not interfere and deprive the authority of its statutory power to adjudicate by grant of such interim relief to which the petitioner may not be entitled to even on merits.

This position that writ petition generally is not maintainable against show cause notice, by now, is reasonably settled. It has been viewed that where threat of prejudicial action is wholly without jurisdiction, a person may not be asked to wait for an

injury to be caused to him before seeking the court's protection. Apparently, the case pleaded before me is not that the notices issued to the petitioners in all these cases suffer from any want of jurisdiction. The writ petition at this stage may not be maintainable. Still, the pleas raised by the petitioners have been considered as all such petitioners have worked with the respondent-Department for considerable period of time and this Court has interfered in some of the cases to protect them till the next academic session.

While disposing of Civil Writ Petition No.6092 of 2011 (Satyawati Vs. State of Haryana), the order passed by the 1st Division Bench in **CWP No.6090 of 2010(Tilak Raj Vs. State of Haryana & others), decided on 30.3.2011**, has been noticed. Action to dispense with the services of Guest Teachers, numbering over 5000, has been protected upto 31.3.2012 by virtue of order passed in **Tilak Raj's case (supra)**. This order was passed on the basis of statement made by learned Advocate General that discontinuation/termination of a Guest Teacher may have adverse affect on the functioning of the schools. 1st Division Bench had laid down the schedule for holding T.E.T and other regular process of selection. The Advocate General had stated before the Court that the State should be permitted to continue with the existing Guest Teachers until completion of the requisite test and regular recruitment process is completed. It was stated before the Court that the process of selection will end by the end of academic year, i.e., 31.3.2012. Noticing this stand, earlier some of the writ petitions were admitted and the Guest Teachers were allowed to continue till 31.3.2012. Those writ petitions were

ordered to be taken up for hearing in April 2012.

Mr. Nehra, however, points out that the order passed by the 1st Division Bench was entirely in different context. The petitioners therein had approached this Court with a prayer that the practice of appointing Guest Teachers followed in the State be scrapped when the Advocate General of the State had made the statement before the Bench that education system in overall would suffer if such appointments were scrapped. The Advocate General had then explained the necessity of continuing with Guest Teachers till the regular selection process was complete. As per the counsel, this statement would nowhere prohibit the State to dispense with the services of those Guest Teachers who were appointed by ignoring the essential qualification or other such similar infirmity.

Having regard to the respective submission, I am of the considered view that all such pleas should first be raised before the authorities concerned. The petitioners have approached this Court only against show cause notices. Their main grievance is that their eligibility and qualifications ought to be seen as on the date of their respective appointments and not as on date. Such pleas, at the first instance must be raised before the competent authority which has a jurisdiction to deal with issue. Thus, response to show cause notice must be so made before the competent authority as the authority concerned cannot be deprived of its statutory power to adjudicate. The show cause notice does not suffer from want of any jurisdiction. Without first explaining their legal right to continue in service on any other ground that the petitioners may have to urge against the show cause notice must, at the first instance, be raised before the

competent authority, who has to pass an order. Accordingly, the petitioners have to first submit themselves to the jurisdiction of the authority to answer the show cause notices before they can be heard.

The apprehension expressed by the petitioners that final order is a foregone conclusion appears to be their mere apprehension. Still in order to dispel this apprehension, the cases of the petitioners can be relegated before some higher authority, like Director, School Education, so that chance of this being pre-judged is dispelled. The Director or any higher authority, who is to decide the cases, can be asked to afford an opportunity of hearing so that the petitioners can raise all the pleas that they would wish to against the show cause notice. It can be noticed that State has undertaken to make a proper and permanent arrangement by the next academic session. The Guest Teachers perhaps may not be able to continue in service thereafter once the teachers are appointed on regular ban as per the directions given by 1st Division Bench in **Tilak Raj's case (supra)**. It is obvious that any order which the Director or the authority has to make would be after due consideration of the orders passed by this Court in this regard in CWP No.6090 of 2010(1st Division Bench Order).

In those cases where an adverse order has been passed or has taken affect after issuance of show cause notice, then those petitioners will have to impugn those orders now. Since these orders are not under challenge, these petitions can also not now be entertained as challenge in these cases is to the show cause notices. All such petitioners may also appear before the respective

authorities, who had earlier issued them the show cause notices and file their replies as per the schedule given in this order. Their cases would also be dealt with in the manner as already noted. Such petitioners, whose services have been terminated, be also afforded opportunity of hearing. If the order of termination is maintained, it should be so stated and the fresh order passed in such cases, which such petitioners can then impugn alongwith the order, if any, earlier passed.

In CWP No.5533 of 2011 (**Manoj Kumar and others Vs. State of Haryana and others**), services of petitioner No.5 have already been dispensed with despite the interim order in her favour. Said petitioner, thus, would have to challenge this order after following the procedure as mentioned above.

In the light of above observations, all the petitioners are directed to appear before respective authorities, who have issued show cause notices with their response on 23.8.2011. The authority concerned shall transmit the cases to the Director on or before 30.8.2011, for appearance before the Director on 05.09.2011. If the Director faces any difficulty because of any commitment, he may authorize Joint Director/Deputy Director to hear the cases.

All these writ petitions are disposed of with a direction to the petitioners to appear before the respective authorities which have issued show cause notice in each case. The said authorities, after obtaining replies of the respective petitioners to the show cause notice, shall forward the case to the Director, Education School, by fixing a date of hearing before the Director in consultation with the Director. The Director, School, thereafter, would afford due

opportunity of hearing to the petitioners and pass an order in accordance with law. The petitioners shall be at liberty to raise all the pleas that they may wish to urge against the proposed action. Needless to mention that the Director would keep in mind the observations made by 1st Division Bench in **Tilak Raj's case (supra)**. The petitioners would be at liberty to impugn any order passed by the Director in accordance with law. If any of the petitioner makes a request for being represented by a counsel, the same shall be considered by the Director and appropriate order made thereon. The interim order passed in favour of the petitioners shall continue till the date of decision by the Director.

The writ petitions are, accordingly, disposed of.

August 05, 2011
monika

(RANJIT SINGH)
JUDGE