

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

Civil Writ Petition No. 24383 of 2016 (O&M)

Date of Decision: December 23 , 2016.

Court on its own motion

..... PETITIONER (s)

Versus

U.T. Chandigarh and others

..... RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE S.S.SARON
HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. Jagmohan Singh Bhatti, Advocate (amicus curiae)
and Ms. Tanu Bedi, Advocate (amicus curiae).

Mr. IPS Doabia, Advocate, Standing Counsel
for U.T. Chandigarh.

Mr. PPS Thethi, Addl.AG, Punjab.

Mr. H.C. Arora, Advocate as Intervener.

S.S.SARON, J.

Information was received at Police Station Sector 3, Chandigarh on 3.11.2016 that two young men had climbed the mobile tower situated inside Punjab Bhawan, Sector 3, Chandigarh. On getting the information, Ms. Poonam Dilawari, Inspector/SHO, Police Station Sector 3, Chandigarh reached the spot where two boys were sitting on the top of the mobile tower at Punjab Bhawan,

Sector 3, Chandigarh. They were holding out threats to commit suicide if their demands were not fulfilled. The Disaster Management team, the Fire Brigade and the Ambulance services were informed. Verifications were carried out at the spot and it was found that the names of the boys who had climbed the tower were Deepak Kumar and Rakesh Kumar. They had qualified their Elementary Teachers Test (ETT) and were thus eligible for appointment as Elementary Teachers in the State of Punjab. They were insisting that a meeting be held regarding their demands for jobs for the Elementary Teachers with the Hon'ble Chief Minister, Punjab.

Another telephone tower is stationed in the premises of a house in Sector 3, Chandigarh and two ladies and a boy climbed on the said tower on 17.11.2016. They also demanded for holding a meeting with the Hon'ble Chief Minister, Punjab for carrying out the process of filling and making appointments against the vacant posts of Elementary Teachers. The Chandigarh Police made efforts to convince them to climb down from the mobile tower. The said protesters with good sense did climb down on 21.11.2016.

However, the manner in which the protest was being raised and the fact that unemployed youth including two women had climbed the mobile tower stationed at the backyard of a private house; besides, the news items that had appeared in the Press, impelled a learned Judge of this Court (Ms. Daya Chaudhary, J) to refer the matter to the Registrar Judicial of this Court for

putting up the case before the Hon'ble Chief Justice of this Court for consideration for taking up the issue on the judicial side. The Hon'ble Chief Justice ordered the case to be treated as a Public Interest Litigation and listed it on the judicial side.

This Court in terms of order dated 23.11.2016 asked the Counsel for the State of Punjab and the Union Territory, Chandigarh to appear. Mr. PPS Thethi, Addl. Advocate General, Punjab; besides, Mr. Suvir Sehgal, Advocate and Mr. IPS Doabia, Advocate Standing Counsel for UT, Chandigarh with Ms. Poonam Dilawari Inspector/SHO, Sector 3, Chandigarh appeared.

A special report was submitted by Inspector/SHO *inter alia* stating that the Union Leaders Kamal Thakur and Amarjeet Kamboj of the unemployed Teachers Union were contacted for necessary mediation. The Station House Officer was asked to call for the Union Leaders in Court. They were, however, stated to be at Bathinda, Punjab; however, Ms. Renu Sidana, a member of the Union appeared. She was apprised that a mode of protest which endangers the life of any person is improper.

Mr. PPS Thethi, Addl. Advocate General submitted that the demands of the Teachers Union had been for a meeting with the Hon'ble Chief Minister, Punjab, which meeting had been arranged for 26.11.2016. It was observed that the matter could be resolved by negotiations and it was pressed upon Ms. Renu Sidana a member of the Union to ask the protesters who were on the top of the mobile telephone tower to climb down and negotiate with the

Chief Minister, Punjab. She was also informed that the matter was being adjourned for resolving the issue within legal parameters. She stated that she would press upon the protesters to climb down from the mobile telephone tower on that day itself. The case was adjourned to 28.11.2016 and the outcome of the meeting between the Chief Minister, Punjab and the Union Leaders was to be submitted in Court on the adjourned date.

The case was taken up on 28.11.2016 and Mr. PPS Thethi, Addl. Advocate General, Punjab submitted that the meeting between the Teachers Union and the Chief Minister had been successfully held. The Inspector/SHO, Police Station Sector 3, Chandigarh submitted that after the meeting the Union Members had expressed satisfaction. However, Ms. Renu Sidana, a member of the Union stated that the meeting was not fruitful as talks were conducted by the Principal Secretary to the Chief Minister and not by the Chief Minister himself although he was present. The Court made further efforts to amicably resolve the matter. Status report by way of affidavit of Inspector/SHO Sector 3, Chandigarh was submitted by Mr. IPS Doabia, Advocate which was taken on record.

As regards the issues involved which were subject matter of the protests were informed by Mr. PPS Thethi, learned Addl. Advocate General, Punjab. The position was that two advertisements had been issued for recruitment of Elementary Teachers. In one advertisement 4500 posts were advertised and around 620 posts were reserved for Ex-Servicemen, Sports persons

and Backward Classes. These were, however, vacant and had remained unfilled. The process to get these posts de-reserved and fill them from the General category had been initiated. A request had been sent to the Sainik Welfare Board, Sports Department and the Social Welfare Department for de-reservation of these posts.

In the second advertisement, 2005 posts of Elementary Teachers, independent of the 4500 posts, had been advertised. The process to fill these 2005 posts had also been initiated. There were also posts that were reserved according to the reservation policy of the State Government. Some posts out of the reserved categories were not likely to be filled due to the non-availability of the reserved category candidates. The process for de-reservation of these posts, it was submitted, would also be undertaken independently of the other process that was going on. It was also submitted that the waiting lists of the posts to be filled against both the advertisements i.e. 4500 posts and 2005 posts had been prepared. It was submitted that the posts would be filled from the waiting lists by 31.3.2017 till which date the waiting list was to remain operative. A detailed breakup in this regard was to be submitted.

Two members of the Teachers Union namely Ms. Renu Sidana and Mr. Lalit who were present submitted that they would press upon the protesters to climb down from the mobile tower and the case was to be taken up for hearing in the post-lunch session. After the lunch interval, Ms. Renu Sidana only appeared and she

submitted that the protesters desired that the matter should be finalized immediately. Ms. PPS Thethi, learned Addl. Advocate General, Punjab submitted that it was a voluminous task and exercise in accordance with law was to be carried out for filling the vacant posts of Elementary Teachers. The process as it transpired included the process of identifying the candidates who had applied in both the categories of posts; besides, de-reserving posts and also many Court cases that were pending. Ms. Renu Sidana was asked whether she would like to have assistance of a counsel to guide them in the matter and she agreed for the same.

Accordingly, on the request of the Court, Mr. Jagmohan Singh Bhatti, Advocate and Ms. Tanu Bedi, Advocate who were present in Court graciously agreed to assist the Court and help in amicably resolving the matter. They were accordingly appointed as 'amicus curiae'. The Advocates who had been appointed as amicus curiae were asked to press upon the protesters and make them understand the legal nuances and to get the matter resolved in a legal matter.

The case has thereafter been adjourned on day to day basis with intermittent breaks in between so that the process of filling 4500 posts and 2005 posts of Elementary Teachers was expedited by the State Government and the matter could be amicably resolved. Mr. H.C. Arora, Advocate by way of CM No.16291 of 2016 himself volunteered and made a request to assist the Court as an Intervener and he was permitted to do so.

He also carried out deliberations with the protesters and rendered invaluable assistance. It was, however, disheartening to learn that despite the Union Leaders being asked to appear in Court so as to amicably resolve the issue, they did not appear and only Ms. Renu Sidana, a member of the Union appeared and acted with responsibility and made efforts to resolve the impasse. The learned Advocates appointed as amicus curiae on 20.12.2016 stated that the stand of the Union Leaders had been most uncooperative and they had come at the site of protest for getting their photographs clicked by 'selfies' in front of the mobile tower and then probably must have circulated the photographs amongst the teachers seeking appointments. Despite request being made to them to appear before this Court, they had not appeared. This conduct of the Union Leaders, according to the learned amicus curiae, had been most irresponsible and also reprehensible. In fact, Mr. PPS Thethi, Addl. Advocate General, Punjab submitted that their turn for getting appointments had reached and they have since been offered appointment letters, which they had taken.

Be that as it may, a reading of the interim orders passed from time to time would show that on each and every date of hearings, efforts were made by the Directorate of Primary Education to expedite the process of filling up the vacant posts of Elementary Teachers. The task involved de-reservation of posts, the avoiding of duplicity amongst candidates who had applied against the 4500 posts and the 2005 posts of Elementary Teachers

and identification of the common candidates in both the categories as also keep in mind the pending court cases, which were stated to be more than three hundred in number.

A choice was given to the selected candidates to opt for one of the posts out of the 4500 posts or the 2005 posts against which they had been selected. Thereafter, the post in the other category was to be declared vacant and offered to the candidate next in order of merit. The waiting lists of the both categories were put on the website of the Directorate of Primary Education. The position of the candidates whose turn would reach for counselling and consequent offer of appointment was displayed on the website. Efforts were also made by the Chandigarh police authorities to get the two boys who were protesting examined by a doctor. However, the protestors refused to climb down or get themselves medically examined. Ms. Tanu Bedi, Advocate amicus curiae had herself gone up on the tower and spoken to the protesters but they were reluctant to come down although they assured that they were absolutely fine and in case there was any cause or trouble, they would seek help.

The turn of one of the protesting youth namely Rakesh Kumar who had climbed the tower had reached. He was offered an appointment letter and posted at Government Primary School, Bham District Gurdaspur. He after persuasion climbed down from the tower and this Court was informed accordingly on 14.12.2016 on which date he appeared in Court. He has since collected his

appointment letter and joined service. However, efforts to make the other protester Deepak Kumar also to climb down from the tower had remained unsuccessful.

The learned Advocates appointed amicus curiae were *ad idem* that the protesters had stated that they would end their protest once the process for filling up the posts had been initiated. However, later the stance was changed to that till they were offered appointments. The merit position for offering appointment to Deepak Kumar, the other person protesting candidate had not reached. According to Mr. PPS Thethi, learned Addl. Advocate General, Punjab an offer of appointment could only be made to him on his turn reaching on merit.

Today when the case was taken up, Mr. PPS Thethi, Additional Advocate General, Punjab submitted that the process of counselling/issuing appointment letters is going on. Against 4500 posts of Elementary Teachers, it is submitted that for 385 posts of the General Category, 656 candidates have been called. They have been called due to the reason that 360 candidates were common for 4500 posts and also in the 2005 posts. Besides, 189 candidates out of 656 candidates that were called had been given appointment letters against the 2005 posts.

From amongst the Backward Class category, it is submitted, 182 posts are to be filled for which 400 candidates have been called. This again, it is submitted, is for the reason that 197 candidates are common; besides, 74 candidates have already been

appointed against 2005 posts. It is also submitted that 45 candidates whose names were withheld, have also been called. In this manner, for filling up of 612 posts, 1101 candidates have been called in the 4500 category of posts.

The position with respect to 2005 posts of Elementary Teachers, it is submitted, is that there are 150 vacant posts of the General Category. For these 150 posts, 443 candidates have been called for 24.12.2016. This again is for the reason that 360 candidates, it is submitted, are common with the list of 4500 posts. Six of them have been appointed against the 4500 posts.

In the Backward Class category with respect to 2005 posts, 117 posts are to be filled for which 250 candidates have been called. This is for the reason that 197 candidates are common with the list of 4500 posts. Three candidates have been appointed against 4500 posts.

It is submitted that candidates having up to 85 marks with date of birth 24.09.1995, have been called in the Backward Class category against 2005 posts. It is further submitted that 23 candidates whose names were withheld against 2005 posts, have also been called. It is submitted that 290 posts are being filled up against 2005 posts for which 716 candidates have been called.

In this manner, against both the categories of posts i.e. 4500 posts and 2005 posts, 902 posts are being filled which includes 68 candidates whose names had been withheld i.e. 45 from 4500 posts and 23 from 2005 posts. These 68 candidates are

independent from 834 posts. It is also submitted that the turn of Deepak Kumar, who has been protesting, has reached in both the lists i.e. against 4500 posts and against 2005 posts and in case he appears for counselling, he would be given appointment letter after following due course and subject to verifications that are being carried out in respect of each candidate. According to Mr. PPS Thethi, Additional Advocate General, Punjab, the turn of Deepak Kumar has reached strictly on his merit.

This Court, as already noticed, had initiated *suo motu* proceeding, in view of the fact that certain Elementary Teachers were protesting for not being offered appointment letters. This Court made efforts to expedite the process. There has been complete cooperation by the State authorities, learned amicus curiae, the learned Counsel appearing as Intervener, the Chandigarh Administration, the Inspector/SHO Ms. Poonam Dilawari, Police Station Sector 3, Chandigarh and other officials. One of the protesters, namely, Rakesh Kumar whose turn for appointment had reached, had climbed down from the tower. The turn of the other protester Deepak Kumar has also reached.

Learned counsel for the State has submitted that as soon as he appears for counselling, he would be given appointment letter after following the due course.

In the circumstances, the grievance of Deepak Kumar, who has been protesting, has been redressed and nothing survives in the present petition. However, according to learned Counsel

appearing as amicus curiae, he is for the present under a misconception probably due to the time that he has spent on the tower and is not willing to accept the position that an appointment letter has been offered to him.

We are of the view, that the methods adopted by the protesters are unfortunate, improper and incorrect. It is to be noticed that at one stage the persons protesting had stated that once the process was initiated, they would end their protest and now, even appointment letter is being offered, but one of the protesters is somewhat unrelenting. In the circumstances, the further continuation of the Court proceedings may not be proper. However, the matter was taken up as it was viewed that the protesting youth may not lose their lives by their misplaced notions and for this they needed counselling and guidance.

Ms. Tanu Bedi, Advocate (Amicus curiae) has emphasized that the matter be kept pending for laying down guidelines in future in such cases. Though we would have liked to do so but for the present, it would be just and expedient to put a quietus to the matter so that the person protesting can climb down from the tower and seek his appointment as Elementary Teacher after complying with the necessary formalities. Besides, the State shall continue with its process of offering appointment letters to the Elementary Teachers whose turn on merit has reached so that the recruitment process against the 4005 and the 2005 posts of Elementary Teachers is completed and the vacant posts are filled.

Mr. H.C. Arora, Advocate as also Mr. Jagmohan Singh Bhatti, Advocate (amicus curiae) and Ms. Tanu Bedi, Advocate (amicus curiae) state that they shall jointly file a PIL in this regard. They may do so.

The present petition is, accordingly, disposed of.

(**S.S.SARON**)
JUDGE

(**LISA GILL**)
JUDGE

December 23 , 2016.
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Note:-

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No

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