

STATE OF HARYANA AND ORS.

v.

INDIRA KUMARI

AUGUST 13, 2003

[V.N. KHARE, C.J., AND S.B. SINHA, J.]

*Service Law:*

*Posts of Language teacher—Promotion to—Educational qualifications for—Earlier, besides other qualifications, Orientation Training (O.T.) was essential for promotion to language teacher—Later, Junior Basic Training Course(JBTC), was treated equivalent to O.T.—O.T. or equivalent qualification was prescribed for appointment to language teacher—Held, by reason of Notification dated 12.3.1976, J.B.T.C. has been recognized as equivalent to O.T. whereon a judicial seal has been put—In absence of any contrary provisions in the Rules, the contention that High Court could not have treated JBTC equivalent to O.T rejected—This decision directed to be treated as prospective—Prospective Operataion of Judgment.*

*Constitution of India, 1950:*

*Article 136—Treating of different degrees as equivalent—For the purpose of arriving at a decision as to whether one degree is equivalent to another or not, no order in terms of Article 136 of the Constitution is required to be passed—The decision of the State can also be inferred from its conduct—On facts, State of Haryana on 12.3.1976 gave out that JBTC is equivalent to O.T.—Even the Director of Secondary Education by letter dated 5.5.1995 conveyed the decision of the State to the said effect.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4301 of 1999.

From the Judgment and Order dated 19.3.1998 of the Punjab and Haryana High Court in C.W.P. No. 2439 of 1998.

WITH

C.A. Nos. 1280/2002, 4995-5000, 4627 and 5002 of 2003.

A Mukul Rohtagi, Additional Solicitor General, Ms. Kavita Wadia and Neeraj Kumar Jain for the Appellants.

Mahabir Singh, Ajay Pal, Rakesh Dahiya, Debasis Misra and S. Srinivasan for the Respondent.

B The following Order of the Court was delivered:

The respondents herein were in the service of the appellant-State as Language Teachers. They were appointed a long time back.

C The question which arises for consideration in these appeals is as to whether the Certificate of Junior Basic Training Course (for short "J.B.T.") is equivalent to that of Orientation Training (for short "O.T.").

D The essential qualification for holding of the post of Language Teacher is said to be "(i) Metric from Punjab University or Board of School Education Haryana or an equivalent qualification recognised by the said Board; (ii) Prabhakar (Honours in Hindi) from a recognised University; and (iii) pass in LTC (OT) examination in Hindi conducted by the Haryana Education Department or an equivalent qualification recognised by the Haryana Education Department-OR-Graduate from a recognised University with Hindi as an elective subject/M.A. in Hindi from a recognised University/B.A. (Honours) in Hindi with B.T./B.Ed. or equivalent in all the cases. "The said qualification was laid down by the appellant-State by amending the Punjab Educational Service Rules, 1955 by reason of Punjab Educational service, Class-III School Cadre (First Amendment) Rules, 1995.

F It is not in dispute that in the 1955 Rules, the requirement was to hold the qualification of STC or OT Course. The course of study for JBT was started in 1957. On or about 12.3.1976, however, the State itself prescribed the qualifications for appointment of language Teachers, the material part whereof is as under:

G "Subject : Qualifications for the appointment of language teachers.

.....

Hindi Teachers Metric Prabhakar O.T. or J.B.T. Punjabi Teachers Matric-Giani O.T. or J.B.T. Sanskrit Teachers Shastri-O.T."

H Yet again in the year 1983 some instructions were issued for appointment of

Language Teachers wherein the qualifications were laid down as Matriculation Prabhakar, L.T.C. or O.T. or equivalent qualification recognised by the State. When the said instructions were issued, a writ petition was filed by the Teachers in service on an apprehension that their services would be terminated. The said writ petition titled *Gurcharan Singh and Anr. v. State of Haryana and Ors.* being Civil Writ Petition No. 206 of 1984 came to be decided and was allowed by a judgment of the Punjab & Haryana High Court and it was held as under :

“ . . . In the face of this factual position, the respondent authorities, to my mind, were entitled to prescribe any other course and more particularly J.B.T. Course as equivalent to O.T. This was precisely so done by these authorities vide Annexure P-1 not only this when a clarification was sought by one Shakuntla Sharma Hindi Teacher in a private school vide Annexure P-3 dated April 5, 1979, the office of the Director of Public Instructions, Haryana informed her that the qualifications for the post of Hindi Teacher should be Metric (Full) Prabhakar with O.T. (Hindi) of J.B.T. course (Two years course). This communication marks it more than clear that with the abolition of S.T. Course with effect from the year 1958 the J.B.T. Course which admittedly was started in the year 1957, was either taken as a substitute for the first course of atleast equivalent to O.T. course. . . . ”

It is not in dispute that the special leave petition against the said decision has already been dismissed.

As despite possessing the said qualifications the respondents were not promoted, they filed writ petitions before the Punjab & Haryana High Court under Article 226 of the Constitution of India. By reason of the impugned judgment, the High Court relying upon the decision in *Gurcharan Singh* (supra) allowed the writ petitions directing that the case of the respondents be considered for promotion treating the J.B.T. Course as equivalent to that of O.T. in Hindi. It is against the said judgment, the State of Haryana is in appeal before us.

Learned Additional Solicitor General appearing for the State urged that in view of sub-rule (2) of Rule 2 of the Punjab Educational Service, Class-III, School Cadre (First Amendment) Rules, 1995, the High Court was not entitled to equate J.B.T. to O.T. (Hindi). Learned Additional Solicitor General urged that since the State of Haryana has not recognised J.B.T. as equivalent to O.T. (Hindi), therefore the view taken by the High Court is erroneous. We do not

A find any merit in the contention.

B It is not in dispute that for the purpose of arriving at a decision as to whether one degree is equivalent to another or not, no order in terms of Article 136 of the Constitution is required to be passed. The decision of the State can also be inferred from its conduct. As noticed hereinabove, the State of Haryana as far back as on 12th March, 1976 gave out that Certificate of J.B.T. is equivalent to that of O.T. The same was acted upon, even the judgment of the High Court in *Gurcharan Singh* (supra) was given effect to and the respondents were appointed having regard to the aforementioned fact-situation. In fact, even the Director of Secondary Education by a letter dated 5th May, 1995 conveyed the decision of the State to the said effect in the following terms :

C “Vide Directorate Memo No. 14/25-77-Estt. (3)/dated 3.6.77 instructions were issued for the promotion of J.B.T. teachers who acquire the qualifications of Prabhakar/Giani/Shastri during their service period on the posts of Sanskrit/Hindi/Punjabi teachers . And vide memo No . 13/48/77 Estt . III (3) dated 28.11.84 of the Directorate promotions on such posts were banned till further orders.

D Now after reconsideration on this matter , Govt. has taken decision that promotion of J.B.T. Teachers on the post of Hindi/Punjabi/Sanskrit teachers be restarted to the extent 25% but only those JBT teachers be promoted on these posts who acquired the requisite qualification during the service for those posts.

E The prescribed qualification for these posts is as under :

- F (1) Sanskrit Teachers :
- (2) Hindi Teachers :-
- (i) Metric Pass (Full Subjects) .
- (ii) Pabhakar (Honours in Hindi ) from a recognised University.
- (iii) Pass in L.T.C. (O.T) in Hindi conducted by the Haryana Education Department or equivalent qualification recognised by Haryana Education Department .

OR

G Graduate from a recognised University with Hindi as an elective subject/ M.A. In Hindi from a recognised University/B.A (Honours) in Hindi with B.T./B.ED. Or equivalent in all the cases.”

H

In this view of the matter and particularly having regard to the fact that A  
by reason of the aforementioned notification dated 12th March, 1976, J.B.T.  
has been recognised as equivalent to O.T. , where over a judicial seal has  
been put , in the absence of any contrary provisions in the rules the submission  
of the learned Additional Solicitor General cannot be accepted.

For all these reasons, we do not find any merit in these appeals . They B  
fail and are, accordingly, dismissed. There shall be no order as to costs.

We may, however, make it clear that this decision shall be treated as  
prospective.

R.P.

Appeals dismissed. C