

## KULWINDER SINGH VS STATE OF PUNJAB AND OTHERS

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Present : Mr. Jagtar Singh Sidhu, Advocate,  
for the petitioner.

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Present writ petition has been filed under Article 226 of the Constitution, *inter alia*, praying for quashing of the impugned clause No.4(iii) of the Advertisement No.6 dated 19.10.2021 issued by the Department of Higher Education, Government of Punjab, for recruitment of 56 posts of Assistant Professors (College Cadre) in Computer Science and the said clause reads as under:-

**“4. Mode of Selection**

*(iii) The part time/guest faculty/contractual teachers working in the government colleges clearing the written test will be given extra weightage of one mark per completed academic year of teaching experience subject to a maximum limit of five marks.”*

सत्यमेव जयते

Paper-book reveals that above clause was incorporated on the basis of decision taken by the Government of Punjab vide memo dated 18.10.2021, whereby, it was decided to fill up 1158 posts of Assistant Professors in different subjects for Government Colleges in the State of Punjab and Clause 3.0 of the same being relevant is recapitulated as under:-

*“3.0 In order to mitigate hardship being faced by the Part Time/Guest Faculty/contractual teachers working in the government run colleges, it has also been decided by the Government that such teachers who are otherwise eligible as per prescribed qualifications will be given*

*relaxation in upper age limit to the extent of period they have worked as such. Further, such teachers shall be given weightage of one mark per year subject to maximum of five marks in respect of experience gained by them while working as Part Time/Guest Faculty/contractual teachers in government run colleges.”*

There is no dispute that during the pendency of the selection process, in a meeting dated 28.11.2021, headed by Secretary, Higher Education, Punjab, it was *inter alia* decided :-

“Meeting dated 28.11.2021 held by Secretary Higher Education Punjab on Recruitment of Assistant Professors and Librarians Proceedings

*The two issues, as mentioned in second column of the following table, have been brought to notice of the Department of Higher Education Punjab. To resolve the same, a meeting was held on 28-11-2021, the following officers participated in this meeting,*

1. *Sh. Upkar Singh, IAS, D.P.I. (C) Punjab.*
2. *Sh. Jarnail Singh, Director Recruitment Board, Deptt. of School Edu., Punjab.*
3. *Sh. Ashwani Bhalla, Assistant Director, o/o D.P.I. (C) Punjab.*
4. *Sh. Gurdarshan Singh Brar, Assistant Director, o/o D.P.I. (C) Punjab*
5. *Sh. Rajneesh Goyal, Law Officer, o/o D.P.I (C) Punjab*

*After detailed deliberations, the following decisions were taken:*

Sr. No.	Description of Issue	Decision
1.	<p><i>The Advt. of College Teachers while mentioning 5 marks of experience, available to Guest Faculty, Part Timers and Contractual Teachers of Government Colleges, it was not mentioned "Government Colleges of Punjab". That way candidates from U.T./ Haryana i.e. of other States also become claimants as per U.G.C. Regulations 2010 adopted in 2013.</i></p>	<p><i>The relevant Departmental Service Rules namely; the Punjab Educational Service (College Cadre) (Class-II) Rules, 1976, also define that "Government" as 'the Punjab Government in the Education Department'. Secondly, the advertisement for these posts mentions that the applications are invited by the Deptt. of Higher Education and Languages, Govt. of Punjab.</i></p> <p><b><i>Decision: The claim of the teachers from other States is not maintainable. Thus benefit of giving marks for experience is available only to the teachers of Government Colleges of Punjab.</i></b></p>

Learned counsel while making reference to the result dated 28.11.2021 (P-5) submitted that petitioner who belongs to Scheduled Caste (R&O) (Category code : 5) was awarded total 71 marks (66 written test + 05 in lieu of experience); but his name is missing in the recommendation list dated Nil (P-8). Further submitted that one Gagandeep Singh (Roll No.161276), who also belongs to SC (R&O) and secured 71 marks, has been recommended despite the fact that he is younger in age to the petitioner. He again submitted that petitioner is working as an Assistant

Professor (Computer Science) on contractual basis with Baba Jogi Peer Neighbourhood Campus, Ralla, a constituent College of Punjabi University, Patiala since 10.10.2011; and thus, he was granted 5 marks in lieu of work experience, but the same have been deducted by the respondents subsequently, on the basis of decision dated 28.11.2021, with the plea that he is not working in a Government College of Punjab. Lastly, submitted that action of the respondents while denying the benefit of 5 marks is wholly untenable in law just to favour the candidates who are working in the “Government Colleges of Punjab” and thus, prayed for stay of the further process on the basis of decision dated 28.11.2021.

Notice of motion.

On asking of the Court, Ms. Anu Chatrath, Addl.A.G., Punjab, who is present in court, accepts notice on behalf of respondents No.1 to 3; whereas Mr.M.K. Dogra, Advocate, accepts notice on behalf of respondent No.4.

Learned State counsel, after obtaining instructions and going through the official records, submitted that initially petitioner was awarded 05 marks in lieu of work experience on the basis of disclosure made in the application form. She further submitted that later on it came to the notice of the respondents that petitioner is not having the work experience from the “Government College of Punjab” and as such, in view of the clarification dated 28.11.2021, he has rightly been denied the benefit of weightage.

Heard parties for consideration of the interim prayer.

It is quite elementary that view of the mandate of Articles 14 & 16 of the Constitution, every public employer has an obligation in our

country to make public appointment(s) strictly in accordance with the provision of law applicable for the post(s) in question and an aberration without proper justification shall negate the rule of law.

In the present case, respondents are recruiting the Assistant Professors for the Government Colleges; thus, it is their prime duty to attract the best talent in the interest of the students as well as the community at large. There is no doubt that initially, the Government vide memo dated 18.10.2021 decided to grant the weightage of maximum 05 marks in lieu of work experience to the part time/guest faculty/contractual teachers working in the "Government-run Colleges" and the same was incorporated in the advertisement as well; but there was no interdict that such a benefit would be restricted only to the teachers working in the "Government Colleges of Punjab". Now, during the ongoing selection process and that too at the fag end, in the meeting headed by the Secretary, Education Department, selection criteria has been tinkered with. The benefit of granting weightage in lieu of work experience has been restricted only to the Guest Faculty, Part Timers and Contractual Teachers working in "Government Colleges of Punjab", without there being any lawful authority with such a Committee.

Moreover, the decision dated 28.11.2021, thereby, debarring the Guest Faculty/Part Timers/Contractual Teachers from Government Colleges of other States to avail the benefit of weightage on the basis of work experience is wholly arbitrary and discriminatory in view of the fact that the respondents have failed to show any reasonable basis for making such a classification for the purpose of ongoing selection process.

In view of the above, *prima facie*, this Court is of the opinion that action of the respondents while proceeding with the selection on the basis of the decision dated 28.11.2021 is legally unsustainable and the same deserves to be stayed.

As a result thereof, there is no option except to restrain the respondents till the next date of hearing from proceeding with the matter while taking shelter under the clarification dated 28.11.2021, thereby, restricting the benefit of weightage only to the Guest Faculty/Part Timers/Contractual Teachers working in the “Government Colleges of Punjab”.

Ordered accordingly.

Posted on 13.12.2021 for arguments.

Pleadings in all respects be completed before the next date of hearing.

Needless to say that above observations are only for decision the interim stay and the same shall not be construed as an expression of opinion on the merits of the case.

**03.12.2021**  
*atulsethi*

**(MAHABIR SINGH SINDHU)**  
**JUDGE**