

(2013) 12 MP CK 0175
In the Madhya Pradesh High Court
Case No : Writ Petition No. 17849 of 2013

Aditya Kumar Dubey

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 05-12-2013

Acts Referred:

Citation : (2013) 12 MP CK 0175

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Gulab K. Patel, for the Appellant; Vaibhav Tiwari, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Yadav, J.—Heard. Rejection of candidature for appointment of Area Education Officer on the ground that the petitioner does not possess requisite year of teaching experience is cause for present writ petition.

2. That the cadre of Area Education Officer came to be created by causing amendment in the Madhya Pradesh Education Service (School Branch) Recruitment and Promotion Rules, 1982. The posts are to be filled up through a limited Departmental Examination from amongst Teachers (Upper Division Teachers) Head Masters of Middle School/Adhyapak of Local Bodies.

3. The minimum educational qualifications and other requisitions as per amendments in Rule 1982 published in Madhya Pradesh Gazette (Extraordinary) dated 22.08.2013 are "Graduate Degree from recognized University and B.Ed. which should be recognized by the National Council for Teachers Education and Teachers (Upper Division Teachers) Head Masters of Middle Schools/Adhyapak of Local Bodies cadre who has five years minimum teaching experience."

4. The petitioner though promoted as Upper Division Teacher w.e.f. 17.01.2013 was not considered for appointment to the post of Area Education Officer.

5. Petitioner blames the issuance of letter dated 16.09.2013 being the cause for rejection. The letter is in the following terms:

6. It is urged that it is because of the issuance of above letter which has led the respondents not to take into consideration the experience gained by the petitioner as Assistant Teacher. It is contended that the stipulation in the letter dated 16.09.2013 laying down that Upper Division Teacher and Head Master must possess experience of five years to be eligible for appointment as Area Education Officer, is contrary to the Rules, therefore, deserves to be quashed and the petitioner be declared eligible for appointment as Area Education Officer.

7. Considered the submissions.

8. The eligibility criteria for appointment to the post of Area Education Officer as brought in vogue by way of amendment at the cost of repetition is:

9. Thus, the feeder cadre, educational qualification and the teaching experience has been clubbed. Thus unless the incumbent fulfills all the three elements, he is not entitled to be appointed as Area Education Officer. The suggestion that the experience gained by the petitioner prior to their promotion to the post of Upper Division Teacher should be taken into consideration cannot be accepted because minimum qualification being Upper Division Teacher/Head Master/Adhyapak in Local Bodies, the experience gained after the appointment on the feeder cadre can only be taken into consideration. In this context, reference can be had of the decision in Nilangshu Bhusan Basu etc. Vs. Deb K. Sinha and Others etc., wherein it has been held:

15. Learned counsel for the petitioner failed to substantiate the submission that experience on a "responsible post" would mean experience on the just below post. He referred to a Circular dated 1-4-1992 issued by the Municipal Corporation (Personnel Department). It relates to recruitment to "A" Category post like that of Medical Officer, Assistant Engineer and Deputy Assessor Collector, Deputy Treasurer etc. It has been provided that experience on supervisory post would mean the post immediately below the post to which promotion is to be made, for example experience on the post of Assistant Assessor/Assistant Collector/Assistant Treasurer etc. would be experience on a supervisory post for promotion to the post of Deputy Assessor, Deputy Collector, Deputy Treasurer etc. We hardly find that this Circular would be applicable in the case in hand. It is specific about "A" category posts and not for all categories and ranks. Another Circular dated 21.6.1988 has been referred to which relates to recruitment on the post of Deputy Chief Engineer (Civil), Deputy Chief Engineer (Mechanical) etc. By means of the said circular experience on the post of Executive Engineer or on any similar post was required. It firstly relates to the recruitment to the post of Deputy Chief Engineer. It cannot be applied for recruitment to the post of Chief Municipal Engineer (Civil). Such a condition is not contained in terms of required qualification for the post of Chief Municipal Engineer (Civil). Wherever experience on a post just below is needed, such a

provision is specifically contained. On this basis it cannot be generally held that for every post in any rank or category the "responsible post" must necessarily mean the post next below the post for which recruitment is to be made.

10. That the letter dated 16.09.2013 when adjudged on above analysis does not support the contention of the petitioner that it supplants the statutory Rules, rather it only clarifies. And supplementing of a Rule by executive fiat is permissible under law for an authority see: Union of India (UOI) and Others Vs. Raj Kumar Gupta and Others, and Union of India and Others Vs. Rakesh Kumar etc., . Careful reading of the letter in question would reveal that it neither restrict the scope of the statutory provision, nor does it widens it. In view whereof, there being no substance in the petition, it fails and is dismissed. No costs.