

(2012) 03 SHI CK 0186
In the High Court Of Himachal Pradesh
Case No : CWP. No. 9770 of 2011-G

Anupam Sharma

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Citation : (2012) 03 SHI CK 0186

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Advocate : Amit Singh Chandel, for the Appellant; P.K. Sharma, A.A.G. with Ms. Shubh Mahajan, Dy. Advocate General For the respondents-1 and 2 and Mr. Shashi Shirshoo, Advocate For respondents 5-6, for the Respondent

Final Decision : Allowed

Judgement

Dev Darshan Sud, J.—The grievance of the petitioner in this writ petition is that she has not been declared as eligible to be considered for the post of Punjabi Language Teacher for the post interview was conducted on 22.7.2011. It is undisputed before me that the interviews to this post were held pursuant to advertisement Annexure:P-1 issued by the respondent-State. The Rules governing selection and appointment which are not disputed have been annexed with the writ petition as Annexure:P-3. Rule 7 provides for the essential qualifications which a candidate must possess before his/her case is considered. It provides:

Rule 7

Minimum educational qualification and other qualifications required for direct results.

1. ESSENTIAL QUALIFICATION:

Honours in Punjabi or B.A. (Hons.) in Punjabi with B.Ed. or +2with Giani Certificate or M.A. in Punjabi from a recognized University/Board/Institutions.

2. DESIRABLE QUALIFICATIONS:

Knowledge of customs, manners and dialects of Himachal Pradesh and suitability for appointment in the peculiar conditions prevailing in the Pradesh.

I am not considering the other rules as this is the rule which is called for interpretation in question in this writ petition.

2. It is also undisputed before me that the petitioner is a matriculate who passed this examination from the Punjab School Education Board in the year 1984 with Punjabi as one of the subjects. Thereafter, the petitioner passed the pre university examination in the year 1985, graduated from the Punjab University, appeared in M.A. examination and was awarded the degree in the year 1993 and also cleared the Giani (O.T.MIL) Examination in September 2008 conducted by the Punjab University.

3. It is undisputed before me that she was interviewed for this post but in the remarks column, it has been written "not eligible". It is this action of the State which is challenged by the petitioner herein.

4. Learned counsel appearing for the petitioner has drawn my attention to Annexure:P-7 which is a communication addressed by the Director of Education to the Principal Secretary Elementary Education to the Govt. of Himachal Pradesh, Shimla-171002. A clarification was sought as to whether the petitioner was eligible to be considered for the post of Punjabi Language Teacher in terms of the Recruitment and Promotion Rules. The special Secretary, after consideration of the matter writes:

" No. Shiksha-II (Kha) 6-4/2000-Loose Government of Himachal Pradesh. Department of Higher Education.

From:

The Principal Secretary (Edu.) to the Government of Himachal Pradesh.

To

The Director of Elementary Education, Himachal Pradesh, Shimla-171001.

Subject: Clarification regarding education qualification for Punjabi Teachers.

Sir,

I am directed to refer to your letter No. EDN- H(III)B(6)1/2008-Punjabi/Urdu(Apptt.) dated 21.2.2011 on the subject cited above and to say that the matter has been examined in the department and it is found that Smt. Anupam Sharma is eligible for appointment as Punjabi Teacher. You are, therefore, requested to take necessary action in the matter, under intimation to this department.

Yours faithfully,

Sd/

Special Secretary (Edu.) to the Government of Himachal Pradesh".

5. This should have been the end of the matter but the respondent-State still insists that she was not eligible. The submission is made on the basis: (a) that a candidate must possess a certificate of having cleared +2 and a certificate of proficiency in Giani. I cannot accept this submission in the manner urged. The rule if read as a whole provides for eligibility where a candidate possesses: (a) Honours in Punjabi or B.A. (Hons.) in Punjabi with B.Ed. or +2 with Giani Certificate or M.A. in Punjabi from a recognized University/ Board/Institutions. To insist that even a post graduate/ graduate must possess +2 degree, is not the correct interpretation of the rule and defeats its very purpose. What the rule requires is proficiency in Punjabi which is to be judged/ adjudged with the basic qualification which the candidate acquires. There are three categories of persons who are eligible. If he is at the lowest rung, it is envisaged that the person must at least possess a +2 qualification and then Giani which is a proficiency test in Punjabi. The other two qualifications are, of course, B.A. degree, graduate degree in Punjabi and post graduate in Punjabi. These three categories are distinct and apart. The rule cannot be stretched to mean that a person, who otherwise qualifies Giani examination, must in all circumstances qualify the +2 examination even if such candidate is a graduate/post graduate. That would be reducing the interpretation of the Rule to *reductio-ad-absurdum*. Any rule to be workable, must be given a purposeful interpretation and not kneejerk reaction of interpreting the words in a pedantic manner.

6. Learned counsel for the petitioner also places on record a letter addressed by the Under Secretary to the Govt. of Himachal Pradesh addressed to the Director Elementary Education stating therein that the petitioner herein had cleared/ passed pre-university examination in 1985 when 10+ system was not prevalent. She is a matriculate in Punjabi with B.A., B.Ed., M.A. History and Giani certificate and, therefore eligible in all respects.

7. In these circumstances to insist on a pedantic interpretation that a candidate must possess +2 certificate in all circumstances cannot be accepted. That interpretation would be applicable only if a candidate is not a graduate/post graduate or any other degree equivalent to graduation. The rule contemplates that in such a situation the basic minimum qualification required by a teacher should be +2 and Giani certificate and nothing more. It cannot be interpreted to mean that +2 has to be acquired in all situation because graduation/post graduation, B.Ed. always follows acquiring a basic minimum education which is matriculation, pre university or +2.

8. On the submission made by learned counsel for the petitioner that respondents No. 5 and 6 are not eligible, I cannot accept this submission for the reason that both these candidates possess M.A. in Punjabi which qualifies them to be considered for the post. In these circumstances, this writ petition is allowed

with a direction to the respondents to declare the result of the petitioner for the interview for the post in question which was held on 22.7.2011 and to take appropriate action in accordance with law.