
(2006) 07 JH CK 0083

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3143 of 2005

Ashok Kumar Gorain

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 11-07-2006

Acts Referred:

Bihar Government Secondary School (Service Condition) Rules, 1983 — Rule 1, 4, 4(1), 4(g)(a)

Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 — Section 9

Citation : (2007) 1 BLJR 370 : (2007) 1 JCR 261

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : Manoj Kumar, for the Appellant; J.C. to S.C. II and Sanjay Piprawall, for the Respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

Permod Kohli, J.—Validity of the advertisement notification issued by the Jharkhand Public Service Commission, published in "Dainik Jagaran", a vernacular daily in the issue dated 17th of December, 2004, has been challenged in so far it prescribes the eligibility condition for the post of Teachers. Vide aforesaid advertisement notice, applications have been invited for the posts of Teachers in the Human Resource Development Department for 2507 available vacancies in various subjects specified in Clause 1 of the Notification. Clause III of the aforesaid Notification prescribe qualifications and eligibility criteria. In terms of the aforesaid clause, an applicant should be a Graduate from any of the State or Central Institute in the subjects of Arts, Science and Commerce with 2nd Class and minimum of 50 per cent marks in the concerned subject. Minimum percentage for scheduled castes and scheduled tribes has been prescribed as 45 per cent. Candidate should also be trained with B.Ed. Degree or N.C.T.I. from the recognised institutes. It is further provided for the posts of Teachers that untrained candidates may also participate but successful candidate shall be

eligible for regular appointment only after the production of Training certificate.

2. Petitioner, who has filed this writ petition claims to have M.Sc. (Mathematics) with 64 per cent marks and B.Ed. degree with 56 per cent marks to his credit. He challenged the advertisement notification in respect to prescription of minimum 50 per cent marks in the Graduation and also the condition of the advertisement notice, whereunder untrained applicants have also been permitted to apply and participate in the Selection Process. The only ground of challenge to this advertisement notice and the conditions as referred to above is non-conformability of the advertisement with the statutory rules, namely, Bihar Government Secondary School (Service Condition) Rules, 1983. It is the case of the petitioner that u/s 9 of the Bihar Non-Government Secondary School (Management & Control) Act, 1981, Rules have been framed prescribing service conditions i.e. Bihar Government's Secondary School Conditions, 1983. Rule 4 of the 1983 Rules prescribe the eligibility condition for the post of Headmaster and Assistant Teachers in the High School. Rule 4(g)(a) provides Graduation degree from the recognised university in Arts, Science or Commerce as the only qualification for the appointment to the post of Teacher. It is, accordingly, stated that since Rules do not prescribe any minimum percentage of marks in the qualifying exam for appointment to the post of Teacher in the High School, incorporation of such a condition is illegal, arbitrary and without jurisdiction. It is, accordingly, submitted that the advertisement notification being contrary to the statutory rules governing the recruitment to the post of Teacher, the same is liable to be struck down to the extent of inconsistency and consequently petitioner and other candidates, who are otherwise possessed of the prescribed qualification be allowed to participate in the process of selection and to appear in the competitive examination pursuant to the advertisement notice. Jharkhand Public Service Commission has resisted the petition and sought its dismissal in the factual and legal background, noticed hereunder.

3. It is stated that the Commission received a requisition from the Secretary, Secondary Education, Government of Jharkhand vide Memo. No. 2833 dated 23rd November, 2004. The requisition is based upon Jharkhand Rajkiyakrit Madhyamik Vidyalaya (Sewa Sart) Niyamawali, 2004. Rule 4(1) (iii) (ka) of the aforesaid appointment rules prescribed the qualifications as under:

Shikshak Pad Par Niyukti Hetu Rajya Sarkar Aathwa Kendra Sarkar Dwara Sthapit Kisi Vishwavidyalaya Se Kala vigyan Athwa Vanijya Mein Dwitiya Shreni Mein Sambandhit Vishay Ke Sath Nyuntam 50 % Anko Se Snatak Degree Aniwarya Aharta (Essential Qualification) Honge. Kintu Anusuchit Jati/Anusuchit Jan Jati Ke Mamle Mein Nyuntam Praptank 45% Lagu Rahega

4. A separate counter affidavit has been filed by the Additional Director (Secondary Education), Jharkhand, Ranchi on the same lines and justified the conditions incorporated in the Notification on the basis of above rule.

5. A copy of the Rules framed by the State has also been placed on record. The

condition of minimum 50% marks in the Graduation as essential qualification as contained in the Advertisement Notification is in fact a condition provided under the Statutory Recruitment Rules. Rule 4(1)(iii) (kha) further provides that the eligible graduate candidates will be permitted to appear in the examination. However, successful candidate will be appointed only on production of certification of training.

6. Petitioner has relied on Rule 4 of the Bihar Government Secondary School (Service Conditions), Rule, 1983. Rule 4(g)(a) of the 1983 Rules prescribes the Graduation as the only qualification and there is no stipulation of minimum percentage of marks in the Graduation. However, these Rules have been replaced by Jharkhand Rajkiyakrit Madhyamik Vidyalaya (Sewa Sart) Niyamawali, 2004, the new set of Rules have been framed by the State of Jharkhand and, thus the Ruled, which were in operation prior to the framing of the Rules stands repealed. This is particularly in view of the fact that after the creation of State of Jharkhand, the newly created State has framed its own rules, governing the recruitment of Teachers and thus by implication also, these Rules are operative from the date, these have been published in the Government Gazette as per the clear stipulation under Chapter I Rule 1(I)(a) (b) and (c). Rules in existence at the time of coming into operation of the new Rules as notified vide Notification dated 05th of November, 2004 have been specifically repealed by virtue of Rule 20 of the Notification (new Rules). Hence, the Rules relied upon by the petitioner, cannot be said to be governing the field at the time of issuance of advertisement Notification dated 17th of December, 2004. It is for the employer to lay down the Conditions of Recruitment including the qualifications and other eligibility criteria.

7. Hon"ble Supreme Court in the case of P.U. Joshi and Ors. v. Accountant General, Ahmedabad and Ors. with Union of India and Ors. v. Basudeba Dora and Ors. reported in AIR 2003 SWC 272 held as under:

Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate.

8. In view of the law laid down by the Supreme Court, it is the sole prerogative of the employer to lay down the qualifications and other eligibility criteria for any post or service. It is primarily the field of experts and not for this Court to

venture.

9. In any case the Rules notified in the year 2002 are not under challenge. The Advertisement notice being in consonance with the statutory Rules and no condition or stipulation of it being arbitrary or otherwise violative of any law, no interference is warranted. There is no merit in this writ application, which is, accordingly, dismissed.