

(2003) 12 JH CK 0044
In the Jharkhand High Court
Case No : Writ Petition No. 5440 of 2003

Ashok Kumar Sahani and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-12-2003

Acts Referred:

Jharkhand Primary Teachers Appointment Rules, 2002 — Rule 2

Citation : (2004) 1 BLJR 145 : (2004) 1 JCR 5

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Mahesh Tiwari, Rashimi Pradhan and Sujata Bhattacharjee, Sanjay Piperwal, for the Appellant; R.N. Sahay, Sr. Sc II, Ravindra Pd. and Burnwal S. Lal, Addl. A.G., for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—These two writ petitions involving common question of facts and law have been heard together and are disposed of by this common judgment.

2. Petitioners seek issuance of writ in the nature of mandamus commanding upon the respondents to consider their cases for appointment to the post of primary teachers in the primary school situated within their respective districts in accordance with the advertisement issued on 24.10.2002 and further for a direction to the respondents not to restrict their candidatures for being appointed to the post of primary teachers only against the vacant posts of physical trained teachers which are available in the four districts.

3. The facts of the case lie in a narrow compass.

4. The respondent-Jharkhand Public Service Commission (shortly the "Commission") Issued advertisement dated 24.10.2002 for appointment of primary teachers in all the 22 districts of the State of Jharkhand. In the said advertisement the eligibility conditions were prescribed and the candidates possessing qualifications, as mentioned in the advertisement, were eligible to

apply for the said post. Subsequently on 28.10.2002 by way of corrigendum the commission clarified the definition on the words "trained teachers" as defined under Rule 2 of the Jharkhand Primary Teachers Appointments Rules, 2000 (the Rule), in pursuance of the said advertisement and corrigendum the petitioners applied for the said post.

5. Petitioner's case is that after being found fit they were issued admit cards for appearing in the examination to be held on 25.5.2003. All the petitioners appeared in the examination and did well. They are said to have secured high marks in the said examination. The petitioners thereafter came to know that their cases for appointment as Primary Teachers has been restricted only against the post of Physical Trained Teachers and they shall not be considered for appointment in the general post of Primary Teachers at par with the candidates having the qualification of matric trained teachers.

6. The respondents, in their counter affidavit, have stated that till the result of the physical trained teachers has not been published and as such the writ application is premature. It is stated that the petitioners qualification is of physical trained teachers against the vacant post of physical trained teachers. Further case of the respondent is that Rule 2 (b) of the Rule, 2000 has already been amended vide notification dated 6.3.2003 and as such the petitioners are entitled to be considered for appointment on the post of Physical Trained Teachers against the vacant post, if any, in their district.

7. Mr. Mahesh Tiwary, learned counsel appearing on behalf of the petitioners contended that the petitioners are trained teachers as defined under Rule 2 (b) (iii) of the Rule, 2000 and, therefore, they are entitled to appointment against the general seats of Primary Teachers. Learned counsel, drawing my attention to a Division Bench Judgment of this Court rendered in W.P. (PIL) No. 2769 of 2003 and submitted that the Commission has no power to restrict for being appointed against the general seats of Primary Teachers. Learned counsel submitted that the notification dated 6.3.2003 making amendment in Rule 2 of Rule, 2000, does not apply in the case of the petitioners.

8. Mr. R.N. Sahay, learned Sr. Standing Counsel No. II on the other hand, submitted that as per the amended Rule the petitioners do not possess the requisite qualification for being appointed as Primary Teachers. Learned counsel submitted that the petitioners have not challenged the notification dated 6.3.2003 and therefore they cannot be allowed to claim appointment on the general seats of Primary Teachers in violation of the Rules.

9. From perusal of the advertisement dated 24.10.2002, it appears that the requisite qualification prescribed for appointment on the post of Primary Teachers are as follows :

"(A) Matric or equivalent examination passed.

(B) Two years teachers training or B./Ed./Dip.-in- Ed./Dip.-in-teach or C.P.Ed.

10. By a corrigendum as contained in Annexure-2 the words "trained" has been defined and clarified as candidates having two years teachers training or B.Ed./Dip.-in-Ed./Dip.-in-teach or C.P.Ed./D.P.Ed.

11. Rule 2 of the Jharkhand Primary Teachers Appointments Rules, 2000 reads as under:

"(ka) "Prarambhik Vidyalaya" se ab-hiprerit hai satwen warg tak ke aise vidyalaya jo Jharkhand gair sarkari prathamik vidyalaya (Niantrayan Grahani) Adhiniyam, 2001 ke tahat rajya sarkar dwara adhigrihit hai ya kholigaye hai.

(kha) "Prakshikhit se abhiprerit hai waise baiktijo manyata prapt prakshikhan sansthan se nimnn prakshikhan prapt or uttrin ho.

(i) Do warsiya Sikshak Praksikchan athawa

(ii) B.Ed., Dip.-in-Ed./Dip.-teach.

(iii) C.P.Ed./D.P.P.Ed."

12. The Rule has been amended vide notification dated 6.3.2003. By the said amendment in Rule 2 (iii) it was clarified that the qualification of C.P.Ed. and D.P.P.Ed. shall be only for the post of Physical Trained Teachers.

13. On consideration of the pleadings of the parties and after hearing learned counsels, the only question that emerge for consideration is whether petitioners are entitled to claim their appointment against the general seats of primary teachers and not only against the post of Physical Trained Teachers.

14. Admittedly, petitioners do not possess requisite qualification of two years Teachers Training or qualification of B.Ed., Dip-in-Ed/Dip-in-teach. They are matriculate and completed Physical Education Training Course, known as Physical Trained Teachers. As noticed above, in the notification dated 6.3.2003 it was clarified by amendment in Rule 2 (iii) that the candidates having qualification of C.P.Ed/ D.P.P.Ed. shall be eligible only against the post of Physical Trained Teachers. Admittedly all the petitioners appeared in the examination on 27.5.2003 i.e. much after the notification dated 6.3.2003 and therefore merely because the petitioners submitted their applications before the amendment in Rule 2 (iii) came into force they cannot claim their right to be considered for appointment against the post for which they do not possess requisite qualification. Petitioners cannot take the plea that they had no knowledge about the amended Rule before they appear in the examination as it will appear from Annexure-4 that respondents have notified in the Newspaper dated 22.4.2003 to the effect that candidates having qualification of C.P.Ed/D.P.P.Ed. shall be eligible only against the vacant post of Physical Trained Teachers.

15. Recently some of the candidates challenged the advertisement dated 24.10.2002 on the ground of non fixation of upper age limit, standard and level of examination in Public Interest Litigation being W.P. (PIL) No. 2769 of 2003 [see Jharkhand Justice Forum and Another, Jharkhand Rajya Berojgar Prathamik

Parshikshit Sikshak Sangh and Another, Agamlal Mahto and Others, Susen Chandra Kumar and Others and Sachindra Prasad Singh and Others Vs. State of Jharkhand and Others, which has been disposed of by a Division Bench of this Court along with other writ petitions vide judgment dated 29.9.2003. While deciding the issue involved in the said writ petition, their Lordships held that those candidates who do not possess requisite qualification or the required age will not be considered for recommendation, selection or appointment. Their Lordships observed:

"In one of the writ petitions, this Court issued a direction that the three writ petitioners in that writ petition, would be permitted provisionally to take the examination or to write the examination even if they did not fulfil the age requirement or the age qualification, subject to the result of the writ petition. It appears that some unruly elements on the strength of that order forced some of the officers or the authorities to issue them hall tickets to appear in the examination even though they were over aged and did not qualify as per the amended rule issued pursuant to the earlier decision of the Division Bench. It is made clear that those who did not possess the requisite age qualification as per the amended Rule 4 (d) of the Rules, even if they have written the examinations, would not be considered for recommendation, selection or appointment by the Commission or by the Government. Appearance of those who did not possess the requisite qualification or the age qualification will be ignored by all those concerned with the process of selection and appointment"

10. In another writ petition being W.P. (PIL) No. 2517 of 2003 [see Binod Vikash Manch and Another Vs. State of Jharkhand and Others, it was brought to the notice of the Court that the State of Jharkhand has introduced C.B.S.E. Syllabus for education in the State and that syllabus provides that English language be taught from the first standard. But in the Recruitment Rules, there was no even a paper in the English in the test that was conducted for primary teaches. It was conceded by the State Counsel that a person who has not studied English at the appropriate level cannot be entrusted with the task of teaching English or a person who has not studied Mathematics will not be in a position to teach that subject. A Division Bench of this Court while disposing of this writ petition held as under:

"We, therefore, dispose of this writ petition by directing the respondents to ensure that, only those who possess the qualification in the particular subject as indicated are selected and appointed to teach the particular subject. As an illustration, only a teacher who has the requisite qualification in terms of the Rules and who has studied the English language upto the qualification level, should be appointed as a teacher in English. The same will be the position regarding the other subjects. The authorities must also consider the need for introducing English as a subject for these selection tests taking into consideration the fact that, that language is our window to acquisition of advanced knowledge making us competent to compete with the rest of the world in all fields of human

activity."

17. In the case of District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, the Supreme Court while considering a question in, that case where appointments were made of a candidate not having minimum essential qualification held that such appointment amounts to fraud on public and no Court should be a part to the perpetuation of the fraudulent practice. Their Lordships observed:

"It must further be realized by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No Court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact.

18. In the case of Union of India (UOI) and Another Vs. Yogendra Singh, the Apex Court while considering a similar question held that no candidate who does not possess currently prescribed qualification but who may possess the educational qualification prescribed earlier, can be said to qualify or have any vested right to appointment even against some earlier unfilled vacancy. Every candidate who aspires to fill any vacancy must possess the educational qualifications that are then prescribed.

19. In the case of U.P. Public Service Commission Vs. Dr Saad Usmani, the fact of the case was that an advertisement was issued inviting application for the post of Professor, one of the essential qualification prescribed for the said post was 10 years" teaching experience of the subject including three years" on the post of Reader in a recognized institution. Petitioner of that case was permanent Demonstrator and also worked as Lecturer for some time. The Commission was of the view that respondents do not possess requisite teaching experience and he was not called for interview. Petitioner filed writ petition in Allahabad High Court, which was allowed on the ground that since respondent was employed as full time Demonstrator his experience as Demonstrator should be counted for the purpose of teaching experience. The Supreme Court in an appeal moved by the Commission set aside the order of the High Court and held as under:

"The respondent satisfied the first condition inasmuch as he had worked as a full-time Demonstrator but he did not satisfy the second condition since he did not possess a postgraduate qualification. In view of the decision of the commission dated 30.10.1992 the experience of the respondent on the post of Demonstrator could not, therefore, be taken into account and if the period the respondent

worked as Demonstrator is excluded he did not have the requisite ten years" teaching experience. There was, therefore, no infirmity in the view of the Commission that the respondent did not possess the requisite qualification prescribed for the post of Professor in Moalejat. The High Court, in our opinion, was in error in holding that the respondent fulfilled the conditions of the eligibility and was wrongly denied consideration for the post of Professor in Moalejat by the Commission"

20. In the instant case, admittedly, petitioners obtained physical training course which is required for the post of physical trained teachers. For being appointed as a primary teacher a candidate must possess qualification of a trained teacher i.e. B.Ed./ Dip-in-Ed/Dip-in-teach. In my considered opinion therefore, petitioners do not possess requisite qualification for appointment on the post of primary teacher.

21 Mr. Mahesh Tiwari, learned counsel for the petitioners vehemently argued that since petitioners appears in the written examination and they have done well they are bound to be selected for the post of primary teaches. I do not find any force in the submission of the learned counsel. The law has been set at rest by catena of decision of the Supreme Court that even if a person is selected for appointment does not acquire any indefeasible right to be appointed to the post in question. Similarly, merely because a person was allowed to appear in the examination doesn't acquire any right to be considered for appointment if does not possess requisite qualification.

22. Having regard to the entire facts of the case and the discussions made above, I have no hesitation in holding that petitioners since do not possess requisite qualification are not entitled to claim their appointment on the post of primary teachers.

23. For the reasons aforesaid, I do not find any merit in these writ petitions, which are accordingly, dismissed.