

(2010) 11 AHC CK 0014

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 66328 of 2010

Atul Mani Tripathi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-11-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2011) 3 ADJ 423

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Shukla, J.—Petitioners have approached this Court for following prayer:

(i) Issue a writ order or direction in the nature of mandamus commanding the Respondents to consider the application of Petitioners submitted in pursuance of the advertisement No. 1 of 10 dated 8.10.2010 for the post of TGT in English on merit and declare the result thereof.

(ii) Issue a writ order or direction in the nature of mandamus commanding the Respondents to allow the Petitioners to submit their forms for the post of Trained Graduate Teachers in English according to advertisement No. 1 of 10 dated 8.10.2010 and allow them to appear in the written examination as well as interview.

(iii) Issue writ or direction in the nature of any other order or direction in which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

(iv) to award cost of writ petition in favour of the Petitioner.

2. Brief background of the case is that Petitioners is holding M.A. degree in English literature but opted English language at graduation level. Advertisement No. 1 of 2010 has been issued by the U.P. Secondary Education Services

Selection Board, Allahabad for the post of trained graduate teacher in English subject. Qualification, which has been prescribed therein is that for the purpose being appointed as TGT grade of English Subject teacher, incumbent must be Graduate in English Literature alongwith B.Ed. Petitioner has tried to contend that candidate receiving B.Ed. degree with English Subject have to impart teaching in English language as one of the practical subject while English literature was not included. Petitioner has tried to contend that trained graduate in English subject has to impart teaching upto 9th and 10th standard in which the syllabus of English subject comprises of English literature, thus English language is essential and constitute major part of syllabus and in such a situation English language ought to be included in the minimum qualification in graduation standard for appearing in examination for the post of trained graduate teachers in English subject. Petitioner further submits that classification between candidate opting English language and candidates opting English literature in their graduation standard for appearing in examination is unreasonable, impracticable and unsound and particularly when the major portion of syllabus in 9th and 10th standard comprises of English Language. Petitioners have approached this Court with all these complaint noted above and the prayer made above.

3. Sri. Satyendra Nath Tiwari, Advocate, learned Counsel for the Petitioners contended with vehemence that in the present case fixation of eligibility criteria for the post of teaching in English subject is totally arbitrary, unreasonable that candidate must be Graduate with English literature alongwith B.Ed whereas English language covers major part of syllabus and as such English language ought to have been included amongst one of the eligibility requirement as such writ petition as it has been framed and drawn deserves to be allowed.

4. Countering the said submission learned Standing Counsel, as well as A.K. Yadav, Advocate, learned Counsel for the Selection Board on the other hand contended that fixation of eligibility criteria is in the domain of the employer and Petitioners is not filling in such eligibility criteria as such Petitioner could not have any legitimate right to raise any grievance on said score, as such writ petition deserves to be dismissed.

5. After respective arguments have been advanced, undisputed factual position which is emerging in the present case is that post in question has been advertised for making selection and appointment of T.G.T. Grade teacher of English and as far as the post of T.G.T. grade is concern, minimum eligibility provided is Graduation with English literature and teachers training. Qualification to the similar effect has been mentioned in the advertisement as provided in Appendix-A of Chapter-II of U.P. Act No. 2 of 1921. Rule 5 of 1998 Rules clearly, provides that candidate for direct recruitment to a post of teacher must possesses qualification specified in Regulation I of Chapter-II of Regulation made under U.P. act No. 2 of 1921. Fixation of the eligibility criteria is the domain of the employers and is requirement is to be judged by the employers and not by

the candidate.

6. Hon''ble Apex Court in the case of P.M. Latha and Another Vs. State of Kerala and Others, has taken the view that fixation of qualification for particular post is matter of recruitment policy. Relevant extract of the said judgment is being quoted below:

We find absolutely no force in the argument advanced by the Respondents that B.Ed qualification is a higher qualification then TTC and therefore, the B.Ed. candidates should be held to be eligible to complete for the post. On behalf of the applicants, it is pointed out before us that Trained Teacher''s Certificate is given to teachers specially trained to teach small children in primary classes whereas for B.Ed degree, the training imparted is to teach students of classes above primary B.Ed degree holders, therefore, cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools. Whether for a particular post, the source of recruitment should be from the candidates with TTC qualification or B.Ed. qualification, is a matter of recruitment policy. We find sufficient logic and justification in the State prescribing qualification for the post of primary teaches as only TTC and not B.Ed. Whether B.Ed qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider B.Ed candidates for the present vacancies advertised as eligible.

7. Hon''ble Apex Court again in the case of Yogesh Kumar and Others Vs. Government of NTC, Delhi and Others, has taken the view that it is open to the recruiting authorities to evolve a policy of recruitment and to decide the source from which the recruitment is to be made. Paragraph 8 of the aforesaid judgment clearly mentions that fixation of qualification is discretion of recruiting authority as recruiting authority knows the sources from which recruitment is to be made. Relevant paragraph-8 of the aforesaid judgment is being quoted below:

8. This last argument advanced also does not impress us at all. Recruitment to Public Services should be held strictly in accordance with the terms of advertisement and the recruitment rules, if any. Deviation from the Rules allows entry to ineligible persons and deprives many others who could have competed for the post. Merely because in the past some deviation and departure was made in considering the B.Ed. candidates and we are told that was so done because of the paucity of TTC candidates, we cannot allow a patent illegality to continue. The recruitment authorities were well aware that candidates with qualification of TTC and B.Ed. are available yet they chose to restrict entry for appointment only to TTC pass candidates. It is open to the recruiting authorities to evolve a policy of recruitment and to decide the source from which the recruitment is to be made. So far as B.Ed. qualification is concerned, in the connected appeals [CA No. 1726-28 of 2001] arising from Kerala which are heard with this appeal, we have already taken the view that B.Ed. qualification cannot be treated as a qualification higher than TTC because the natures of training imparted for grant of certificate and degree are totally different and between them there is no parity

whatsoever. It is projected before us that presently more candidates available for recruitment to primary school are from B.Ed. category and very few from TTC category. Whether for the aforesaid reasons, B.Ed. qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider B.Ed. candidates for the present vacancies advertised as eligible. In our view, the division bench of the Delhi High Court was fully justified in coming to the conclusion that B.Ed. candidates were rightly excluded by the authorities from selection and appointment as primary teachers. We make it clear that we are not called upon to express any opinion on any B.Ed. candidates appointed as primary teachers pursuant to advertisements in the past and our decision is confined only to the advertisement which was under challenge before the High Court and in this appeal.

8. Hon''ble Apex Court in the case of Sanjay Kumar Manjul Vs. The Chairman, UPSC and Others, has taken the view that it is the statutory authority alone which is entitled to frame Rules as well as the qualification and Courts have no authority to prescribe qualification or to supplant or supplement the same. Relevant paragraphs 23 to 26 of the said judgment is being extracted below.

23. The aforementioned contention of the Fourth Respondent herein has specifically been denied and disputed. It has been contended that recruitment rules of the Deputy Superintending Archaeologist are different from the Superintending Archaeologist. Whereas in the case of the former, two years'' research experience in various subjects including Epigraphy was considered to be sufficient, in the case of latter, what was necessary was field experience of five years in Archaeology and knowledge of monuments and antiquities.

24. The statutory authority is entitled to frame statutory rules laying down terms and conditions of service as also the qualifications essential for holding a particular post. It is only the authority concerned who can take ultimate decision therefore.

25. The jurisdiction of the superior courts, it is a trite law, would be to interpret the rule and not to supplant or supplement the same.

26. It is well settled that the superior courts while exercising their jurisdiction under Article 226 or 32 of the Constitution of India ordinarily do not direct an employer to prescribe a qualification for holding a particular post.

9. Based on the judgments quoted above, the inevitable conclusion is that authorities are presumed to be aware of the fact, that candidate with other qualifications are available and it is well within their domain to evolve policy of recruitment and decide the source from which recruitment is to be made. In such a situation, this Court cannot come to the rescue of the Petitioners.

10. Writ petition lacks merit on all counts, as such the same is dismissed.