
(2002) 03 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 744 of 2002

Babita Rani

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 07-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 03 P&H CK 0023

Hon'ble Judges : Swatanter Kumar, J;Mehtab S. Gill, J

Bench : Division Bench

Advocate : R.K. Malik, Surya Kant, General and Amol Rattan, A.A.G, for the Appellant;

Final Decision : Dismissed

Judgement

Swatanter Kumar. J.—All the petitioners in these 39 writ petitions bearing civil writ petition Nos. 627, 744, 892, 897, 917, 942, 944, 955, 972, 973, 1017, 1018, 1040, 1053, 1085, 1087, 1097, 1101, 1111, 1123, 1132, 1135, 1138, 1141, 1143, 1155, 1167, 1170, 924, 1720, 1177, 1178, 1179, 1188, 1200, 1260, 1309, 1424 and 2080 all of 2002, have a common grievance against the respondent-Haryana Staff Selection Commission, hereinafter referred to as the Commission. The fact that they are fully qualified for appointment to the post of S.S. Masters, they have not been permitted to take examination held by the Commission. Thus, they prayed that the Commission be directed to permit the petitioner to take the written test and thereafter they be selected and appointed if found suitable in accordance with Rules.

2. As there were large number of petitions raising the same controversy on 17.1.2002 we had passed an interim order requiring the respondents to let the petitioners take the examination without prejudice to their rights. The order dated 17.1.2002 reads as under:-

"Reply has been filed in Court. The same is taken on record. List this matter for

final hearing on 14.2.2002 at 12.00 noon.

In the meanwhile, the petitioner(s) in all petitions and even such other candidates who have applied, would be permitted to take the examination provisionally, subject to further orders to be passed in this writ petition. The result of the petitioners) will not be declared. 1: will be maintained in a sealed cover. Permission to appear provisionally in the written test will not accrue any benefit or right to the petitioners). Only the eligible candidates, who satisfy all other conditions except the subject combination conditions as imposed by the respondents will be permitted to appear in written test. This order will not give any advantage to the petitioners) or other candidates, who have acquired the requisite qualifications after the cut off date i.e. the last date for submission of the applications."

3. Thereafter matters were heard for final disposal and judgments were reserved by us on 19.2.2002.

4. The Commissioner vide its advertisement No.2 of 1999 dated 14.11.1999 had advertised the posts of S.S. Masters/Mistresses. The petitioners are graduates and possess different additional qualifications. They belong to genera! as well as reserved categories. In response to the advertisement, they have submitted their applications which were scrutinized and they were not found eligible by the Commission as they did not satisfy the condition of subject combination as stipulated in the rules and advertisement. Resultantly, they were not permitted to take the entrance test. The petitioners, therefore, approached this Court. According to the petitioners, the State had earlier advertised 504 posts of teachers in different cadres including 229 posts of S.S. Masters/Mistresses on 7.11.1996. Thereafter the Commission again advertised 2217 posts on 14.11.1999. The copy of the advertisements has been placed on record as Annexure P. 1 to the writ petition. The first and fore-most condition in the advertisement is the clause relating to qualification on the basis of which the petitioners have been rendered ineligible, and not permitted to take the examination. According to the respondents, who have filed a detailed reply, the petitioners are not eligible as per the advertisement which is in consonance with the rules framed for filling up such vacancies, The petitioners being ineligible the respondents have declined to give them permission to take the examination.

5. It is commonly conceded before us that appointment and conditions of service of the teachers whose posts fell under Group C are governed by the Rules known as Haryana State Education School Cadre (Group C) Service Rules, 1998. The qualifications for appointment to the said posts as specified under Appendix B reads as under:-

APPENDIX B

(See rule 7)

Sr.No.

Designation of posts

Academic Qualification and experience if any, for direct recruitment

Academic Qualification and experience, if any, for appointment other than the direct recruitment.

1.

XX

XX

XX

2.

Social Study Master

(i) B.A. with B.T./B.Ed. from a recognised from a recognise; University OR B.A. Education (4 years Course) from a recognised University:

(i) B.A. with B.T./B.Ed. ;reconised University OR B.A. Education (4 years Course) from a recognised

(ii) In addition to English in B,A. or B.A. Education a combination of at least two subjects out of the following:-

(ii) In addition to English in B,A. or B.A. Education a combination of at least two subjects out of the following:-

(1)History (1) History (2) Political Science (3) Economics (4) Geography (5) Sociology (6) Public Administration (iii) Knowledge of Hindi upto Matric Standard.

(2) Political Science (3) Economics (4) Geography (5) Sociology (6) Public Administration, (iii) Knowledge of Hindi upto Matric Standard, (iv) 3 years experience on the post of JBT/C& (V) Teachers.

The qualifications specified in the advertisement are identical to the ones provided under the "rules.

6. The case of the respondents in the written statement on record can be conciesely referred with some advantage at this stage. Vide notification dated 29.10.1999 the posts were taken out of the purview of the Commission as they were existing on 8.9.1999. Advertisement No.2 of 1999 was issued by the State of Haryana inviting applications for the posts of S.S. Masters (E.S.M.&P.H,). Out of these S.S. Masters Posts, total were 2127 relating to all categories. This advertisement was issued on 14.11.1999. According to the respondents all previous advertisements stood withdrawn automatically and were of no consequence whether issued by the Commission or the Board. All the applicants in furtherance to 1999 advertisement, were required to satisfy the prescribed qualifications undep the rules afore-referred. The same Rules of 1998 would

control the appointments and earlier rules will be of no consequence. In terms of the advertisement dated 14.11.1999 the cut off date of determination of age and eligibility condition was 16.12.1999, the last date for receiving the applications. As the petitioners did not satisfy the eligibility conditions, therefore, they were not permitted to take the written examination. Such applicants including the petitioners are not entitled to be considered for appointment because they do not possess essential qualification of having the prescribed subject combination at the graduation level. May be some of the petitioners possess higher qualification of M.A. but that does not satisfy the prescribed essential qualifications, as such the writ petitions should be dismissed. The respondents have relied upon & Division Bench judgment of this Court in the case of Gyatri v. State of Haryana, C.W.P. No. 16058 of 2001, decided on 31.10.2001.

7. On the afore-stated premises, learned counsel for the petitioners in various writ petitions have raised challenge to the action of the respondents inter alia on the following grounds:-

i) The petitioners had applied in response to the advertisement issued by the Board or the Commission prior to 1999 and in response to the advertisement dated 7.11.1996. Resultantly, all the vacancies for which the application had been invited prior to the impugned advertisement should be filled as per the old rules. The condition of subject combination at the graduation level, therefore, cannot be enforced against the petitioners. In other words, the rules of 1998 can be enforced by the State prospectively alone, A right of consideration to the petitioners had already accrued prior to the issuance of advertisement of November, 1993, such right cannot be taken away by respondents now,

ii) The petitioners had studied one subject out of the prescribed subject combination at the graduation level and the other at post-graduation level. Though the subject they studied at post-graduation level was not their subject at the graduation level, still the petitioners are possessed of higher qualification than prescribed under the advertisement. Reference in this regard was also made to the instructions issued by the Government on 16.6.1979.

iii) The State is acting arbitrarily and discriminatory inasmuch as the teachers working on adhoc basis in the Government Schools and who are similarly situated like the petitioners have been considered eligible. They have been permitted to take the written test, while petitioners have been denied the opportunity.

iv) As the respondents are holding a written test themselves to adjudge knowledge and merit of an applicant, thus, the eligibility condition in regard to subject combination is rendered irrelevant.

8. DISCUSSION

Reversing back to the first submission raised on behalf of the petitioners, it is an admitted case before us that advertisement was issued by the Commission on

7.11.1996, Annexure P/I to the writ petition inviting applications for 504 posts of S.S. Masters in the Education Department of the State of Haryana. At that time, the condition of eligibility in relation to subject combination was mentioned in the advertisement, however, under the rules, no such qualification was prescribed. On similar facts, where the advertisement was issued for S.S. Masters in the year 1991 by the State of Haryana, a writ was filed before this Court in the case of *Dharamvir v. State of Haryana* and Anr. 1996(1) R.S.J. 296 and a Division Bench of this Court set aside the action of the State in rejecting candidature on the ground that the rules did not specify such a condition. Thus, no condition contrary to the rules could be inserted in the advertisement. Probably this persuaded the State to amend the relevant rules. The State Government amended the Haryana State Education School Cadre (Group-C) Rules in the year 1998, This amendment introduced the condition of subject combination, which then was duly incorporated in the notification dated 14.11.1999. As already noticed the case of the State Government is that by issuing advertisement dated 14.11.1999 it had withdrawn all the earlier advertisements and the process of scrutiny/selection was put to an end by mere issuance of this advertisement as 2124 vacancies advertised in 1999 advertisement included the earlier vacancies of S.S. Masters.

9. The Government issued the notification on 29.10.1991, copy attached to the reply as Annexure R/I while exercising its powers under Article 309 of the Constitution of India and all others powers enabling him in this behalf and read with the proviso to Clause 6 of the Haryana Government General Administration Department (General) Services with all enabling powers took these posts outside the purview of the Commission. Therefore advertisement dated 14.11.1999 was issued which was quite in consonance with the principles spelled out by the Division Bench of *Dharamvir's* case (supra). The rules in question, of course, were amended in the year 1998 so as to introduce in the rules itself, the essential qualifications with regard to two subject combinations out of six subjects specified in the rules and in conformity therewith in the advertisement. There is also no dispute before us that the petitioners do not strictly satisfy the eligibility conditions as none of them has studied the subject combination at the graduation level. Of course, an effort was made to show that some of the petitioners have studied one subject at the graduation level while in another subject out of the six subjects mentioned in the advertisement they have done their post graduation though not studied the same at the graduation level. This aspect of the matter we would discuss shortly hereafter.

10. First and the fore-most point that we must notice is that what is the date relevant for the purposes of adjudging the eligibility of the applicants? The advertisement was issued on 14.11.1999 and the last date for submission to the applications was 6.12.1999 we have no reason to doubt that the State had abandoned the advertisement No.2 of 1999 and took no steps to proceed any further with the process of scrutinising and selection on the basis of earlier applications. A Full Bench of this Court in the case of *Rahul Prabhakar Vs. Punjab*

Technical University and Others, and even the judgments of the Hon'ble Supreme Court have clearly held that the relevant date for determining the eligibility of an applicant is the last date for submission of such applications. Advertisement of posts does not vest any indefeasible right in the applicants who apply in response to such advertisement.

11. Prescription to out off date cannot be per se termed as arbitrary. Fixing of maximum age and qualification with reference to a date in an advertisement cannot also be said to be arbitrary and unjust merely because there is a delay in issuance of said advertisement (refer Dr. Ami Lal Bhat v. State of Rajasthan and Ors. J.T. 1997(6) SCC 72). There is hardly any question of operating the Rules of 1998 retrospectively. The advertisement in question for 2124 posts had been issued subsequent to the amendment of the rules and, thus, the rules would squarely apply to the process of scrutiny and selection for appointment to these posts. The applicants who have applied under and in response to the advertisement of 1996 do not have any indefeasible or vested right to require the State to fill up the erstwhile advertised vacancies. The state in its wisdom and for appropriate reasons can always abandon a selection. No mala fides have been alleged against the State on this score. The learned counsel for the petitioners had placed reliance upon the judgment reported as Jatinder Kumar v. State of Haryana and Anr. 1995(1) R.S.J. 752, to argue that the earlier vacancies must be filled in accordance with the old rules.

12. Thus, because an advertisement has been issued which subsequently is withdrawn does not give any right to the petitioners to claim selection or even for that matter consideration in furtherance to the new advertisement.

The new advertisement has been issued after amendment of the rules. We have already noticed that the qualifications essential or otherwise specified in the advertisement are in conformity with Rule 7 and Appendix thereto. The Hon'ble Supreme court of India in the case of Dr. Ramulu and another, etc. Vs. Dr. S. Suryaprakash Rao and others, while dealing with the cases of promotion and enforcing a penal under the repeal Rules, while negating the contentions of the petitioners that they have any vested right, held as under:-

"Thus, we hold that the first respondent has not acquired any vested right for being considered for promotion in accordance with the repealed Rules in view of the policy decision taken by the Government which we find is justifiable on the material available from the record placed before us. We hold that the Tribunal was not right and correct in directing the Government to prepare and operate the panel for promotion to the post of Assistant Directors of Animal Husbandry Department in accordance with the repealed Rules and to operate the same."

13. In the case of Renu Ahuja v. State of Punjab and Ors. 1992(4) S.L.R. 263, after discussing various judgments of the Apex Court as well as this Court, the Bench held that an advertisement is a notice to the people at large to submit their applications. The mere issuance of advertisement does not vest right of

appointment to prospective applicant. Such advertisement could be withdrawn at any time and for varied reasons. The Bench held as under:-

"In fact a rule which has been consistently recognised in service jurisprudence is that even selection for a post does not confer an indefeasible right to be appointed. Reference in this behalf can usefully be made to the law laid down by the Apex Court in *The State of Haryana Versus Subhash Chander Marwaha and Ors.* 1973(2) S.L.R. 137, and *Mani Subrat Jain v. State of Haryana* 1977(1) S.L.R. 272: 1977 S.L.W.R. 77 (S.C.),

If even selection to a post does not ordinarily confer a right on the selection candidate to get an appointment, a mere advertisement of the post or occurrence of a vacancy, which has to be filled up by direct recruitment, cannot confer any right. Whatsoever, in my view, it is open to the employer to scrap an advertisement totally or to revise the qualifications at any time before the selections are actually made. This would of course, be subject to the condition that the action of the employer should not be arbitrary or capricious.

14. The judgment of the Division Bench in the case of *Jatinder Kumar (Supra)* is of no help to the petitioner. Some observations favourable to the petitioner were certainly made by the Division Bench in that case. However, the matter was clarified by the same Bench of this Court and the principle in *Jatinder Kumar's* case was clarified without ambiguity. Their Lordships of the Division Bench while taking note of the judgment of the Supreme Court in the case of *State of Madhya Pradesh and Ors. v. Raghuveer Singh Yadav* (1994)6 S.C. 151 and *Rajasthan Public Service Commission Vs. Chanan Ram and Another*, held as under:-

"We are also of the view that the ratio of the judgment of the Court in *Jatinder Singh v. State of Haryana and Anr. (Supra)* cannot be applied to the facts of this case for the purpose of directing the Commission to hold separate selections for the vacancies which became available prior to the coming into force of 1998 Rules and those which occurred after the enforcement of the new rules."

"If we examine the claim of the petitioners in the light of the ratio of the decision of the Supreme Court in *Raghuveer Singh Yadav's* case (supra) and *Chanan Ram's* case (supra), there is little difficulty in holding that the action of the respondent-Commission to withdraw the advertisement No. 2/96 or to issue fresh advertisement incorporating qualifications proscribed under the 1998 Rules cannot be declared unconstitutional simply because the petitioners do not possess the qualifications prescribed in the 1998 Rules and, therefore, they are not eligible to be considered against the advertised posts more so because the petitioners have not prayed for quashing the notice Annexure P-4 vide which the commission withdrew advertisement No.2/76.

15. It was also noticed that if the advertisement/notification issued for direct recruitment is withdrawn after amendment of the rules and fresh advertisement is issued, the applicants cannot claim a right under the previous advertisement.

16. It is a settled principle of law that Government is the biggest employer in our country. The Government has constituted specialised bodies like Commission or Boards or Selection Committee for making appointments to its various departments. Such concept of employer normally would not be permitted to be stagnate and the appointments to various cadres must be made keeping in view the job requirement and specific qualifications as the competent authority may prescribe. Such criteria, thus, would essentially be subject to change and the Government has a right to change qualifications, experience and eligibility conditions keeping in mind the State policy and job requirement.

17. In the case of Raghuvver Sigh Yadav (supra) their Lordships of the Supreme Court held that upon amendment of the rules, alteration in eligibility conditions and essential qualifications could be prescribed by the Government. The Government was competent to make selections on the basis of the amended criteria, though amended rules were prospective in their operation. The candidates who pass an examination under the unamended rules or advertisement are not vested with any right against the State. Further more, in the case of Union of India v. Yogendra Singh 1994(3) S.C.T. 176 again the Hon"ble Apex Court reiterated the principle that where the qualifications for the post of Health Inspector were changed with effect from 24.5.1990, then the candidates possessing qualifications earlier to the amendment cannot claim appointment even in respect of the vacancies which had fallen vacant before 25.4.1990. The candidates would have to satisfy the currently prescribed qualifications. This view was also taken by the Hon"ble Apex Court in the case of Rajasthan Public Service Commission (supra).

18. In view of the above settled principles of law we do not find any merit in the contention of the petitioners that they had acquired a vested right under the earlier notification and the amended Rule 7 would be applicable prospectively to the extent that the previous vacancies must be filled up as per the unamended qualifications.

19. We may also notice that where-ever the Hon"ble Apex Court has taken the view that an advertisement by a Commission give some right to the applicants, there were the cases where the Commission had actually acted upon the advertisement and not only commenced the process of selection but actually selected the candidates as well. Reference can be made to the judgment of the Hon"ble Supreme Court in the case of P. Mahendran v. The State of Karnataka 1990(1) S.L.R. 307 (S.C.). In the present case, admittedly the advertisements issued by the Board in the year 1996 were never acted upon and no process of selection was commenced there-upon. In fact all the advertisements prior to November, 1999 in this regard have been abandoned and all fresh selections are controlled by the process commenced in furtherance to 1999 advertisement. All persons are being treated by the same criteria. There has been no restriction of any kind upon all the eligible person to apply in furtherance to the advertisement and the qualification prescribed in the amended rules of 1998.

20. Another Division Bench of this Court in the case of Gaytri (supra) had declined the relief to the applicants similarly placed like the petitioners. The Bench took the following view:-

""The question which arises for consideration is whether a person not possessing the prescribed qualification, but possessing a higher qualification, is to be treated at par with the persons possessing prescribed qualification. The above Supreme Court judgment is not a case of not holding minimum qualification, but a case of holding minimum as well as higher qualification. In the present case, there is no bar for persons holding higher qualification, but has higher qualification in the same line. The Full Bench of this Court in Som Dutt v. State of Haryana 1983(3) S.L.R. 141 held that it could not be laid down that a technically higher qualification is necessarily better or more advantageous for the peculiar needs of a post for which lower qualifications are prescribed."

21. We respectfully agree with the above reasoning. It is true that the view expressed by the Full Bench in Som Dutt's case (supra) has been doubted in some other matter and has been referred to a larger Bench, but in view of the judgment of the Hon'ble Apex Court referred above, we must follow the view expressed in Som Dutt's case (supra).

22. The second and third submissions raised on behalf of the petitioners can be discussed together. It is a conceded case that the petitioners do not possess the prescribed essential qualifications of subject combination at the graduation level. They wish to justify that they possess higher qualifications on the premises that they have studied one of the subjects at graduation level while in the other they have done post-graduation, though without studying the same at the graduation level. The stand of the petitioners is that they possess higher qualifications and keeping in view the principles enunciated in the case of Y. Srinivasa Rao Vs. J. Veeraiah and Others, the petitioners should be deemed to be qualified and eligible for the posts in question. This argument again has no merit. The State in its wisdom has amended Rule 7 and the qualifications have also been amended making it mandatory that an applicant should have studied prescribed subject combination at the graduation level. In none of the writ petitions before us there is a challenge to the validity, constitutionally or otherwise of provisions of Rule 7. Once Rule 7 is taken to be a valid place of legislation existing on the statute book, its strict adherence is the obligation of the State and its agencies. The State cannot alter the prescribed qualifications even by implication and particularly when there is no power of relaxation prescribed in the rules. The Government has issued advertisement strictly in consonance with Rule 7 and all applicants must satisfy these essential qualifications. Whether a given qualification is equivalent to or higher than the prescribed qualifications, that too on certain conjectures and surmises is not for the Courts to determine. It is for the specialised agencies to determine equivalence of qualifications or such allied matters. This has been repeatedly held by the Hon'ble Apex Court and reference can be made to the case of Rajendra Prasad Mathur Ors. Vs. Karnataka

University and Another, .

23. It is contended by the learned Advocate General on behalf of the State that these qualifications are job based and have a direct nexus to the duties to be performed by the candidate when appointed. This is intended to strike a balance between the nature and duties of employment on the one hand and prescribed qualifications on the other, keeping in mind the needs of the Society. The State's wisdom in this regard would hardly be open to judicial review. Need oriented based employment is the concept which must be examined by the concerned authorities and not by the Court. If the State has provided that studying of a particular subject at graduation level is mandatory for employment to a particular post, in that even the Court cannot sit in judgment as to correctness or otherwise of such decision. The Court may even not be a proper forum to comment whether study of the subject at post-graduate level without studying the same at the graduation level, would be a higher qualification or not. The concept of higher qualification in the present case in fact hardly arise for consideration. Higher qualification presuppose lower qualification in the same subject. Syllabi of a lower class in the same subject would constitute a higher qualification as per its syllabi in the higher class. We do not consider it appropriate to deal with this question in any greater detail. Adherence to the prescribed qualification is an obligation of the State in regard to employment and it is equally binding on the applicant that they must satisfy the currently prescribed qualifications for appointment to the posts in question.

24. We have also heard the learned counsel for the parties at some length with regard to the delay in filling up these vacancies. The short-listing criteria introduced by the Government for the purposes of introducing process of elimination, as there were large number of applicants against few posts, was challenged in relation to other subjects before the High Court. There were certain interim directions passed by the High Court in various cases. There has been some delay on the part of the Government in filling up the vacancies but it is not entirely for the fault of the State. There is no intentional or negligent delay on the part of the Board/Commission. On this score, the petitioners cannot be permitted to seek advantage and request for filling up of posts as per old rules.

25. Another aspect of this case which we must consider is that should some of the petitioners who have acquired prescribed qualifications subsequent to the cut off date be permitted to take the examination and be considered for selection to these posts. This question will have to be answered in the negative because inevitable result of acceptance of such a contention would be patent discrimination and arbitrariness in State action. The general candidates who have acquired the prescribed qualifications after 1999 and could obviously not apply in response to the advertisement would be deprived of such consideration. The petitioners did possess the prescribed qualifications under old rules but attained the prescribed essential qualifications under the amended rules after the cut off date. Thus, such candidates cannot be placed differently than from the general

conditions who are not before the Court and were not possessed of essential qualifications prior to cut off date and so could not apply for the post in question. The contention of the petitioners that there is also apparent discrimination in the State action as adhoc teachers working in Government schools had been permitted to take the examination and would also be considered for appointment to the posts in question, but the petitioners are being deprived of such consideration as they are teaching in other recognised schools, is also without merit. Certain limited benefit has been given to adhoc teachers in pursuance to the orders of the High Court in CWP No. 3400 of 1999. It is not a voluntary act on the part of the State but is in compliance to the direction of the Court. The concession which is being granted. The concession which is being granted in furtherance to order of the Court cannot be treated to be an act of discrimination on the part of the State. The Advocate General, Haryana also stated that if the order of the High Court attains finality, they would also give such benefit to adhoc teachers in the government or the government aided schools against sanctioned posts.

26. In these circumstances we are unable to trace any element of discrimination and arbitrariness in the state action. We also do not consider it appropriate to direct the State to grant such a relief to the petitioners if they have acquired necessary qualifications after the cut off date. The Court cannot be a party to a State action, which would patently offend the principles of equality enshrined in Articles 14 and 16 of the Constitution of India.

27. The last submission raised on behalf of the petitioners that once a written test is being held by the respondents then the condition of subject combination provided in the advertisement is meaningless. The very purpose of prescribing such qualification is defeated as merit of the candidates would be adjudged in the written test. The argument is not well founded. Holding of the written test is primarily taken as a step towards process of elimination keeping in view the large number of applications that the State has received in response to the advertisement in question. It does not obviate the necessity for enforcing the essential prescribed qualifications against all the applicants. What should be the prescribed qualifications and whether it need to be relaxed at any stage of the selection process is not a matter squarely falling in the domain of judicial determination. It must necessarily be decided by the specialised agencies created for that purpose by the State.

28. For the reasons afore-stated we find no merit in these petitions and the same are dismissed leaving the parties to bear their own costs.

Mehtab S. Gill, J.