

(2008) 03 P&H CK 0083
In the Punjab And Haryana At Chandigarh

Bahadur Singh and Another	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 03-03-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2008) 3 PLR 217 : (2009) 2 SLR 108

Hon'ble Judges : Jaswant Singh, J;Jasbir Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Jasbir Singh, J.—This order will dispose of Civil Writ Petitions No. 16674 of 2006, 10756 of 2006, 5904 of 2007, 5906 of 2007, 15977 of 2007 and 521 of 2008, as common questions of law and facts are involved in all these petitions. For dictating judgment, facts are being mentioned from C.W.P. No. 16674 of 2006.

2. Petitioner No. 1 is working as a Sanskrit Teacher and petitioner No. 2 as a Lecturer in Sanskrit. Both are working in Schools, run by the Education Department of State of Haryana. Dispute in these writ petitions pertain to promotion to the posts of Headmaster, High School. When names of the petitioners were not considered for the said posts, being ineligible they came to this Court.

3. On notice issued, reply has been filed, wherein it has been stated that so far as petitioner No. 1 is concerned, he is now being considered eligible and his case for promotion to the next higher posts shall be considered. However, petitioner No. 2 is not eligible as he has not passed B.A. with Sanskrit as one of the subjects.

4. Counsel for the parties heard.

5. Shri Vikas Chatrath, counsel for the petitioners by making reference to Haryana State Education (School and Institution Cadre) Group B Service Rules,

1998, (in short the Rules) argued that the petitioners are eligible for promotion to the posts of Headmaster. Merely because one of them has not passed graduation with Sanskrit as one of the subjects, it cannot be taken against him because no such qualification has been envisaged in the Appendix B, attached to the Rules. He prayed that both the petitioners deserves to be considered for promotion for the next promotional posts.

6. Ms. Alka Chatrath, Advocate, who was appeared for the added respondents, argued that as the petitioners are not possessing the qualifications of B.T/B.Ed., they cannot be considered for next promotional post by giving them benefit of some equivalent qualification.

7. Shri Rathee has also opposed the prayer made by the petitioners, on the ground that petitioner No. 2 has not passed graduation with Sanskrit as one of the subjects.

8. It is apparent from the records that petitioner No. 1 was appointed on ad hoc basis on February 19, 1985, as a Sanskrit Teacher. His service was regularised on September 30, 1988. Similarly, petitioner No. 2 came in service, on ad hoc basis, on July 10, 1981 and his service was regularised on November 1, 1986. Petitioner No. 1 has to his credit qualification of B.A., Shiksha Shastri, O.T. (Sanskrit) from Chandigarh Administration and he is also M.A. in Sanskrit. Similarly, petitioner No. 2 has to his credit qualification of Shastri (Hons. in Sanskrit), B.A. (without Sanskrit), O.T. (Sanskrit) (Haryana) called as Language Teacher Course in Sanskrit, which is equivalent to B.Ed. with Sanskrit as one of the subjects and M.A. in Sanskrit.

9. It is apparent from the records that as per Rule 7 of the Rules, qualification for promotion to the post of Headmaster, High School, is mentioned in Appendix B attached with the Rules. As per Rule 9(d) of the Rules, quota of 7% by promotions to the post of Headmaster, High School, from amongst Sanskrit Teachers, is provided. As per column 4 given in Appendix B with the Rules, for promotion to the post of Headmaster, High School, followings are the requisite academic qualification:

By promotion

- (i) Eight years" experience as Headmaster of Middle School or Master; or
- (ii) B.T./B.Ed. and 8 years" experience as Sanskrit Teacher/Hindi Teacher or Punjabi Teacher; By transfer or deputation.

- (i) Two years" experience as Headmaster of High School;
- (ii) Knowledge of Hindi upto Matric standard.

10. It is not in dispute that petitioner No. 1 is working as Sanskrit Teacher and petitioner No. 2, with requisite experience, i.e. more than 8 years is now working as Lecturer in Sanskrit. Objection of the respondents that Petitioner No. 2 has

not passed B.A. with Sanskrit as one of the subjects is liable to be rejected. As per qualifications, mentioned above in the Rules, it is nowhere prescribed that for a Sanskrit Teacher, for his/her promotion to the post of Headmaster, High School, it is necessary to pass B.A. with Sanskrit as one of the subjects. Admittedly, both the petitioners have acquired experience of eight years as Sanskrit Teacher. As such if they possess qualification of B.T./B.Ed., they are eligible for promotion to the next higher post. An attempt has been made to defeat their right by stating that promotional post can be made available only if they possess qualification of B.T./B.Ed. It is not in dispute that both the petitioners do not possess the qualification of B.T./B.Ed. However, they possess the equivalent qualification. The qualification of Shiksha Shastri (O.T. In Sanskrit) from Chandigarh Administration, possessed by petitioner No. 2 has been considered equivalent to B.Ed. And thus considered to be eligible for promotion as Headmaster by respondent-Department. As per document Annexure R-3, dated May 23, 2007, annexed with C.W.P. No. 5906 of 2006, Maharshi Dayanand University, Rohtak, has opined that qualification of Language Teacher Course (Sanskrit) awarded by State of Haryana is equal to B.Ed. with Shastri as a teaching subject. In view of document Annexure R-3, we are of the view that petitioner No. 2, who has passed the Language Teacher Course (Sanskrit) from the State of Haryana possess the qualification equivalent to B.Ed. Now it is to be seen as to whether he is also eligible for promotion as per rules to the post of Headmaster or not.

11. A similar controversy came up before learned Single Judge of this Court in Karam Pal Singh v. State of Haryana C.W.P. No. 19973 of 2002 (P-12). In that case, petitioner was promoted to the post of Headmaster, High School. Thereafter, a show cause notice was issued to him for his reversion by stating that he does not possess the requisite qualification of B.T./B.ED. The above said petitioner (Karam Pal Singh) had to his credit qualification of Shiksha Shastri (O.T. Sanskrit). While deciding, as to whether qualification of the petitioner therein can be considered equivalent to B.T./B.Ed., by making reference to the provisions of the Rules, referred to above, and ratio of the judgment in Ajit Sen, Sanskrit Teacher v. State of Haryana C.W.P. 1681 of 2002, rendered on September 17, 2004, it was observed thus:

In view of the observations of the Division Bench of this Court in Ajit Sen's case (supra), by which I am bound, the qualification of Shiksha Shastri (OT Sanskrit) having been found to be recognised as equivalent to B.Ed. examination, it is to be taken that the same is valid not only for recruitment as Sanskrit Teacher but also for the purpose of promotion to the post of Headmaster in terms of Group "B" Rules. In fact, in the written-statement, it is the stand of the respondents themselves that the degree of Shiksha Shastri (OT Sanskrit) has been recognised by the State Government as equivalent to B.Ed. degree for direct recruitment to the post of Headmaster. Therefore, it is incomprehensible as to why the same qualification of Shiksha Shastri (OT Sanskrit) is not a valid or a recognised qualification for the purposes of promotion to the post of Headmaster. The stand,

therefore, that the rules for promotion to the post of Headmaster does not contain words "or an equivalent qualification recognised by the Haryana Government" and thus, cannot be read in rules is devoid of merit, as the respondents have themselves read the same in rules for the purposes of appointment to the post of Headmaster by way of direct recruitment. Therefore, there cannot be two different sets for equivalence for the purpose of appointment to the same post of Headmaster in the present case. In other words, the respondent cannot take the stand that the qualification of Shiksha Shastri (OT Sanskrit) from Chandigarh Administration is an equivalent qualification to that of B.Ed. for the purposes of appointment as Headmaster by direct recruitment but is not equivalent for the purposes of appointment by promotion. This would be clearly arbitrary and discriminatory besides being hit by Article 14 of the Constitution.

12. It is apparent from the records that earlier also, similar controversy came up before this Court in Ajit Sen's case (supra). While dealing with similar controversy, a Division Bench of this Court has observed thus:

A perusal of the educational qualifications reveals that a candidate is required to possess eight years' experience as Headmaster of Middle School or Master, or B.T./B.Ed. with eight years experience as Sanskrit Teacher/Hindi Teacher or Punjabi Teacher.

The official respondents have denied consideration for promotion to the petitioner on the ground that he does not possess the qualification of B.T./B.Ed. as the qualification possessed by him, namely, Shiksha Shastri is equivalent to the qualification of B.Ed. only for the purpose of recruitment. It is not the case of the official respondents that the petitioner does not possess the requisite experience. Once the petitioner possesses the qualification of Shiksha Shastri, which has been granted equivalence to B.Ed. such an objection, in our opinion, is misplaced.

Admittedly, the private respondents are junior to the petitioner. In case the petitioner's case for promotion had been considered along with the private respondents, he would have been promoted to the post of Headmaster in preference to them and, therefore, the action of the official respondents in promoting the juniors, is illegal, void, arbitrary and violative of the provisions of Articles 14 and 16 of the Constitution of India. The matter can be examined from another angle. In case the interpretation, sought to be advanced by the counsel for the State, is accepted, it would lead to a situation where the petitioner would never, during the entire tenure of service, be entitled to promotion. This interpretation would, thus, confine the petitioner to the post of a Teacher for the entire tenure of his service, without any chance of promotion whatsoever. It is, thus, apparent that such an interpretation of the Rules as also the letter of equivalence, would be arbitrary and, therefore, liable to be rejected. The letter of equivalence has to be read along with the rules, having already been so read at the time of recruitment.

13. It is virtually admitted in this case that many Sanskrit Teachers, who have to their credit equivalent qualification to B.T./B.Ed., were promoted to the post of Head master, High School. In para No. 5 of C.W.P. No. 10756 of 2006, it has been averred as under:

5. That, however, the juniors of the petitioners have been promoted on the basis of their professional qualifications of Shiksha Shastri alone. Some of the juniors who have been promoted as Headmasters without the qualification of B.Ed. on the basis of qualification of Shiksha Shastri are given below:

I. Sh. Sushil Kumar, Sanskrit Teacher. Govt. High School, Kardhan Distt. Ambala has been promoted as Head Master, Govt. High School and now posted in G.H.S. Khuda Distt. Ambala.

II. Mahinder Singh, Sanskrit Teacher and has been promoted as Head Master and he is posted in District Rohtak.

III. Ajit Kumar, Sanskrit Teacher was also promoted as Head Master and he is posted in Rohtak.

Reply to the paragraph, referred to above, reads thus:

That in reply to para-5 of the writ petition it is submitted that the persons mentioned in this para of the writ petition of promoted to the post of Headmaster in view of the judgment of this Hon''ble High Court. However, it is submitted that as already submitted in foregoing para-I of the preliminary submissions that earlier the answering respondents as well as this Hon''ble Court have not examined the issue as to whether a person who have only possessed equivalent professional qualification to that of B.Ed. but not have the equivalent academic qualification to that of B.A. qualification can be promoted as Headmaster of Govt. High School particularly for appointment in the service as a Headmaster both professional and academic qualifications are necessary. The answering respondents have given promotion to such persons without examining this issue.

14. Reading of the contents of the written-statement further reveal that many persons having equivalent qualification to B.T./B.Ed. were promoted against the post of Headmaster, High School under the Rules. Objection that the candidates, who have not passed B.A. with Sanskrit as one of the subjects, cannot be permitted to be raised at this belated stage. Once the petitioners are working as Sanskrit Teachers, for so many years, for their promotion to next higher post, qualification of B.A. with Sanskrit as one of the subjects is not relevant, as the same is not a requisite condition as per rules.

15. In view of facts, mentioned above, we allow these writ petitions and direct the respondents to consider the petitioners and all other Sanskrit Teachers working in the respondent - Department, who possess qualifications equivalent to B.T./B.Ed., and have the requisite experience as per Rules but they may not possess qualification of B.A., with Sanskrit as one of the subjects, as eligible for promotion to the posts of Headmaster, High School. Furthermore, it is made clear

that if any junior person, to the petitioners in the cadre has been promoted as Headmaster earlier, relief be granted to the petitioners also from that date. However, as per undertaking given by their counsel, they shall not be entitled to get any actual financial benefit, only deemed/notional benefits be given to them. This be done in the case of other employees also. Needful be done within a period of two months from the date of receipt of copy of this order.

Chief Secretary, Haryana, is directed to circulate copy of this judgment to the authorities concerned so that such like litigations may not arise in future.