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**(2011) 05 RAJ CK 0110**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 15289 of 2010**

Bhag Chand Verma

APPELLANT

Vs

R.P.S.C. and Others

RESPONDENT

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**Date of Decision :** 10-05-2011

**Acts Referred:**

Constitution of India, 1950 — Article 14

National Council for Teacher Education Act, 1993 — Section 12(d), 32

**Citation :** (2011) 4 RLW 3543

**Hon'ble Judges :** Ajay Rastogi, J

**Bench :** Single Bench

**Advocate :** Sandeep Bhagwati, Umesh Kr. Sharma, R.D. Meena, Lokesh Sharma, Thakur Lal Pandey, Ram Pratap Saini, Dharmendra Barala and Rajendra Soni and Mohit Soni CW-1322/11 and Ashok Yadav CW-2390/11, Rajendra Soni for Ramesh Chand and Ors. in 15289/10 and Ashok Yadav for Ram M. Meena and Ors. in 15289/10, for the Appellant; S.N. Kumawat, AAG for State and PSC, Ram Rakh Sharma and Mr. Ashwani Sharma for Pvt. Respondents, for the Respondent

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## Judgement

Ajay Rastogi, J.—Since common controversy being involved in a bunch of instant petitions, hence are heard together at joint request and decided by this order. Basic question raised by petitioners for determination by this Court is as to whether such applicants having not submitted their applications pursuant to advertisement issued by Rajasthan Public Service Commission ("RPSC") and regardless to their eligibility but on being participated in a combined competitive examination held for the posts of Physical Training Instructor ("PTI") Gr. II (Code-35) & Gr. III (Code-36), can be selected and be recommended by PSC for appointment under the Rajasthan Educational Subordinate Service Rules, 1971 ("Rules, 1971").

2. Advertisement dt. 03/09/2008 (Ann. 1-CWP-15289/2010) was issued by the RPSC for holding process of selection for the posts of PTI Gr. II & Gr. III under the Scheme of Rules, 1971. Under advertisement (supra), posts of PTI Gr. II & Gr. III were separately identified and a special Note was appended thereto that

applicants in OMR form have to specifically mention in regard to their participation either for PTI Gr. II (Code-35) or PTI Gr. III (Code-36) or both separately. While submitting OMR Form. Since there being different qualification prescribed for PTI Gr. II & Gr. III, one might have fulfilled requisite qualification for both the posts, and may like to appear in combined competitive examination for both the posts.

3. However, after instructions appended to advertisement dt. 03/09/2008, a Press note was released by the PSC on 22/09/2009 (Ann. 7-CWP-15359/2009) inter-alia notifying to all the applicants who have submitted OMR Forms pursuant to advertisement (supra) for participating in a combined competitive examination held for PTI Gr. II & Gr. III, to the effect that looking to requisite qualification for PTI Gr. II & Gr. III, he must submit his post Code-35 or Code-36 and accordingly result would be declared and in case of an error being committed in specifying post Code, result of such applicants shall be cancelled.

4. After Press Note was released on 22.09.2009 (supra), combined competitive examination was held on 04.10.2009 - result whereof was declared on 29/10/2010; and a News was published in Daily News Paper that the PSC has declared all such applicants who did not apply for the post of PTI Gr. III but holding degree of Bachelor of Physical Education (B.P.Ed.), eligible for the post of PTI Gr. III, as well.

5. But prior thereto, RPSC issued letters on 04.12.2009 calling upon applicants to submit their testimonial/documents in the Office of PSC on or before 04/01/2010; and immediately thereafter, News was published in Daily News Paper on 18/12/2009 that the State Government has directed that the holders of Diploma of Physical Education (D.P.Ed.)/Bachelor of Physical Education (B.P.Ed.) being a higher qualification are also eligible for PTI Gr. III and accordingly, direction dt. 06/01/2010 was issued by the State Government to the Secretary, RPSC that Certificate of Physical Education (C.P.Ed.) acquired after Senior Secondary & D.P.Ed./B.P.Ed., are higher qualification and its holders are eligible for PTI Gr. III and be allowed to be applicants regardless of them having submitted Forms/options about post Code pursuant to advertisement dt. 03/09/2008 and in terms of direction dt. 06/01/2010, result of combined competitive examination was published by PSC on 29/10/2010 and all such candidates who were not the applicants for the post-Code 35 (PTI Gr. II) or Code-36 (PTI Gr. III), as the case may be, were selected by the PSC; against which joint grievance has been raised by petitioners by the bunch of instant petitions.

6. Counsel for petitioners jointly submit that in terms of advertisement dt. 03/09/2008, applicants were called upon to specify regarding their post Code-35 or Code-36 in which they intended to apply/appear; and under instructions appended thereto, it was left open for the applicants to decide as per his/her qualification whether intended to apply for/appear for the post-Code 35 or 36 or both and to this effect, there was a specific clause in the advertisement that any

error if committed by the applicant in filling post Code, for which one intended to apply/appear on holding qualification, but if finally found in-eligible for the post, his selection would be cancelled; and despite such a specific condition (*supra*) being widely circulated by Press Note release before holding examination; and after the combined competitive examination was held and all the applicants took their decision as to whether one intends to appear either for Post Code-35 (PTI Gr. II) or Code-36 (PTI Gr. III) or for both. The unilateral decision taken by the State Government dt. 06/01/2010 and pursuant thereto, the PSC declared the result regardless of the Post Code-35 (PTI Gr. II) or Code-36 (PTI Gr. III) solely based on their qualification, is wholly arbitrary and in violation of conditions of advertisement; and contrary to law and is also in violation of Art. 14 of Constitution of India.

7. Counsel for the petitioners placed reliance upon the decision in *Kallash Chandra Harijan Vs. State of Rajasthan and Others*, and further submit that those holders of D.P.Ed., or B.P.Ed., may be holders of higher qualification, as alleged but in the light of judgment (*supra*), are not holding equivalent qualification to C.P.Ed. being a professional qualification to hold the post of PTI Gr. III, and the directions issued by State Government vide Circular dt. 06/01/2010 are in contravention of the National Council for Teacher Education Regulations, 2001; and in such circumstances, the decision taken by the respondents in treating those applicants holding qualifications of D.P.Ed./B.P.Ed., being eligible for PTI Gr. III and directing the PSC to declare result of such applicants regardless of their forum being submitted for post Code-35 or 36, is wholly arbitrary, inasmuch as the decision taken by State Government & carried out by the PSC is without application of mind & deserves to be quashed.

8. Counsel for petitioners further submit that once the recruitment process was initiated pursuant to advertisement dt. 03/09/2008, and procedure of selection being prescribed in advance could not have been changed by the respondents at a later stage, which is impermissible under law and in support whereof, Counsel placed reliance upon a decision in *K. Manjusree Vs. State of A.P. and Another*, .

9. Respondent-PSC has filed reply in which it has been inter-alia averred that after the written examination was held on 04/10/2009 (which appears to have been wrongly mentioned in the reply as on 04/10/2010) but before result whereof could be declared, direction was issued by the State Government vide Circular dt. 06/01/2010 to the Secretary, RPSC that those holders of D.P.Ed./B.P.Ed., are to be considered as eligible for PTI Gr. III, as well. Pursuant to which result was declared on 29/10/2010 and according to the reply filed by PSC, (8) candidates applied for PTI Gr. III (Post Code-36) but were selected for PTI Gr. II while 62 candidates who were the applicants for PTI Gr. II (Post Code-35) were selected for PTI Gr. III. Relevant para 4 of the reply reads *ad infra*:

4. That respondent RPSC forwarded names of 62 candidates for appointment on the post of PTI Gr. II. Out of which 43 candidates applied only for PTI Gr. II and selected, 11 candidates applied for both the posts of PTI Gr. II and PTI Gr. III and

8 candidates applied only for PTI Gr. III but selected on the post of PTI Gr. II.

That so far as PTI Gr. III is concerned, 405 posts were advertised and examination was common for the post of PTI Gr. II and PTI Gr. III; as such name of 405 candidates have been forwarded by RPSC.

Out of 405 candidates, 62 candidates were applicant only for PTI Gr. II-Post Code-35, 180 candidates were the applicant of PTI Gr. II and PTI Gr. III-Code-36 also and 163 candidates applied only for PTI Gr. III. The above fact demonstrates that only 62 selected candidates in PTI Gr. III were not the applicants of PTI Gr. III Code-36 post, however, they were selected. Rest candidates are applicants for post Code 35 as well as Code 36.

10. On the basis of facts averred in the reply, Counsel for respondent PSC submits that the decision taken by the State Government in holding those having qualification of D.P.Ed. & B.P.Ed., eligible was based on the judgment of this Court (DB) in State of Rajasthan vs. Hari Ram (2006 (1) WLC 124) wherein the Division Bench held that those holding qualification of B.P.Ed are eligible for PTI Gr. II & Gr. III and taking note thereof, directions were issued vide circular dt. 06/01/2010 which was carried out by the PSC and considered holders of B.P.Ed. eligible for PTI Gr. III, regardless of their application in a common written examination held, and result of the selected candidates was accordingly declared on 29/10/2010.

11. Counsel submits that it is a mere technical objection raised by petitioners that the applicants who have not submitted Forms could not have participated in the process of selection, but the ultimate fact remains that in the light of judgment of this Court in State of Rajasthan vs. Hariram (2006 (1) WLC 124), all such candidates were eligible for PTI Gr. III and based on their merit, they have been finally selected and intended to be recommended by PSC and merit of such candidate should not be sacrificed when they are otherwise eligible for both the posts for aforesaid reasons.

12. In counter to arguments of respondent's Counsel (supra), Counsel for petitioners submit that qualification alone will not make one eligible unless having filled OMR form pursuant to advertisement and what has been observed by Division Bench in State of Rajasthan and Others Vs. Hari Ram and Others, cited by the respondent's Counsel was confined to the controversy raised only in regard to the qualification of B.P.Ed., for the post of PTI Gr. II and not for PTI Gr. III and therefore, the judgment (supra) cannot be considered as ratio decidendi while examining the controversy in regard to eligibility for the post of PTI Gr. III and that apart, what has been observed by Division Bench, in regard to PTI Gr. III appears to be obiter.

13. This Court has considered rival contentions advanced at the bar, and with their assistance, examined material on record. Before examining the controversy raised herein, it would be relevant to first have a brief resume of scheme of Rules, 1971 pursuant to which process of selection impugned herein was initiated

by the PSC.

14. Posts of PTI Gr. II & PTI Gr. III are included in Schedule (Section B) appended to Rules, 1971 and according to the scheme of Rules, post of PTI Gr. II is to be filled 50% by promotion & 50% by direct recruitment. At the same time, post of PTI Gr. III is to be filled 100% by direct recruitment. Procedure for Direct recruitment is provided under Part IV to the Rules, 1971 and vide amendment notification dt. 23/07/2008, Schedule II has been added to the Rules, 1971 laying down the syllabus for holding competitive examination for the posts of PTI Gr. II & PTI Gr. III. However, separate qualification has been prescribed for the posts of PTI Gr. II & PTI Gr. III, as taken note of in advertisement dt. 03/09/2008, being relevant quoted ad infra:

(i) Graduate or equivalent examination with diploma in Physical Education. Or Secondary with 4 years diploma in Physical education.

(ii) Working knowledge of Hindi written in Devnagri script and knowledge of Rajasthani Culture.

(i) Senior Secondary certificate of Board of Secondary Education recognized by the Government of Rajasthan and Secondary or equivalent examination recognized by the Government of Rajasthan with five subjects three of them should be mathematics, English and Hindi with certificate in Physical Education.

(ii) Working knowledge of Hindi written in Devnagri script & knowledge of Rajasthani Culture.

15. It is also relevant to take note of minimum qualifications laid down by NCTE pursuant to notification dt. 03/09/2001 published in Gazette of India dt. 04/09/2001 (Extra ordinary Part III Section 4), whereby in exercise of powers under Cl. (d)(i) of sub-section (2) of S. 32 read with S. 12(d) of the National Council for Teacher Education Act, 1993, the Council framed National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (NCTE Regulations, 2001); 2nd Schedule whereof prescribes qualifications for recruitment of Teachers of Physical Education in Educational Institutions mentioned in S. 2 of the Regulations ad infra:

Second Schedule to the National Council for Teacher Education (Determination of Qualifications for Recruitment of Teachers) Regulations 2001

Qualifications for recruitment of teachers of Physical Education in Educational Institutions mentioned in Section 2 of the Regulations-

Note: Some of the States are having certificate in physical education courses of one year duration only, while in some other States students passing secondary level examination are admitted to certificate in physical education courses. Such States may, by 2005, conduct certificate in physical education programmes of a duration of not less than two years with admission being open to Senior

Secondary/Intermediate pass candidates. In the meantime candidates who have undergone certificate courses in physical education of one year duration or were admitted to such programmes after passing secondary level examination only, may be given employment in the concerned States only.

16. From the Scheme of Rules, 1971 & NCTE Regulations, 2001, it clearly emerges that minimum academic & professional qualification upto Elementary level (PTI Gr. III) is Senior Secondary School certificate with C.P.Ed., as provided under Rules, 1971 but under NCTE Regulations, 2001, it is (i) Senior Secondary School certificate & (ii) certificate in Physical Education (C.P.Ed.) of a duration of not less than 2 years or its equivalent; and at the same time, for Secondary/High School, it is Graduate with Bachelor of Physical Education (B.P.Ed.) or its equivalent; while for Senior Secondary School, it is M.P.Ed./M.P.Ed. (2 years duration) (Physical Education as an elective subject). However, under Scheme of Rules, 1971 since there is no distinction in regard to qualification of Secondary or Senior Secondary, being taught by PTI Gr. II, Diploma in Physical Education has been considered to be minimum professional qualification for PTI Gr. II. Thus, requirement for minimum professional qualification for PTI Gr. II under Rules, 1971 is of D.P.Ed., and under NCTE Regulations, 2001 is B.P.Ed or its equivalent.

17. Looking to different professional qualifications prescribed under Rules, 1971 as well as Regulations, 2001 for PTI Gr. II & PTI Gr. III, it appears that because of reasons (supra), when the PSC issued advertisement dt. 03/09/2008 initiating process of selection, for PTI Gr. II & PTI Gr. III, it was separately notified with a Special Note appended thereto, candidates were called upon while filing OMR forms to disclose post Code for which one intends to apply/appear, whether it is for PTI Gr. II (Code-35) or Gr. III (Code-36) or both for which separate form has to be filled. Here it will be relevant to quote conditions under advertisement dt. 03/08/2009 which an applicant was required to comply with while filling his OMR form; ad infra:

18. To rule out all possible confusions in the mind of applicants, a Press Note was released on 04/09/2009 leaving it for candidates to decide about Post Code, in which one intends to apply/appear, with a stipulation that if post Code does not match with the qualification acquired, and if found in-eligible, form would be cancelled.

19. It appears that after candidates appeared in combined competitive examination and before its result being declared, matter was agitated by candidates who wanted to claim that result should be declared not on the basis of their post Code but on the basis of qualification and their request was prevailed upon the State Government and directions were issued on 06/01/2010 to the Secretary RPSC that such applicants holding qualifications of D.P.Ed./ B.P.Ed. shall be considered eligible for PTI Gr. III, regardless the fact whether they had applied for the post and taking note of directions issued by the State Government, the PSC thereafter declared result of participants not on the basis of their OMR form but based on the qualifications acquired.

20. But, before the select list could be forwarded to the State Government, writ petitions were filed before this Court and vide interim order dt. 12/01/2011, the PSC was restrained from recommending names of such candidates for appointment pendent final outcome of the writ petitions. In view of interim order dt. 12/01/2001, recommendations could not have been forwarded and at this stage, the matter has been finally heard.

21. That apart, even under R. 22 of Rules, 1971, no right could be said to be conferred in favour of candidates merely because of inclusion of their names in the select list and mere participation or successful in combined competitive examination or appeared under interim orders of the Court would not confer any right.

22. From material on record and Scheme of Rules, 1971 & NCTE Regulations, 2001, it is clearly manifest that there are different qualifications prescribed for PTI Gr. II and Gr. III under Rules, 1971 & Regulations 2001; on premises whereof, separate applications were invited by candidates intending to appear in combined competitive examination held for both the posts pursuant to advertisement dt. 03/09/2008 and in these facts & circumstances after holding written examination the decision taken by the State Government holding those holders of D.P.Ed. & B.P.Ed, eligible vide circular dt. 06/01/2010, regardless of having applied for the post and in contravention of the terms of advertisement impugned, in the opinion of this Court is not legally sustainable and is also not in conformity with the Rules 1971 & Regulations, 2001.

23. It is true that condition of advertisement has to be in conformity with the statutory Rules but where the statutory Rules are silent and the procedure of selection has been prescribed in the advertisement, it is settled that the recruiting agency is under an obligation to follow the condition of advertisement in its true spirit; and after the process of selection (written examination or interview, as the case may be) is held, change/alteration in conditions of the advertisement at a later stage, if causes prejudice, is impermissible, unless provided by law.

24. That apart, in the instant case, the PSC took all precautions and incorporated such condition in the advertisement that applicant has to fill separate OMR form for post Code-35 or Code-36 or if one intends to appear for both, two separate OMR forms are to be filled and one has to specify in the OMR form regarding the post, for which one intends to apply/appear in the examination; and in support thereof, further press Note was released on 22.9.2009, which clearly depicts that it was for the candidates to take a decision on the basis of qualification acquired whether he/she intends to participate for the post of PTI Gr. II or PTI Gr. III or both the posts, which could not have been altered by the respondents unilaterally and the decision of the State Government dt. 6.1.2010 pursuant to which the PSC declared the result of candidates selected regardless of the posts of PTI Gr. II or PTI Gr. III but on the basis of their qualification, alone cannot be said to be in conformity with terms & conditions of advertisement dt. 3.9.2008

and deserves to be quashed.

25. Main thrust of the respondents' Counsel that in State of Rajasthan and Others Vs. Hari Ram and Others, , Division Bench held that those acquiring degree of B.P.Ed., are eligible for the post of PTI Gr. II & Gr. III and the decision taken by the State Government vide Circular dt. 06/01/2010 is in the light of judgment (DB) in State vs. Hari Ram (supra) holds no substance for the reason that what was examined in the judgment (supra) basically was, whether persons ridding Degree of B.P.Ed., are eligible for the posts of PTI Gr. II but finally it was held that holders of B.P.Ed., are eligible for PTI Gr. II & Gr. III.

26. Yet, in the light of judgment in State vs. Hariram (supra), even if one is considered to be eligible for PTI Gr. III but regardless a post filled in OMR form pursuant to advertisement dt. 03/09/2008, one can not be considered to be candidate/applicant for being permitted to participate in the process.

27. Be that as it may, this Court at this stage would like to record that at the same time, in Kailach C. Harijan vs. State (2006 (1) RLR 665), the Division Bench considered the question as to whether those holding degree of B.Ed., in the light of NCTE Regulations, 2001, would be considered to be eligible for the post of Teacher at a primary level under Regulations, 2001, Taking note of Regulations, 2001 the Division Bench observed that in terms of recruitment and professional qualification for Teachers in Educational Institutions, those who are holders of B.Ed., are not eligible for the Teacher at primary level and it was observed that it might be a higher qualification but is not a qualification equivalent to BSTC and the question of higher qualification is of no relevance.

28. At this stage, this Court would like to record that under Rules, 1971 professional qualification for the post of PTI Gr. III is C.P.Ed. and no other equivalent qualification has been provided and at the same time, under NCTE regulations, 2001, C.P.Ed., of not less than Two years or its equivalent makes the incumbent eligible at elementary level. The question to be considered is as to whether those holders of degree of B.P.Ed., or its equivalent (which is a qualification under NCTE regulations, 2001 for secondary/high school) and the qualification required for PTI Gr. II under Rules, 1971 can be considered for PTI Gr. III, is left open to be examined in an appropriate case as to whether in the light of qualification laid down under NCTE Regulations 2001, how far, holder of B.P.Ed. are eligible for PTI Gr. III.

29. But, as observed (supra), in absence of having applied for or filled OMR form for a the post as required under advertisement, an incumbent cannot be held eligible to participate in the process of selection and what has been observed (supra) is also supported by statutory provisions and procedure provided under Rajasthan State & Subordinate Services (Direct Recruitment by Combined Competitive Examinations) Rules, 1999; U/r 11 thereof, an incumbent, if applied for various services and even if eligible for a number of posts, but while submitting his application form, one has to give his order of preference, and even

if finally his name finds place in order of merit but in absence of preference being specified in regard to a particular post when the applicant form was filled, he will not be considered for appointment on the basis of holding qualification for the post or being placed in order of merit as provided U/r 20 of Rules, 1999.

30. As regards submissions made by the respondents that certain petitioners were allowed to appear in combined competitive examination held for PTI Gr. II & Gr. III under interim orders of the Court, suffice is to say that such an interim order passed granting permission will not confer any right in favour of such petitioners and it was always subject to be the final decision of the writ petition.

31. Consequently, all the writ petitions along with stay petitions succeed and are hereby allowed. Candidates who have not submitted applications/OMR Forms pursuant to advertisement dt. 03/09/2008 either for PTI Gr. II or PTI Gr. III; but their result has been declared and selected either for PTI Gr. II or PTI Gr. III (viz. Eight candidates having applied only for PTI Gr. III but selected for PTI Gr. II; and (62) candidates having applied for PTI Gr. II but selected for PTI Gr. III) - details whereof (quoted supra, with Bold & italic emphasis) are mentioned in para 4 of the reply to CWP-16048/2010 (Ram Pd Meena & (3) Ors. vs. State & Ors.) are quashed and set aside. Against the number of vacancies advertised, the respondent-PSC is directed to declare the result afresh of the candidates who applied for their respective post either of PTI Gr. II (Code-35) or PTI Gr. III (Code-36) or for both, as the case may be, subject to their eligibility in order of their respective merit; and recommend their names to the State Government for taking necessary steps for their appointment under the Rules, 1971. Compliance of directions (supra) be ensured within three months. Shri Rajendra Soni has informed to this Court that petitioners in CWP-1322/2011; & 2390/2011 have submitted their OMR forms for both the posts separately, and their petitions (supra) stand disposed of in the light of what has been observed (supra). No costs.