

(2021) 09 GUJ CK 0044

In the Gujarat High Court

Case No : R/Special Civil Application No. 2601, 2602 Of 2017

Bharatbhai Nathubhai Baria

APPELLANT

Vs

State Of Gujarat & 2 Other(S)

RESPONDENT

Date of Decision : 15-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 226
Directorate Primary Education And District Primary Education Committee Or Municipal Primary Education Committees Rules, 2016 — Rule 4(b)(1), 4(b)(i)
Bombay Primary Education Rules, 1949 — Rule 70(2)
University Grants Commission Act, 1956 — Section 3

Citation : (2021) 09 GUJ CK 0044

Hon'ble Judges : R.M.Chhaya, J;Biren Vaishnav, J

Bench : Division Bench

Advocate : Jigar G Gadhavi, Meet Thakkar

Final Decision : ?Dismissed

Judgement

R.M.Chhaya, J

1. Identical questions of law arises in these petitions and hence, both the petitions were heard together and were disposed of by this common judgment and order.
2. By way of these petitions under Article 226 of the Constitution of India, the petitioners in both the petitions have challenged the validity of Rule 4(b)(1) of the Recruitment Rules to the post of Head Teachers, Class III in the subordinate services of the Directorate Primary Education and District Primary Education Committee or Municipal Primary Education Committees Rules, 2016 (hereinafter referred to as the "Rules of 2016").
3. In SCA No. 2601 of 2017, the petitioner possesses degree of Bachelor in Rural Studies and Master Degree in Rural Studies and is also possessing degree of Bachelor in Education from Saurashtra University. Whereas, in SCA No. 2602 of 2017, the petitioner possesses Degree of Bachelor of Computer Application (BCA)

and PTC from North Gujarat University. In both the cases, the petitioners are serving in school as Teacher and in both these petitions, the petitioners have challenged the constitutional validity of vires of the Rules of 2016.

4. Heard Mr. Jigar Gadhvi, learned advocate for the petitioners in both the petitions and Mr. Meet Thakkar, learned AGP for the respondents in both the petitions.

5. Mr. Gadhvi, learned advocate appearing for the petitioners contended that the Rule impugned is absolutely arbitrary and discriminatory and the same deprives the petitioners from making application to the post of Head Teacher and therefore, violative of Article 14 of the Constitution of India. Mr. Gadhvi further contended that the impugned Rule clearly favours a particular class of persons having particular degree and in reality, it deprives other class of persons who are though qualified and not entitled to apply for the post of Head Teacher, which creates discrimination and therefore, the same is violative of Article 16 of the Constitution of India. It was also contended by Mr. Gadhvi that limiting the recruitment process to the candidates having Bachelor's Degree in Arts, Commerce and Science is completely prejudicial and biased act and hence, the impugned Rule is ex facie illegal and violative of the Constitution of India and is against the basic spirit of equality before law and hence, the impugned Rule deserves to be quashed and set aside. It was contended by Mr. Gadhvi that based on the impugned Rule, the advertisement is also violative of Articles 14 and 16 of the Constitution of India. On the aforesaid grounds, it was therefore contended by Mr. Gadhvi that both the petitions deserve to be allowed and the impugned Rule of 2016 deserves to be declared as ultra vires the Constitution of India and deserves to be quashed as prayed for.

6. Per contra, Mr. Meet Thakkar, learned AGP submitted that the very challenge to the Rules of 2016 is misconceived. It was submitted by Mr. Thakkar that the post of Head Teacher is an important post from the view point of future of the students. It was contended by Mr. Thakkar that the degree possessed by the petitioner of SCA No. 2601 of 2017, i.e., Bachelor in Rural Studies, the petitioner has to study at the graduate level and has to study subjects like crop protection, crop breeding, farm management, agriculture chemistry, etc., whereas, the work handled by Head Teacher is entirely of different nature. Mr. Thakkar submitted that similarly, the petitioner of SCA No. 2602 of 2017 is a Bachelor in Computer Application (BCA) and therefore, in both the cases, Rule 4(b)(1) of the Rules of 2016 would not apply, which requires adequate knowledge of Arts, Science or Commerce, which is admittedly not possessed by the petitioners. Mr. Thakkar, learned AGP, has relied upon the judgment of the coordinate bench rendered in the case of Jagrutiben Ishvarlal Patel Vs. State of Gujarat and Ors. in LPA No. 178 of 2017 and allied matters and contended that the challenge made in both the petitions are squarely covered by the said judgment, which has become final and Mr. Thakkar contended that both the petitions are meritless and the same deserve to be dismissed.

7. No other or further submissions have been made by the learned advocates appearing for the respective parties.

8. From the admitted fact, as narrated hereinabove, both the petitioners possess Bachelors Degree other than Arts, Science or Commerce. The Hon'ble Division Bench in the case of Jagrutiben Ishvarlal Patel (supra) had an occasion to examine the very Rule, i.e., Rule 4(b)(1) of the Rules of 2016 and the Division Bench has observed thus -

"10. Having heard learned counsel for both the sides, it can be noticed that the bone of contention is Rule 4(b)

(i) of the Rules of 2016 of the Notification dated 22.09.2016. Before we proceed further, a reference to the said Rule 4(b)(i) is apposite;

"4. To be eligible for appointment by direct selection to the post mentioned in rule 2, a candidate shall,-

(a) ...

(b)

(1) possess a Bachelor's degree in Arts or Science or Commerce obtained from any of the Universities established or incorporated by or under the Central or a State Act in India or any other educational institutions recognized as such or declared to be deemed as a University under section 3 of the University Grants Commission Act, 1956; and

(i) have completed two years certificate course of Primary Teachers Course from any educational institution recognized by the Government; or

(ii) possess one year degree in special education obtained from any of the Universities established or incorporated by or under the Central or a State Act in India or any other educational institutions recognized as such or declared to be deemed as a University under section 3 of the University Grants Commission Act, 1956; or by Rehabilitation Council of India or by the Central Government;

or

(iii) possess a Bachelor's degree in Education obtained from any of the Universities established or incorporated by or under the Central or a State Act in India or any other educational institution recognized as such or declared to be deemed as a University under section 3 of the University Grants Commission Act, 1956; or

(2) have passed Higher Secondary Certificate Examination conducted by a Secondary and / or Higher Secondary Education Board or possess an equivalent qualification recognized as such by the Government and possess a four years' Bachelor's degree in Elementary Education or a four years' Bachelor's degree in Education obtained from any of the Universities established or incorporated by or under the Central or a State Act in India or any other educational institution

recognized as such or declared to be deemed as a university under section 3 of the University Grants Commission Act, 1956; or (3)(i) have passed the Head Teacher Aptitude Test as may be prescribed by the Government; and

(ii) have about five years' separate or combined experience of teaching as a Teacher or Vidya Sahayak, Shikshan Sahayak, Adhyapak Sahayak, Junior Lecturer, Senior Lecturer in Government or Grant-in-Aid or Non-Grant-in-Aid Private Lower Primary School or Upper Primary School or Secondary Education School or Higher Secondary Education School or Primary Education Adhyapan Mandir or District Institute of Education and Training (DIET); and

(c) possess the basic knowledge of computer application as prescribed in the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967; and

(d) possess adequate knowledge of Gujarati or Hindi or both."

11. The above Rule specifically provides that for being eligible for appointment by direct selection to the post of Head Teacher, the candidate concerned should possess a Bachelor's degree in Arts or Science or Commerce obtained from any of the Universities mentioned in the said Rule. The said Rule provides for the minimum requisite qualification that a candidate has to possess at the Graduation level for appointment to the post of Head Teacher and Vidya Sahayaks (For Standards 6 to 8, Gujarati and other mediums).

As the designation itself reads, the duties of a Head Teacher are different to the duties of a Primary School Teacher. Subrule (2) of Rule 70 of The Bombay Primary Education Rules, 1949 specifically provide that the duties of a Head Teacher of a Primary School shall be subject to the instructions that may be issued by the Administrative Officer, in addition to his duties as a Primary School Teacher in respect of the class or classes to be taught by him personally. Thus, over and above the duty to teach as a Primary School Teacher, the Head Teacher has to discharge such other duties, as may be instructed to him by the Administrative Officer of the Primary School and which includes; to act responsibly for efficient and effective education, including physical education of all pupils in his school; to ensure that the school property is properly maintained, shall be responsible for the arrangement of pupils in their classes and for their promotion to higher standards according to their progress during the year; to make all possible efforts to improve attendance in the school; to collect and safe-custody of school fees and fines and other amounts received in the school till the time of their remittance to the Taluka teachers. to prepare pay bills for the school and send them to the Taluka Master before such date as may be specified by the Administrative Officer in this behalf. shall be responsible for the disbursement of pay to his assistants immediately on receipt of such pay from the Taluka Teacher. to prepare timetable of the school every year. shall be responsible for the proper maintenance of all school register and records.

12. The duties that a Head Teacher is required to perform is much arduous and carries a high degree of responsibility. Over and above the duty to work as a

Primary School Teacher, the Head Teacher also has to discharge several other administrative functions in the school. Hence, the duties performed by the Head Teacher falls in a different pedestal as compared to the duties performed by a Primary Teacher.

13. The Rules of 2016 have been framed keeping in mind the nature of duty that the post carries. It is pertinent to note that the advertisement in question is for recruitment of Head Teachers and Vidya Sahaykas for Standards 6 to 8 in the Gujarati as well as other mediums. Over and above the administrative functions that a Head Teacher has to perform, he has to impart education in the subjects of History, Maths, Science & Technology, Social Science, etc. to the students. The prevailing curriculum of a Primary School Teacher requires that the candidate should be a Graduate either in the field of Arts, Commerce or Science. Such qualification has been fixed keeping in mind the different subjects that the candidate is required to teach in the primary section. A candidate who has a degree in Bachelor of Computer Application has specialized knowledge in the field of computer applications / software that are useful to perform singular or multiple tasks.

Such a candidate would not be able to impart education in the subjects of History, Maths, Science & Technology, Social Science, etc. to the students efficiently as compared to the subjects related to computer applications. Considering the need of the hour, the expert body fixed the criteria of degree of Bachelor of Arts or Bachelor of Commerce or Bachelor of Science as the requisite qualification at the Graduation level. Hence, it cannot be said that the decision to fix the qualification of B.A., B.Com or B.Sc as the requisite qualification at the Degree level for appointment to the post of Head Teacher is arbitrary, illegal or unconstitutional. We are of the considered opinion that academic issues has to be left to be decided by the expert body concerned. In the present case, we do not find any infirmity in the decision of the respondents to fix the qualification of B.A., B.Com or B.Sc as the requisite qualification at the Degree level for appointment to the post of Head Teacher. Hence, the said contention raised by learned counsel for the petitioner is devoid of any merits."

"16. There is no dispute regarding the proposition of law laid down in the decisions relied upon by learned counsel for the petitioner. However, in the facts and circumstances of the present case, the said decisions would not apply since the petitioner do not possess the requisite qualification prescribed in the advertisement. Further, we do not find any infirmity in the decision of the respondents of fixing the standards of Graduation to B.A., B.Com or B.Sc. We are in complete agreement with the reasonings given by the learned single Judge in the impugned order and hence, find no reasons to entertain these appeals."

9. As held by the Hon'ble Division Bench in Jagrutiben Ishvarlal Patel (supra), the eligibility criteria is provided for direct selection to the post of Head Teacher. Considering the duties of Head Teacher, the provisions of Rule 4(b)(1) cannot be termed as violative of Article 14 and/or 16 of the Constitution of India. The post

of Head Teacher carries with it responsibilities of both academic as well as administrative duties, which requires appropriate skill to perform the duties. While framing the Rules, the framers have taken into consideration the requisite qualifications, which are required at the degree level, which are necessary to see that the same gives opportunity to the authorities to select right man for right job. Restriction of B.A., B.Com. and B.Sc. to the post of Head Teacher is in consonance with the duties that a Head Teacher has to perform. The contention raised by the learned counsel for the Petitioners that it is discriminatory and/or violative of Article 14 of the Constitution of India is totally baseless. Eligibility criteria has direct co-relation with the duties to be performed and that is what is prescribed in Rule 4((b)(i) of the Rules of 2016. As rightly pointed out by the learned AGP, the very Rules have been examined by the Division Bench of this Court in the case of Jagrutiben Ishvarlal Patel (supra). Following the said judgement, we hold that the Rules of 2016 cannot be termed as unconstitutional, arbitrary and discriminatory in nature. All the contentions raised by the learned counsel for the petitioners deserve to be rejected. The petitions deserve to be dismissed and are hereby dismissed. However, there shall be no order as to costs.