
(1978) 04 MP CK 0033

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 247 of 1977

Dalpratap Singh and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 14-04-1978

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1981) ILR (MP) 547 : (1978) JLJ 582 : (1978) MPLJ 747

Hon'ble Judges : A.P. Sen, C.J.; J.S. Verma, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari with L.S. Boghel, for the Appellant; J.M. Sood, Govt. Advocate and A.G. Dhande for Respondents Nos. 5, 7, 8, 11, 16, 18 and 22, for the Respondent

Final Decision : Dismissed

Judgement

J.S. Verma, J.

This order shall also govern the disposal of (Misc. Petition No. 266 of 1977 Dr. Hari Narayan Chaurasia and Anr. v. The State of M.P. and Ors. and (Misc. Petition No. 378 of 1977 Shrimati Pratibha Dube v. State of M.P. and Ors.) since all these petitions involve common questions.

All these Petitioners were appointed Lecturers in different subjects on emergency basis under Clause (5) of Rule 12 of the Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1967 (here-in-after referred to as "the Rules" in different colleges of the State. Thereafter the emergency appointments of these Petitioners have been terminated because of regular appointments made to those posts in accordance with the panel of selected candidates prepared by the State Public Service Commission and duly forwarded to the State Government, after due advertisement of the posts. These regular appointments have been made in accordance with Sub-rule (2) of Rule 12 of the said Rules on the basis of the Commission's panel forwarded in accordance with Sub-rule (1)

thereof. The persons so appointed to these posts are impleaded as Respondents in these petitions, in addition to the State of Madhya Pradesh and the State Public Service Commission who are impleaded as Respondents Nos. 1 and 2 in each of these cases. The Petitioners had also applied for regular appointment to these posts pursuant to the advertisement made by the State Public Service Commission, but they were not called for interview because they did not satisfy the criterion fixed for calling eligible candidates for interview by the Commission. All these Petitioners had obtained Third Division in their Bachelor's Degree Examination and according to the criterion fixed, no candidate who had not obtained at least a Second Division in the Bachelor's degree Examination was called for interview by the Commission from amongst eligible candidates who had applied for the posts of Lecturers in Sociology, Geography and Political Science with which subjects alone we are concerned in these three Petitioners, because all these Petitioners were applicants only for the posts of lecturers in the colleges in these three subjects.

The substantial grievance of all the Petitioners in these three petitions is that they could not be screened out from amongst the eligible candidates merely on the ground that they had all obtained only a Third Division in the Bachelor's Degree Examination and were not at least Second Class Graduates as required by the criterion fixed for calling the eligible candidates for interview by the Commission.

Shri Y.S. Dharmadhikari, learned Counsel for the Petitioners, in all these petitions has advanced the following three arguments, viz.-

- (1) The Petitioners as emergency appointees under Sub-rule (5) of Rule 12 had acquired a right to their respective posts;
- (2) The State Public Service Commission had no right to lay down any criterion for screening of the eligible candidates and once it was found that the candidate satisfied the conditions of eligibility as laid down in Rule 8(II) read with the relevant entry in Schedule III of the Rules, the Commission had no power not to call that candidate for interview; and
- (3) Alternatively, even if there be such power in the Commission, the criterion laid down was fulfilled by the Petitioners or at least some of them who were First Class Post-Graduates on account of which the Commission had no right to refuse to call them for interview.

Admittedly, the present case is one of direct recruitment by selection as provided in Rule 6(1)(a) so that the relevant rules are only Rule 8(II), Clauses (1) and (2) of Rule 11, and Rule 12 which alone are relied on by learned Counsel for the Petitioners.

All the Petitioners were admittedly Third Class Graduates, none of whom had obtained at least Second Class in the Bachelor's Degree Examination and this was the reason for not calling them for interview by the Commission. There is no

dispute that the minimum educational qualification prescribed by Rule 8(II) read with the relevant entry in Schedule III is a Second Class Master's Degree. On that basis, all the Petitioners were eligible to apply for the posts which had been advertised, by Advertisement No. 19 of 1974, dated 1-1-1975, issued by the Public Service Commission, Madhya Pradesh. This advertisement clearly stated in the note as follows:

The possession of minimum qualifications will not automatically entitle a candidate to be called for personality test or interview if better qualified candidates are available

It was thus made clearly known in the advertisement itself that every one who satisfied the minimum conditions of eligibility would not for that reason alone be entitled to be called for interview by the Commission. Thereafter a corrigendum was issued on 22-9-1975 by the Public Service Commission which also notified the criterion fixed for screening of the eligible candidates in order to decide who should be called for interview by the Commission and thereby the last date for sending applications was also extended up to 11th November 1975. The criterion specified in this corrigendum is the real grievance of the Petitioner because it is on that basis they were not called for interview. This criterion was communicated to the Public Service Commission by the State Government by a letter, No. 5775/4734/XX-V/75, dated 1-8-1975 (Annexure-R/1) and it is its Hindi translation which is contained in the corrigendum issued by the Commission which is filed as document No. 3 with the Petition Letter No. 2472/20-V/76, dated 26-3-1976, from the Special Secretary, Education Department. Government of Madhya Pradesh, to the Chairman, State Public Service Commission, merely clarifies the criteria communicated by the State Government to the Public Service Commission by the earlier letter dated 1-8-1975 (Annexure-R/1). Apparently it was on the basis of the direction of the State Government contained in Annexure-R/1 dated 1-8-1975 that the Corrigendum to the Advertisement was issued by the State Public Service Commission on 22-9-1975 incorporating the criteria decided by the State Government and communicated to the Commission for implementation. Acting on these directions of the State Government, the State Public Service Commission issued notices dated 17-1-1977 (Annexure-R/3) and dated 19-1-1977 (Annexure-R/4) stating expressly that only those eligible candidates who had also passed the Bachelor's Degree Examination at least in Second Division would be called for interview by the Commission. As earlier stated, the Petitioners were not called for interview because they did not possess at least Second Class Graduate's Degree.

The first contention of learned Counsel for the Petitioners has no force. Sub-rule (5) of Rule 12 under which emergency appointments are made, itself specifically says that emergency appointments to a post may be made only if the Commission's panel of selected candidates is not available. The proviso in Sub-rule (5) further states that if and when the Commission's panel is available, the teachers so appointed on emergency basis will be liable to be removed without

notice. This alone is sufficient to indicate that a person who is appointed to a post merely on emergency basis cannot have any right to that post. Some other provisions contained in Rule 12 reinforce this conclusion. Sub-rule (2) of Rule 12 lays down that the candidates on the Commission's panel shall be appointed strictly in the order in which they are placed. An illustration is thereafter given in this sub-rule which says that if a lecturer already working as an emergency measure is lower in the panel, his services will be terminated, it necessary, to appoint a candidate who ranks higher on the panel. Sub-rule (3) provides that no lecturer shall be continued in an emergency appointment if a candidate duly selected by the Commission in the subject is available for appointment. In the face of these express provisions contained in Rule 12, there is no merit in the first argument of Shri Dharmadhikari and it is accordingly rejected.

The second argument of Shri Dharmadhikari must also fail because this is concluded against the Petitioners by a Full Bench decision of this Court in *Omprakash Vs. The State of Madhya Pradesh and Another*, The criterion fixed in this case, as earlier indicated, was not to call Third Class Graduates for interview, obviously because better qualified eligible candidates were available in sufficient number. The adoption of this basis of criteria for screening the eligible candidates cannot by any stretch of imagination be called arbitrary because the possession of a good academic career throughout has undoubtedly reasonable nexus with the object, viz., the selection of suitable teachers. In the Full Bench decision, question No. 6 fully covers the second argument of Shri Dharmadhikari. In the present case, no infraction of any statutory provision is alleged or shown in the fixation of the criterion which was actually done by the State Government and the State Public Service Commission merely acted in accordance therewith. No provision contained in the aforesaid rules which governs the case has been shown to be violated by the fixation of this criterion nor has it been shown that this criterion is in any manner inconsistent with any part of these rules. There can be no doubt that in the field left open by the rules framed under Article 309 of the Constitution, it is open to the State Government, by issue of executive instructions, to lay down reasonable guidelines. In the present case, the fixation of this criteria was only for the purpose of ensuring a quick selection by calling the best from amongst those available obviously because the number of applicants for the posts was very large. This point does not, therefore, require any further consideration.

The last contention of Shri Dharmadhikari has also no force. It is based on an extract of Government's letter dated 1-8-1978 (Annexure-R/1) which reads as follows:

A consistently good academic record with 1st or high second class (not less than 55% marks) Master's Degree of an Indian or Foreign University in the concerned subject and a recognised degree beyond the Master's level;

Provided that if a candidate possessing the above qualifications is not available or not considered suitable, the following will be the qualifications in order of

preference:

(i) 1st class Master's Degree or an equivalent degree of an Indian or Foreign University in the concerned subject.

(ii) A consistently good academic record with high second class (not less than 55% marks) Master's Degree or equivalent degree of an Indian or Foreign University in the concerned subject and: (a) Published work indicating capacity for independent research work or (b) two years experience of teaching degree classes.

Explanation: Consistently good record means over all record of all assessments throughout the academic career leading to the Master's Degree. However, a candidate falling in category (i) or (ii), if appointed, shall have to obtain a recognised degree beyond the Master's level within five years of appointment failing which further increment of pay Shall be withheld.

Shri Dharmadhikari argues that a candidate who has a First Class Master's Degree in the concerned subject had to be called for interview for this reason alone and that he was not required to further satisfy the requirement of "a consistently good academic record" which means at least a Second Class Graduate's Degree. Before we examine this contention, we might mention the background in which such a requirement came to be introduced by the State Government which was only implemented by the State Public Service Commission.

It is clear that the Government of India had laid down certain minimum qualifications for Lecturers to be appointed in the Degree and Postgraduate Colleges in connection with the revised pay-scales which had been recommended for them. According to the Government of India, a consistently good academic record, i.e Master's Degree in the First Class or Second Class with over 55% marks in the concerned subject and a recognised Degree beyond the Master's level with at least a Second Class Bachelor's Degree was a necessary requirement for the appointment of such teachers. These instructions were communicated to the State Government and it was in accordance with these instructions that the directions contained in the State Government's letter dated 1-8-1975 (Annexure-R/1) were conveyed to the State Public Service Commission. It appears that the Public Service Commission was of the view that some relaxation should be given to candidates who possessed a Ph. D., i.e. a recognised degree beyond Master's level, but had a low Second Class in the Bachelor's examination. A recommendation to that effect was made by the State Public Service Commission to the State Government for modification of the criterion prescribed by the State Government's Letter dated 1-8-1975 (Annexure-R/1). In reply, the State Government, by its letter dated 26-3-1976 (Annexure-R/2) turned down the Commission's proposal for relaxation in case of candidates who had Ph. D. as recommended by the Public Service Commission. In doing so, on behalf of the State Government, in Annexure-R/2 it was stated as following:

The Secretary to the Commission was of the view that due weightage was not being given to Ph. D. He felt that a Ph. D. degree holder with a low second class at the Bachelor's examination should be made eligible. You had desired that the Education Department may examine and communicate their views in the matter.

Accordingly, we have examined the whole matter and we find that the qualifications communicated by the Education Department are in keeping with those laid down by the Government of India in connection with the revised pay-scales. A consistently good academic record (which is interpreted as high second class i.e. 55% and above by the education Department) with a I or II class (which has been defined by us as 55% at the Master's degree and a recognised degree beyond the Master's level is the minimum qualification, prescribed by the Government of India. It is with reference to this that the Education Department insists on "a consistently good academic record" i.e. 55% and above at the Bachelor's level. This is a necessary condition whether the candidate has a I class Master's degree or a 11 class Master's degree with a Ph. D.

The above facts would show that the contents of the State Government's letter dated 1-8-1975 (Annexure-R/1) on which learned Counsel for the Petitioners relies were never understood to mean that a candidate possessing a First Class Master's Degree was, for that reason alone, exempt from the requirement of "a consistently good academic record" which was applicable to candidates of all categories including the first category, viz., candidates possessing a recognised degree beyond Master's level, i.e. Ph. D.

Reading the above quoted extract from Annexure-R/1 as a whole, we are also unable to accept Shri Dharmadhikan's argument. It is obvious therefrom that the requisite qualification for appointment as a Lecturer in a Degree or Post Graduate College, laid down by the Government of India, was a consistently good academic record with First Class or high Second Class (not less than 55% marks) Master's Degree in the concerned subject and recognised degree beyond the Master's level. If for the time being no such candidates were available, then the proviso came into play. According to it candidates having a First Class Master's Degree or thereafter a high Second Class (not less than 55% marks) Master's degree who had also published research work or two years' teaching experience of Degree classes, were in that order to be considered for appointment and it was further provided that any such candidate who came in by virtue of the proviso had to acquire a degree beyond Master's level. i.e., Ph. D. within five years of his appointment. This is how the proviso was intended to fulfil the minimum requirement laid down by the first paragraph of the above quoted extract which we have already indicated. It would, therefore, be incongruous to hold that a person who had a First Class Master's Degree was for that reason alone exempt from any other requirement coming under Proviso (i) whereas a candidate with a First Class Master's Degree in the concerned subject and also having a Ph. D. was further required to have "a consistently good academic record" i.e., at least a Second Class Bachelor's Degree, in order to qualify for

appointment. For this reason alone this argument must be rejected.

In the result, all these three petitions fail and are dismissed. The parties shall however bear their own costs. The outstanding amount of security deposit shall be refunded to the Petitioners.