
(2017) 05 RAJ CK 0203
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5166 Of 2015

Deepak Bariya

APPELLANT

Vs

Rajasthan Public Service Commission, Ajmer And Ors

RESPONDENT

Date of Decision : 26-05-2017

Acts Referred:

Citation : (2017) 05 RAJ CK 0203

Hon'ble Judges : Nirmaljit Kaur, J

Bench : Single Bench

Advocate : Deepak Nehra, Ramdev Potalia, Hanuman Singh Choudhary

Final Decision : Allowed

Judgement

The petitioner applied in pursuance to the advertisement dated 2.8.2013 issued by the Rajasthan Public Service Commissioner (RPSC) inviting applications for direct recruitment on the post of Senior Teacher Grade II (English) under the respondent Department of School Education (Secondary Education). As per the advertisement, the requisite qualification for appointment on the post was Graduate or equivalent Examination with concerned subject as optional subject and Degree or Diploma in Education recognized by National Council for Teacher Education. After the declaration of the written examination, the petitioner's name appeared in the select list. All the selected candidates were directed to submit detailed application form along with the requisite documents in the office of the RPSC. The RPSC while recommending the name of the selected candidates to the Government did not recommend the name of the petitioner. He was informed by the RPSC vide order dated 6.4.2015 that his candidature has been rejected on the count that he is not having the concerned subject with English as optional subject in his Graduation Examination (First, Second and Third Year).

While praying for setting aside the impugned order, learned counsel for the petitioner submitted that the petitioner had the subject of English in First, Second and Third Year of Graduation. Moreover, he also has the higher

qualification of Master Degree in English Subject. Hence, the rejection of his candidature for appointment on the post is totally arbitrary, hypothetical and baseless.

Reply has been filed. Although it is admitted that the petitioner had the subject of 'English' in his First, Second and Third Year but was not taken into consideration as it was not offered as optional subject by the petitioner. The respondents relied on the following requisite qualifications for the post as mentioned in the rules and advertisement:

"Qualification:

(1) Graduate or equivalent Examination with concerned subject as optional subject and Degree or Diploma in Education recognised by National Council for Teacher Education;

(2) Working Knowledge of Hindi written in Devnagri Script and knowledge of Rajasthan Culture."

It is submitted that the first requisite qualification is Graduation or equivalent Examination with concerned subject as optional subject and Degree or Diploma in Education recognised by National Council for Teacher Education. It is further submitted that the General English is 'compulsory subject' which as per the condition mentioned in the advertisement dated 2.8.2013 cannot be said to be the requisite qualification because the qualification column of the advertisement clearly mentioned the qualification as Graduate or equivalent Examination with concerned subject as 'optional subject'.

A perusal of the mark-sheet of all the three years of Graduation shows that one of the subjects in which the petitioner had duly appeared and cleared the said examination was 'English compulsory'. The argument that the petitioner had not opted for English as one of his optional subjects in his Graduation should not stand in the way of the petitioner, inasmuch as he has subsequently done his Post Graduation in the subject of English itself. The mark-sheet of Post Graduation has been placed on record as Annexure-3 which is admittedly a higher qualification.

The Apex Court in the case of Chandrakala Trivedi Vs. State of Rajasthan & Ors. (Civil Appeal No.400 of 2012) decided on 12.1.2012 set aside the order of the High Court vide which the writ petition of the appellant was dismissed on the ground that the appellant did not possess the Senior Secondary Examination which is the basic qualification for the post in question by holding that the word 'equivalent' must be given a reasonable meaning and that there were some degrees of flexibility or adjustment which in no manner lower the standard or requisite qualification laid down in the rules. The operative part of the judgment reads as under:-

"We fail to appreciate the aforesaid view taken by the High Court. We find that from the qualifications which have been mentioned, it is made clear that the

basic qualification is Senior Secondary or Intermediate or its equivalent. We find that the appellant on the basis of her qualification was provisionally selected after she had submitted her requisite testimonials.

In the impugned judgment, the High Court has given a finding that the higher qualification is not the substitute for the qualification of Senior Secondary or Intermediate. In the instant case, we fail to appreciate the reasoning of the High Court to the extent that it does not consider higher qualification as equivalent to the qualification of passing Senior Secondary examination even in respect of a candidate who was provisionally selected. The word 'equivalent' must be given a reasonable meaning. By using the expression, 'equivalent' one means that there are some degrees of flexibility or adjustment which do not lower the stated requirement. There has to be some difference between what is equivalent and what is exact. Apart from that after a person is provisionally selected, a certain degree of reasonable expectation of the selection being continued also comes into existence."

Similarly, in the case of Parvaiz Ahmad Parry Vs. State of Jammu & Kashmir & Ors. (Civil Appeal No.13368 of 2015) decided on 6.11.2015 too, the Apex Court set aside the order and judgment of the High Court vide which it was held that the appellant in the said case did not have the requisite qualification by holding that once the appellant had possessed the higher qualification, he has to be considered as having the prescribed qualification for the post. Para 25 of the said judgment reads as under:-

"25. In our view, if a candidate has done B.Sc. in Forestry as one of the major subjects and has also done Masters in the Forestry, i.e., M.Sc.(Forestry) then in the absence of any clarification on such issue, the candidate possessing such higher qualification has to be held to possess the required qualification to apply for the post. In fact, acquiring higher qualification in the prescribed subject i.e. Forestry was sufficient to hold that the appellant had possessed the prescribed qualification. It was coupled with the fact that Forestry was one of the appellant's major subjects in graduation, due to which he was able to do his Masters in Forestry."

Thus, this Court is of the opinion that the petitioner not only had the requisite subject in his Graduation but the requirement that the said subject of English should have been offered as his optional subject in Graduation cannot be insisted upon in view of the petitioner having cleared his Post Graduation in the subject of English. The petitioner thus, has higher qualification as prescribed for the post for the purpose of teaching upto Secondary Level.

In view of the above, the writ petition is allowed. The impugned order dated 6.4.2015 is set aside and the respondents are directed to recommend the case of the petitioner for appointment in case he is otherwise in merit. The needful be done within two months.