

(2013) 09 SHI CK 0018

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 5278 of 2013-H Alongwith Civil Writ Petition No"s. 1802, 1803, 1804, 1805, 1806, 1807, 1808, 1809, 1812, 1813, 1814, 1815, 1816, 1817, 3120, 3121, 3122, 3136, 3137 and 3138 of 2011

Desh Raj and Others

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Citation : (2013) 3 ShimLC 1421

Hon'ble Judges : A.M. Khanwilkar, C.J.;Kuldip Singh, J

Bench : Division Bench

Advocate : C.N. Singh, Amit Singh Chandel, Ramakant Sharma, L.S. Mehta and Sushil Gautam, for the Appellant; Shrawan Dogra, Advocate General with Mr. Romesh Verma, Anup Rattan, Additional Advocate Generals, Mr. J.K. Verma and Ms. Parul Negi, D.A.G.s for the Respondents-State, Mr. Raj Kumar Negi, Ms. Archana Dutt and Aruna Sharma, Advocates for HPSSSB, Sanjeev Bhushan and Rajesh Sharma, for the Respondent

Judgement

A.M. Khanwilkar, C.J.—Heard Counsel for the parties. The grievance of the petitioners is that they possessed necessary qualification as per the Rules framed in the year 1975. In that, they were matric with one year"s diploma in Physical Training. However, because of the introduction of new Rules by the State titled as Himachal Pradesh, Elementary Education Department, Physical Education Teacher Class-III (Non-Gazetted) Recruitment and Promotion Rules, 2010 and as amended on 10th January, 2011, the petitioners have become ineligible to apply for the post of Physical Education Teachers which has been advertised on 15th September, 2012 and 20th May, 2013 respectively.

2. According to the petitioners, the selection process, pursuant to the aforesaid two advertisements, ought to be taken forward on the basis of old Rules and for which reason the petitioners should be permitted to participate in the selection process and considered for appointment. This argument does not commend to

us. It is well established position that in the case of direct recruitment, as is the case under consideration, the Rules, in force, on the date of advertisement of vacancy and inviting applications to fill in the said vacancy, would govern the selection process and not the Rules which were operating in anterior point of time.

3. It is indisputable that the Rules of 2010 have been framed in the light of mandate contained in Right of Children to Free and Compulsory Education Act, 2009 and the Rules framed there-under. In any case, it is for the employer/department to decide the essential educational qualification qua the post advertised and, moreso, in terms of the Rules framed in exercise of power under Article 309 of the Constitution of India as in this case. The aspirants cannot dictate to the employer/department to provide for qualification of their choice.

4. The learned Advocate General has justly relied on the exposition of the Apex Court in the case of P.U. Joshi and Others Vs. The Accountant General, Ahmedabad and Others, In Paragraph-10 of this decision, the Court observed thus:--

We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.

(emphasis supplied)

This exposition applies on all fours to the case on hand. Reliance has also been justly placed on the decision in the case of Chandigarh Administration through the Chandigarh Administration through the Director Public Instructions (Colleges), Chandigarh Vs. Usha Kheterpal Waie and Others, In Paragraph-22 of this decision, the Court observed thus:--

It is now well settled that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment. Courts and tribunals can neither prescribe the qualifications nor entrench upon the power of the concerned authority so long as the qualifications prescribed by the employer is reasonably relevant and has a rational nexus with the functions and duties attached to the post and are not violative of any provision of Constitution, statute and Rules. [See J. Ranga Swamy Vs. Government of Andhra Pradesh and Others, and P.U. Joshi and Others Vs. The Accountant General, Ahmedabad and Others, In the absence of any rules, under Article 309 or Statute, the appellant had the power to appoint under its general power of administration and prescribe such eligibility criteria as it is considered to be necessary and reasonable. Therefore, it cannot be said that the prescription of Ph.D. is unreasonable.

(emphasis supplied)

5. In our opinion, therefore, the petitioners cannot be permitted to challenge the subject advertisement as the petitioners are admittedly ineligible and do not possess the essential qualification as per the extant Regulations and Rules. To get over this position, the petitioners have asked for further relief of certiorari to quash the amended Recruitment and Promotion Rules. For the reasons, already recorded and the exposition of the Apex Court, reproduced hitherto, even this relief, in our opinion, is ill-advised.

6. Counsel for the petitioners, relying on Rule 18 of Rules 2010, would then contend that there is power to relax the eligibility criteria. The respondents be directed to exercise power in favour of the petitioners and similarly placed persons. Even this submission does not commend to us. Inasmuch as, that is the discretion of the department/employer and not a right enuring in favour of aspirants who intend to apply pursuant to the advertisement. No such condition has been specified in the advertisement already issued by the department. It is for the department to consider whether that provision should be made in the advertisement while ensuring that the essential qualification cannot be compromised or relaxed in any case. In the present case, the department has not chosen to invoke that power. Needless to observe that Rule 18 would come into play in respect of in-service candidate. Accordingly, even this submission should fail and the same is rejected. It is lastly contended that the petitioners have already passed 10+2 course. It is not, therefore, open nor possible for the petitioners to improve upon that qualification by appearing for other examination which is specified as essential qualification in the Rules of 2010. That cannot be the basis to allow the petitioners to challenge the advertisements in question

much less the Rules of 2010 in force. The petitioners have not challenged the said Rules on the ground of legislative competency or being ultravires the provisions of the principal Act or the Constitution as such. Whereas, the grievance of the petitioners is that the petitioners were qualified under the old Rules and, therefore, should be allowed to participate in the selection process pursuant to the impugned advertisement. That claim, to say the least, is completely misplaced and ill-advised. Hence, these petitions fail and the same are rejected.