

(2019) 08 RAJ CK 0154

In the Rajasthan High Court

Case No : Civil Writ Petition No. 19074 Of 2018, ?5283 Of 2019

Dolly Sharma And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 28-08-2019

Acts Referred:

Rajasthan Panchayati Raj Rules, 1996 — Rule 10(a), 10(a)(ii), 266(3)

Citation : (2019) 08 RAJ CK 0154

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Sushil Bishnoi, Kailash Choudhary, Manish Vyas

Final Decision : Dismissed

Judgement

These writ petitions have been filed by the petitioners seeking declaration that the petitioners are eligible for the post of Teacher Gr.III (Level-II) (English) and a direction to the respondents to give appointment to the petitioners on the post of Teacher Gr.III (Level-II) as per their merit.

It is inter alia indicated in the writ petitions that an advertisement dated 11.09.2017 (Annex.1) was issued inviting applications for recruitment on the post of Teacher Gr.III (Level-II) (English) in terms of provisions of Rajasthan Panchayati Raj Act, 1994 ('the Act, 1994') and Rajasthan Panchayati Raj Rules, 1996 ('the Rules, 1996'). The petitioners claiming themselves to be eligible, applied by submitting online application forms. The petitioners had obtained Graduation Degree in Science (B.Sc.). Subsequently, both the petitioners obtained degree of M.A. (English) and whereafter, the petitioner Dolly Sharma obtained M.Phil. in English, besides obtaining degree of B.Ed. and qualified Rajasthan Eligibility Examination for Teachers ('REET'). The petitioners on participation in the selection process were selected and were allotted districts by order dated 02.02.2018 and were called for document verification. On the scheduled date, the petitioners appeared before the authorities and submitted their original documents for verification, however, pursuant to the document

verification, the petitioners were not called for counseling and on inquires it was revealed that the petitioners were found ineligible on account of not having graduation in English subject, they were not called for counseling.

It is inter alia submitted that the rejection of petitioners' candidature is not sustainable as the petitioners are having Master Degree in English, which is higher than the prescribed qualification.

It is submitted by learned counsel for the petitioners that as the petitioners are possessing Masters Degree in English and petitioner Dolly Sharma has specialization in English subject having obtained M.Phil. also, they have good knowledge of English subject, which aspect has not been considered by the respondents and the petitioners have been wrongly held as ineligible, which cannot be sustained.

Reliance has been placed on judgments in Jyoti K.K. vs. Kerala Public Service Commission & Ors. : 2010 (15) SCC 596, Chandrakala Trivedi vs. State of Rajasthan & Ors. : (2012) 3 SCC 129, Deepak Bariya vs. R.P.S.C. & Ors. : S.B. Civil Writ Petition No.5166/2015, decided on 26/05/2017, which judgment was upheld in D.B. Civil Special Appeal (W) No.528/2018, decided on 7/3/2018.

Learned counsel for the respondent-State vehemently opposed the submissions.

It was submitted that the eligibility as indicated in the advertisement is specific requiring that the teacher of language, the candidate must have passed Graduation or equivalent examination with the corresponding language as an optional subject. With reference to the mark-sheets produced by the petitioners, it was submitted that the petitioners have studied English as compulsory language in B.Sc.(Part-I) only and, thereafter, have not studied English at all and therefore, the basic requirement of having passed Graduation with subject English as an optional subject has not been fulfilled and, therefore, the petitioners were rightly held ineligible.

Further submissions have been made that judgment in the case of Deepak Bariya (supra) has no application to the facts of the case as in the said case the issue pertained to study of Language during Graduation as an optional subject and not a case where the candidate had not studied English in Graduation. Submissions have been made that the judgment in the case of Jyoti K.K. (supra) is distinguishable on account of provisions which were under consideration in the said judgment, which aspect has been considered in subsequent judgment of Hon'ble Supreme Court in State of Punjab & Ors. vs. Anita & Ors. : (2015) 2 SCC 170 and Zahoor Ahmad Rather & Ors. vs. Sheikh Imtiyaz Ahmad & Ors. : (2019) 2 SCC 404. It was prayed that the petitions be dismissed.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

The facts are not in dispute wherein the petitioners have done their B.Sc. i.e. their Graduation in Science. However, after completing B.Sc. they have done

M.A. in English and based on the said post graduation in English, claimed themselves to be eligible for appointment to the post of Teacher Gr.III (Level-II) in subject English.

The academic qualification for the post inter alia has been provided in Rule 266(3) of the Rules, 1996 which provides that for the teacher of Language, the candidate must have passed graduation or equivalent examination with corresponding language as an optional subject, which requirement as noticed herein-before has been indicated in the advertisement (Annex.1). The language involved in the present matter is English and admittedly, the petitioners had not studied English as an optional subject in Graduation and, therefore, it cannot be said that the petitioners have passed Graduation with English as an optional subject, which is the required academic qualification.

The plea raised is that irrespective of the fact whether the petitioners had studied English during the course of their Graduation or not, on account of their having obtained post graduation i.e. M.A. in English, they are eligible.

In the case of Jyoti K.K. (supra) it was inter alia laid down that when a qualification has been set-out under the relevant rules, the same cannot in any manner whittled down and different qualification cannot be adopted, however, relying on Rule 10(a)(ii) involved in the said case, which provided that higher qualification would presuppose acquisition of lower qualification for the post, the Hon'ble Supreme Court came to the conclusion that as the petitioner therein had obtained degree in Electrical Engineering whereas the prescribed qualification was Diploma or Certificate in Electrical Engineering, she was eligible.

In the case of Chandrakala Trivedi (supra), the issue involved was meaning required to be given to word 'equivalent' and it was laid down that the word must be given reasonable meaning which means there is some degree of flexibility or adjustment, which does not lower the stated requirement.

In the case of Deepak Bariya (supra) which pertained to recruitment to the post of Senior Teacher Gr.II (English) and required Graduation or equivalent examination with concerned subject as optional subject, the Court on finding that the petitioner therein had subject English in his First, Second and Third year as compulsory subject, laid down that the same was sufficient for the purpose of qualification. It was also held that in view of the fact that petitioner having cleared his post graduation in subject English, the requirement of having optional subject in Graduation cannot be insisted upon, which view was upheld by the Division Bench in the appeal filed by RPSC.

The aspect of having higher qualification than the required qualification came up for consideration before Hon'ble Supreme Court in the case of Anita (supra) wherein after considering the judgment in the case of Jyoti K.K. (supra) it came to the conclusion that it was imperative for a candidate to possess statutory qualification prescribed for appointment to the concerned post, possession of higher qualification (M.A., M.Sc., M.Com. etc.) as against prescribed qualification

(JBT / ETT) was inconsequential. It was inter alia observed as under :-

"15. It was sought to be asserted on the basis of the aforesaid observations, that since the private respondents possess higher qualifications, then the qualification of JBT/ETT, they should be treated as having fulfilled the qualification stipulated for the posts of JBT/ETT teachers. It is not possible for us to accept the aforesaid submission of the learned counsel for the private respondents, because the statutory rules which were taken into consideration by this Court while recording the aforesaid observations in Jyoti K.K.'s case, permitted the aforesaid course. The statutory rule, in the decision relied on by the learned counsel for the private respondents, is extracted hereunder:

"6. Rule 10(a)(ii) reads as follows :

'10.(a)(ii) Notwithstanding anything contained in these Rules or in the Special Rules, the qualifications recognised by executive orders or standing orders of Government as equivalent to a qualification specified for a post in the Special Rules and such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post.'

(emphasis supplied)

A perusal of the rule clearly reveals, that the possession of higher qualification would presuppose the acquisition of the lower qualification prescribed for the posts. Insofar as the present controversy is concerned, there is no similar statutory provision authorizing the appointment of persons with higher qualifications."

Similarly, in the case of Zahoor Ahmad (supra), wherein, the qualification prescribed was Matriculation with ITI in Electrical Trade and the appellants were not possessing ITI certification, but were Diploma holders in Electrical Engineering / Electronics & Communication, the Hon'ble Supreme Court distinguishing the judgment in the case of Jyoti K.K. (supra) in para 23, 24 & 25 inter alia laid down as under:-

"26. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti KK in the subsequent decision in Anita (supra). The decision in Jyoti KK turned on the provisions of Rule 10(a) (ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily pre-supposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The state as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the state, as the recruiting authority, to determine. The decision in Jyoti KK turned on a specific statutory rule under which the holding of

a higher qualification could presuppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench of the High Court was justified in reversing the judgment of the learned Single Judge and in coming to the conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision of the Division Bench.

27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The state is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision making. The state as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in Jyoti KK must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in Jyoti KK turned.

28. Ms Wadia sought to draw sustenance from the fact that the holder of an ITI certification can obtain lateral entry to the diploma course. The point of the matter, however, is that none of the appellants fit the description of candidates who had secured an ITI certification before seeking a lateral entry to a diploma course. Plainly, when an ITI with matric is required, a person who does not hold that qualification is not eligible."

In view of the law laid down by the Hon'ble Supreme Court in the case of Zahoor Ahmad (supra), wherein, the earlier judgment in the case of Jyoti K.K. (supra) was thoroughly considered and distinguished on account of the statutory provisions involved therein, which provisions admittedly are not available in the present cases, the mere fact that the petitioners have post graduation i.e. M.A. in English, cannot take away the ineligibility of their lacking requisite and statutory academic qualification under Rule 266(3) of the Rules, 1996 and consequently the rejection of petitioners' candidature in this regard by the respondents cannot be faulted.

Similarly, the judgments in the case of Chandrakala Trivedi (supra) and in the case of Deepak Bariya (supra) do not advance the cause of the petitioners.

Consequently, there is no substance in the writ petitions and the same are, therefore, dismissed.