

(2011) 07 RAJ CK 0074

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3701 of 2011

Garima Mani Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 12-07-2011

Acts Referred:

Rajasthan Panchayati Raj Rules, 1996 — Rule 266

Citation : (2012) 1 RLW 654

Hon'ble Judges : M.N. Bhandari, J

Bench : Single Bench

Advocate : S.P. Sharma with Gaurav Sharma, Virendra Lodha with Ankit Jain, Dinesh Sharma, D.K. Garg, Sudarshan Laddha, Narendra Saini, Kapil Gupta, Aslam Khan, Jainendra Jain, Suresh Kumar, R.A. Verma, Brajesh Dhabhai, Virendra Godara, Suresh Kumar, Mukesh Bijarania, Naveen Dhuwan, Keshav Agrawal, Shyam Lal Sharma, Rahul Kamwar, Mahendra Sharma, Anoop Dhand, Sandeep Garra, Sunil Yadav, R.D. Singh Naruka, Bharat Saini, Atul Kumar Jain, Kailash Tailor Shailender Balwada, Ram Pratap Saini, Suresh Kumar Pareek, Sanjay Khedar, Gupal Gupta, G.S. Sisodia, S.K. Beniwal, Rajesh Kala, Banwari Sharma, Intjar Ali, Ashindra Gautam, Mahendra Singh Gurjar, D.S. Bagadia, Mukesh Kumar Goyal, H.S. Bikarwar, K.C. Surela, Shivendra Singh Rathore, Devi Singh Choudhary, Ajay Gupta, S.S. Shekhawat and S.K. Jain, for the Appellant; S.N. Kumawat, AAG and Ganesh Meena, Addl. G.C., for the Respondent

Final Decision : Dismissed

Judgement

M.N. Bhandari, J.—Since this bunch of writ petitions are based on same facts and grounds, thus have been heard and decided by this common judgment. The respondent-Rajasthan Public Service Commission (for short "the RPSC") issued an advertisement calling for applications for the post of Teacher Grade-II in Sanskrit Education Department. So far as the present matter is concerned, it pertains to post of Teacher Grade-II in Sanskrit Subject.

2. Column 6 of the advertisement provides qualification of the post and so far as the post of Teacher Grade-II in Sanskrit Subject is concerned, it is provided that

one should have the qualification of Shastri or equivalent Traditional Sanskrit Examination with Sanskrit Medium from an University established by the law and Shiksha Shastri/Decree in Education recognized by the Government. The petitioners are having the qualification of B.A. in Sanskrit and few petitioners are having M.A. in Sanskrit or qualification of Acharya with B.Ed. or Shiksha Shastri Degree.

3. The petitioners were called for the examination and accordingly they appeared for the written test. The respondents thereafter declared the result wherein petitioners secured more marks than the last candidate selected in their category. The petitioners were, however, disqualified for want of required qualification. On inquiry, it was found that candidates not having the qualification of Shastri or equivalent Traditional Sanskrit Examination with Sanskrit Medium were disqualified for the appointment. Even the candidates for the post of Sanskrit Teacher Grade-III, were also disqualified for want of qualification of Varistha Upadhyaya. On further inquiry, petitioners could reveal that the candidates having qualification of graduation or postgraduate in Sanskrit subject were disqualified by not treating aforesaid to be equivalent to Traditional Sanskrit Examination with Sanskrit Medium.

4. Learned counsel appearing for the petitioners submit that B.A. with Sanskrit subject has always been treated equivalent to the qualification of Shastri. This can be seen from the website of the Sanskrit Department itself. Even the University has treated qualification of B.A. with Sanskrit equivalent to qualification of Shastri and thereby candidates are allowed for higher studies. The qualification was amended by the respondents vide notification dated 10.6.2008. However, same is in ignorance of the Regulations of the National Council for Teachers Education (for short "the NCTE") wherein one is held qualified for B.Ed. Course, if possesses the qualification of B.A. in Sanskrit subject and accordingly, University is also treating a graduate in Sanskrit subject eligible for B.Ed. Course by treating it to be equivalent to Shastri. Even the Board of Secondary Education has also given equivalence to various courses like Praveshika and Varistha Upadhyaya and is treated equivalent to 12th Class examination for higher education. Thus, contrary to the Regulations of the NCTE, University and Board of Secondary Education, the respondents have provided the qualification by amending the Rule through the notification dated 10.6.2008. It is stated that Rule so amended has not been challenged in any of the writ petitions, but then interpretation of the Rule has to be made after taking into consideration the Regulations of the NCTE, University and Board of Secondary Education. In fact, M.A. in Sanskrit is higher qualification than the qualification of Shastri and otherwise B.A. in Sanskrit is to be treated as equivalent traditional Sanskrit examination with Sanskrit medium. However, after giving erroneous interpretation, the respondents have deprived the petitioners from their right of appointment to the post of Teacher Grade-II in Sanskrit subject.

5. Learned counsel for petitioner have referred the judgment of this Court in the

Case of Ramnarain Verma vs. State of Rajasthan and 2 Ors. reported in 1986 RLR Page 525 wherein question of equivalence of the qualification of Shiksha Shastri came up for consideration and therein it was held to be a Bachelor's degree in Education is equivalent. Other than the aforesaid judgment, no other judgment has been cited by the learned counsel for the petitioners.

6. Learned counsel for respondents submits that by virtue of the amendment in the Rule vide notification dated 10.6.2008, one is under compulsion to possess the required qualification. None of the petitioners are in possession of the qualification as per the amended provision, B.A. in Sanskrit subject or postgraduate in Sanskrit subject cannot be considered to be equivalent traditional Sanskrit examination with Sanskrit medium. None of the petitioners are in possession of qualification of Shastri, thus they were rightly being disqualified. The respondents have not taken incorrect interpretation of the Rule so amended. So far as the Regulations of the NCTE, University and Board of Secondary Education are concerned, they are for the purpose of equivalence of the qualification for higher studies, thus cannot have relevance where one is selected as Teacher to impart education in Sanskrit subject, therein one should possess the qualification of Shastri or traditional Sanskrit examination with Sanskrit medium. It is stated that almost similar controversy came up before the Hon'ble Division Bench in the case of Pawan Kumar Jain & Anr. vs. State of Rajasthan & Ors. - D.B. Civil Special Appeal (Writ) No. 173/2011 & 13 others decided by order dated 23.3.2011 : Pawan Kumar Jain and Another Vs. State of Rajasthan and Others, . Similar arguments were raised before the Hon'ble Division Bench but were not accepted taking note of the objects behind the amendment in the Rule. In the case of Pawan Kumar Jain (supra), the candidates were not having qualification of Varishtha Upadhyaya or equivalent traditional Sanskrit examination with Sanskrit medium. The interpretation to equivalent qualification was considered and those possessing qualification of B.A. or M.A. in Sanskrit subject were not held qualified. The judgment (supra) gives complete answer to the issue raised herein by the petitioners. The Hon'ble Division Bench even considered the equivalence of qualification given by the Sanskrit Department on its website. In the light of the aforesaid, a case is not made out by the petitioners for calling for the interference by this Court in the action of the respondents.

7. Learned counsel for respondents has relied upon the judgment of the Hon'ble Division Bench in the case of Bihar Public Service Commission and Others Vs. Kamini and Others, .

8. I have considered the rival submissions of the parties and scanned the matter carefully.

9. The controversy as raised by the petitioner herein came up before the Hon'ble Division Bench in view of the amendment in the Rule vide notification dated 10.6.2008, thus it would be relevant to quote the amended Rule providing qualification for the post of Teacher Grade-II, which is quoted thus for ready

reference:-

10. Perusal of the Rule quoted above shows that for the post of Teacher Grade-II (Sanskrit) required qualification is Shastri or equivalent Traditional Sanskrit Examination with Sanskrit Medium from a University established by law in India and Shiksha Shastri/Degree in Education recognized by the Government. It is not in dispute that the petitioners are not in possession of qualification of Shastri. The only argument is that they are having the qualification of equivalent Traditional Sanskrit Examination with Sanskrit Medium from the University established by the law. Accordingly, the question for this Court is as to what is the meaning of equivalent Traditional Sanskrit Examination with Sanskrit Medium. The respondents have not defined or declared equivalent Traditional Sanskrit Examination with Sanskrit Medium, therefore, controversy came up before this Court. Accordingly, prayer is to accept equivalence of qualification as provided by the NCTE, University or by the Board of Secondary Education.

11. Before dealing with the issue aforesaid, it would be necessary to look into as to why amendment in the Rule was made. Perusal of the judgment in the case of Pawan Kumar Jain (*supra*) shows that amendment in the Rules of 1978 was introduced pursuant to the Division Bench judgment of this Court in Kailash Chandra Harijan vs. State of Rajasthan and others reported in RLR 2006 (1) 665: RLW 2006 (2) Raj. 1700. Purpose of the aforesaid amendment is to ensure that only those, who are proficient in the language of Sanskrit, to be appointed as Teacher in Sanskrit. In reference to the amendment, this Court considered the matter in regard to the qualification of Teacher Grade III in Sanskrit subject for Primary and Upper Primary levels. Para 13 of the judgment of Pawan Kumar Jain (*supra*) is quoted thus for ready reference:-

13. Afore-quoted entry was inserted in the Schedule of the Rules of 1978 by the Rajasthan Sanskrit Education Subordinate (Second Amendment) Rules, 2008 promulgated vide Notification dated 22.8.2008. This amendment was originated by the Division Bench judgment of this Court in Kailash Chandra Harijan *supra*. Question in that case was with regard to the recruitment to the post of Teachers in Primary and Upper Primary Schools. In that context, it was held that howsoever high qualification a candidate might possess, it cannot be treated at par with Basic School Training Certificate (BSTC) and the appointments to the candidates with such qualification may not be granted on the basis of Rule 266 of the Rajasthan Panchayati Raj Rules, 1996 as it runs contrary to clause 4 of the Regulation framed by the National Council for Teachers Education u/s 12 of the Act of 1993. This Court however saved the rules and for the time being allowed three years time period to the State Government to modify the existing recruitment rules in terms of Regulation 4 *supra*. In those regulations, imparting of education in the schools has been divided in three stages, namely; (i) Primary, (ii) Upper Primary/Middle School and (iii) Secondary and Senior Secondary school. But here in the present case, we find that intention of the rule making authority is slightly different but specific that only such teachers are appointed in

the schools at elementary stage i.e. Primary and Upper Primary level, who have had their early education upto the level of "Varishtha Upadhyaya" with Sanskrit as medium of instruction. This is because a candidate with only such background can impart education to the students in Sanskrit schools in medium of Sanskrit only. Intention of the rule making authority is further evident from the fact that while specifically prescribing "Varishtha Upadhyaya" as eligibility qualification, it also additionally provided for "equivalent traditional Sanskrit examination with Sanskrit medium." In clause (i) of column 4 at entry 6(a) of Schedule-I appended to the Rules of 1978, Varishtha Upadhyaya or equivalent traditional Sanskrit examination with Sanskrit medium has thus been prescribed as "foundational qualification", which is the basic and necessary qualification for making a candidate eligible for appointment on the post of Teacher Gr. III (Sanskrit) both for Primary and Upper Primary level. Reason for this is that in most of the schools run by the Government, Teachers Gr. III are imparting education at both the levels i.e. Primary and Upper Primary Schools. There is a definite purpose behind this and this has got a reasonable nexus with the object sought to be achieved. Object is to ensure that only such teachers, who have had their early education with Sanskrit as medium of instruction, are capable of imparting education to the students of those schools at Primary and Upper Primary level with Sanskrit as medium of instruction. Same level of proficiency may not be possible to be achieved if one possess a Senior Secondary Examination with Sanskrit as an optional subject, where rest of the subjects are not taught to him with Sanskrit as a medium of instruction.

12. The perusal of the quoted para shows that much stretch has been given for education of a candidate in Sanskrit subject for teaching at the level of Primary and Upper Primary. Since the basic qualification is required with Sanskrit Medium even for Primary and Upper Primary level teacher, a teacher at the level of secondary and senior secondary cannot have lesser qualification, inasmuch as, he is also required to have same capability of teaching Sanskrit subject at the level of secondary and senior secondary. A candidate passing out senior secondary examination with Sanskrit subject is not found to be efficient to impart education of Sanskrit subject as rest of the subjects in senior secondary are not taught in Sanskrit. The same is the position in regard to a candidate, who is possessing qualification of B.A. in Sanskrit as other than Sanskrit subject, he reads other subjects without Sanskrit as a medium. Therefore, para quoted above from the judgment of Pawan Kumar Jain (supra) applies to this case also.

13. The question now comes that equivalent Traditional Sanskrit Examination with Sanskrit Medium has not been defined any where then why B.A. and M.A. in Sanskrit subject should not be treated as equivalent course to the Shastri. The aforesaid question was also considered by the Hon"ble Division Bench in the case of Pawan Kumar Jain (supra). Paras 15 and 16 of the aforesaid judgment are quoted thus for ready reference:-

15. Contention that equivalent traditional Sanskrit examination with Sanskrit

medium has not been defined anywhere and the State Government has not notified such equivalence so far, cannot be a reason to hold that in absence of any prescription by the government, Senior Secondary with Sanskrit as an optional subject, should be treated as equivalent traditional Sanskrit examination with Sanskrit medium, although we may at this stage impress upon the State Government to expedite process of making prescription of such equivalent traditional Sanskrit examination with Sanskrit medium so that there may not be any ambiguity in this respect.

16. Merely because appellants have higher qualification such as B.A. in Sanskrit or M.A. in Sanskrit or Shiksha Shastri, does not mean that rigour of the rule in their cases should be relaxed so as to read in the rules what is not provided by the rule making authority and/or rather ignore what has been specifically provided. We are not inclined to countenance the argument that sub-clause (iii) in clause (ii) of column 4 of entry 6(a), in the schedule appended to the Rules of 1978, which provides "Graduate with Shiksha Shastri or its equivalent" should be read independent of the first two sub-clauses. In our view, it would amount to doing violence to the language of the rule in clause (i) whereof Varishtha Upadhyaya has been treated to be a basic foundational eligibility qualification together with any one of the three educational training qualifications in clause (ii) to make a candidate eligible for appointment. The word "and" has been used between sub-clause (i) and sub-clause (ii) and this "and", as is evident from the context, has to be always understood in conjunctive sense that both the conditions have to be satisfied by a candidate so as to claim eligibility for appointment. But in clause (ii), three different sub-clauses relating to educational training qualifications are divided by the word "or", which is a disjunctive expression making it open for a candidate to claim eligibility on the basis of qualification of Varishtha Upadhyaya or equivalent traditional Sanskrit examination with Sanskrit medium in clause (i) with any one of those three educational training qualifications.

14. Perusal of the quoted paras shows that the candidate possessing the qualification of B.A. & M.A. in Sanskrit has not been treated as qualified even for the lower post of Teacher Grade-III, then such a candidate cannot be held to be eligible for the higher post of Teacher Grade-II in Sanskrit subject. The Hon'ble Division Bench held that rigour of the amended Rule cannot be relaxed so as to read in the Rules, which is otherwise not provided. It has further been considered that even certain equivalence indicated on the website of the Department cannot nullify the Rules. Para 18 of the aforesaid judgment is quoted hereunder for ready reference:-

18. Merely because the Sanskrit Education Department has no its website indicated the qualification of "Varishtha Upadhyaya" of the level of the Senior Secondary, does not mean that every candidate having Senior Secondary Examination certificate would be treated having equivalent traditional Sanskrit examination with Sanskrit medium for the purpose of Rules of 1978. Howsoever

high qualification the appellants may possess, whether BA in Sanskrit or MA in Sanskrit or Shiksha Shastri, they do not have the basic foundational qualification of "Varishtha Upadhyaya" or equivalent traditional Sanskrit examination with Sanskrit medium. They cannot be therefore treated as eligible. We may in this connection usefully refer to the judgment in P.M. Latha and Another Vs. State of Kerala and Others, . In that case too, B.Ed. candidates were allowed to compete in seeking for appointment and were selected contrary to the terms of advertisement for imparting education in Primary and Upper Primary Government schools. The candidates, who possessed Teachers Training Certificate (TTC) qualification, questioned their non-selection due to inclusion of B.Ed. candidates in the select list prepared by the Public Service Commission of the State of Kerala. The Single Bench of the High Court of Kerala allowed all the writ petitions holding that B.Ed. candidates, who did not have TTC qualification and were yet included in the rank list should be deleted therefrom and their appointments be cancelled and the merit list should be prepared afresh. The judgment was challenged before the Division Bench, which reversed the same and the matter travelled to the Supreme Court. While reversing the judgment of the Division Bench and restoring that of the Single Bench, the Supreme Court in para 13 of the report of the judgment observed, as under:-

13. Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law. The Division Bench forget that in extending relief on equity to B.Ed. candidates who were up qualified and yet allowed to compete and seek appointments contrary to the terms of the advertisement, it is not redressing the injustice caused to the appellants who were TTC candidates and would have secured a better position in the rank list to get appointment against the available vacancies, had B.Ed. candidates been excluded from the selection. The impugned judgment of the Division Bench is both illegal, inequitable and patently unjust. The TTC candidates before us as appellants have been wrongly deprived of due chance of selection and appointment. The impugned judgment of the Division Bench, therefore, deserves to be set aside and of the learned Single Judge restored.

15. Perusal of the para quoted above shows that equivalent Traditional Sanskrit Examination with Sanskrit Medium has to be given true meaning i.e. equivalent qualification should be with basic foundational course in Sanskrit with same medium. The B.A. in Sanskrit or M.A. in Sanskrit are held not to possess basic foundational qualification of equivalent Traditional Sanskrit Examination. In view of the para quoted above, the petitioners' claim for equivalence cannot be accepted as B.A. in Sanskrit or M.A. in Sanskrit with Shiksha Shastri are not considered as equivalent Traditional Sanskrit Examination with Sanskrit Medium for the post of Teacher Grade-III, then in the present matter, required qualification of Shastri is still higher qualification than the Varishtha Upadhyaya. Thus, the equivalence as claimed by the petitioners cannot be given contrary to the judgment of the Hon"ble Division Bench. It may, however, be clarified that the judgment in the case of P.M. Latha and Another Vs. State of Kerala and

Others, is regarding the basic training course for teaching and is not for basic qualification of the post. To make a difference between the two, it is clarified that Shastri of equivalent Traditional Sanskrit Examination with Sanskrit Medium are the basic qualification of the post whereas Shiksha Shastri/Degree are Teacher Training Course. Teacher Training Course of B.Ed. or B.S.T.C. provides training in teaching at different level of class i.e. higher class of teaching i.e. at the level of secondary or senior secondary and teaching at primary level respectively. The controversy in the present matter is not of the equivalence of Teacher Training Course. The issue is regarding the basic educational qualification for the post in question, thus reference of the judgment in P.M. Latha's case and other judgment referred by the Hon''ble Division Bench in reference to the qualification of B.Ed. are not relevant. The issue as raised herein was otherwise considered by the Hon''ble Division Bench in para 21 of the judgment (supra), which is quoted thus for ready reference:-

21. We in the present case are conscious of the fact that qualification of "Varishtha Upadhyaya" is not an educational training qualification but nevertheless this is the basic foundational qualification for which an emphasis has been laid by the rule making authority in the rules by additionally providing for equivalent traditional Sanskrit examination with Sanskrit medium only with the object of ensuring that only such candidates who have had their early education in Sanskrit medium are appointed to impart education to the students at the Primary and Upper Primary level in Sanskrit medium. That expertise possibly cannot be achieved if a candidate acquires Senior Secondary Certificate with Sanskrit only as one of the optional subjects or receives Sanskrit education at a very late stage of academic career, at the Graduation or Post Graduation level. We are therefore in agreement with the interpretation placed by the learned Single Bench on the rule in question.

16. The position of the facts of this case is similar as has been mentioned in the para quoted above. Therein the senior secondary certificate was obtained by the candidates with Sanskrit as one of the optional subject. The same is the position herein because even one is taught Sanskrit subject apart from other subjects without Sanskrit as medium in B.A. Course.

17. In the light of the aforesaid, the ratio of the judgment in the case of Pawan Kumar Jain (supra) applies to this case also.

18. So far as the equivalence given by the NCTE, University and Board of Secondary Education is concerned, same has already been clarified in the earlier part of the judgment and this is not otherwise relevant for appointment to the post of Teacher Grade-II in Sanskrit subject. This is more so when the Hon''ble Division Bench even did not agree to the equivalence given by the respondent Department on its website itself. In fact, Rules have to give interpretation after taking note of the object behind the amendment. If the plea of the respondents for equivalence in reference to the Regulations of the NCTE, University or Board of Secondary Education is accepted, then there remains no effect of the amended

Rules because prior to the amendment, the position of the Rules as taken by the Department was the same as stated by the petitioners. If the equivalence is to be considered with the same parameter as was given by the Department earlier, than the amended Rules are virtually made redundant or keep no effect despite the fact that amendments in the Rules have been made for achieving the purpose indicated by this Court in the earlier judgment. In the light of the discussions made above, I do not find any merit in the arguments raised by learned counsel for the petitioners rather matter is largely covered by the judgment of the Hon''ble Division Bench in the case of Pawan Kumar Jain (supra). All the writ petitions are accordingly dismissed with no order as to costs.