

(1999) 01 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 3431 of 1998

Gurwinder Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 11-01-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (1999) 2 ILR (P&H) 275

Hon'ble Judges : Iqbal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Jasbir Singh, for the Appellant; Rupinder Khosla, D.A.G. and R.K. Chopra, for Respondents Nos. 5, 6 and 7, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—The Petitioners have prayed for quashing the select list prepared by the Departmental Selection Committee (Teaching), Punjab for recruitment of Agriculture Masters.

2. The Petitioners, the non-official Respondents and others applied for recruitment as Agriculture Masters in pursuance of the advertisement Annexure P-1, dated 28th October, 1994. The educational qualifications specified in the advertisement were "B.Sc. in Agriculture with B.Ed." The Departmental Selection Committee prepared the select list by making assessment of the academic attainments of the candidates and their performance in the viva voce. The Petitioners, whose names do not figures in the select list, have challenged the same mainly on the ground of discrimination. Their contention is that the Departmental Selection Committee did not have the jurisdiction to consider the candidature of those who do not possess the qualifications specified in the advertisement. According to the Petitioners, consideration of the candidature of ineligible persons has resulted in undue enlargement of the zone of consideration and consequential reduction in their chances of selection.

3. The official Respondents have, by and large, supported the Petitioners. In the written statement, they have averred that the government has decided to terminate the services of those candidates who do not possess the degree of B.Ed. They have placed on record copy of the order, dated 31st January, 1996, passed in C.W.P. No. 9807 of 1995 to support their stand that the candidates who do not possess the degree of B.Ed. are ineligible to be considered for deletion. In their written statement, Respondents No. 5, 6 and 7 have referred to the Notification No. GSR 105/Const./Art. 309/ Amd. (8)/88, dated 7th December, 1988,--vide which Appendix "B" annexed with the Punjab State Education Class-III (School Cadre) Service Rules, 1978 (hereinafter referred to as the Rules) was amended, to show that the degree of B.Ed. is not the qualification prescribed for appointment on the post of Agriculture Master. They have pleaded that the select list prepared by the Departmental Selection Committee does not suffer from any jurisdictional or legal error and the selection of candidates who do not possess the degree of B.Ed. cannot be declared illegal. The non-official Respondents have averred that Agriculture is not a teaching subject and therefore, B.Ed. with Agriculture as one of the teaching subject is not awarded by any educational institution. They have also asserted that large number of Agriculture Masters/Mistresses working in the service of the Government of Punjab do not possess the degree of B.Ed.

4. Shri Jasbir Singh argued that the selection of candidates who do not possess the qualification specified in the advertisement, i.e., B.Sc. in Agriculture with B.Ed. is per se illegal and violative of Articles 14 and 16 of the Constitution. He submitted that the decision of the Departmental Selection Committee to consider of the candidature of ineligible candidates along with eligible candidates amounts to treating the unequal equally and this is clearly violative of the doctrine of equality. The learned Deputy Advocate General conceded that the Rules do not prescribe B.Ed. as an essential qualifications for recruitment as Agriculture Master but he tried to justify the incorporation of B.Ed. as one of the essential qualifications in the advertisement by arguing that the government can restrict the choice of consideration to those who possess higher qualifications and it is not necessary to consider each and every candidate who fulfils the bare minimum qualifications. Shri R.K. Chopra entered a strong caveat and urged that the official Respondents should not be allowed to tinker with the recommendations made by the Departmental Selection Committee keeping in view the qualifications prescribed in the Rules. He submitted that the degree of B. Ed. could not have been incorporated in the advertisement as an essential qualification because the Rules framed under proviso to Article 309 of the Constitution do not prescribe the same as one of the essential qualifications for recruitment as Agriculture Master. Shri Chopra laid considerable emphasis on the omission of the degree of B.Ed. from column 3 of entry 3 (iv) of Appendix "B" annexed with the Rules and argued that this designed omission by the rule making authority cannot be ignored by the official Respondents while making appointment on the posts of Agriculture Masters/Mistresses.

5. We have given serious thought to the respective submissions. Admittedly, recruitment of Agriculture Masters is regulated by the Rules. A bare persual of Rules 5 and 9(1) along with Appendix "B" annexed with the Rules shows that 75% posts of Agriculture Masters are required to be filled by direct recruitment from among those who possess the qualification of B.Sc. (Agriculture) and 25% posts are to be filled by promotion. For the sake of convenience, the relevant extract of entry 3 of Appendix "B" of the Rules, as it stands after amendment made,--vide notification dated 7th December, 1988, reads as under:

Appendix "B"

Method of recruitment

Sr. No.	Designation of posts	Minimum qualifications	and teaching experience_
	Direct appointment	Promotion	
1	2	3	4
5			

1 2 3 4 5

(i) (a) Masters or Mistresses Degree of a recognised University with B.T. or B. Ed., B. Sc. and S.S.T.C. or B.T. or B. Ed. Senior Basic Trained with any two of the four subjects in B. Sc. namely, Physics," Chemistry, Botany and Zoology. Or B.A. with Mathematics A course and Physics or Physics and Geography with S.S.T.C. or B.T. or B. Ed, or Senior Basic, trained. 75% 25% (i) 15% from trained Graduates amongst J.B. Ts., and (ii) 10% from trained Graduates amongst C and V teachers.

(ii) Mathematics Masters or Mistresses Graduate with Mathematics as-one of the elective subject with B.T. or B. Ed. Or B.A. with Physic's and Mathematices A course with S.S.T.C, B.T., B. Ed, or Senior Basic Trained 75% 25% (i) 15% from trained Graduates amongst- J.B. Ts and (ii) 10% from trained Graduates amongst C and v. Teachers.

(iii) Social Studies Masters or Mistresses B.A. with subject combination as approved by Government from time to time with S.S.T.C, B.T., B. Ed, or Senior Basic trained (includes service of B.P. Ed. and B.P. Ed. . as Masters/Mistresses w(ith atleast three years actual teaching experience). 75% 25% (i) 15% from trained Graduates amongst .J.B. Ts. and (ii) 10% from trained Graduates amongst C and v. teachers.

(iv) Agriculture Master B. Sc. (Agriculture) 75% 25% (i) 15% from trained Graduates amongst J.B. Ts and (ii) 10% from trained Graduates amongst C&V teachers.

(v) Commerce Master B. Com. 75% 25% (i) 15% from trained Graduates amongst J.B. Ts and (ii) 10% from trained Graduates amongst C&V teachers.

(vi) Physical . Training Masters or Mistresses (D.P.E.) Graduate with training in advance Physical Training Course Degree or Diploma 75% 25% (i) 15% from trained Graduates amongst J.B. Ts and (ii) 10% from trained Graduates amongst C&V teachers.

6. A careful analysis of what has been extracted above shows that B.Ed. has been prescribed as one of the essential qualifications for the posts of Masters or Mistresses, Mathematics Masters or Mistresses, Social Studies Masters or Mistresses but not for the posts of Block Primary Education Officer, Agriculture Master, Commerce Master and Physical Training Masters or Mistresses. We, therefore, hold that the advertisement of the posts of Agriculture Master with B.Ed, as an essential qualification was ultra vires to the Rules and the Departmental Selection Committee did not commit any illegality when it recommended candidates who do not possess the degree, of B.Ed.

7. We are also of the opinion that the action of the official Respondents to advertise the posts of Agriculture Masters with the qualification of "B.Sc. in Agriculture with B.Ed." amounted to an amendment of the Rules and this they could not have done by usurping the power vested in the Governor of the State under proviso to Article 309 of the Constitution of India. In *State of Haryana, Vs. Shamsher Jang Bahadur, etc. etc.*, the question which fell for consideration by the Apex Court was whether the government could issue administrative instructions laying down additional qualifications for recruitment by promotion. The facts of that case show that the Punjab Civil Secretariat (State Service Class-III) Rules, 1952 provided for recruitment of Assistants from among senior Clerks. By an administrative order, the government directed that a test would be held for promotion to the posts of Assistants. While upholding the judgment of this Court that the order/instructions issued by the government were contrary to the statutory rules and, therefore, the same could not be applied for promotion to the posts of Assistants, their Lordships observed as under:

Where the administrative instructions issued by the Government added to the qualifications already prescribed by the rules relating to promotion framed under Article 309 of the Constitution, the instructions would undoubtedly affect the promotion of the concerned officials and they would, thus, relate to their conditions of service. The Government is not competent to later by means of administrative instructions the conditions of service prescribed by those rules.

8. In *C.C. Padmanabhan v. D.P.I and Ors.* 1980 (2) S.L.R. 599, their Lordships of the Supreme Court held that the executive instructions cannot be issued for amendment of the statutory rules. In *S.L. Sachdeva v. Union of India* 1980 (3) S.L.R. 503, it has been held that the Director General, Post and Telegraph did not have the jurisdiction to issue a directive prescribing an additional test for recruitment to the cadre of U.D.C. One of the contentions urged on behalf of the Respondents was that the directive of the Director General is aimed at further and better implementation of the Recruitment Rules. While repelling the submission, their Lordships held:

It may be recalled that the recruitment Rules only provide for a classification on the basis of the length of service in the new organisation. Any directive which goes beyond it and superimposes a new criterion on the Rules will be bad as lacking in jurisdiction. No one can issue a direction which, in substance and

effect, amounts to an amendment of the Rules made by the President under Article 309. This is elementary. We are unable to accept the learned Attorney General's submission that the directive of the Director General is aimed at further and better implementation of the Recruitment Rules. Clearly, it introduces an amendment to the Rules by prescribing one more test for determining whether U.D.C.s drawn from the Audit Offices are eligible for promotion to the Selection Grade/Head Clerks Cadre.

9. Similar views have been expressed in *P.D. Aggarwal and Others Vs. State of U.P. and Others*, , *Union of India (UOI) and Others Vs. Arun Kumar Roy*, , *Bindeshwari Ram v. State of Bihar* (1989) 4 S.C.C. 565, *Ex. Capt. K. Balasubramanian and Others Vs. State of Tamil Nadu and Another*, , and a recent decision of this Court in *Nirmal Prabhakar v. State of Punjab through Secretary Education Punjab Civil Secretariat Chandigarh* 1997 (1) R.S.J. 374.

10. The judgment of the learned Single Judge in C.W.P. No. 9807 of 1995, the typed copy of extract of which has been produced at Annexure R. 1, does not support the case set up by the official Respondents. In that case, the learned Single Judge held that Rule 5 read with Appendix "B" only provides for minimum qualifications and it does not mean that the Respondents are precluded from prescribing an additional qualification of training. With great respect, we are unable to subscribe to the views expressed by the learned Single Judge that the government has the power to advertise the posts by incorporating the qualifications in addition to those prescribed in the Rules. It is one thing to say that while making selection, the recruiting authority and the government can give preference to the persons possessing higher qualifications but it is an altogether different thing to say that the posts can be advertised with qualifications over and above those prescribed in the Rules. In the later case, the action of the government the appointing authority seeking to indirectly amend the statutory rules will have to be regarded as nullity.

11. In view of the above mentioned conclusion, we may have dismissed the writ petition and given liberty to the official Respondents to make appointment of the selected candidates but we are not inclined to adopt that course keeping in view the fact that the advertisement Annexure P. 1 issued by the Departmental Selection Committee did specify B.Sc. with B.Ed. as the essential qualification for recruitment on the posts of Agriculture Masters/Mistresses and many candidates who possess the qualification of B.Sc. (simpliciter) must not have applied on the assumption that they do not fulfill the advertised qualifications. Therefore, by giving permission to the official Respondents to make appointment of the selected candidates, we do not intend to frustrate the right of consideration which was available to other eligible persons who could not apply in view of the misleading and erroneous insertion of the essential qualifications in the advertisement.

12. For the reasons mentioned above, we dispose of the writ petition with the direction to the official Respondents to advertise the posts of Agriculture Masters

afresh by incorporating the qualifications prescribed in the Rules and then make a fresh selection. This exercise shall be undertaken and completed by the Respondents within 4 months of the receipt of certified copy of this order. It is, however, made clear that this decision shall not be construed as a bar to the laying down of an appropriate criteria based on higher educational qualifications or otherwise, to shortlist the number of candidates to be called for viva-voce. It will also be open to the competent authority to prescribe a criteria for selection giving preference to the candidates possessing higher qualifications.

13. The candidates, already appointed, may be allowed to continue in service on a purely temporary basis for the time being after giving notice to them in the light of the conclusions recorded in this judgment.