
(2008) 09 RAJ CK 0031
In the Rajasthan High Court

Jaipal Bishnoi

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-09-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21A

Citation : (2009) 1 RLW 447

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Govind Mathur, J.—All these petitions for writ raise common legal question, thus, I propose to decide all these cases by one common judgment.

2. To regulate recruitment and other service conditions in the Rajasthan Prabodhak Service, the Government of Rajasthan, while exercising powers conferred by Section 102 of the Rajasthan Panchayati Raj Act, 1994, enacted the Rajasthan Panchayati Raj Prabodhak Service Rules, 2008 (hereinafter referred to as "the Rules of 2008"). An intention to fill in the existing vacancies of Prabodhaks was notified by the Government of Rajasthan on 31.5.2008. Accordingly, the process of recruitment was initiated in various Districts of the State. The eligibility for appointment as Prabodhaks under the rules of 2008 is as follows:

Senior Secondary School certificate or intermediate or its equivalent, with Diploma or certificate in basic teachers training of a duration of not less than two years of Diploma or certificate in elementary teachers, training of a duration of not less than two years,

OR

Bachelor of Elementary Education (B.El.Ed)

OR

Graduation with Bachelor of Education (B.Ed.) or its equivalent.

AND

Must have at least 5 years continuous teaching experience without any break in any recognized educational institution.

3. The term "Teaching Experience", as defined under Rule 2(k) of the Rules of 2008 also includes the experience gained in supervisory capacity In any recognized educational or project. Rule 13 of the Rules of 2008 deals with the age of recruitment to the Rajasthan Prabodhak Service and that reads as follows:

13.Age:-A candidate for direct recruitment to a post enumerated in the "Schedule must have attained the age of 23 years and must not have attained the age of 35 years on the first day of January following the last date fixed for receipt of applications:

Provided-

(i) that the upper age limit mentioned above, shall be relaxed by 5 years in the case of male candidates belonging to the Scheduled Castes, Scheduled Tribes and the Other Backward Glasses.

(ii) that the upper age limit mentioned above shall be relaxed by 5 years in case of women candidates belonging to General Category.

(iii) that the upper age limit mentioned above shall be relaxed by 10 years in the case of woman candidates belonging to the Scheduled Caste, Scheduled Tribes and the Other Backward Classes.

(iv) that the upper age limit mentioned above shall be 50 years in the case of Ex-Service Personnel and the reservists, namely the Defense Service Personnel who were transferred to the reserve.

(v) that the person serving under the educational project in the State viz. Rajiv Gandhi Pathshala / Shiksha Karmi Board / Lok Jumblish Parlyojana / Sarva Shiksha Abhiyan / District Primary Education Programme shall be deemed to be within age limit, had they been within the age limit when they were initially engaged even though they may have crossed the age limit at the time of direct recruitment.

(vi) that the upper age limit mentioned above shall be relaxed by a period equal to the service rendered In the NCC in the case of Cadet instructors and if the resultant age does not exceed the prescribed maximum age limit by more than three years, they shall be deemed to be within the prescribed age limit.

(vii) that the Released "Emergency Commissioned Officers and Short Service Commissioned Officers after release from the Army shall be deemed to be within the age limit even though they have crossed the age limit when they appear before the Committee had they been eligible as such at the time of their joining the Commission in the Army,

(viii) that there shall be no Upper age limit in the case of widows and divorced women.

4. The petitioners, in these petitions, are working as teachers with aided and non-aided recognised Educational Institutions. Their case is that for the purpose of consideration for appointment as Prabodhaks a teaching experience of five years is required and as per Rule 2(k) of the rules of 2008 that may be of any recognised educational institution or project, thus, the persons working either with recognised institutions or with educational projects forms one class. The maximum age limit to be considered for appointment as Prabodhak as per the provisions of Rule 13 of the Rules of 2008 is 35 years, however, an indefinite age relaxation is given under proviso (v) to Rule aforesaid only to the persons serving in educational projects, therefore, the proviso is discriminatory. A claim is made to harmonise the provision by-extending the same relaxation to the persons serving with the recognised institutions.

5. On the other hand, as per the respondents the service under education projects referred in proviso (v) stands on absolutely different pedestal than to the persons serving with recognised institutions, thus, the classification made is reasonable. According to the respondents the education projects are part of various educational schemes introduced time to time and the persons serving with such projects are, not having status of regular employee. These persons are getting consolidated honorarium and their service is co-terminus with project. The persons serving in various educational projects possess rich experience of teaching and motivating people for education in rural areas, therefore, irrespective of age their engagement as Prabodhak, who is to work in rural areas shall be in public interest.

6. The nucleus of the controversy involved in these petitions is that whether the proviso (v) to Rule 13 of the Rules of 2008 is inconsistent to the Articles 14 and 16 of the Constitution of India being creating two classes among the persons working in the educational system of the State?

7. To adjudicate the issue, an introduction of various educational projects and also position of the recognised educational institution in the State is required to be noticed.

8. The Shiksha Karmi Project was initiated in the year 1987 as collaborating venture between the Government of India, Government of Rajasthan and Svedon International Development Authority (SIDA). To start with, during first phase the expenditure was to 90% paid by SIDA and 10% by the Government of Rajasthan, however, during second phase expenditure was shared equally between the SIDA and the Government of Rajasthan. The SIDA withdrew support for the project following the explosion to nuclear test by the Government of India in May, 1998, therefore, the British Development Aid Agency at a subsequent stage agreed to support phase three of the project. In Shiksha Karmi Project the education workers were engaged in the name of Shiksha Karmi to address the

problem of teacher absenteeism, poor enrollment, high drop out trends and Inadequate excess to education by training of local para teachers in remote, economically backward rural areas where formal primary schools are either non-existent or dias-functional. Shiksha Xarmis/Shiksha Sahyogis/Para Teachers in the project aforesaid were not getting wages, but a fixed honorarium. Their engagement was co-terminus with the project.

9. The Rajiv Gandhi Swarna Jayanti Pathshala Scheme was introduced to provide alternative and innovative education centers outside the regular formal schools. The persons appointed for the teaching at alternative schools/innovative education centers viz. Rajiv Gandhi Pathshala are education volunteers in the name of Shiksha Sahyogis or Para Teachers, Their service was also co-terminus to the project. They were also engaged with a consolidated honorarium. Rajiv Gandhi Pathshalas were set up for specific difficulty groups of out of school children for mainstreaming through the alternative and innovative education component. The scheme aforesaid as a matter of fact was introduced to execute the will of the legislature as introduced by insertion of Article 21A of the Constitution of India in the terms that "State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may by law determine".

10. With the same object the Sarva Shiksha Abhiyan was also introduced. The Lok Jumbish Project was also in operation to implement "District Primary & Education Project (DPEP)". To execute the schemes above the Lok Jumbish Council and the Rajasthan Council of Primary Education were constituted and registered under the Rajasthan Societies Registration Act. The persons working with Sarva Shiksha Abhiyan and Lok Jumbish too were getting consolidated honorarium and their service was also co-terminus to the project.

11. The projects referred above were introduced to accelerate universalisation of elementary education by community ownership of the schooling. In all the schemes aforesaid an effective involvement of the Panchayat Raj Institutions was quite effective as the schemes were mainly operational in rural areas. Beside the teaching, the persons serving the educational projects are having an important task of motivating rural masses for acquiring education. These persons were essentially engaged to meet the problems of inadequate excess to education in rural areas and also to stop high drop out rates even in primary education.

12. So far as recognised educational institutions are concerned, those are the institutions where the course(s) of study followed is/are prescribed or recognised by the government or University or a Board constituted by the law or by any other authorised body in this behalf by the Government, in the State of Rajasthan the recognised institutions are either under the control of the Government of Rajasthan and its educational agencies or are regulated as per the provisions of the Rajasthan Non-Government Educational Institutions Act, 1989. The service conditions such as pay, grant of selection scales, payment of provident fund and gratuity etc. are same in all recognised educational

institutions, may those be Government or Non-Government institutions. The teachers working with recognised educational institutions are having their definite teaching job and they are not suppose to work as motivators. They are also not required to discharge other supervisory duties and they may be working in rural areas as well as in the urban location.

13. Broadly the distinction among the persons working with recognised institutions and with educational projects is that the engagement of the persons working in educational projects is on fixed honorarium" and their service is co-terminus to the projects concern. These persons are working mainly in rural areas with duties of teaching, motivating rural masses for education and for other supervisory work relating to the scheme concerned. The appointment and other service conditions of the persons engaged with the recognised institutions are governed by the statute including the Rajasthan Non-Government Educational Institutions Act, 1989 and the Rules framed thereunder. Such persons have a right to serve till acquiring the age of superannuation prescribed in the statute and they are also entitled for the pay as prescribed by the Government time to.time. The persons serving with the recognised institutions are entitled for getting gratuity, provident fund and also pension, if made applicable. Their duty is to impart education and they are not suppose to work as motivators and also not have supervisory duties. The recognised institutions are having concentration in urban areas or at densely populated places in rural areas. Normally the recognised institutions are not available in remote and hard stations of rural parts. On basis of critical analysis of the educational projects, recognised institutions and the persons serving therein, it can be said well that the persons serving with the educational projects such as Sarva Shiksha Abhiyan, Lok Jumbish, DPEP, Shiksha Karmi Project etc. are not at same pedestal so far as their service structure is concerned to the persons serving with recognised educational institutions. As such, they form two different classes.

14. With the finding above, the rational for extending age relaxation to the persons serving in educational projects requires consideration.

15. The Prabodhaks appointed under the Rules of 2008 have to work in rural areas where the requirerhent is not only the teaching, but motivation for education also. A person having experience of working with educational projects operating in rural areas shall be certainly useful in achieving the object of teaching as well as of motivation. It is also pertinent to note that in all educational projects the natives of the village under operation of the project were engaged as para teachers or teaching/education assistance. These persons, therefore, are having an essential essence of rural society, as such they are certainly in better position to educate and motivate rural masses.

16. It is also relevant to be noticed that the teachers working with the recognised institutions are having status as their service is regulated by the Rajasthan Non-Government educationalj Institutions Act, 1989 and the Rules framed thereunder, whereas the persons serving with the educational projects, may that be from last

number of years are not:having any statutory protection of service. They are getting consolidated honorarium and their service is coterminus to the project, therefore, if a welfare government has taken a Step to cover those persons within the ambit of protection of statute by: offering an opportunity to get themselves employed as Prabodhaks, then the same is not irrational but rather a need of time. Pertinent to note here that under the Rules of 2008 only a relaxation of maximum age limit is granted and no compromise is made with merit while making recruitment of the Prabodhaks. The persons serving educational projects are also required to face the process of selection necessary for recruitment as Prabodhak.

17. It is settled by catina of judgments of Hon"ble Supreme Court that Article 14 of the Constitution of India protects even a discriminatory law as a good law, if it is based on "reasonable" or "perrmssible" classification and the reasonability and permissibility can be measured with the scale that (1) if the classification is founded on an intelligible differentia which distinguishes persons who are grouped together from others left out of the group; and (2)the differentia have a rational relation to the object sought to be achieved by the law in question. The classification may be founded on various factors. The necessity is that there must be nexus between the classification and the object of law iii question. The legislature may adopt a factor constituting dissimilarity, but if that bears a reasonable relation to the social object of law, there will be no violation of Article 14 of the Constitution of India, In the instant matters the classification as pointed out is reasonable for the reasons give above and there is nothing to show that the relaxation in maximum age limit granted to the persons serving with the educational projects such as Rajiv Gandhi Swarna Jayanti Pathshala, Shiksha Karmi Project, Lok Jumbish Project, Sarva Shiksha Abhiyan and District Primary Education Programme is without reason, thus, there is no unequal treatment.

18. The petitions forwrit, in the circumstances fall and, therefore are dismissed.