

(2010) 04 SHI CK 0115

In the High Court Of Himachal Pradesh

Case No : CWP No"s. 3703 of 2009 and 1340 of 2010

Kamlesh Kumar

APPELLANT

Vs

State of H.P. and Another
 Sujata Vs State of H.P. and
Others

RESPONDENT

Date of Decision : 29-04-2010

Acts Referred:

Citation : (2010) 04 SHI CK 0115

Hon'ble Judges : Kurian Joseph, C.J;R.B. Misra, J

Bench : Division Bench

Judgement

Kurian Joseph, C.J.—Whether the selection procedure can be varied either in terms of qualification or in terms of procedure thereof, after commencement of the selection process and if so, what is the impact thereof in respect of the vacancies that existed prior to such amendment is the question arising for consideration in this case.

2. The Petitioners in these cases are aggrieved since they have been informed by the Selection Committee that they do not satisfy the qualification for appointment to the post of TGT in various subjects. The main contention of the Petitioners is that they satisfy the qualifications as they stood at the time of invitation of the applications.

3. Short facts. The H.P. Subordinate Service Selection Board invited the applications for the post of TGT (Trained Graduate Teacher) in various subjects as per the notification dated 28th August 2008. There is no dispute that the Petitioners satisfied the requirement in terms of the R & P Rules at the relevant time. The written examination was conducted on 22nd July 2009. The Petitioners came out successful in the written examination. Thereafter, they were called for interview. At the time of interview, they were told that they do not satisfy the requirement in terms of the qualifications as subsequently prescribed by the department on 22nd October, 2009.

4. As per the R & P rules, the requirement was only that the candidate should be a graduate in the field concerned, like Arts, Science & Commerce etc. However, as per the notification dated 22nd October 2009, the Department prescribed that the candidate in the field concerned should possess the qualification in terms of the subject combination as subsequently prescribed.

5. The question raised is whether the rejection of the candidature is justified in the above facts and circumstances? As already stated above, all the Petitioners satisfied the requirements of qualification as prescribed in the R & P Rules. The Rules governed the field at the time of notification of the posts. When the selection process commenced, the Petitioners were fully qualified and hence they were permitted to participate in the written test. They were qualified in the test. However, midway, the rules of the game changed and the Department prescribed new qualifications. It is now settled law that the vacancies which existed prior to the amendment of the rules should be filled up only in terms of the rules as they existed prior to the amendment. See decisions of the Supreme Court in Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, and Ors., Arjun Singh Rathore and Others Vs. B.N. Chaturvedi and Others, and A. Manoharan and Others Vs. Union of India (UOI) and Others, .

6. Therefore, these writ petitions are disposed of directing the department and the Service Selection Board to treat the Petitioners as duly qualified in terms of the qualifications as it existed at the time of the initiation of the selection process. They shall be governed by the merit in the written examination as well as in the interview.

7. In case, any of the Petitioners in these cases has not been interviewed and in case the Petitioners satisfy the qualification in terms of the judgment, such Petitioners shall be interviewed forthwith.

8. The learned Deputy Advocate General contends that no new qualification was prescribed nor was there any amendment in the Rules. The Respondent only clarified the subject combination in terms of each subject. We are afraid, that contention cannot be appreciated. There was no such prescription of subject combination in the R & P Rules, when the applications were invited. The contention that the prescription of the subject combination is only a qualification also cannot be appreciated since it has the effect of prescription of qualification restricting the field of selection. The said R & P Rules stood at the time of issuance of the Notification, in case the Petitioners were qualified, they cannot be disqualified for selection subsequently in terms of clarification. Such a process is not a clarificatory exercise of legislative power. It is nothing but an amendment and the same can have only prospective operation, in respect of the vacancies that would arise after the amendment.

9. The writ petitions are accordingly disposed of, so also the pending application(s), if any.