
(2012) 11 RAJ CK 0043

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8651 of 2012

Madan Gir and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2013) LabIC 724

Hon'ble Judges : Raghvendra S. Chauhan, J; Govind Mathur, J

Bench : Division Bench

Advocate : Sunil Beniwal and Rajesh Punia, for the Appellant;

Final Decision : Dismissed

Judgement

1. While exercising powers conferred by proviso to Article 309 of the Constitution of India, the Governor of Rajasthan made the Rajasthan Education subordinate service Rules, 1971 (hereinafter referred to as "the Rules of 1971") to regulate recruitment and other service conditions relating to the members of the Rajasthan Education Subordinate Service. As per the Schedule-I appended to the Rules aforesaid, the persons, having the qualification of "Certificate in Physical Education" (hereinafter referred as "CPed.") were eligible to be considered for appointment as Physical Training Instructor Grade-III. The eligibility prescribed for appointment to the post of Physical Training Instructor Grade-II was of having Bachelors Degree in Physical Education (hereinafter referred as "BPed.") inter alia. The petitioners are having the qualification of CPed., as such they were eligible to be considered for appointment to the post of Physical Training Instructor Grade-III. The Governor of Rajasthan, while exercising powers conferred by proviso to Article 309 of the Constitution of India, vide notification dated 9.12.2011 notified Rajasthan Educational Subordinate Service (Amendment) Rules, 2011 (hereinafter referred to as "the Rules of 2011") amending schedule-I appended to the Rules of 1971 as under:--

Amendment of Schedule-I.-- In Schedule-I appended to the Rajasthan

Educational Subordinate Service Rules, 1971, under the heading Section-B Physical Training Instructors.

(a) the existing entry in column number 4 against serial number 2 shall be submitted by the following, namely:--

Bachelor of Physical Education (B.P.Ed.) recognised by the National Council for Teacher Education.

(b) the existing entry in column number 6 against serial number 2 shall be substituted by the following, namely:--

Bachelor of Physical Education (B.P.Ed.) recognized by the National Council for Teacher Education and 5 years" experience on the post mentioned in column number 5.

OR

Certificate in Physical Education (C.P.Ed.) or Diploma in Physical Education (D.P.Ed.) recognised by the National Council for Teacher Education and 10 years" experience on the post mentioned in column number 5.

(c) the existing entry in column number 4 against serial number 3 shall be substituted by the following, namely:--

Bachelor of Physical Education (B.P.Ed.) or Certificate in Physical Education (C.P.Ed.) or Diploma in Physical Education (D.P.Ed.) recognized by the National Council for Teacher Education.

2. As a consequent to the amendment made, the persons having the qualification of B.P.Ed. are also made eligible to be considered for appointment as Physical Training Instructor Grade-III along with the persons having qualification of CPED. and the Diploma in Physical Education (DPED.)

3. The petitioners are having the qualification of CPED. and by this petition for writ they are challenging the amended eligibility i.e. inclusion of BPED. holders in the eligibility criteria for appointment to the post of Physical Training Instructor Grade-III.

4. The submission of counsel for the petitioners is that as per the National Council for Teacher Education Act, 1993 framed National Council for Teachers Education (Department of Minimum Qualification for Recruitment of Teachers) Regulations 2001 (hereinafter referred to as "the Regulations of 2001") and as per that a Physical Training instructor for elementary level is required to have Certificate in Physical Education (CPED.) of a duration not less than two years or equivalent. The BPED. holders are not eligible to be considered for appointment at elementary physical education level as per the Regulations aforesaid, therefore, the amendment introduced in the Rules of 1971 is bad.

5. We do not find any merit in the argument advanced. The Regulations of 2001 prescribes minimum standards for recruitment of teachers. True it is, the

qualification of CPed. of duration not less than two years or its equivalent is prescribed as minimum academic and professional qualification for appointment to the post of Physical Training Instructor at elementary level, but the qualification of BPed. is quite higher than the qualification of CPed. As per the Regulations of 2001 the respondents could have not prescribed any eligibility less than the eligibility prescribed under the Regulations aforesaid, but higher standards of qualification are certainly permissible to be introduced as necessary eligibility. The provisions under challenge in these petitions for writ as such are neither at all inconsistent with fundamental rights of the petitioners nor are also beyond the legislative competence. The amendment introduced is quite rational as that provides higher qualification as eligibility for appointment on the post of Physical Training Instructor Grade-III. It is further relevant to note that no institution in the State of Rajasthan is providing the qualification of CPed. in the State of Rajasthan at least from last about a decade. No case, therefore, is made out to impeach the amended eligibility prescribed for appointment to the post of Physical Training Instructors Grade-III. The writ petitions, for the reasons given above, are dismissed.