
(1982) 11 RAJ CK 0011
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1379 of 1980

Madanlal	Vs	APPELLANT
The State of Rajasthan and Others		RESPONDENT

Date of Decision : 03-11-1982

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (1982) WLN 276

Hon'ble Judges : S.C. Agrawal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Agrawal, J.—Madan lal petitioner, in this writ petition filed under Article 226 of the Constitution of India, joined service of the Government of Rajasthan in the Education Department as Teacher Grade III on August 24, 1960. At the time of his recruitment in the service, the petitioner was holding the qualification of Intermediate (Commerce). While in the service, the petitioner completed graduation in Commerce in 1972 and also obtained B. Ed. degree in Commerce and in 1978, he passed the M. Com. (Business Administration) examination. The posts of teachers form part of the Rajasthan Subordinate Educational Service and recruitment to the conditions of service of persons appointed to the Rajasthan Educational Subordinate Service are governed by the Rajasthan Educational Subordinate Service Rules, 1971 (hereinafter referred to as "the Rules"). Under Schedule II of Rules the various posts of teachers have been classified in to various categories vis., Craft Teachers, Music Teachers, Drawing Teachers In the category of General Teachers fall the posts of Senior Teacher, Teachers Grade II and Teachers Grade III. Appointment on the posts of Teacher Grade II is 25% by direct recruitment and 75% by transfer from the schools run by the Panchayat Samities of the concerned district. The qualification that is prescribed for appointment on the post of Teachers Grade III is Secondary or an equivalent examination recognised by the Rajasthan Government and Teachers' training

certificate recognised by the Rajasthan Government. Appointments on the post of Teachers Grade II/Enforcement Assistant are 50% by direct recruitment and 50% by promotion from amongst Teachers Grade III, Library Assistants and Teachers in deaf, dumb and blind schools. The qualifications that have been prescribed for appointment on the post of Teachers Grade II by direct recruitment as well as by promotion are graduate or equivalent examination with atleast two subjects taught in school with a degree or diploma in education or Montessori training. The posts of Senior Teachers are divided in two groups viz. (1) Humanities and Commerce Group; and (ii) Science. Appointment on the posts of Senior Teachers is 50% by promotion from amongst Extension Officers. Instructions in B.S.T.C. Schools (Junior Grade), Teachers Grade II and Technical/Testing Assistant in Bureau of Education and Vocational Guidance. The qualifications that are prescribed for promotion to the post of Senior Teachers are of Master's Degree in the relevant subject and a degree or diploma in Education from a recognised institution and teaching experience as Teacher Grade II for five years. In so far as promotions to the posts of Teachers Grade II from Teachers Grade III are concerned, the explanation to Rule 23 of the Rules provides that such promotion shall be made on the vacancies available at each district level on the basis of district-wise seniority of Grade III teachers.

2. The case of the petitioner, in this writ petition, is that for the purpose of making appointment on the 50% posts of Teachers Grade II, which are required to be filled by promotion, the vacancies in the cadre of Teachers Grade II should be determined on subject-wise basis and that 50% of the vacancies should be filled by promotion and the remaining 50% of the vacancies should be filled by direct recruitment. The petitioner has submitted that if the aforesaid procedure had been followed, the petitioner would have been entitled to be promoted to the post of Teacher Grade II in Commerce in the year 1972 itself and that as a result of not following the aforesaid procedure, the petitioner has been denied his right to equality in the matter of employment as guaranteed under Articles 14 and 16 of the Constitution.

3. I have heard Mr. N. P. Gupta, the learned Counsel for the petitioner, and the learned Deputy Government Advocate.

4. The contention of Mr. Gupta was that in view of the provisions in the Rules requiring 50% of the vacancies on the post of Teachers Grade II to be filled by direct recruitment and 50% of the vacancies to be filled by promotion, it was incumbent upon the authorities to determine the vacancies on the post of Teachers Grade II subject-wise and make promotion of Teachers Grade III after preparing separate Seniority List of Teachers Grade III subject-wise. The submission of Shri Gupta was that if the aforesaid procedure had been followed, the petitioner would have been promoted as a Teacher Grade II as far back in 1972 and that on account of the failure to follow the aforesaid procedure, the right of the petitioner guaranteed under Articles 14 and 16 has been violated. The learned Deputy Government Advocate has, on the other hand, submitted

that under the Rules there is a common cadre of Teachers Grade III and a common cadre of Teachers Grade II and the promotion to the post of Teachers Grade II has to be made at the district level on the basis of district wise Seniority List of all Teachers Grade III and that there are no separate cadres Teachers Grade III subject-wise. The learned Deputy Government Advocate has further submitted that even amongst Teachers Grade II, there are no separate cadres subject-wise and, therefore, the petitioner cannot claim that promotion from the post of Teachers Grade III to the post of Teacher Grade II should be made on subject-wise basis.

5. As noticed earlier the Rules have classified teachers in various categories viz, Craft Teachers, Music Teachers, Drawing Teachers and General Teachers. Among General Teachers, there are cadres of Senior Teachers, Teachers Grade II, Teachers Grade III. while Senior Teacher are divided in two group, i. s., Humanities and Commerce Group and Science Group. There is no such division amongst Teachers Grade II and Teachers Grade III. Moreover, in so far as Senior Teachers are concerned, the qualifications that have been prescribed require a degree in the relevant subject. But no such requirement is laid down in the qualifications prescribed for the post of Teacher Grade and all that is required is that the incumbent should be graduate or passed an equivalent examination with at least two subjects taught in the school. In other words, the Rules do not contemplate that appointments to the post of Teachers Grade II should be made on subject-wise basis. On the other hand, the explanation to Rule 23 prescribes that promotion to the posts of Teachers Grade III should be made on the vacancies available at each district level on the basis of district wise seniority of Grade III teachers. This shows that promotion to the post of Teacher Grade II is made on the basis of a common district-wise Seniority List of Grade III teachers. In the circumstances, it is not possible to accept the contention of Shri Gupta that while making the promotion on the post of Teachers Grade II, the authorities should first determine the vacancies on subject-wise basis and after determining the said vacancies they should make promotion on 50% of the vacancies from amongst Teachers Grade III having qualifications in the subject in which the vacancy has occurred.

6. Shri Gupta has placed reliance on Note No. 1 appended to Item B(a) in Section "F" of the Schedule to the Rules relating to Teachers Grade II. In the said note, it is stated that if at the time of recruitment required number of candidates are not available, the diploma in education or equivalent diploma would not be necessary for graduates in Science, Agricultural Commerce and Sanskrit and that the said concession would be available till 1980 only. The submission of Shri Gupta was that the aforesaid note, by referring to graduates in Science. Agriculture, Commerce, Sanskrit, indicates that points on the above post of Teachers Grade II are to be made subject-wise. In my view, the aforesaid note cannot be construed to mean that appointments on the post of Teachers Grade II are to be made on subject-wise basis specially, when in the qualifications that have been prescribed for the post of Teacher Grade II, it is laid

down that the incumbent should be graduate with atleast two subjects taught in the school indicating that after appointment as Teacher Grade II a person may be required to teach any of the subjects in which he has graduated. Shri Gupta has also referred to the order dated February 4, 1980 (Annexure IV) with regard to the appointment of certain teachers as Teacher Grade II. The submission of Shri Gupta was that the aforesaid order shows that appointments on the post of Teachers Grade II are made on subject-wise basis. Shri Gupta has submitted that similarly promotion on the post of Teachers Grade III should be made on subject-wise basis. The learned Deputy Government Advocate has submitted that after the 50% vacancies are filled by promotion the authorities determine the various vacancies which remain unfilled and while making direct recruitment on those unfilled vacancies, the authorities select the candidates, who hold qualifications in the subjects in which the vacancies exist. The submission of the learned Deputy Government Advocate was that the order dated February 4, 1980 (Annexure IV) was an order with regard to direct recruitment on the posts of Teachers Grade II and that on the basis of the said order it could not be said that promotion from the cadre of Teacher Grade III to the cadre of Teacher Grade II is required to be made on subject-wise basis. In my opinion, once it is held that the Rules do not contemplate separate categorisation of Teachers Grade II on subject-wise basis the promotion from the cadre of Teachers Grade III to the post of Teachers Grade II has to be made on the basis of a unified Seniority List and it is not possible to accept the contention of Shri Gupta that the promotion must be made on subject-wise basis by preparing separate Seniority Lists of Teachers Grade III on subject wise basis. The procedure that has been followed by the authorities in making provisions to the post of Teacher Grade II to Teacher Grade III on the basis of a combined Seniority List of Teachers Grade III, cannot be said to be contrary to the Rules or in violation of the provisions of Articles 14 and 16 of the Constitution.

7. Thus, there is no merit in this writ petition and it is accordingly dismissed summarily.