
(2008) 05 JH CK 0004

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4259 of 2005

Md. Sajjad Ali

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 07-05-2008

Acts Referred:

Jharkhand Primary Teachers Appointment Rules, 2002 — Rule 2, 4

Citation : (2008) 56 BLJR 2175 : (2009) 8 SLR 515

Hon'ble Judges : M. Karpaga Vinayagam, C.J.;Narendra Nath Tiwari, J;D.K. Sinha, J

Bench : Full Bench

Advocate : Rajiv Ranjan, in W.P.S Nos. 3065 of 2004 and 4259 of 2005 and Ritu Kumar, in W.P. S No. 4591 of 2004, for the Appellant; A.K. Sinha and Sanjay Piparwall, P. Modi, G.P.I. in W.P.(S) Nos. 3065 of 2004 and 4259 of 2005 and M.S. Akhtar, S.C.II in W.P. (S) No. 4591 of 2004, for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—These three writ petitions give rise to a common issue, which relates to the cut off date of training for applying/appointment to the post of teacher in Primary Schools of the State of Jharkhand. While hearing the writ petition, W.P.(S) No. 4259 of 2005, a Division Bench of this Court noticed two different orders in the same matter; one in the case of Shekhar Gupta v. State of Jharkhand and Ors. (W.P.(S) No. 394 of 2005] and another in the case of Krishna Kumar Jha and Anr. v. State of Jharkhand and Ors. (W.P.(S) No. 921 of 2005]. The said Division Bench felt that the said decisions require consideration by a larger Bench and by order dated 27th February, 2006 referred the matter for such consideration.

2. In W.P.(S) No. 3056 of 2004 and W.P.(S) No. 4591 of 2004, almost identical issues were raised and as such, the said writ petitions were also referred to this Bench.

3. The said writ petitions were heard together and are being disposed of by this

common judgment.

4. The short facts, in common, are as follows:

(i) The applications were invited for appointment to the post of primary teachers from the persons who completed two years' Teachers' Training Course or B.Ed./ Dip-in-ed/Dip-in-teach or C.P.Ed, or D.P.P.Ed. The last date of submission of application forms was 30th September, 2002.

(ii) The petitioners had completed their two years' Training Course of B.Ed., but were yet to appear in the final examination or were awaiting the result. They also applied for the post.

(iii) The written examination for appointment of teachers held on 27th May, 2003.

(iv) Result of the written examination for appointment of teachers published in November, 2003, in which the petitioners were declared successful.

5. Petitioner of W.P.(S) No. 4259 of 2005 having completed his graduation did B.Ed. in the Regional Institute of Education, Bhubneshwar under Uttkal University. He passed B.Ed, examination in the month of May, 2003. The petitioner had completed two years' B.Ed. Course but was yet to appear in final examination when he applied for the post of Primary Teachers. He mentioned the said fact in the form. The JPSC in full knowledge of the said fact issued admit card to the petitioner for the said examination. He appeared in the test and was declared successful. While appointment letters were issued to other successful candidates, it was not issued to him in spite of his selection.

6. Petitioner of W.P.(S) No. 3065 of 2004 passed B.Sc. Honours in first division. He completed his two years Training Course in the sessions 2000-02 from the Regional Institute of Education, Bhubneshwar, Uttkal University. His examination for B.Ed. Course was held in May, 2003. Since the petitioner was declared successful in the examination for appointment of primary teachers, the appointment letter was issued to him on 26th February, 2004. He was posted as Assistant Teacher in Middle School, Ojhadih Sarath, Deoghar. When the petitioner went to submit his joining that was not accepted on the ground that he did not possess the requisite qualification of B.Ed. on the date of submission of his application form for appointment of teachers.

7. Petitioners of W.P.(S) No. 4591 of 2004 after graduation completed their B.Ed. Course in Bethesda Women Teachers' Training (B.Ed.) College, Ranchi before 2002. Their examination held in 2003. Results were published in 2004. They passed their training examination in first class. They had applied for the post of primary teachers, after completion of two years session of B.Ed. Course, as appearing candidate. Admit cards were issued by the Jharkhand Public Service Commission (for short JPSC) to all the petitioners. They appeared in the written examination, conducted by the JPSC and were declared successful. However, appointment letters were not issued to the petitioners. In the meanwhile, Letter No. 1256 dated 21st May, 2004 was issued by the Commissioner-cum-Secretary,

Human Resources Development Department, to all the Deputy Commissioners and District Superintendents of Education directing them not to appoint those persons, who had not passed the Teachers' Training Course till the last date of submission of application form for the posts of primary teacher.

8. According to the petitioners of all the writ petitions, they possess the requisite qualification for being appointed as Primary Teacher. They appeared in the written examination conducted by the JPSC. They were declared successful and were selected for appointment to the posts of primary teacher, but appointment has been denied only on the ground that they had not passed the Teachers' Training Examination till the last date of application for the post contrary to what was required in the advertisement inviting applications for the same.

8.1. It has been contended that in the advertisement, the requirement was only completion of B.Ed. Training Course. All the petitioners had completed their B.Ed. Training Course and they were appearing candidates. They had completed their Training Course in time, but the examination of B.Ed. was belatedly held, which was not their fault. The petitioners had eligibility according to the advertisement, as they had completed B.Ed. Training Course before submission of their applications and they had passed B.Ed. examination with excellent numbers before the date of their appointment as teachers. The respondents with full consciousness had invited applications from the candidates, who had completed the B.Ed. Course on the date of submission of application form and not only from the persons "B.Ed. Pass".

8.2. The JPSC after due scrutiny of their bio-data particulars mentioned in the application form had issued admit cards. The petitioners did preparation for the examination and appeared in the examination and declared successful and were selected by the JPSC. Several appearing candidates in B.Ed. examination applied for the post and after having declared successful, have been appointed. For instance, the candidates at Sl. Nos. 45, 110, 114 and 121 of panel of Dhanbad district, who had not passed B.Ed. Training Course on the date of application, had applied for the post. They were allowed to appear in the examination and having been successful and selected, they have been given appointment letters. The respondents have adopted pick and choose method in issuing appointment letters to some of the similarly situated persons and denying the same to the petitioners. It has been submitted that the petitioners have been arbitrarily discriminated against and deprived of their valuable rights. The petitioners, who in terms of the advertisement are perfectly eligible and have been issued admit cards by the JPSC after due scrutiny of the facts and particulars, on selection, are entitled to be appointed to the post.

8.3. The petitioners have been selected in due process and they cannot be prevented and deprived of their valuable right on technical ground, misinterpreting the terms and conditions of the advertisement and offer of employment. The respondents once having accepted their eligibility after due scrutiny are estopped from challenging their eligibility after their final selection

for the post.

8.4. The respondents have denied the petitioners' appointments after their due selection on the ground of the provisions of Jharkhand Primary Teachers' Appointment Rules, 2002, which was also subsequently amended, providing that the candidates who are to appear in the Teachers' Training Examination and result of their Teachers' Training Examination is expected to be published before publication of the result by the JPSC are also eligible to apply. The said amendment in the Rule clearly supports the provision for application even by those candidates, who completed Teachers' Training Course before the date of submission of the application, as was required in the said advertisement.

8.5. In view of the said clear provision in the advertisement which subsequently was also clearly expressed by way of amendment, there is no scope for contrary interpretation of the provisions of the Jharkhand Primary Teachers' Appointment Rules, 2002 and the denial of letters of appointment/joining of the petitioners after due selection is wholly illegal, arbitrary and discriminatory.

9. The State respondents as well as the JPSC contested the petitioners' claims. The common grounds taken by the respondents in opposition of the writ petitions are as follows:

(i) According to the requirement of Rule 2(Kha) of the Jharkhand Primary Teachers' Appointment Rules, 2002 (hereinafter to be referred as the "Rules"), the persons who have not got Teachers' Training qualification are not eligible for appointment.

(ii) The petitioners on the date of submission of the application form had not passed B.Ed. examination.

(iii) The date of determining the eligibility of the candidate is the last date fixed for receipt of the application form.

(iv) The candidates who did not possess requisite qualification till the last date of submission of application form, but acquired the qualification by the date of selection are ineligible.

(v) Petitioners' results of B.Ed. examination were published after expiry of last date of submission of application forms and as such, they are not eligible for appointment on the post of a teacher.

(vi) The amended rule allowing the persons to apply for the post who have appeared in the Teachers' Training Examination came in force by notification dated 14th August, 2007. The same is applicable with prospective effect and is not applicable in the petitioners' case, who submitted their application forms much prior to the said amendment.

(vii) Rules and terms and conditions cannot be changed after the selection process has started vide the decision of the Hon'ble Supreme Court in Secretary, Andhra Pradesh Public Service Commission v. B. Swarna and Ors. 2005 (3) JLR

100 (SC).

(viii) Material date for determining the eligibility is the last date fixed for receipt of application. The decision of the Hon"ble Supreme Court in Harpal Kaur Chahah (Smt) v. Director, Punjab Instructions relied upon.

(ix) The petitioners who were not trained on the date of application are not eligible and despite their selection, they cannot be appointed.

10. We have heard learned Counsel for the parties and considered the facts and materials on record.

11. The following facts are admitted:

(i) The petitioners had completed two years" Teachers" Training Course of B.Ed. before applying for the post of teachers in response to the advertisement.

(ii) All the petitioners at the appropriate column clearly mentioned to have completed two years training course, waiting for their B.Ed. Examination.

(iii) The JPSC issued admit cards to the petitioners allowing them to appear in the examination to be held for recruitment of the teachers.

(iv) The petitioners appeared in the written examination conducted by the JPSC and were selected.

(v) Appointment letters were issued to some of the petitioners.

(vi) The petitioners finally passed B.Ed. Examination and got the certificate before the appointment letters were issued to them.

(vii) After the publication of the result by the JPSC, a circular dated 21st May, 2004 was issued by the department under the signature of the Commissioner-cum-Secretary, Human Resources Development Department, whereby it was clarified that the candidates who have been recommended by the JPSC and who had written their examination of Teachers" Training before the last date of submission of application form and were awaiting their results can be appointed, if they fulfill other requirements. (Annexure-R-2/E).

(viii) By amendment in the appointment, Sub-clause (5) has been introduced in Rule 2(Kha) providing that candidates awaiting to appear in the Teachers" Training Examination can also apply for the post provided such candidates obtain the certificate of Teachers" Training Examination before publication of the result of the examination by the JPSC.

(ix) So far as the letter of the Commissioner-cum-Secretary, Human Resources Development Department, dated 21st May, 2004 is concerned, it has been submitted by learned Counsel for the respondents that the same is an executive instruction and has no strength to alter the provision of the statutory rule. No right can accrue or be claimed on the basis of such executive letter, which is not in accordance with the statutory rules.

12. Learned Counsel for the respondents submitted that insertion of Sub-clause (5) in Rule 2(Kha) of the said Rules, whereby the candidates awaiting to appear in the Teachers' Training Examination are allowed to apply for the post of teachers, is not applicable in the process of appointment, which was started earlier and the petitioners cannot derive any benefit by the said amendment in the Rules. He further submitted that under Rule 2(Kha), a trained teacher means a candidate who has completed his training and passed the examination.

13. Rule 4(Ga) which provides for calling for applications from the candidates who have completed training has to be read conjointly with Rule 2(Kha), meaning thereby the candidates must have passed the Teachers' Training Examination on the date of submission of application form. The petitioners though had completed the Teachers' Training Course, had not passed the training examination on the date of submission of the application and they cannot be said to have completed training in view of the provisions of Rule 2(Kha).

14. The petitioners on the other hand contended that they having completed the training course were eligible for applying for the examination for appointment of teachers as required by Rule 2(Ga). Completing course or obtaining training cannot be read to mean "Passed Training" in the context, in view of the clear provision of Rule 2(Ga).

15. The controversy between the parties gives rise to the following points for consideration:

I. Whether the petitioners were eligible for applying for the examination of appointment of teachers on the date of submission of their application forms?

II. Whether the petitioners are eligible for being appointed as teacher?

Point No. I:

16. In the advertisement (Annexure R-2/B) applications were invited from the persons requiring following eligibility;

(i) The candidate should be citizen of India.

(ii) Has passed Matric or equivalent examination.

(iii) Has obtained two years' Teachers' Training or B.Ed./Dip-in-Ed./Dip-in-Teach/C.P.Ed.

17. Jharkhand Primary School Teachers' Appointment Rules 2002 provides eligibility criteria in its Rule 4. According to Rule 4, applications are to be invited for the appointment of teachers from the person;

(i) who is citizen of India;

(ii) Who has passed matriculation examination or equivalent; and

(iii) Who has obtained Teachers' Training as mentioned in Rule 2(Kha).

18. Rule 2(Kha) defines the word "Trained" (PRASHIKSHIT). According to the said provision, a person is trained, who has obtained training from recognized institute and passed;

(i) two years' Teachers' Training; or

(ii) B.Ed./ Dip-in-Ed./Dip-in-teach;

(iii) C.P.Ed/D.P.P.Ed.

19. From the joint reading of the eligibility criteria, mentioned in the advertisement inviting applications and as provided in Rule 4 of the said Rules, it is evident that the applications were invited from the persons, who have obtained training, as mentioned in Rule 2(Kha) and not from the persons Trained i.e. not from the person who has (i) obtained training and (ii) passed.

20. For the purpose of appointment, the person besides possessing other qualification must be trained (PRASHIKSHIT) means he must have obtained training and passed. But according to Rule 4(Ga), the person who has obtained training (PRASHIKSHAN PRAPT KIYA HO) can apply.

21. The said Rule even provides for holding examination of untrained person in special circumstance, but their appointment on the post of teacher shall be subject to passing the teachers training examination and in the meanwhile they can be given salary of untrained teachers during the period of their training.

22. The said Rule 4, which provides for eligibility criteria for inviting applications, is reproduced hereunder:

4. JHARKHAND LOK SEVA AYOGE KE DWARA JILABAR CHINHIT RIKTIYON KE ADHAR PAR SAMACHAR PATRON ME VIGYAPAN JARI KAR NIMN AHARTA DHARAK UMMIDWARON SE AVEDAN PATRA AMANTRIT KIYA JAYENGE;

(KA) JO BHARAT KA NAGRIK HO.

(KHA) JO MATRIK ATHWA USKE SAMKAKASH PARIKASHA UTIRN HO,

(GA) JO NIYAM 2(KHA) ME ULLEKHIT PRASHIKSHAN PRAPT KIYA HO,

PARANTU PARISTHITI VISHESH ME APRASHIKSHIT UMMIDWARON KE LIYE BHI ALAG SE PARIKSHA AYOJIT KI JA SAKEGI, TATHA AISE UMMIDWARON KA PRASHIKSHAN PARIKSHA ME UTIRN HONE KE BAD HI, SHIKSHAK KE PADO PAR NIYUKT KIYA JA SAKEGA. AISE APRASHIKSHIT UMMIDWARON KO PRAKSHISHAN KE DAURAN MATRA CHHATRAVRITI DI JAYEGI, JO MATRIK APRASHIKSHIT VETANMAN KE PRATHAM PRAKRAM KE BARABAR HOGA. PRASHIKSHAN KI VEYAVASTHA RAJYA SARKAR DWARA KARAYI JAYEGI. PRASHIKSHAN KE BAD SAFAL UMMIDWARON KI NIYUKTI MATRIK PRASHIKSHIT VETANMAN SE MATRA TIN VARSHO KI AVADHI KE LIYE RAJYA SARKAR DWARA SUBIDHA KE ADHAR PAR KI JA SAKEGI.

(GHA) JIS PANCHANG VARSH ME VIGYAPAN NIKALA JAYEGA, US VARSH KI PAHLI JULY KO UMMIDWAR KI AYU SARKAR DWARA NIRDHARIT NYUNTAM EVAM ADHIKTAM AYU SIMA KE ANTARGAT HOGI, KINTU IS NIYAMAVALI KO PRAVRIT HONE KE BAD MATRA PRATHAM NIYUKTI VARSH ME PURV PRASHIKSHIT UMMIDWARON KE LIYE SARKARI SEVA ME PRAVESH KE LIYE NIRDHARIT ADHIKTAM AYU SIMA KI SHART KI RAJYA SARKAR DWARA SHANT KIYA JA SAKEGI.

23. On bare reading of Rule 4(Ga), it is evident that the candidate should have obtained training of the course mentioned in Rule 2(Kha). Rule 4(Ga) does not require the applicant to be trained (PRASHIKSHIT) i.e. having obtained training and passed. The intention of the framers of the Rule is clear from the provisions that passing training examination on the date of application is not a mandatory requirement. The Rule provides for the examination of even untrained persons in special circumstance, although such candidates are to be appointed to the post of teachers only after passing the training examination.

24. Learned Counsel for the respondents tried to interpret Rule 4(Ga) to mean that the expression used for training "obtained" in view of the definition of Rule 2(Kha) necessarily means: "obtained and passed". On close perusal of the said provision, it is clear that Rule 2(Kha) does not define the meaning "obtained" rather it defines the word "trained", as "training obtained and passed". Rule 4(Ga) does not require the eligibility of "trained" (PRASHIKSHIT) on the date of applying for the post but the requirement is "training obtained" (PRASHIKSHAN PRAPT KIYA HO).

25. Moreover, Rule 4 provides for the specific provision for inviting applications from the candidates, while Rule 2 is only the definition. Rule 4 is self-content, which for the purpose of educational qualification specifically requires Matric passed or equivalent and training obtained. Rule 4(Ga) does not require "Trained" or "training passed". The required training courses are described in Rule 2(Kha) and as such, Rule 4(Ga) provides that the training obtained means training obtained in the courses, mentioned in Rule 2(Kha). It does not provide that the persons who had already trained or who have passed their training examination only are eligible for applying for the post of teachers;

26. From the reading of the said Rule as a whole, it is unequivocally clear that while a person who has obtained training in the courses described in Rule 2(Kha) is eligible for the purpose of applying for the post of teacher, a person cannot be appointed as a teacher unless he is trained i.e. has obtained training and passed the examination of the prescribed training course.

27. The petitioners in these cases, on the date of submission of application forms, had obtained training. They had already completed their training sessions of B.Ed. Course before the date, they applied and were waiting for appearing in the final B.Ed. examination.

28. The petitioners thus fulfilled the prescribed eligibility criteria for applying for

the post, the JPSC after scrutiny of their application forms filled up by them issued admit cards for the examination for the appointment of teachers. There was no ambiguity at that stage. When the petitioners appeared in the examination and passed the same and were selected for the purpose of appointment and in the meanwhile, also passed B.Ed. examination and acquired eligibility for appointment and became trained having obtained and passed B.Ed. Course, they were denied appointed on the post. In some cases even appointment letters were issued but they were also not allowed to join the post on the plea that on the date of application, they had no requisite eligibility, though the petitioners possessed requisite qualification and eligibility having obtained teachers training before the date of application for the post.

29. In view of the above discussions, the first point has to be answered in affirmative and in favour of the petitioners. It is held that the petitioners having obtained the Teachers' Training before applying for appearing in the examination for appointment of teachers were eligible for that purpose in view of the clear provision of Rule 4(Ga) of the said Rules.

Point No. II:

30. While discussing the Point No. I, it has been seen that though for the purpose of applying for the post, a person who has obtained the training is eligible, yet for the appointment to the post of teacher, according to Rule 2(Kha), he must have trained i.e. he must have obtained "training and passed" the examination of the course. The petitioners, who had applied for the post had appeared in the examination and passed the training examination before the appointment letters were issued to them. The said position is not disputed by the respondents. However, the only ground taken by the state respondents as well as by the JPSC is that on the date of submission of application, they were not trained and were not eligible for applying the post, as discussed in the preceding paragraphs.

31. While deciding the Point No. I, it has been held that on the date of application, the petitioners were eligible for applying for the post. The said objection of the respondents is held to be without any substance. Appointment cannot be denied to the petitioners on that ground. There is thus no impediment to hold that there is no just reason or legal ground to deny the petitioners' appointment after their due selection for the post who possess the requisite qualification and eligibility in accordance with the prescribed Rule. The petitioners having passed B.Ed. Training Examination were/are eligible for the appointment to the post of Assistant Teacher. This point is also answered in favour of the petitioners.

32. In course of argument, learned Counsel for the respondents urged that it is true that the Rules have been amended to allow even the appearing candidates to apply for the post, but the said amendment came later on. The amended rule has not been made applicable with retrospective effect and the petitioners cannot derive any advantage on the basis of that amended provision. The respondents

have also referred several decisions to fortify their contention. However, as has been held that the petitioners had all eligibility for applying for the post even on the date of the application before coming into force of the said amended provision, the said submissions require no further discussion and consideration.

33. However, the amendment in the rule, whereby it has been categorically provided that even the appearing candidate can apply for the post, express the intention and policy emanating from the unamended Rule 4(Ga) of the said Rules. The amended provision has explained expressly what was intended by the framers of Rule 4 in providing the said eligibility criteria.

34. Learned Counsel for the respondents has also assailed the letter dated 21st May, 2004 issued by the Commissioner-cum-Secretary, Human Resources Development Department, Government of Jharkhand, whereby the instruction has been given to all the districts to appoint even those candidates, who had already appeared in the Teachers' Training Examination by the last date of submission of the application for appointment of teachers. The main ground for assailing the said letter is that the same was contrary to the terms of the Rule and the same is an executive instruction and cannot override the provisions of the Rule.

35. In view of the observations and the findings recorded while answering the Point No. II, there is no occasion for entering into the said controversy for the purpose of the instant case.

36. For the reasons aforesaid, these writ petitions are allowed. It is held that all the petitioners are eligible for being appointed as teachers and the petitioners, who have already selected for appointment in the examination held by the JPSC, are entitled to be treated equally at par with other selected candidates. It is, hereby, directed that the petitioners to whom appointment letters have not been issued on the above said objection are entitled to get appointment letters, if there is no other legal impediment. The petitioners, who were given the appointment letters, are entitled to join their respective posts. The respondents are directed to do the needful to give effect of this decision, within a period of four weeks from the date of receipt/production of a copy of this order.

There is no order as to costs.