

(2015) 04 AHC CK 0013
In the Allahabad High Court
Case No : Service Single No. 1495 of 2015

Neha Sharma

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 4 ADJ 324 : (2015) 4 ALJ 201 : (2015) 4 AWC 4125 : (2015) 2 UPLBEC 1297

Hon'ble Judges : D.K. Upadhyay, J

Bench : Single Bench

Advocate : Shivam Sharma, for the Appellant

Final Decision : Dismissed

Judgement

Devendra Kumar Upadhyaya, J.—Heard Shri Ratnesh Chandra, learned counsel appearing for the petitioner and learned Standing Counsel appearing for the respondents.

2. These proceedings under Article 226 of the Constitution of India have been instituted by the petitioner challenging the advertisement dated 17.03.2015, in so far as it restricts selection to the post of Trained Graduate Teacher (English) only to the candidates, who have graduated with English in all the three years of their Graduation Course, to the exclusion of candidates credited with a degree of Post Graduation in English.

3. In effect, the petitioner challenges the educational qualification prescribed by the respondent No. 2 for selection/appointment as Trained Graduate Teacher (English), according to which, only those Graduates in English will be eligible, who have studied English as a subject in all the three years of their Graduation Course.

4. The State Government has taken a decision to establish Model Schools in the State of Uttar Pradesh and for the said purpose Rajya Model School Organization,

Uttar Pradesh, has been established as a Society. The purpose of establishing Rajya Model School Organization, it appears, is to establish Model Schools on the pattern of Kendriya Vidyalayas established throughout the country by Kendriya Vidyalaya Sangathan. The Rajya Model School Organization, Uttar Pradesh has advertised various teaching posts to be filled in these Model Schools, which are to be established and affiliated with the Central Board of Secondary Education, New Delhi.

5. As per the annexure No. 3 annexed with this petition, the essential qualification prescribed for the post of Trained Graduate Teacher in English is that the candidate should possess Graduation Degree in English with 50% minimum marks along with the degree of B.Ed./L.T. from a University established under law or from any other Institution.

6. The petitioner is a Post Graduate in English from University of Lucknow. She is also possessed of a B.Ed. Degree from Indra Gandhi National Open University. Further, the petitioner has also qualified the Central Teacher Eligibility Test (CTET) conducted by the Central Board of Secondary Education, New Delhi. The petitioner also possesses a Graduation Degree from Lucknow University. She studied Geography and Psychology as two subjects in the third and last year of her B.A. Course. In the first and second year of B.A. Course, the petitioner had studied English as one of the subjects.

7. Submission of learned counsel for the petitioner is that the petitioner possesses a qualification higher than the educational qualification prescribed by the Rajya Model School Organization, and hence, she is better equipped to teach the students, who are to be imparted education in class VI to X. It has further been argued by the learned counsel for the petitioner that if a candidate possesses higher qualification than the essential qualification prescribed, the same cannot be permitted to come as a hurdle in his/her way to seek public employment.

8. It has also been stated by the learned counsel for the petitioner that the Model Schools being established by the State of Uttar Pradesh, are going to be affiliated with Central Board of Secondary Education for the purposes of admitting the students to participate in the examination conducted by the said Board and Central Board of Secondary Education has framed bye laws for the purposes of regulating various aspects of the institutions, which are affiliated with it. He has further stated that the Central Board of Secondary Education affiliation bye laws prescribe qualification for appointment as Trained Graduate Teacher (English) as Graduation in/with the subject, recognized Degree/Diploma in Education and B.A. B.Ed. with English of the Regional College of Education. He has further submitted that since the Model Schools are going to be affiliated with Central Board of Secondary Education, hence, it was incumbent upon the Rajya Model School Organization to have borrowed the qualification prescribed by the Central Board of Secondary Education in its affiliation bye laws.

9. Learned counsel for the petitioner in support of his submission that higher qualification should not come to the disadvantage of a candidate seeking employment, has relied upon a judgment of Hon''ble Supreme Court in the case of Mohd. Riazul Usman Gani and Ors. vs. District and Sessions Judge, Nagpur and others, (Civil Appeal No. 1010 of 2000), rendered on 11.02.2000.

10. Per contra, Shri Pratyush Tripathi and Shri Ajay Kumar, learned Standing Counsels, have submitted that the qualification prescribed by the Rajya Model School Organization for the post of Trained Graduate Teacher in English, have been borrowed from the prescriptions made for the said purpose by the Kendriya Vidyalaya Sangathan. It has also been stated by the learned Standing Counsels that it is not only that the qualification for the post in question only has been borrowed from the prescriptions made by the Kendriya Vidyalaya Sangathan, but it has been borrowed for all the teaching posts.

11. The question, thus, which calls for determination by the Court is as to whether a candidate, possessing a Master''s Degree in English having studied English only in two years of his/her Graduation Course, instead of studying English in all the three years of the course, can be said to have been wrongly excluded by the respondents from the zone of eligibility.

12. Before dealing with the submission advanced by the learned counsel for the petitioner in support of his case, it would be apt to state that this is not the province of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India to go into and prescribe the essential qualification for selection/appointment on a post. In the case of The University of Mysore and Another Vs. C.D. Govinda Rao and Another, AIR 1965 SC 491 : (1964) 4 SCR 575 , it has been observed by Hon''ble Supreme Court that normally it is wise and safe for the courts to leave the decision of academic matters to experts, who are more familiar with the problems they face than the courts generally can be.

13. It is equally well settled principle of law that it is the policy of the Government or the employer to create a post or to prescribe the qualification for the post. The Court or any Tribunal is devoid of any power to give any such direction. The judgment of Hon''ble Supreme Court in the case of the The Commissioner, Corporation of Madras Vs. Madras Corporation Teachers'' Mandram and others, (1996) 9 AD 269 : AIR 1997 SC 2131 : (1997) 1 LLJ 708 : (1996) 8 SCALE 685 : (1997) 1 SCC 253 : (1996) 8 SCR 660 Supp : (1997) AIRSCW 1983 : (1996) 8 Supreme 561 can be referred to in this regard. Yet another judgment of Hon''ble Supreme Court in the case of Bihar Public Service Commission and Others Vs. Kamini and Others, (2007) 5 JT 445 : (2007) 5 SCALE 735 : (2007) 5 SCC 519 : (2007) 2 SCC(L&S) 190 : (2007) 5 SCR 182 , can be mentioned to reiterate the aforesaid principle, wherein Hon''ble Supreme Court has held that it is well settled that in the field of education, a Court of Law cannot act as an expert.

14. In the case of J. Ranga Swamy Vs. Government of Andhra Pradesh and

Others, AIR 1990 SC 535 : (1989) JT 426 Supp : (1990) 1 LLJ 526 : (1989) 2 SCALE 1405 : (1990) 1 SCC 288(1) : (1990) 1 SCC 288 : (1990) 1 UJ 424 , it has been held by the Supreme Court that it is not for the Court to consider the relevance of qualifications prescribed for various posts.

15. Reference may also be had to another judgment of Hon"ble Supreme Court in the case of Official Liquidator Vs. Dayanand and Others, (2008) 4 CompLJ 401 : (2008) 11 JT 467 : (2009) 3 LLJ 305 : (2008) 13 SCALE 558 : (2008) 10 SCC 1 : (2009) 1 SCC(L&S) 943 , wherein it has been laid down by Hon"ble Supreme Court that though the decision of the employer to create or abolish posts or cadres or to prescribe the source or mode of recruitment and laying down the qualification, etc. is not immune from judicial review. However, the Court will always be extremely cautious and circumspect in interfering in such matters.

16. Para 59 of the aforesaid judgment in the case of Official Liquidator (supra) is relevant which is quoted here in below:

"The creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source and mode of recruitment and qualifications and criteria of selection etc. are matters which fall within the exclusive domain of the employer. Although the decision of the employer to create or abolish posts or cadres or to prescribe the source or mode of recruitment and laying down the qualification etc. is not immune from judicial review, the Court will always be extremely cautious and circumspect in tinkering with the exercise of discretion by the employer. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post or number of posts be created or filled by a particular mode of recruitment. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provisions or is patently arbitrary or vitiated by mala fides."

17. Thus, in view of the aforesaid pronouncements of Hon"ble Supreme Court it can safely be summed up that the grounds of judicial review by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India in a case where challenge is made to the prescription of essential educational qualification for a teaching post, is very limited.

18. It has been stated by the learned Standing Counsel, which fact is not disputed, that essential educational qualification for all the posts in Model Schools to be established by the State of Uttar Pradesh including the post of Trained Graduate Teacher (English) has been borrowed from the prescription made for the said purpose by the Kendriya Vidyalaya Sangathan.

19. One of the purposes, as observed above, for establishing the Model Schools in the State of U.P. is to establish these institutions on the pattern on which Kendriya Vidyalayas in the entire country have been established by Kendriya Vidyalaya Sangathan, which functions under the aegis of Central Government.

Thus, it cannot be said that educational qualification prescribed for the post in question by the Rajya Model School Organization, U.P. is without any basis.

20. As already observed above, the qualification which has been prescribed for the post in question has been borrowed from the prescription made in that regard by Kendriya Vidyalaya, hence, the ground being urged by the learned counsel for the petitioner that the qualification is unreasonable and without any basis, in so far as it excludes the Post Graduates in English from the zone of eligibility is not tenable.

21. So far as the submission made by the learned counsel for the petitioner that since the institutions, which are going to be set up by Rajya Model School Organization, are to be affiliated with the Central Board of Secondary Education, as such the qualification prescribed in the affiliation bye laws framed by the said Board are binding and appointment of teachers in these institutions should also be made in accordance with the prescriptions made in the affiliation bye laws is concerned. It may only be indicated that the said bye laws do not appear to be binding for the reason that Kendriya Vidyalaya established by Kendriya Vidyalaya Sangathan, have also been affiliated with the Central Board of Secondary Education and Kendriya Vidyalayas' prescription for appointment to the post of TGT (English), is Graduation in English with the condition that the candidate should have studied English in all the three years of his Bachelor's Course.

22. The last submission made by the learned counsel for the petitioner on the basis of judgment rendered by Hon'ble Supreme Court in the case of Mohd. Riazul Usman Gani and Ors. (supra) that a criteria which denies a candidate his right to be considered for appointment against a post on the ground that he is having higher qualification than the qualification prescribed cannot be reasonable also does not have any bearing on the fate of this writ petition.

23. In the case of Mohd. Riazul Usman Gani and Ors. (supra), the matter which caught attention of Hon'ble Supreme Court was in relation to appointment of peons in the subordinate judiciary of the Bombay High Court. The qualification prescribed for the post of peon in the said case was "not lower than a pass in the Examination of Standard IV in the Regional Language." Certain candidates desirous of appointment to the said post of peon were having higher qualification and at the time of short listing, the candidates having higher qualification than a pass in Examination of Standard IV, were excluded from the zone of consideration. Hon'ble Supreme Court while examining the rules relating to various posts, including the posts where recruitment was made by way of making promotion from amongst the peons and qualification for such higher posts was higher than the qualification prescribed for the post of peon, has considered that in case a peon having higher qualification is excluded from the zone of consideration for appointment on the said post, then promotion to the posts from amongst the peons, who did not fulfill the requirement of higher qualification, could not be made. Further, Hon'ble Supreme Court has decided the said case of Mohd. Riazul Usman Gani and Ors. (supra) in the facts of the said case, relevant

observations made by Hon''ble Supreme Court in the said case is as follows:

"A criterion which has the effect of denying a candidate his right to be considered for the post on the principle that he is having higher qualification, than prescribed cannot be rational. We have not been able to appreciate as to why those candidates who possessed qualifications equivalent to SSC examination could also not be considered. We are saying this on the facts of the case in hand and should not be understood as laying down a rule of universal application."

(Emphasis supplied by the Court)

24. From a perusal of the aforequoted observations made by Hon''ble Supreme Court in the case of Mohd. Riazul Usman Gani and Ors. (supra) makes it clear that the proposition that a candidate cannot be denied his participation for selection for appointment on a post on the basis that he is having higher qualification, thus, cannot be applied universally. The application of the said principle of law would depend on the facts and circumstances of the case.

25. In the instant case, it is not known as to whether the incumbent, who would be appointed on the post of TGT (English) teacher, would have any avenues of promotion. Even if the promotional avenues are made available to such TGT (English) teacher, what would be the eligibility criteria for promotion to the higher post is also not known. Thus, looking to the facts of this case, the judgment rendered by Hon''ble Supreme Court in the case of Mohd. Riazul Usman Gani and Ors. (supra) does not come to the rescue of the petitioner.

26. At the cost of reiteration, it may be stated that the fact that the respondents have borrowed the qualification for appointment to the post in question on the prescriptions made in that regard by Kendriya Vidyalaya Sangathan, itself is sufficient to sustain the qualification prescribed by the respondents which has been challenged in this writ petition.

27. It may further be observed that in exercise of its jurisdiction under Article 226 of the Constitution of India, neither the prescription made by the respondents for appointment to the post in question can be set aside nor any Mandamus can be issued to include the candidates having Post Graduate qualification in English within the eligibility zone. Such matters, as observed above, are in the exclusive domain of the employer or the Government being a policy matter.

28. For the reasons given and discussions made above in the preceding paragraphs, I do not find any illegality in the impugned qualification prescribed by the respondents for the post in question.

29. Accordingly, the writ petition is dismissed.

30. Before parting the case, I may, however, observe that for consideration of candidates having Post Graduate qualification in English for consideration of appointment on the post of TGT (English), since such authority lies with the

employer, it would be open to the petitioner to take up her cause before the authority concerned by way of making a representation. If the petitioner in this regard makes a representation to the authority concerned raising all the pleas, which may be available to her, the same shall be considered and decided by the authority concerned without being influenced by any of the observations made hereinabove.

31. There will be no order as to costs.