
(2000) 12 RAJ CK 0020

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 1740 and 3144 of 2000

Nema Ram Jakhar

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-12-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(3), 16, 226

Citation : (2001) 3 RLW 1931 : (2000) 4 RLW 682 : (2001) 1 WLC 538 : (2001) 1 WLN 461

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : Vijay Bishnoi and Rakesh Kalla, for the Appellant; S.M. Mehta, General, Kusum Rao and P.R. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Chauhan, J.—Both these petitions have been filed for quashing the advertisement dt. 20.4.2000 as it provided for 100% reservation for female candidates and giving preference to candidates on the basis of residence for appointment of "Shiksha Sahyogi" in Rajiv Gandhi Swaran Jayanti Pathshala and further to direct the respondents to advertise vacancies afresh calling applications from alt eligible candidates.

(2). The facts and circumstances giving rise to these cases are (hat vide advertisement dated 20.4.2000, respondent No.2, the Director, Primary Education, invited applications only from female candidates for being appointed as Shiksha Sahyogi in primary and upper primary schools under the aforesaid Scheme. The said advertisement also stipulated for preference on the basis of residence clarifying that a candidate coming from outside the Gram Panchayat shall not be appointed. Hence, these petitions challenging the advertisement itself on various grounds.

(3). Earlier this court has dealt with the issue of appointment of teachers/

Shiksha Sahyogi in Rajiv Gandhi Swaran Jayanti Palshala in Mohan Lal v. State of Rajasthan and Ors. (1), wherein the Court explained the scope of Articles 14 and 16 of the Constitution of India and held that the posts for which any expenditure is incurred by the public exchequer, even if it is not a public office, cannot be filled up without issuing advertisement and without holding a proper selection. While deciding the said case a large number of judgments of the Hon'ble Supreme Court including Kumari Shrilekha Vidyarthi v. State of U.P. and Ors. (2); Purustiotam v. Chairman, Maharashtra State Electricity Board and Anr. (3); Ajit Singh (II) v. State of Punjab and Ors. (4); Indira Sawhni v. Union of India and Ors. (5) and A.P. Aggarwal v. Government of N.C.T. of Delhi and Ors. (6), and held that every State action, in order to survive, must not be susceptible to the vice of an arbitrariness which is the crux of Article 14 of the Constitution of India. Further, reliance had been placed on a Full Bench judgment of this Court in Deepak Kumar Suthar v. State of Rajasthan and Ors. (7), wherein this Court has held that no preference can be given to any person on the ground of residence either for admission or for employment. In the case of Mohan Lal (supra), the learned Advocate General had appeared and various suggestions were made and accepted by the Court.

(4). Mr. Bishnoi has submitted that in the instant case, there is a complete variance and disobedience of the directions issued by this Court in Mohan Lal (supra) and, thus, the respondents should not be permitted to proceed with selection process in pursuance of the impugned advertisement. The respondents be restrained from appointing untrained teachers.

(5). On the other hand, the learned Advocate-General has submitted that there is no variation from the conditions imposed by this Court in Mohan Lal (supra) and the State is fully aware of its responsibility for providing basic education. The posts had been advertised in the local newspaper having very wide circulation, i.e. "Dainik Bhaskar". Thus it cannot be said that vacancies have not been advertised. By issuing the another notification (corrigendum) which has also been published in the local newspaper on 26.8.2000 (Annex.R/2), the condition of being local resident has been withdrawn. Further the learned Advocate General has drawn the attention of the Court towards the Government order dated 26.8.2000 (Annex.R/1) which reflects on the Government policy in respect of female children education in the State. The qualification required for appointment would be Senior Secondary/Higher Secondary or equivalent; further the applicant must possess B.S.T.C. or equivalent Certificate. In addition to this, the applicant must be aware of local conditions/customs. Minimum age of the applicant is provided as 18 years. The post has been reserved for women candidate only in case where the post of Sarpanch has been reserved for women. It also provides as who will constitute the selection committee and in case any person is aggrieved of the appointment then a representation will lie to the District Collector and in case he is not satisfied by the order passed by the District Collector, he can also approach the State Government.

(6). In view of the submissions made by learned Advocate General and the document on which he has placed reliance it cannot be said that the terms and conditions incorporated in the judgment in Mohan Lal (supra) have been violated; rather the advertisement appears to be in consonance with the aforesaid judgment.

(7). Moreso, there can be no dispute on facts that the posts have been advertised in local news-paper having wide circulation and the condition of being a local resident has been withdrawn. So far as the issue of reservation in favour of female candidates is concerned, it has been submitted by the learned Advocate General that it is not a post in strict legal sense of service jurisprudence. Moreso, Article 15(3) of the Constitution empowers the State Government to frame a policy providing for such guidelines/reservation. The appointment etc. are not governed by any statutory rules, it is a project to attract the children towards basic education and in order to remove the apprehensions in the mind of orthodox parents in the rural areas as they did not send their daughters to the institutions unless there is a female teacher, such a course is necessary. Thus, Mr. S.M. Mehta, learned Advocate General stated that altogether 11,847 posts of "Shiksha Sahyogi" have been filled up. Even if 20% reservation is given to the women candidates, there must be more than 2,000 women "Shiksha Sahyogis." But in the entire State their total number comes to 898 i.e. about 7%. So it is in the aforesaid backdrop that 100% of these posts had been provided in favour of the women candidates. Shri Mehta has further submitted that State cannot in any circumstance escape from the liability of basic education of the children which has been declared to be a fundamental right by the Hon'ble Supreme Court in Unni Krishnan J.P. v. State of Andhra Pradesh and Ors. (8). Moreso, he agreed that children must be given education only by the competent trained persons.

(8). In a recent judgment in L. Muthukumar and Anr. v. State of Tamil Nadu and Ors. (9), the Hon'ble Supreme Court observed as under:-

"We are of the considered opinion that before teachers are allowed to teach innocent children, they must receive proper and adequate training in a recognised training institute satisfying the prescribed norms, otherwise the standard of education and careers of children will be jeopardised. In most civilised and advanced countries, the job of a teacher in a primary school is considered an important and crucial one and as moulding of young minds begins in primary schools, allowing ill trained teachers coming out of de-recognised or unrecognised institutes or licensing them to teach children of an impressionable age, contrary to the norms prescribed, will be detrimental to the interest of the nation itself in the sense that in the process of building a great nation, teachers and educational institutions also play a vital role. In case like this, interest of individuals cannot be placed above or preferred to the larger public interest."

(9). In Ram Sukh v. State of Rajasthan (10), the Hon'ble Supreme Court has considered the case for absorption of untrained teachers on the ground that they

had been continuing for long. The Court observed as under:-

"We are not less sympathetic to the petitioners who are out of job but we cannot forget the welfare of those who are not before the Court. They are the tiny tots who require proper handling by well trained teachers."

(10). While deciding the said case the Hon'ble Apex Court placed reliance upon the judgment in Andhra Kesari Education Society v. Director of School Education (11) wherein the Court had observed as under:-

"The teacher alone could bring about the skills and intellectual capabilities of students. He is the engine of all the educational system. He is a principal instrument in awakening the child to cultural values. He need to be endowed and energised with needed potential to deliver enlightened services expected of him. His quality should be such as would inspire and motive into action the benefitor."

(11). In view of the above, the importance of primary education cannot be overlooked; nor there can be any latitude for making any kind of deviation therefrom and this Court had persistently deprecated the practice of giving employment to untrained persons which is evident from the judgments of this Court in Chanda Tamboli v. Panchayat Samili Mandal (12); Bej Nath v. State of Rajasthan and Ors. (13); Hari Chand v. State of Rajasthan and Ors. (14); Kundal Lal v. State of Rajasthan and Ors. (15) Ragvendra v. State of Rajasthan and Ors. (16) and Smt. Harsh Lala v. State of Rajasthan and Ors. (17) and its appeal Smt. HarshaLata v. State of Rajasthan and Ors. (18) and Sarda Panchayat Samiti v. State of Rajasthan (19); Panna Ram and Ors. v. Panchayat Samiti Sergar and Anr. (20); Kalu Ram v. State of Rajasthan (21) and Bansroadgarh Panchayat Samiti v. State of Rajasthan (22).

(12). In Panna Ram (supra) this Court observed as under:-

"Spccific plea of denial of livelihood to some individuals like the petitioners cannot overweigh the prospects of serious injury to the students of rural areas and their future cannot be allowed to be , destroyed at the hands of untrained persons. It may be that some individuals like petitioners (untrained teachers) may suffer a bit on account of denial of right to continue in service but much more grave injury will be suffered by a larger segment of society if such persons are appointed or allowed to continue in service. Students who are taught by untrained hands will suffer throughout their life, and, there fore, it is in the interest of the society that untrained teachris are not appointed in the service or in any case they are not continued in service for long period. Efforts must always be made by the compe tent authority to secure the availability of trained hands. It is not possible to accept any apology from the concerning authorities for their failure to make effort to secure selected persons for regular appointment and in any case trained persons for temporary appoint ments as teachers."

(13). While deciding Indira Kumari Arya v. State of Rajasthan (23) this Court (Jaipur Bench) held (hat only in case the selected candidates are not available

and it is necessary to fill up the vacancy of teacher then at least trained persons should be appointed. The Court made the following observations:-

"Government should make it clear that if appointment is given to untrained persons in future salary paid to such untrained persons will be recovered from the pay of that officer who is responsible for making such appointment."

(14). Thus, in view of the above, it is clear that under no circumstance, untrained persons should be appointed. In the instant case, the learned Advocate General has taken a specific stand that they are not going to deviate from the observations made by this Court from time to time and they will not appoint any person untrained so long the trained persons are available and the Govt. decision referred to above itself clarifies the position. Thus, as the corrigendum has been issued removing the condition of being local resident and further the Government order itself provides only appointing trained persons, the case does not warrant any interference on these counts.

(15). From the observations above, it will be seen that the Government has laid down a policy to impart primary and higher primary education not only through Government schools but also by establishing Rajiv Gandhi Swarn Jayanti Pathshalas through out the State, it shall be independent and ancillary programme for promotion of education in Rajasthan. The social background of education in Rajasthan for the past fifty years will have to be kept in mind before adjudicating upon the validity or otherwise of the Government Policy aimed at imparting education in primary and higher primary schools in the State of Rajasthan. It is, also, held by this Court that whole scheme of Rajiv Gandhi Swarn Jayanti Pathshala is an educational programme and is not employment under the State, as contemplated by Article 16 of the Constitution. Shiksha Sahayogi is not a Government employee in the sense that he is a teacher regularly employed in rural schools. From the scheme itself, it will be seen that a fixed stipend is paid to Shiksha Sahayogi and he/she is required to have certain educational competence. If in this background the specific stand taken by the State through the learned Advocate General is considered, it becomes evident that the Scheme does not suffer from any error.

(16). The question remains whether all the posts could have been reserved for female candidates. The learned Advocate-General had given the figures according to which 7% of the posts of "Shiksha Sahayogi" have been filled up by the female candidates and he also submitted that the orthodox parents in the rural area of the State would not send their daughters at least a female "Shiksha Sahayogi" is appointed in the school.

(17). Factually, it will have to be ascertained whether all these posts have been reserved for female candidates and what is, in fact, reservation. Article 14 of the Constitution promises equality before law. Article 15 prohibits discrimination only on the ground of sex etc. but further provides that nothing in the said Article shall prevent the State from making any special provision for women and

children. As will be seen from the Scheme, more than 20,000 Shiksha Sahayogis are required and as has been observed by me earlier, the percentage of women Shiksha Sahayogis is not even 20%. There is, therefore, no question of any reservation being 100%. Apart from that, even if the advertisement questioned in this petition is taken in isolation, it is a provision specially made for women and female children in Rajasthan. Judicial notice will have to be taken of the fact that in Rajasthan, parents do not send their female child to a school in which there is no female teacher. The provision is, therefore, for upliftment of education of female children in the State of Rajasthan. If reservation is made even 100% for recruitment of women Shiksha Sahayogis to teach such female children, it will not be hit by Article 15 of the Constitution. The recruitment of a given number of teachers and reserving all that number of posts for women candidates cannot be considered in isolation and consequently, in the present case, it cannot be said to be any reservation in favour of women only on the ground of sex.

(18). The ratio of this Court in *Ghewar Rani v. State of Rajasthan and Ors.* (24) has no application in the instant case for the reason that it was a case of filling up the vacancy under the Rajasthan Panchayat Samities and Zila Parishad Act and Rules. The instant case is not governed by any statutory rules. In the said case the Court struck down the advertisement in favour of female candidate only on the ground that Government policy or executive instructions cannot override the statutory rules. Here no such Rules are in existence, therefore, the only question left to the Court is to consider whether the Court can interfere in the facts and circumstances of the case.

(19). Further, Articles 15 and 16 inhibit the discrimination only and only on the grounds mentioned in these Articles including the sex. But the said Articles do not prohibit the said principle making the discrimination on the ground other than those mentioned therein, or grounds mentioned therein coupled with other consideration. (Vide *Yusuf Abdul Aziz v. State of Bombay* (25); *Javed Niyaz Beg and Anr. v. Union of India and Anr.* (26) and *Air India v. Nergesh Meerza and Ors.* (27) and a Constitution Bench judgment of this Court in *Ganga Ram Moolchandani v. High Court of Judicature for Rajasthan and Ors.* (28). In the instant cases, as the discrimination is not on the ground of sex only but also to fulfil the objective that the girls may also attend the schools and for up-lifting their education, the Government has framed the Scheme to have one female teacher in every school so that their parents may not have an apprehension in sending them to the school. In such circumstances, even if it is termed as "reservation", it may be permissible to some extent in law.

(20). It is settled legal proposition that a policy decision does not require interference unless it is found to be completely arbitrary or unreasonable. (Vide *Delhi Science Forum v. Union of India* (29); *Shivaji University through Director v. Bharti Vidyapeeth through Jt. Secretary and Ors.* (30); *Distt. Collector and Anr. v. B. Suresh and Ors.* (31); *Rameshwar Prasad v. Managing Director, U.P. Rajkiya Nirman Nigam Ltd. and Ors.* (32) & *Principal, Madhav Institute of*

Technology & Science v. Rajendra Singh Yadav (33).

(21). In Tamil Nadu Education Department Municipality and General Subordinate Services Association etc. v. State of Tamil Nadu and Ors. (34) the Hon"ble Supreme Court observed as under:-

"Once the principle is found to be rational, the fact that a few freak circumstances of hardship may arise on either side cannot be a ground to invalidate the order or the policy. Every act claims a martyr and however, unhappy we be to see the seniors of yesterday becoming the juniors of today. This is an area where passing arbitrariness and irrational, the Court has to adopt a hands-off policy."

(22). To sum-up the cases, the respondents, in their reply, have clarified the position that the vacancies of Shiksha Sahayogis have been advertised in the local news-appear having a wide circulation; the condition of being local resident for having preference has been removed by issuing corrigendum in the news-paper and making appointment only of female candidates may be to up-lift the education of the local girls and to remove the apprehension of their orthodox parents as they are not willing to send their daughters in the school unless there is a female teacher. In the aforesaid circumstances, the cases do not require any interference.

(23). Respondents should not deviate from the conditions mentioned in the policy and the advertisement, including the corrigendum, while making appointments. The petitions are dismissed. Interim order, if any, shall stand vacated. There shall be no order as to costs.