

(2016) 09 P&H CK 0058
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 147 of 2014 (O&M)

Pardeep Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 06-09-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 226

Citation : (2017) 1 SCT 799

Hon'ble Judges : Surya Kant and Sudip Ahluwalia, JJ.

Bench : Division Bench

Advocate : Mohit Garg, Advocate, for the Petitioner; Ravi Dutt Sharma, DAG Haryana, for the Respondent

Final Decision : Dismissed

Judgement

Surya Kant, J. - This order shall dispose of the above-captioned writ petitions in which the petitioners have laid challenge to Appendix-B of the Haryana School Education (Group C) State Cadre Service Rules, 2012 (in short, 'the 2012 Rules) to the extent it prescribes at Sr.No.12 the qualification for the post of Trained Graduate Teacher (TGT) Art.

2. The grievance of the petitioners is that vide above-stated new set of statutory Rules, an irrational qualification of a "two year diploma in Elementary Education" instead of a "diploma in the field of Art and Craft" has been inserted which amounts to radical change in the eligibility criteria, rendering the petitioners ineligible for the post of TGT Art.

3. Before adverting to the grounds on which the petitioners have assailed the vires of 2012 Rules, a brief reference to the facts may be made.

4. The petitioners after qualifying 10+2 examination have completed two years" Diploma in Arts & Crafts from various Government/private institutions running in the State of Haryana. The minimum qualification for admission to these institutes is 10+2 with at least 50% marks. A Graduate with Fine Arts subjects from a

recognised University is also eligible and is given weightage. All the petitioners successfully completed the above-stated Diploma Course in different years but prior to 2012.

5. The appointment of Art & Craft Teacher used to be regulated under the Haryana State Education School Cadre (Group C) Service Rules, 1998 and the qualification prescribed for the post of Art & Craft Teacher (Drawing Teacher) under those Rules used to be as follows:-

"(i) Matric from Haryana School Education Board or an equivalent qualification recognised by the Haryana School Education Board;

(ii) 2 years Diploma in Art and Craft Examination conducted by the Haryana Industrial Training Department or an equivalent qualification recognised by the Haryana School Education Board;

(iii) Knowledge of Hindi upto Matric Standard."

6. After the National Council for Teacher Education (in short, 'the NCTE') came to be established under the National Council for Teachers Education Act, 1993, the NCTE vide notification dated 23.08.2010 laid down the minimum qualification for a person to be eligible for appointment of Teachers for Class I to VIII standard in a school, referred to under the Right to Children to Free and Compulsory Education Act, 2009. Those minimum qualifications are to the following effect:-

"(i) B.A./BSc. And 2-year Diploma in Elementary Education (by whatever name known)

OR

B.A./BSc. With at least 50% marks and 1-year Bachelor of Education (B.Ed.)

OR

B.A./BSc. With at least 45% marks and 1-year Bachelor of Education (B.Ed.) in accordance with the NCTE (Recognition norms and procedure) Regulations issued from time to time in this regard.

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 year Bachelor in Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 year BA/B.Sc. Ed.or B.A.Ed/B.Sc. Ed.

OR

B.A./BSc. with at least 50% marks and 1-year B.Ed. (Special Education)

(ii) Pass in the Teacher Eligibility Test (TET) to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose."

7 The NCTE on 29.07.2011 (P58) further amended its notification dated 25.08.2010, laying down the minimum qualifications for a person to be eligible for appointment as a Teacher. These revised qualifications are as follows:-

"1. Minimum Qualifications:-

(i) Classes I-V

(a) Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Elementary Education (by whatever name known)

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2-year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure), Regulations, 2002

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor of Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Education (Special Education)

OR

Graduation and two year Diploma in Elementary Education (by whatever name known)

AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose."

8. Clause (IV) of the notification dated 29.07.2011 further clarified that "the minimum qualification norms referred to in this Notification apply to teachers of Languages, Social Studies, Mathematics, Science etc. In respect of teachers for Physical Education, the minimum qualification norms for Physical Education teachers referred to in NCTE Regulation dated 3rd November, 2001 (as amended from time to time) shall be applicable. For teachers of Art Education, Craft Education, Home Science, Work Education etc. the existing eligibility norms prescribed by the State Governments and other school managements shall be applicable till such time the NCTE lays down the minimum qualifications in respect of such teachers."

9. The State of Haryana, in the wake of prescription of minimum qualifications by NCTE felt necessary to revise the qualifications prescribed for various categories of Teachers and has consequently notified 2012 Rules whereby 1998 Rules have been repealed. Rule 7 of 2012 Rules mandates that no person shall be appointed to any post in the Service, unless he is in possession of qualifications and experience specified in Column 3 of Appendix-B in the case of direct recruitment. Rule 9(1)(I) of these Rules further provides that in the case of TGT Art, 67% posts shall be filled by direct recruitment on contract basis and remaining 33% by promotion or by transfer/deputation of an official already in service of any State Government/Government of India. Appendix-B in its Column 3 at Sr.No.12 prescribes the qualification for direct recruitment to the post of TGT Art and the same reads as follows:-

"(i) B.F.A./B.A. and 2-year Diploma in Elementary Education; OR

B.F.A./B.A. with at least 50% marks and 1-year Bachelor in Education (B.Ed.); OR

B.F.A./B.A. with at least 45% marks and 1-year Bachelor in Education (B.Ed.) in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard; OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 year Bachelor in Elementary Education (B.El.Ed.); OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 year BA Ed.; OR

B.F.A./B.A. with at least 50% marks and 1-year B.Ed. (Special Education);

AND

(ii) In case of B.A. Arts, at least 50% marks in Fine Arts as an Elective subject,

(iii) In case of B.Ed., Fine Art as a teaching subject from a recognised University.

(iv) Certificate of having qualified Haryana Teacher Eligibility Test (HTET)/School Teachers Eligibility Test (STET);

(v) Matric with Hindi/Sanskrit or 10+2/B.A./M.A. with Hindi as one of the subject."

10. It may be seen from the above reproduced new set of Rules that a two years" Diploma in Art & Craft possessed by the petitioners on the basis of which they were eligible for the post of Art & Craft Teacher (Drawing Teacher) under the 1998 Rules, is no longer a valid and prescribed qualification for the post of TGT Art for which they are required to possess the qualifications as are prescribed in Appendix-B of the 2012 Rules. Since the petitioners on the basis of their respective Diplomas have been rendered ineligible for the subject posts, they question the very prescription of the new qualifications under the 2012 Rules.

11. The petitioners have averred that the qualifications under the 2012 Rules are in conflict with those prescribed by NCTE and since the mandate to prescribe qualifications for the post of Teachers vests in NCTE who has been conferred powers to command the States to modify the existing services Rules to bring their qualifications in conformity with those prescribed by it, the action of State of Haryana ultra vires the Regulations notified by NCTE. They have further averred that the prescribed qualification is totally irrational and directionless as it fails to achieve the object of imparting education in the subject of Art & Craft.

12. State of Haryana in its reply dated 03.03.2015 has defended the prescription of qualifications for various teaching posts maintaining that the same are in conformity with the qualifications prescribed by the NCTE. It is also averred that the qualifications have been prescribed keeping in view the specific requirement of each subject and before notifying the Rules, the matter was examined at various levels of the Government keeping in view the standard parameters and with the objective to impart quality education.

13. We have heard learned counsel for the parties at a considerable length and gone through the record. It is vehemently urged by learned counsel for the petitioners that NCTE has been set up under the Central Act with the sole objective of laying down uniform teaching standards throughout the country. The qualifications prescribed by NCTE shall have supremacy and an overriding effect over the inconsistent and incongruous qualifications wherever prescribed by the State Governments. Learned counsel refers to an order dated 15.01.2013 passed by Hon'ble Supreme Court in a bunch of Civil Appeals which were disposed of as infructuous in view of the National Council for Teacher Education (Amendment) Act, 2011. He urges that by virtue of this order, the supremacy of NCTE over the State-prescribed qualifications stands affirmed. He further argues that the new qualifications are totally arbitrary and discriminatory as the petitioners have been rendered ineligible with a stroke of pen even though such like Diploma-holders have been treated eligible for the post of drawing teachers for decades.

14. On the other hand, learned State counsel maintains that the qualifications prescribed under 2012 Rules nowhere offend the minimum qualifications recommended by NCTE. He further urges that NCTE has recommended only "minimum qualifications" and such recommendatory power does not take away the State's authority to enact a law save where the Parliament has not intervened.

15. It appears from the rival contentions that the following three questions fall for our consideration:-

(i) Whether the State of Haryana is competent to prescribe more stringent than the minimum qualifications prescribed by NCTE for the post of Teachers?

(ii) Whether qualifications prescribed under 2012 Rules are inconsistent with the minimum qualifications recommended by NCTE for teaching posts?

(iii) Whether 2012 Rules have taken away a vested right of consideration of the petitioners for appointment to the post of TGT Arts?

Question Nos.(i)&(ii)

16. It is self-evident from the NCTE notification dated 29.07.2011 that the qualifications laid down by it for appointment of a Teacher or that of a Principal are "minimum qualifications". NCTE has recommended Senior Secondary i.e. 10+2 with two years" Diploma in Elementary Education as the minimum qualification for the post of Teacher for Classes I to V. As an alternative qualification, it has also recommended "Graduation with two year Diploma in Elementary Education" as the minimum qualification. The State Government, however, with a view to improve the quality education, has enhanced the minimum qualification from 10+2 to Bachelor of Fine Arts/B.A. instead of 10+2 along with two-years" Diploma in Elementary Education. Such higher qualification neither is in conflict with nor does it offend the recommendations made by NCTE for a minimum qualification. The expression "minimum" leaves no room to doubt that the NCTE did not want any State Government to prescribe qualification for teaching posts lower than those recommended by it. None of the notifications issued by NCTE says or can be construed as an embargo on the powers of the State Government to prescribe a qualification higher than the one recommended by it. There is no judicial pronouncement as claimed by the petitioners" counsel that states that the States are incompetent to prescribe qualification higher than the "minimum" prescribed by NCTE. The first and second questions are thus answered against the petitioners.

Question No.(iii)

17. As regard to the question of denial of opportunity to the petitioners to compete for the post of TGT Arts, suffice it to observe that a vested right would have accrued in favour of the petitioners only if they had actually been appointed to the subject-posts. The self-serving expectations/belief of the petitioners that they would be considered for the post of TGT Arts on the basis of 10+2 qualification does not amount accrual of an indefeasible right in their favour. It is well settled that eligibility conditions can be altered at any time which does not mean that any vested right has been affected. Prescription of such revised qualifications does not have any retrospective effect merely because the candidates who were eligible under the old qualifications are rendered ineligible by virtue of new regime of rules. [please see. P. Suseela v. University Grants Commission, (2015) 8 SCC 129].

18. In Rajasthan Public Service Commission v. Chanan Ram, (1998) 4 SCC 202, the Commission had advertised the posts on 05.11.1993 but pending recruitment process, the State Government amended the Rules on 19.04.1995 and abolished the advertised posts. Under the new Rules, the nomenclature of the posts was changed and qualification was also enhanced from 2nd Class Bachelor's Degree to Master's Degree in Agriculture with specialization in Agriculture Economics.

The Supreme Court held that since the previous vacancies no longer existed and the newly created posts required higher qualification, the candidates with 2nd Class Bachelor's Degree had no right to seek consideration.

19. In *Jai Singh Dalal v. State of Haryana*, (1993) Suppl. 2 SCC 600 also, the eligibility criteria was revised when the process for recruitment to Haryana Civil Services (Executive Branch) had already commenced. The Apex Court reiterated that the candidates did not acquire any right to appointment on the basis of earlier notification. An authority empowered to specify the method of recruitment is deemed to have an inherent power to revise and substitute such method for good reason.

20. Applying these principles to the facts of the case in hand, we are of the view that Appendix-B of 2012 Rules cannot be declared arbitrary or irrational merely because the rule-making authority has enhanced the qualification for most of the TGT posts including TGT Arts. The enhanced qualification has a rationale to impart quality education as a Graduate in Fine Arts or otherwise, is legitimately expected to impart more qualitative teaching as compared to a 10+2 candidate. No vested right has ever accrued in favour of the petitioners to claim appointment even when they do not possess the prescribed qualification under the 2012 Rules. In fact the averments made in the writ petition nowhere suggests that the post of TGT Arts were advertised under the old Rules or any selection were ever made. Since such posts would now be advertised after the 2012 Rules have come into force, it is wholly misdirected to say that these Rules have rendered the candidates ineligible through retrospective operation.

21. The writ petitions are thus wholly misconceived and are accordingly dismissed.