
(2009) 01 PAT CK 0025
In the Patna High Court
Case No : CWJC No. 15646 of 2008

Parvez Alam and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-01-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2009) 2 PLJR 213

Hon'ble Judges : Chandramauli Kr. Pd., Acting C.J.; Ravi Ranjan, J

Bench : Division Bench

Advocate : Chittaranjan Sinha and Siddhartha Prasad, for the Appellant; Lalit Kishore and Satyabir Bharti, for the Respondent

Final Decision : Dismissed

Judgement

Prasad & Ranjan, JJ.—Both the writ petitions involve common questions of law and facts and hence; they were heard together and are being disposed of by this common judgment. Petitioners have either obtained Mauivi or Up-Shashtri qualification from the recognized institutions and intend to offer their candidature for appointment as Panchayat Teacher (General) and on account of exclusion of this qualification by Rule 4 of the Bihar Panchayat Prathmik Shikshak (Appointment and Service Condition) (Amendment) Rules, 2008, they have preferred these writ applications challenging its constitutional validity.

2. Facts lie in a narrow compass.

3. Petitioners have obtained either the qualification of Mauivi or Up-Shashtri degree from recognized institutions which are equivalent to Intermediate examination. The State Government framed Bihar Panchayat Prathmik Shikshak (Appointment and Service Condition) Rules, 2006 for appointment, inter alia, of Panchayat Teachers. Rule 8 of the aforesaid Rules provides for qualification for appointment to the post of Teachers, including Panchayat Teachers, same reads as follows:-

"8. For employment.-(A) Eligibility: For Block Teacher:

XXXX

For Panchayat Teachers:-

1. Should be citizen of India and habitant of Bihar.
2. Should be higher secondary or intermediate or equivalent examination passed from educational institution recognized by Government.

x x x x"

4. It is not in dispute that persons holding the qualification of Maulvi and Up Shastri were held eligible and considered for appointment in terms of the aforesaid Rules. However, later the State Government made certain amendments in Bihar Panchayat Prathmik Shikshak (Appointment and Service Condition) Rules, 2006, hereinafter referred as Rules 2006, by Bihar Panchayat Prathmik Shikshak (Appointment and Service Condition) (Amendment) Rules 2008, hereinafter referred as Rules 2008, and Rule 4 thereof substituted Rule 8(2)(ka) of the Rules 2006 in the following manner:-

3. Amendment of Section 2 of sub-rule (a) of Rule 8:- Section 2 of sub-rule (a) of Rule 8 will be substituted by the following:-Should be passed higher secondary intermediate or equivalent examination from a school/college/ board recognized by the Government but it does not include the degree in technical education (Polytechnic Unani education) physical education, language Specific degree (Maulvi, Up-shastri) and the degree provided by the voluntary institutions (decided by the department) (for employment on the post of general teachers.

(underlining ours)

5. Rule as amended thus, hereinafter referred to as the offending Rule excludes the candidature of all those persons possessing qualification of Up-Shastri and Maulvi, and the petitioners being rendered ineligible on account thereof, have questioned its constitutional validity. The language of the English version of the Rules is pathetic. It suffers from the inexactitude of language but as Court of law we have ironed out it to understand the real purpose.

6. It is the assertion of the petitioners that for passing the Maulvi examination a candidate had to pass in twelve subjects including main stream subjects like English, Logic, Hindi, Economics etc. and for obtaining the degree of Up-Shastri, a candidate is required to pass in total eight papers including main stream papers like English, History, etc. According to them, the curricula followed for the courses of Maulvi and Up-Shastri are more exhaustive than the Intermediate examination. Accordingly, it has been contended by the petitioners that offending rule is unconstitutional.

7. Before we enter into this question, we deem it expedient to consider the scope of judicial review of the delegated legislation.

8. Mr. Lalit Kishore, Additional Advocate General No. -III appearing on behalf of the State points out that before entering into the question of validity of the offending rule it would be advisable to consider the scope of judicial review in this regard. He points out that scope of power of judicial review of the delegated legislation is the same as that of legislation. According to Mr. Lalit Kishore the cases in hand are not one of those cases in which the impugned rule can be struck down as it does not offend any of the constitutional provision.

9. Reference in this connection has been made to a decision of the Supreme Court in the case of *Hinsa Virodhak Sangh vs. Mirzapur Moti Kuresh Jamat*, (2008)5 Supreme Court Cases 33 and our attention has been drawn to paragraph 39 of the judgment which reads as follows:-

"We have recently held in *Govt, of A.P. vs. P. Laxmi Devi*, that the Court should exercise judicial restraint while judging the constitutional validity of statutes. In our opinion, the same principle also applies when judging the constitutional validity of delegated legislation and here also there should be judicial restraint. There is a presumption in favour of the constitutionality of statutes as well as delegated legislation, and it is only when there is a clear violation of a constitutional provision (or of the parent statute, in the case of delegated legislation) beyond reasonable doubt that the Court should declare it to be unconstitutional."

(underlining ours)

10. It is well settled principle of law, hallowed by time and sanctified by precedents that there is one and only one ground for declaring the act of legislature or a provision thereof to be ultra vires and that is, when it violates some of the provisions of the Constitution. It is also trite that before declaring the statute to be unconstitutional the Court must be absolutely sure and there is no manner of doubt that it violates the provision of Constitution. If two views are possible, one making the statute constitutional and another making it unconstitutional, the former view must prevail and the Court must make efforts to uphold the constitutional validity of a statute. In view of the judgment of Supreme Court in the case of *Hinsak Virodhak Sangh* [supra], the principles applied for testing the validity of the legislative act or the provision thereof have to be applied in the case of delegated legislation.

11. We are proceeding to consider the submission of the learned Counsel for the petitioner bearing in mind the aforesaid principles.

12. Mr. Chittaranjan Sinha, Senior Advocate as also Mr. Uma Kant Shukla, appearing on behalf of the petitioners contend that the person holding Up-Shastri and Maulvi qualification earlier were held to be eligible in terms of Rules 2006 and therefore the offending rule excluding them from consideration is without any justification and suffers from the vice of arbitrariness. It is pointed out that the qualification of Maulvi or Up-Shastri is equivalent to the Intermediate qualification and therefore excluding them from consideration for appointment to

the post of Primary Teacher (General) is irrational. According to them, once the provision is found to be irrational or arbitrary it hits Article 14 of the Constitution of India and therefore the impugned rule deserves to be struck down on this score alone.

13. Mr. Lalit Kishore, however, contends that fixing the qualification for appointment is within the domain of the rule making authority and the qualification of Up-Shastri and Maulvi may be equivalent for some purposes but that itself shall not mean that both are one and the same. It has been pointed out that in teaching of Up-Shastri and Maulvi emphasis is on the language and therefore there is a reasonable distinction between the qualification of Intermediate and qualification of Up-Shastri and Maulvi.

14. Having appreciated the rival submission, we do not have the slightest hesitation in accepting the broad submission put forth on behalf of the petitioners that any provision which is arbitrary hits at the root of Article 14 of the Constitution of India and has to be declared unconstitutional if it does so but the question before us is as to whether exclusion of qualification of Maulvi and Up-Shastri, for the purpose of eligibility for appointment as Panchayat Teacher (General) in any way arbitrary.

15. We are of the opinion that the basic qualification needed for appointment, primarily needs to be decided by rule making authority. While amending Rule 8 of Rules 2006 by Rule 4 of Rules 2008 the State Government in exercise of its rule making power has excluded the qualification of degrees in language, including Up-shastri or Maulvi. In such situation this Court in exercise of its power of judicial review cannot term the same to be arbitrary. The purported similarity in the curriculum of the intermediate examination and Up-Shastri/ Maulvi examination is of no consequence. It is well settled that qualification for appointment is a matter within the domain of the body, which is competent to make that legislation. Simply because in earlier years persons holding the qualification of Maulvi and Upshastri were considered eligible in terms of the rule, later on, the plea that such persons cannot be excluded from consideration by making amendment in the rule in accordance with law does not commend us. Here the rules have been amended in accordance with law and the authority conferred with the power making rule has by the offending rule, specifically excluded the qualification of Maulvi and Up-Shastri, rendering persons holding such qualification ineligible. The plea that contents of the teaching of Up-Shastri and Maulvi is the same as that of Intermediate, we are of the opinion that it is not within the scope of judicial review and is a matter of legislative policy.

16. The view which we have taken finds support from a Division Bench" judgment of this Court in the case of Dhirendra Kumar Singh & Ors. vs. State of Bihar & Others [2008(1) PLJR 583] in which it has been held as follows:-

Whether the rules governing recruitment for any post, in eligibility criterion prescribed for the post must include other equivalent qualification is a matter of

legislative policy and not for this Court to decide. Even where rules provide for alternate to main and substantive qualification by recognizing equivalent qualification to be taken into consideration, the question of considering any qualification, is a matter of expert body to decide. Therefore, it is inept for this Court to enter into that territory and decide upon equivalence. From a plain reading of the provision contained in 1983 rules, it would appear that various teacher" training courses referred therein are training qualifications of different grades and cannot by any means be equivalent with each other, a priori. It hardly needs an argument that unless the matter is examined by any expert body, ordinarily, a diploma course is not equivalent for a degree. Likewise, a certificate by itself is not equivalent to a degree or diploma in the subject.

Learned counsel for the petitioners had taken pains to explain the content of training of teaching under different training courses for the purpose of impressing upon the Court that there is hardly any distinction between different courses of training imparted to a candidate. We are afraid, this is not the scope for judicial review while examining the validity of the legislation providing eligibility criteria. Thus is a matter of legislative policy and it is within the domain of the legislative body as to what should be the policy to provide requisite qualification for offering appointment to the intending incumbent."

(underlining ours)

17. We are of the opinion that the offending rule does not suffer from any arbitrariness or offends any of the constitutional provision and therefore the challenge made to it fails. In the result, we do not find any merit in these writ applications and they are dismissed accordingly, but without any order as to cost.