

(2014) 09 MP CK 0130

In the Madhya Pradesh High Court

Case No : Writ Petition No. 8190 of 2012, W.P. Nos. 922, 4208, 11902, 16641, 17167, 17194, 17270, 17272, 17276, 20937, 16568, 13640, 16579, 17939, 17938, 17615 and 17344, 19259 of 2013 and W.P. Nos. 1472 and 4919 of 2014

Pratibha Mishra

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 03-09-2014

Acts Referred:

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 70, 95
Right of Children to Free and Compulsory Education Act, 2009 — Section 23, 23(2)

Citation : (2015) LabIC 505

Hon'ble Judges : A.M. Khanwilkar, C.J.; Alok Aradhe, J

Bench : Division Bench

Advocate : S.D. Mishra, Advocate for the Appellant; Piyush Dharmadhikari, Government Advocate, Advocate for the Respondent

Judgement

Writ Petition No. 17194 of 2013

1. Heard counsel for the parties.

2. The challenge in these petitions is to insertion of serial number 3 in Schedule-II of the Madhya Pradesh Panchayat Samvida Shala Shikshak (Employment and Conditions of Contract) Rules, 2005. The amendment is made in exercise of power conferred by sub section (1) of Section 95 read with sub-section (2) of Section 70 of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993. The same reads, thus:

3. In Schedule II .?

(i) In serial number 1, in column (5) for the existing entry, the following entry shall be substituted, namely :-

?Masters Degree in the relevant subject with Bachelor of Education (B.Ed) or its equivalent;

(ii) In serial number 2, in column (5) for the existing entry, the following entries shall be substituted, namely :-

Bachelor Degree in the relevant subject and 2 years Diploma in Elementary Education or its equivalent.

OR

Bachelor Degree in the relevant subject with at least 50% marks and Bachelor in Education (B.Ed)

OR

Bachelor Degree in the relevant subject with at least 45% marks and Bachelor in Education (B.Ed) in accordance with the NCTE (Recognition Norms and Procedure) Regulations, 2002.

OR

Higher Secondary Certificate Examination with at least 50% marks and Bachelor in Elementary Education (B.El.Ed.).

OR

Higher Secondary Certificate Examination with at least 50% marks and 4 years Bachelor Degree in the relevant subject (B.A. B.Ed./B.Sc. Ed.)

OR

Bachelor Degree in the relevant subject with at least 50% marks and Bachelor in Education (Special Education)?;

(iii) In serial number 3 , ---

(a) in column (5) for the existing entry, the following entries shall be substituted namely ---

?Higher Secondary Certificate Examination with at least 50% marks (or its equivalent) and 2 years Diploma in Elementary Education.

OR

Higher Secondary Certificate Examination with at least 45% marks (or its equivalent) and 2 years Diploma in Elementary Education in accordance with the NCTE (Recognition Norms and Procedure) Regulations, 2002.

OR

Higher Secondary Certificate Examination with at least 50% marks (or its equivalent) and 4 years Bachelor in Elementary Education (B.El. Ed.)

OR

Higher Secondary Certificate Examination with at least 50% marks (or its

equivalent) and 2 years Diploma in Education (Special Education).?;

(b) In column (7), after item 3, the following item shall be added namely :-

?4. The minimum qualification for Samvida Shala Shikshak Grade-3 (Laboratory) shall be Higher Secondary Certificate Examination with at least 50% marks with Science subjects or equivalent?;

(iv) Under the heading ?Note (a) Qualification?,-

(a) Clause (1) shall be omitted;

(b) for clause (4), the following clause shall be substituted namely :-

?(4) The Honorary Teachers appointed for Government schools and part time teacher of Vocational Education shall be given fifteen years relaxation in maximum age limit of 35 years : Provided that part time teacher of Vocational Education whose contract was terminated due to his work being found unsatisfactory will not be entitled for the relaxation.?.; (c) After clause (8) the following clauses shall be added namely :-

?(9) Widow and Divorcee candidate shall have five years relaxation in maximum age limit in addition to other relaxation.

(10) The State Government shall appoint the persons as Samvida Shala Shikshak possessing minimum qualification as laid down in column (5) of Scheduled II. If trained persons are not available in sufficient number the State Government may appoint untrained persons on the post of Samvida Shala Shikshak as per provision of the rules after due notification of the Central Government under section 23 (2) of the Right of Children to Free and Compulsory Education Act, 2009 (No.35 of 2009).

(11) The candidates who have worked as Guest Teacher in Government School for minimum three educational session, shall be entitled to five years relaxation in maximum age limit;;

(v) under the heading ?Note (b) Disqualification?, clause (7) shall be omitted.

4. Schedule IV shall be omitted.?

(emphasis supplied)

3. Admittedly, the petitioner possesses one year B.Ed. Degree. He is aspiring to be appointed as Contract Teacher Grade-III, which is, essentially, for primary school and for classes between I to VIII. The qualification prescribed by the amendment of 2011 does not qualify B.Ed. Degree- holder to be appointed on the post of Samvida Shala Shikshak Grade-III for primary school.

4. The argument, is that, the Central Government in exercise of powers under Section 23 of the Right of Children to Free and Compulsory Education Act, 2009, having relaxed the minimum qualification for being appointed as Samvida Shala

Shikshak by virtue of Notification dated 21st November, 2011, the amendment has become ultra vires. For examining this contention, we may straightaway refer to the relaxation Notification issued by the Central Government. By virtue of that Notification, the relaxation is in the following terms:-

Now, therefore, in exercise of the powers conferred by sub-section (2) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009), the Central Government hereby relaxes in respect of the State of Madhya Pradesh, the minimum qualification notified by the National Council for Teacher Education under sub-section (1) of Section 23 of the said Act vide notification number 215 dated 25th August, 2010 (the said notification), as amended by notification number 158 dated the 2nd August, 2011 (the amended notification) in so far as they relate to classes I to VIII, namely ?

(a) two year Diploma in Elementary Education (by whatever name known) for appointment of a teacher in classes I to VIII and

(b) one year Bachelors in Education for appointment of a teacher in classes VI to VIII.?

(emphasis supplied)

5. Going by the plain language of the Notification, it is evident that for appointment of a Teacher for Classes I to VIII, the relaxation is limited to Diploma in Elementary Education (by whatever name known). That relaxation does not and cannot permit the State Authorities to appoint candidate with qualification B.Ed. to the post of Samvida Shala Shikshak Grade-III which is essentially for primary school for classes I to VIII.

6. Relying on clause (b) of the above quoted Notification, it was argued that the relaxation is also for appointing candidate possessing Bachelor in Education Degree. This argument, in our opinion, is ill-advised. For, clause (b) pertains to appointment of a teacher for classes VI to VIII and not for classes I to VIII in a primary school. In our opinion, reliance placed on clause (b) of the Notification is inapposite. The excepted category for appointment as teacher for classes I to VIII is Diploma in Elementary Education (by whatever name known) and nothing more. It is well established position that it is the prerogative of the employer to specify the qualification and in this case that is done by virtue of statutory rules.

7. Suffice it to observe that the amended Schedule in terms of the Notification dated 27th June, 2011, bearing No.F-2-2-2011-XXII-P-2, therefore, cannot be termed as ultra vires the provisions of the Central Act of 2009 or the Rules and Regulations framed thereunder or for that matter the Notification dated 21st November, 2011 issued by the Central Government.

8. As the petitioner has failed to substantiate the challenge to the amended Rules referred to above, the consequential relief claimed by the petitioner for issuing direction to the respondents to appoint him on the post of Contract Teacher Grade-III concerning the primary school for classes I to VIII cannot be

countenanced.

9. Accordingly, taking any view of the matter and as no other contention is raised by the petitioner before us, this petition as well as companion writ petitions ought to fail and the same are hereby dismissed.

10. After the pronouncement of this judgment in open Court, now the counsel for the petitioner submits that he would like to argue one more point. He invited our attention to paragraph 2 of the Notification dated 21st November, 2011, which mentions about the minimum educational qualification for being appointed as teacher for classes VI to VIII. Relying on that part of the Notification, it is argued that the petitioner should be appointed on the post of Teacher for classes VI to VIII and for which reason the qualification possessed by him of Bachelor in Education must be treated as valid and sufficient. This argument once again, to say the least, is ill-advised. The category of teachers has been mentioned in the Schedule. It is a different matter that the Teacher Grade-III is expected to teach in classes I to VIII. Classes-VI to VIII may be overlapping with the teachers appointed for classes I to VIII, but, the appointment is primarily as Grade-III Teacher for primary schools where they are expected to train students of classes I to V as well.

11. As a result, even this argument of the petitioner cannot be taken further in the context of the relief claimed by the petitioner. Hence, this petition as well as other connected writ petitions are hereby dismissed with no order as to costs.