

(2019) 04 RAJ CK 0048

In the Rajasthan High Court

Case No : Civil Writ Petition No. 16664 Of 2018

Priyanka Menaria

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 11-04-2019

Acts Referred:

Rajasthan Panchayati Raj Rules, 1996 — Rule 266

Citation : (2019) 04 RAJ CK 0048

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Abhimanyu Singh Rathore, Kailash Choudhary, Manish Vyas

Final Decision : Allowed

Judgement

This writ petition has been filed by the petitioner aggrieved against her disqualification for the post of Teacher Gr.III (Level-II) pursuant to the advertisement dated 31.7.2018.

By advertisement dated 31.7.2018, the respondents advertised 2800 posts for Teacher Gr.III (Level-II) for the subject Social Science. The petitioner being eligible applied for the same in the unreserved category and claimed her status as a widow. In the select list dated 3.9.2018 (Annex.9), the name of the petitioner appeared at Sr. No.1654 with merit 2452 and she was allotted District Chittorgarh.

It is submitted that when the petitioner appeared before the respondents for document verification pursuant to her selection, her candidature was rejected on account of the fact that she had done her graduation in Commerce (B.Com) and as such she was not qualified for the post of Teacher Gr.III (Level-II) for subject Social Science.

It is submitted by learned counsel for the petitioner that the petitioner has obtained bachelors degree in Commerce from Mohan Lal Sukhadia University, Udaipur and has inter alia studied Banking and Business Economics as one of the

subject for three years course in all the three years.

Submissions have been made that as per the qualification prescribed under Rule 266 of the Rajasthan Panchayati Raj Rules, 1996 ('the Rules of 1996'), the requisite qualification for the post of Teacher Gr.III (Level-II) subject Social Science is that the candidate must have passed graduation or equivalent examination with at least one subject as an optional subject from amongst History, Geography, Economics, Political Science, Sociology, Public Administration and Philosophy and as the petitioner has studied Economics during her graduation, she was qualified and the rejection by the respondents in this regard is not justified.

Further submissions have been made that in the frequently asked questions (FAQs) published by the respondents, in response to question no.19, it was specifically indicated by way of example that if the candidate has done his/her graduation in Commerce and the additional subject group is not included therein, the same can be filled up as per the indications made therein and, therefore, merely because the petitioner has done her graduation in commerce, she cannot be disqualified by the respondents and, therefore, the action of the respondents in rejecting the candidature of the petitioner deserves to be quashed and set aside.

A reply to the writ petition has been filed by the respondents inter alia indicating that as the petitioner has done her graduation in Commerce and had applied for subject Social Science and in terms of the Rules of 1996 as the petitioner was not having the mentioned subject as one of the subject in her graduation, her candidature was rightly rejected and, therefore, no case for interference is made out.

Learned counsel for the petitioner with reference to the mark-sheets of three years of graduation made submissions that the petitioner has studied subject Banking and Business Economics for three years and reference was made to the syllabus filed as Annex.13 to emphasize that from the said syllabus also, it cannot be said that the petitioner had not studied Economics in her graduation and, therefore, it cannot be said that the petitioner does not have the subject Economics in her graduation so as to disentitle her for the post based on her qualification.

Learned counsel appearing for the respondents supported the action of the respondents and made submissions that a bare look at the requirement of the advertisement indicates that the candidate must have studied Economics as an optional subject and from a perusal of the mark-sheet, it is apparent that the petitioner had not studied Economics but had studied Banking and Business Economics, which does not fulfill the requirements of the qualification as indicated and, therefore, the petitioner being ineligible, rejection of her candidature cannot be questioned and the petition deserves to be dismissed.

I have considered the submissions made by learned counsel for the parties and

have perused the material available on record.

A bare look at the requirement of Rule 266 reveals that for the post of Teacher Gr.III (Level-II) subject Social Science, the candidate must have passed graduation with at least one subject as optional subject from the various subjects indicated as noticed earlier, which includes Economics.

It may also be noticed that the requirement in the Rule for the subject Science indicates similar requirements and the optional subjects indicated therein are Chemistry, Physics and Botany, Zoology, Micro-Biology, Bio-Technology and Bio-Chemistry.

A bare look at the said requirements for the eligibility, which is based on the law laid down by this Court in the case of *Sher Singh & Ors. v. Dinesh Singh & Ors.*: 2018 (3) WLN 318 (Raj.) is that the Teachers, who are required to teach particular subjects must have background for teaching those subjects and for the said purpose, the requirement indicated is that they must have studied the said subject during course of their graduation.

Looking to the nature of work i.e. of teaching students of Class 6th to 8th, the requirement / qualification for teachers for each subject in the Rule amended post judgment has been broad-based, whereby, the candidates having done their graduation could teach the subject, in which, recruitment is to take place i.e. Social Science/ Science etc.

Keeping in view the said philosophy, a look at the FAQs, which have been answered by the respondents pertaining to the recruitment with relation to those candidates, who have done graduation in Commerce, has to be examined, which reads as under:-

"यदि आवेदक द्वारा जिस विषय में आवेदन किया जा रहा है, स्नातक में वह विषय नहीं है (उदाहरण कॉमर्स) व आवेदक द्वारा अतिरिक्त विषय के रूप में आवेदित विषय में स्नातक उत्तीर्ण कर रखी है तो ऊपर की तीन लाइन में any other सलेक्ट करना है उसके बाद चौथी लाइन में additional subject group सलेक्ट कर उसके आगे additional subject तथा उसके कुल अंक व प्राप्तांक व अन्य सूचनाएँ भरनी है।

नोट- आवेदक द्वारा जिस विषय में आवेदन किया जा रहा है उसकी स्नातक परीक्षा में वह विषय होने पर additional subject का विवरण नहीं भरना है। स्नातक में आवेदित विषय नहीं होने पर ही additional subject का विवरण भरना है"

A perusal of the above answer would indicate that the respondents were well aware of the fact that the various subjects being taught at the graduation level, does not fit the requirements as indicated in the advertisement and, therefore, they had indicated the filling-up of additional subjects groups.

In the present case, the petitioner based on her graduation in Commerce and having studied Banking and Business Economics, sought appointment for the subject Social Science. As to whether the study undertaken by the petitioner during her graduation would fulfill the requirements of having studied Economics as an optional subject, which is sought to be questioned by the respondents, this

Court in the case of Komal Purohit v. State of Rajasthan & Ors.: S.B. Civil Writ Petition No. 13707/2018, decided on 12.10.2018 has based on the previous judgments in the case of Deepak Bariya v. RPSC & Ors.: 2018 (1) WLN 308 (Raj.), State of Rajasthan & Anr. v. Deepak Bariya & Ors.: DBSAW No.598/2018, decided on 04.04.2018 and Jyoti K.K. & Ors. v. Kerala Public Service Commission & Ors.: (2010) 15 SCC 596 laid down that even those candidates who have studied particular subject as compulsory subject would also be eligible.

The Division Bench in the case of Deepak Bariya (supra) while dealing with the requirements of the Rule qua qualification inter alia laid down as under:-

"1. Heard learned counsel for the appellant.

2. Issue which arises for consideration is whether a candidate who opts for a subject as a compulsory subject in graduation Course would be ineligible in terms of the qualification prescribed by the appellant which states that the candidate should have cleared a Graduation Degree in the concerned subject with English as an optional Subject.

3. The respondents have a graduation degree which shows that he had chosen English as a compulsory paper in the First, Second and Third Year of the three years Graduation Course.

4. It is trite that a rule has to be applied meaningfully and practically. The reason behind a rule needs to be ascertained to give meaning to a Rule.

5. As is known to one and all a person who clears Bachelor of Arts, Graduation Examination can opt for various disciplines such as History, Geography, Political Science, Social Science, English, Hindi, Psychology etc.

6. The University has given option to the candidates to opt for compulsory and optional Subject. The reason is a person desirous of acquiring better knowledge, to say History and Political Science, opts for the two as compulsory Subject and for others as optional subject.

7. The idea behind the rule in question framed by the appellant is to ensure that the candidate concerned has adequate knowledge in the Subject for which the candidate offers candidature to be appointed as a Teacher.

8. Since the respondent have opted for English as a compulsory subject in the graduation Course, the object of the rules is satisfied. Thus, we find no infirmity in the view taken by the learned Single Judge. The impugned order dated 26.05.2017 is upheld.

9. The writ petition is dismissed in limine."

(emphasis supplied)

In view of the above philosophy carved out by the Division Bench and the purport of the Rule as noticed hereinbefore regarding the candidates having studied subjects in their graduation, it cannot be said that if the petitioner had

studied Banking and Business Economics, she would be ineligible for grant of appointment for the subject Social Science.

The syllabus (Annex.13) produced by the petitioner fortifies the contention of having studied Economics as such during course of her graduation and, therefore, the action of the respondents in rejecting the candidature of the petitioner by mere reference to the fact that the mark-sheets produced by the petitioner indicated Banking and Business Economics instead of Economics, cannot be sustained.

The above aspect also finds support from the fact that for subject Science the candidates having studied Bio-Technology and Bio-Chemistry have been held eligible, which are also specialized subjects within broader subject Science and, therefore, as the petitioner has studied Banking & Business Economics, the same can very well be treated as part of Economics.

Consequently, the writ petition filed by the petitioner is allowed. It is held that the petitioner, who has studied Banking and Business Economics in her graduation (B.Com) would be eligible for appointment on the post of Teacher Gr.III (Level-II) in subject Social Science.

The respondents would take steps for according appointment to the petitioner, in case, the petitioner is found otherwise eligible. The petitioner would be entitled to all consequential benefits regarding her seniority etc. However, monetary benefits would be paid to the petitioner from the date of her appointment.

Needful may be done by the respondents within a period of four weeks from today.