
(2015) 09 RAJ CK 0030

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 12304, 12381, 12493, 12606 and 12359 of 2015

Rameshwarlal and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 08-09-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 309

Citation : (2015) 09 RAJ CK 0030

Hon'ble Judges : Ajay Rastogi, J;J.K. Ranka, J

Bench : Division Bench

Advocate : Anoop Dhand, Rajendra Sharma and Manish Parihar, for the Appellant; Pradeep Mathur, N.M. Lodha, Advocate General/Senior Counsel assisted by Dharamveer Tholia, Additional Advocate General and Shitanshu Sharma and Vishal Sharma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. Instant batch of petitions have been filed by the petitioners who as alleged worked at one point of time in the recent past either as Guest Faculty or in the department of Informal Education as "Anudeshak", etc. and served under the State Government School/State Government Educational Projects but have crossed the upper age limit of 35 years or under proviso (i) to R.15 of the Rules, 2015 and their grievance is that they have served in the State Government Schools/State Government Educational Projects at one point of time or in the recent past and were within age on the date of their initial engagement in the State Government Schools/State Government Educational Projects but now have crossed the upper age limit and are entitled to seek relaxation invoking R.15(x) of the Rules be treated to be within the age limit & to participate in the selection process which has been initiated by the respondents pursuant to the advertisement dt. 21.07.2015.

2. We have taken note of the facts for our consideration from D.B. Civil Writ

Petition No. 12304/2015. The writ petitioner had served as "Anudeshak" in the department of Informal Education w.e.f. 21.10.1995 to 15.03.1999 and discontinued thereafter and indisputably is not serving under the State Government Schools/State Government Educational Projects.

3. The post of Vidhyalay Sahayak is included in Schedule-I appended to the Rajasthan Vidhyalay Sahayak Subordinate Service Rules, 2015 which has been and framed by the State Government in exercise of powers conferred by the proviso to Art. 309 of the Constitution vide Notification dt. 20.07.2015 initiating selection process for direct recruitment for 33689 vacancies of Vidhyalay Sahayak pursuant to the advertisement dt. 21.07.2015.

4. Counsel for the petitioners submit that the petitioners had served in the State Government School/State Government Educational Projects as Anudeshak in the Department of Informal Education which is also a State Government Educational Project and are eligible to participate in the selection process which the respondents have initiated holding selection for the post of Vidhyalay Sahayak pursuant to advertisement dt. 21.07.2015 and further submit that R.16 of the Rules, 2015 which became selective in holding the candidates of particular projects eligible to participate in the selection process is having no nexus with the object to be achieved is arbitrary & violative of Art.14 of the Constitution of India.

5. It has also been prayed that R.15(x) of the Rules, 2015 which restricts such of the persons/candidates, working in the State Government School/State Government Educational Projects for relaxation in the upper age limit and to make them eligible to participate at the time of direct recruitment even if they have crossed the age limit is arbitrary and violative of Art.14 of the Constitution and it deserves to be extended to all such candidates who at one point of time have served under any of the State Government Schools/State Government Educational Projects which are illustrative and not exhaustive and the project in which the petitioners have worked as "Anudeshak" deserves to be considered at par with such of the educational projects of the State Government and they too are entitled to be considered within age limit to participate in the selection process invoking R.15(x) as they were eligible and within age on the date of their initial engagement in the State Government Schools/State Government Educational Projects as "Anudeshak" in the Department of Informal Education.

6. Shri N.M. Lodha, Advocate General and Shri D.V. Tholia, Additional Advocate General appearing of respondent-State on the other hand submits that Informal Education is not a State Government Educational Project and the projects included in Schedule-I to R.16 of the Rules, 2015 and experience prescribed u/ R.2(j) of the Rules, 2015 gained by academic/non-academic work in State Government Schools/State Recognized Non-Government School/State Government Educational Projects be acknowledged and gained by the person/candidate if he is otherwise eligible to participate in the selection process under the scheme of Rules, 2015.

7. Counsel further submits that as regards the candidates who at one point of time had served either in the State Government Schools/State Government Educational Projects, as alleged, of which reference has been made u/R.16 read with Schedule-I appended to the scheme of Rules, 2015 in holding eligibility of the candidate for selection to the post of Vidhyalay Sahayak or R.15(x) of the Rules, 2015 of which the candidates are seeking relaxation remain confined to the persons who are serving in such of the projects at the time of issuance of advertisement dt. 21.07.2015 to become eligible & to participate in the selection process and it has a reasonable nexus with the object to be achieved, merely served in one or the other project of the State Government could not be relevant to consider a candidate eligible to participate in the selection process.

8. Counsel for respondents further while supporting the scheme of Rules, 2015 submits that one year of experience is one of the condition of eligibility and that may certainly give better efficiency to a person who may be finally inducted as Vidhyalay Sahayak under Rules, 2015 and the rule making authority, if requires one year's experience as a condition of eligibility, it cannot be held to be either arbitrary and unreasonable or hit by any lack of legislative competence or violative of any of the fundamental rights guaranteed under the Constitution or of any other constitutional provisions or statutory Rules and may not be invalidated merely because the incumbents, approaching to this court, are not holding such qualifications.

9. We consider it appropriate to quote R.2(j), 15(x), 16 & Schedule-I appended to the scheme of Rules, 2015, which read ad infra:--

"R.2(j) "Experience" wherever prescribed in these rules means the experience gained by Academic/Non-Academic work in State Government/School State Recognized Non-Government School/State Government Educational Projects (other than those engaged through placement agencies) viz. Lok Jumbish Pariyojana Sarva Shiksha Abhiyan/District Primary Education Programme/Rajiv Gandhi Pathshala/Shiksha Karmi Board and Madarsa listed under the Madarsa Board.

15(x). Age.--A candidate for direct recruitment to a post enumerated in the Schedule-I must have attained the age of 18 years and must not have attained the age of 35 years on the first day of January next following the last date fixed for receipt of applications.

Provided that -

(i) to (ix) XX XX XX

(x) the persons serving under State Government School/State Government Educational Projects (other than those engaged through placement agency) viz. Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/District Primary Education Programme/Rajiv Gandhi Pathshala/Shiksha Karmi Board and Madarsa listed under the Madarsa Board shall be deemed to be within age limit, had they been

within the age limit when they were initially engaged even though may have crossed the age limit at the time of direct recruitment.

16. Academic and technical qualifications and experience.--A candidate for direct recruitment to the post enumerated in the Schedule-I shall possess:--

(i) the qualifications and experience given in column-4 of the Schedule-I; and

(ii) working knowledge of Hindi written Devnagri script and knowledge of Rajasthani culture.

10. After repealing the Rajasthan Education Assistant Services Rules, 2013, the State Government in exercise of powers conferred by the proviso to Art.309 of the Constitution framed the Rules called "Rajasthan Vidhyalay Sahayak Subordinate Service Rules, 2015" and the post of Vidhyalay Sahayak is included in the Schedule-I annexed to R.16 of the Rules, 2015 laying down the minimum qualification and one year's of academic/non-academic experience of working in State Government School/State Recognized Non-Government School/State Government Educational Projects is acknowledged as experience gained by the person, as provided u/R.2(j) of the Rules, 2015 and apart from the academic qualification and experience one has to be within the prescribed age limit for direct recruitment to the post provided u/R.15 of the scheme of Rules, 2015 and the candidate must have attained the age of 18 years and must not have attained the age of 35 years on the first day of January next following the last date fixed for receipt of applications. However, the upper age limit has been relaxed by 5 years for candidates belonging to Scheduled Castes, Scheduled Tribes, Backward Classes and Special Backward Classes and for woman candidates belonging to General Category and Economically backward Classes and by 10 years for woman candidates belonging to Scheduled Castes, Scheduled Tribes, Backward Classes and Special Backward Classes and thus the candidates belonging to the particular categories, as referred to under proviso (i) to R.15 of the Rules, 2015, their upper age limit is relaxed but at the same time those persons who are not covered to seek relaxation but are otherwise eligible and serving in the State Government Schools/State Government Educational Projects they were treated to be within age limit, had they been within the age limit when he was initially engaged even though may have crossed the age limit at the time of direct recruitment and considered to be eligible & within the age limit to participate in the selection process under the Rules, 2015.

11. The question emerges for our consideration is that such of the candidates who at one point of time served in academic/non-academic work in any of the State Government Schools/State Government Educational Projects but not serving in any of the State Government School/State Government Educational Projects at the moment could they be considered eligible to claim benefit of relaxation provided under R.15(x) of the Rules, 2015.

12. Counsel for petitioners submit that since the scheme of Rules, 2015 has been introduced only for such of the candidates who had worked in academic/non-

academic in the State Government Schools/State Government Educational Projects and they alone are made eligible to participate in the selection process with one year's experience, as a condition of eligibility, if not taken care of the very purpose of R.15(x) of the Rules, 2015 will be frustrated.

13. Admittedly, the petitioners are not serving in any of the State Government Schools/State Government Educational Projects or even in the projects which are referred to u/R.15(x) of the Rules, 2015 and indisputably, as per their own statement, the petitioners had worked at one point of time in the recent past in State Government Schools/State Government Educational Projects of which they are claiming benefit and seeking relaxation and their contention is that the action of the respondents in not treating them at par with such of the candidates who are serving in such projects which are referred to u/R.15(x) of the Rules, 2015 is discriminatory and violative of Art.14 of the Constitution of India.

14. Ld. Advocate General Mr. N.M. Lodha and Mr. D.V. Tholia, Additional Advocate General jointly submit that R.15(x) of the Rules, 2015 is explicitly clear and the benefit of relaxation is extended only to those persons who are serving in the State Government Schools/State Government Educational Projects and such of the candidates can be treated to be within age limit who were within the age limit on the date of their initial engagement even though they have now crossed the age limit can be considered for direct recruitment and be permitted to participate in the selection process but the present petitioners have served at some point of time in the recent past in the State Government Educational Projects, as alleged, subject to verification, if they are not serving person in the State Government Schools/State Government Educational Projects of which reference has been made u/R.15(x) of the Rules, they are not entitled to seek relaxation in age to make themselves eligible for participation in the selection process which has been initiated by the respondents pursuant to advertisement dt. 21.07.2015.

15. We have heard counsel for the parties and with their assistance perused the material placed on record.

16. It is trite law that the court would ordinarily take recourse to the golden rule of literal interpretation. It is settled and the Rule of interpretation of statute is that statute is to be interpreted according to grammatical and ordinary sense of the word in grammatical or liberal meaning unmindful of consequence of such interpretation and it is predominant method of reading statute. The principle of interpretation according to the legislative intent is always accepted to be more logical and when the law to be applied in a given case prescribes interpretation of statute, it is an obligation of the court to ascertain the facts and then interpret the provisions of law to apply to such facts. Obviously, it cannot be said that interpretation cannot be in a vacuum or in relation to hypothetical facts when words of the provision are clear, plain & unambiguous and reasonably susceptible to only one meaning irrespective of consequence for the provision speaks for itself. It is the function of the legislature to say what shall be the law and it is

only the court to say what the law is.

17. In the existing scheme of Rules, 2015, the post of Vidhyalay Sahayak, which is included in Schedule-I annexed to R.16 of the Rules, 2015 apart from minimum qualification, the experience which has been gained by academic/non-academic work in the State Government Schools/State Recognized Non-Government School/State Government Educational Projects is being acknowledged as experience wherever prescribed u/R.2(j) of the Rules, 2015 and the State Government Educational Projects that has been defined may be illustrative and not exhaustive is a question which is not to be examined in the instant proceedings but the candidate who intends to participate has to be within the prescribed age limit envisages u/R.15 of the Rules, 2015 which clearly provides that a candidate must have attained the age of 18 years and must not have attained the age of 35 years on the first day of January next following the last date fixed for receipt of applications.

18. In the instant case, since the advertisement pursuant to which the selection process has been initiated for the post of Vidhyalay Sahayak is dt. 21.07.2015, the candidate is supposed to have attained the age of 18 years and not to have attained 35 years on the first day of January next following the last date fixed for receipt of application i.e. 01.01.2016, however, under proviso (i) relaxation has been provided of five years to male candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes and Special Backward Classes; five years for woman candidates belonging to General Category and Economically backward Classes; and at the same time 10 years in case of woman candidates belonging to Scheduled Castes, Scheduled Tribes, Backward Classes and Special Backward Classes and that becomes the upper age limit for such candidates but at the same time under proviso (x) to R.15 of the Rules, 2015 with which we are presently concerned, those persons who are serving (academic/non-academic work) under the State Government School/State Government Educational Projects, as alleged, and were within the age limit at the time of their initial engagement even though have crossed the age limit at the time of direct recruitment are considered to be within the age limit and deserves relaxation under proviso (x) to R.15 of the Rules, 2015 but at the same time such of the persons who are within the age limit on the date when he was initially engaged in the respective State Government School/State Government Educational Projects but had served at some stage under State Government Schools/State Government Educational Projects and if such of the persons have crossed the age limit at the time when the recruit process pursuant to advertisement dt. 21.07.2015 has been initiated shall not be considered to be eligible for relaxation in the upper age limit to participate in the recruitment process initiated pursuant to the advertisement dt. 21.07.2015 and literal & plain interpretation of the provision itself makes it explicitly clear that persons serving under the State Government School/State Government Educational Projects are alone entitled to claim benefit for relaxation provided the person at the time of initial engagement was within age limit shall be deemed to be within age limit even though has

crossed the age limit at the time of initiation of the recruitment process provided u/R.15(x) of the Rules, 2015.

19. We find substance in the submission made by Mr. N.M. Lodha, Advocate General and Mr. D.V. Tholia, Additional Advocate General that literal interpretation of R.15(x) of the Rules, 2015 is explicitly clear and susceptible to only one meaning that it extends benefit of relaxation only to such of the persons who are serving in the State Government School/State Government Educational Projects and only serving persons under the State Government School/State Government Educational Projects if are within age limit at the time of initial engagement even though has crossed the age limit at the time when process of recruitment has been initiated pursuant to advertisement dt. 21.07.2015 could be considered eligible and within age and entitled for relaxation but if the persons who at one point of time had served in the State Government School/State Government Educational Projects like the present petitioners even for sufficient long time but discontinued and not serving in any of the State Government School/State Government Education Projects when recruitment process has been initiated by the State Government pursuant to advertisement dt. 21.07.2015, we have no doubt in our mind to hold that such persons even if served for academic/non-academic work in the State Government School/State Government Educational Projects provided u/R.2(j) or R.16 of the Rules, 2015 would not be entitled to claim benefit of relaxation u/R.15(x) of Rules, 2015.

20. In our considered view, the present petitioners indeed are not the serving persons in the State Government School/State Government Educational Projects, as alleged by them, subject to verification from record, and have crossed the upper age limit of 35 years prescribed under the R.15 of the Rules, 2015 on the first day of January next following the last date fixed for receipt of application i.e. 01.01.2016 or the upper age limit prescribed under the proviso (i) to R.15 of the Rules, 2015 of five years in the case of male candidate belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes and Special Backward Classes; five years for woman candidates belonging to General Category and Economically backward Classes; and at the same time 10 years in case of woman candidates belonging to Scheduled Castes, Scheduled Tribes, Backward Classes and Special Backward Classes and claiming themselves to be within age at the time of initial engagement, as alleged, are not eligible to claim relaxation in age invoking R.15(x) of the Rules, 2015 treating them to be eligible to participate in the selection process initiated by the respondents pursuant to the advertisement dt. 21.07.2015.

21. Consequently, the instant batch of writ petitions are devoid of merit and accordingly stands dismissed.