
(2006) 02 JH CK 0036

In the Jharkhand High Court

Case No : Writ Petition (S) No's. 5220 and 5374 of 2005

Santosh Kumar Mahato and Ram Vinay Roy and Another

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-02-2006

Acts Referred:

Citation : (2006) 2 JCR 271

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : A.K. Sahani, B. Kumar, D.P. Tiwari and A.K. Toppo, for the Appellant;
A.K. Sinha, S. Piprawal and I. Sen Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—Heard learned counsel for the parties.

2. Since, in these two writ applications, common question of law and facts are involved, the same are being heard together and disposed of by this common judgment.

3. First of all, I will take up WPS No. 5220 of 2005. In this case, the petitioner is posted as Assistant Teacher in Primary School in the district of Lohardaga and he joined as such on 27.8.2000. In the year 2005, an advertisement was issued by respondent No. 3 under the direction of respondent No. 2, the Secretary, Higher Education, Govt. of Jharkhand being Advertisement No. 4 of 2005, which was published in the newspaper on 26.8.2005 by respondent No. 3, the Public Service Commission for appointment of teachers in secondary schools. As per the Advertisement, all persons who completed five years' teaching experience as on 1.1.2005 were eligible to apply for the said post. The petitioner's case is that because of the condition of live years' experience put in the advertisement, he was deprived from appearing in the competition and only a limited number of teachers of few districts were eligible to appear in the competitive examination. Petitioner's grievance is that such condition of putting an arbitrary cutoff date in

the advertisement is wholly arbitrary and discriminatory.

4. In the counter-affidavit filed by respondent Nos. 3 and 4, it is stated that Jharkhand Public Service Commission (in short the Commission") on the basis of the requisition given by the Director. Secondary Education,- Govt. of Jharkhand. The respondents" case is that according to Jharkhand Rajkiyakrit Madhyamik Vidyalaya Niyamavali, 2004, for appointment on the post of teacher in Secondary Schools, a candidate must have five-years" teaching experience. The said period of experience fixed in the aforementioned rule has been reduced to 4-1/2 years by amendment made in the said Rule by the State Government vide notification dated 13.9.2005. It is contended that the petitioner is not eligible for the present examination because his date of joining as Assistant Teacher in the Primary School is 27.8.2000.

5. There is no dispute that under the Jharkhand Rajkiyakrit Madhyamik Vidyalaya (Seva Shart) Rules, 2004, the eligibility criteria fixed for appearing in the competitive examination for appointment as teacher in the Secondary School is that the candidates must have five years" teaching experience. In terms of the aforesaid Rules, the Govt. of Jharkhand issued advertisement being Advertisement No. 4/2005 inviting applications for appointment on the post of teachers in the secondary .schools. Clause 4 of the. said advertisement clearly mentions that only those teachers shall be eligible to participate in the examination who have five years, teaching experience up to 1st January, 2005. Admittedly, the petitioner joined the service, as teacher on 27.8:2000 and therefore, he having not acquired five years teaching experience till 1.1.2005. is not eligible to apply for the said post.

6. The grievance of the petitioner is that many teachers including petitioner appeared in the examination for the post of Assistant Teacher in Primary Schools pursuant to the advertisement issued by Bihar Public Service Commission in the year 1996. But the Commission issued appointment letters district-wise and in some of the districts like Lohardaga, Latehar, Palamau, Gumla, Giridih, Chatra, Deoghar, Koderma, Simdega, Bokaro, Garhwa, Dhanbad, Godda and Dumka, appointment letters were issued much after the issuance of appointment letters to the candidates belonging to other districts including Ranchi. Consequently, in some of the districts, the candidates joined at an early date and completed five years, teaching experience whereas in some of the districts, appointment were made in the year 2000, as a result of which teachers of those districts including petitioner could not complete five years" teaching experience. It has also been alleged by the petitioner in the writ petition that the Rule has been amended by the Government reducing teaching experience from 5 years to 4-1/2 years only to accommodate some of the candidates who have completed 4-1 /2 years teaching experience. It is contended that out of 22 districts in the State of Jharkhand, teachers employed in 14 districts shall be deprived from appearing in competitive examination and only limited number of teachers of this district including the district of Ranchi will be entitled to appear in the said examination.

As such, action on the part of the respondents putting arbitrary cut-off date of teaching experience is wholly discriminatory, arbitrary and mala fide.

7. Curiously enough, all these averments and allegations have not been denied by respondent Nos. 1 and 2, the Govt. of Jharkhand by filing counter affidavit, Even in the counter affidavit filed by the commission, these averments and allegations have not been denied.

8. As discussed above, in the Rules, 2004, the. eligibility criteria for appearing in the examination for the post of teachers in secondary schools is five years" teaching experience and according to the said Rules, petitioner is not eligible to appear in the examination. The said Rules applies to all the teachers and therefore, it cannot be held to be discriminatory, arbitrary and mala fide. However, no explanation has been put forward by the respondents as to why by subsequent notification, Rule was amended and the period of teaching experience was reduced to 4-1/2 years from 5 years. Certainly, by the aforesaid. amended Rules, whereby teaching experience has been reduced to 4-1/2 years, only some of the candidates become eligible to appear in the examination.

9. As noticed above, the uncontroverted statements made by the petitioner is that because of the late issuance of appointment letters, many of the candidates could not acquire teaching experience for appointment in the primary schools. Reasons for lowering down the teaching experience by giving relaxation of six months has not been disclosed by the respondent.

10. I have, therefore, no doubt in my mind in holding that the notification amending Rules and reducing teaching experience from 5 years to 4-1/2 years will amount to serious discrimination amongst primary teachers who have been appointed pursuant to one advertisement issued in 1996. Subsequent relaxation, in absence of any justification, will certainly be taken as accommodating some candidates for the reasons best known to the Government. In my opinion, therefore, subsequent notification amending teaching experience cannot be sustained in law. I, therefore, hold that only those candidates who have completed five years teaching experience on 1.1.2005 should only be eligible for appearing in competitive examination. In that view of the matter, petitioner having not completed five years" teaching experience is not entitled to appear in the said examination.

11. In WPS No. 5374 of 2005, petitioners have challenged the Advertisement No. 1/2004-05 published by Jharkhand Public Service Commission (in short the Commission") inviting application for appointment on the post of teacher in the Govt. Nationalized School on the ground inter alia that maximum age limit has been fixed as 35 years. Petitioners" case is that there should be relaxation of five years in maximum age limit for appearing in the examination, at least for those candidates who are working as Govt. Teachers.

12. As noticed above, a separate advertisement being Advertisement No. 4/2005 was published inviting applications from those candidates who are working as

primary teachers and have acquired teaching experience of five years. Admittedly, petitioners have been appointed in 2004 as primary teachers in different schools. I, therefore hold that this advertisement will not apply in the case of these petitioners. As against Advertisement No. 4/2005, the candidates who are working as primary teachers and have acquired requisite experience may apply for the said post. No. relief can be granted to the petitioner in these writ applications.

13. For the reasons aforesaid, these writ applications are dismissed with the aforesaid direction.