

(2013) 03 MP CK 0044

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4529 of 2013

Sanyogita Thakur and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 21-03-2013

Acts Referred:

Right of Children to Free and Compulsory Education Act, 2009 — Section 23(1), 23(2)

Citation : (2013) ILR (MP) 1357 : (2013) 3 MPHT 141 : (2013) 2 MPLJ 206

Hon'ble Judges : Alok Aradhe, J

Bench : Single Bench

Advocate : Praveen Verma, V.K. Soni, R.K. Thakur, Rajesh Soni, Narendra Sharma, Rajesh Dubey, Vijay Shukla and Niranjana Pathak, for the Appellant; P.K. Kaurav, Additional Advocate General and Rajesh Tiwari and Piyush Dharmadhikari, Government Advocates for State, for the Respondent

Judgement

Alok Aradhe, J.—In this petition, the petitioners who are candidates for appointment to the post of Samvida Shala Shikshak Grade-III and hold B.Ed. degrees inter alia seek a direction to the respondents to permit them to participate in the counselling for the post of Samvida Shala Shikshak Grade-III and to appoint them on the said post. The facts, necessary for adjudication of the controversy involved in the instant petition are that the petitioners qualified the Teacher Eligibility Test held for Samvida Shala Shikshak Grade-III. The petitioners have obtained Bachelor degree in Education. However, when the petitioners appeared in the counselling they were informed by the authorities that they do not have requisite qualification as prescribed under the M.P. Panchayat Samvida Shala Shikshak (Employment and Conditions of Contract) Rules, 2005 (in short "the Rules"). In the aforesaid factual background, the petitioners have approached this Court.

2. Learned counsel for the petitioners while inviting the attention of this Court to Schedule-II of the Rules have submitted that initially the qualification prescribed in the Rules for appointment on the post of Samvida Shala Shikshak Grade-III

was Higher Secondary Examination or its equivalent. In pursuance of the advertisement issued by the respondents, the petitioners appeared in the Teacher Eligibility Test conducted by the respondents. The petitioners were declared successful in the aforesaid examination. However, subsequently, the Rules were amended w.e.f. 27-6-2011 and the qualification prescribed for the post of Samvida Shala Shikshak Grade-III has been altered due to which the petitioners have become ineligible for appointment on the post of Samvida Shala Shikshak Grade-III. It is further submitted that initially in the 2005 Rules, there was no condition with regard to passing of D.Ed, examination. It is also urged that once the process of selection has started, the eligibility criteria cannot be altered to disadvantage of the petitioner. It is further contended that the amendment made in the Rules which came into force on 27-6-2011 does not apply to the cases of the petitioners. It is also submitted that the petitioners cannot be held to be disqualified on the ground that they are overqualified and the petitioners who hold the B.Ed. degree are being subjected to discrimination. In support of their submissions, learned counsel for the petitioners have placed reliance on the decision in Madan Mohan Sharma and Another Vs. State of Rajasthan and Others,

3. On the other hand, learned Additional Advocate General submitted that there are two separate sets of Rules framed for rural areas as well as urban areas, namely, Madhya Pradesh Nagreeya Nikay Samvida Shala Shikshak (Employment and Conditions of Contract) Rules, 2005. The aforesaid Rules came into force with effect from 6-5-2005. The Parliament enacted the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as "the 2009 Act") which came into force w.e.f. 26-8-2009. It is further submitted that in exercise of power u/s 23(1) of the 2009 Act, the National Council for Teacher Education by Notification dated 23-8-2010 prescribed the qualification for the post of teachers. Accordingly, the corresponding amendment in the Rules was made by the State Government with effect from 25-6-2011. It is pointed out that the amendment in the Rules was incorporated prior to issuance of the advertisement and the advertisement was issued in accordance with the amended Rules.

4. While inviting the attention of this Court to clause 7.2 of the advertisement issued for Teacher Eligibility Test it is contended that as per aforesaid clause separate merit lists of the candidates who possess the requisite qualification and the candidates who do not possess the requisite qualification were prepared. In view of the relaxation granted by the Central Government in exercise of power u/s 23(1) of the 2009 Act vide Notification dated 21-11-2011 even the candidates who do not have requisite qualification were allowed to appear in the Teacher Eligibility Test. In view of the aforesaid Notification the State Government has to give priority in the matter of appointment to the eligible candidates who have requisite qualifications as per the Notification dated 25-8-2010 issued by the National Council of Teacher Education and thereafter to consider other candidates as per relaxation granted by the aforesaid Notification. It is also submitted that there are more than 49,000 posts of Samvida Shala Shikshak Grade-HI, out of

which only 25,000 candidates having requisite qualifications have applied for counselling. Remaining 24,000 posts of Samvida Shala Shikshak Grade-III shall be filled up from the eligible candidates under the Notification dated 21-11-2011 issued by the Central Government. Learned Additional Advocate General further submitted that the State Government shall obtain extension from the Central Government to fill up the remaining posts of Samvida Shala Shikshak Grade-in and shall hold a separate counselling for the candidates who are eligible in view of the Notification dated 21-11-2011 issued by the Central Government and shall prepare a separate merit list based on inter se merit of such candidates.

5. I have considered the respective submissions made by learned counsel for the parties. Madhya Pradesh Samvida Shala Shikshak (Employment and Conditions of Contract) Rules, 2005 came into force with effect from 6-5-2005. Thereafter the Parliament enacted the Right of Children to Free and Compulsory Education Act, 2009 which came into force w.e.f. 26-8-2009. Section 23(1) of the aforesaid Act provides that any person possessing such minimum qualifications as laid down by an academic authority, authorised by the Central Government by Notification, shall be eligible for appointment as a teacher. u/s 23(1) of the 2009 Act, the National Council for Teacher Education has been authorised by the Central Government. By Notification dated 23-8-2010 the National Council for Teacher Education in exercise of power u/s 23(1) of the 2009 Act prescribed the qualifications. By an order dated 11-2-2011 the National Council for Teacher Education issued guidelines for conducting the Teacher Eligibility Test. The Government submitted a proposal to the Central Government on 3-5-2011 u/s 23(2) of the 2009 Act. Thereafter the Central Government u/s 23(2) relaxed the minimum qualifications prescribed by the National Council of Teacher Education u/s 23(1) of the 2009 Act vide Notification dated 25-8-2010 in respect of the State of Madhya Pradesh and the requirement of possessing two year Diploma in Elementary Education was relaxed. The State Government thereafter amended the 2005 Rules by Notification dated 27-6-2011 and prescribed the eligibility conditions for recruitment on the post of Samvida Shala Shikshak Grades I, II and III in conformity with the conditions prescribed by the National Council for Teacher Education as required under the Notification dated 21-11-2011 issued by the Central Government u/s 23(2) of the 2009 Act. Thereafter an advertisement was issued for Teacher Eligibility Test by which the applications were invited from 27-9-2011 to 27-10-2011. The examination was held on 22-1-2012 and the result was declared on 31-7-2012 which was modified on 4-8-2012. Thus, it is apparent that the Rules were amended prior to issuance of the advertisement by Notification dated 27-6-2011. The advertisement itself was issued in accordance with the amended Rules. Therefore, the contention of learned counsel for the petitioners that after the process of recruitment, the Rules have been amended and eligibility criteria has been changed, cannot be accepted.

6. At this stage, I may advert to the contention raised on behalf of the petitioners that they cannot be declared ineligible on account of possessing over qualifications. It is well settled in law that recruitment in public services should

be strictly in accordance with the terms of the advertisement and recruitment rules, if any. If a deviation is made from the Rules, the same allows entry of ineligible persons and it deprives many others who could not have competed for the posts. It is equally well settled that fixation of qualification for a particular post is a matter of recruitment policy. [See: P.M. Latha and Another Vs. State of Kerala and Others, and Yogesh Kumar and Others Vs. Government of NCT, Delhi and Others, Admittedly, in terms of the advertisement issued for Teacher Eligibility Test, the B.Ed. was not prescribed qualification. Samvida Shala Shikshaks Grade-III have to impart education to the students of class I to class VIII. In B.Ed. course the teachers are specially trained to teach small children in primary classes whereas in B.Ed. course the training is imparted to the teachers to teach the students of higher classes. Therefore, it cannot be said that teachers who hold the B.Ed. degree are suitable for appointment as teachers to impart education to the students of class I to class VIII. It is open for the recruiting authority to frame a policy of recruitment and to decide the source from which such recruitment is to be made. It is also not disputed that the petitioners did not have the requisite qualification therefore, the contention that merely because the petitioners are overqualified and, therefore, they cannot be excluded from the consideration, cannot be accepted.

7. Paragraph 2 of Notification dated 21-11-2011 provides for conditions subject to which relaxation was granted. The relevant extract of the aforesaid paragraph reads as under:

2. The relaxation granted under this Notification shall be valid for a period up to the 31st March, 2013, subject to fulfilment of following conditions, namely,

(i) The State Government of Madhya Pradesh shall conduct the Teacher Eligibility Test as specified in the said Notification as amended from time to time, of the Council in accordance with the Guidelines for conducting Teacher Eligibility Test, dated the 11th February, 2011 issued by the Council and those persons who pass the Teacher Eligibility Test be considered for appointment as a teacher in classes I to VIII;

(ii) the State Government and other school managements shall amend the recruitment rules to provide for the minimum qualifications required for appointment of teachers laid down by the said Notification and the amended Notification of the Council;

(iii) the State Government shall in the matter of appointment give priority to those eligible candidates who passes the minimum qualifications specified in the said Notification dated the 25th August, 2010 as amended from time to time and thereafter, consider other candidates eligible with the relaxed qualifications under this Notification.

In pursuance of the aforesaid Notification the candidates who have passed the Higher Secondary Examination and had B.Ed. degrees were permitted to appear in the examination; However, the State Government under the said Notification is

under an obligation to provide preference to the candidates having requisite qualification. In view of the preceding analysis, candidates having B.Ed. degree do not have any right to claim parity with the candidates having requisite qualification and to seek participation in counselling along with the candidates having requisite qualification.

8. At this stage, I may advert to the statement which has been made by learned Additional Advocate General. Learned Advocate General submitted that in all there are more than 49,000 posts of Samvida Shala Shikshak Grade-III. In response to the counselling, only 25,000 candidates who are having the Diploma in Education have applied for the post in question. It is further submitted that the State Government would seek extension from the Central Government for filling up the remaining posts of the teachers from the candidates having qualification as per Notification dated 21-11-2011 issued by the Central Government as period of relaxation is expiring on 31-3-2013 and a separate counselling shall be held for the aforesaid candidates after obtaining the permission from the Central Government.

9. In view of the aforesaid submission made by learned Additional Advocate General and taking, into account clause 10 inserted in Schedule II to the Rules which provides that State Government shall initially appoint such teachers as Samvida Shala Shikshak who are having minimum qualification and in case trained persons are not available the State Government may appoint untrained persons on the post of Samvida Shala Shikshak as per the Notification issued u/s 23(2) of the Right of Children to Free and Compulsory Education, 2009, I deem it appropriate to direct that proposal for extension of time for filling up the posts of Samvida Shala Shikshak Grade-III from the candidates having qualifications as per Notification dated 21-11-2011 issued by the Central Government shall be forwarded by the State Government to the Central Government within a period of ten days from the date of receipt of certified copy of this order. This Court has no doubt that on receipt of the proposal for extension of period by the State Government, the Central Government shall take a decision on the aforesaid proposal expeditiously. As soon as the order of extension is received by the State Government, thereafter the State Government shall initiate the process of counselling for recruitment for remaining posts of Samvida Shala Shikshak Grade-III within a period of three weeks. After completion of the counselling a select list based on the merits shall be prepared and appointment letters shall be issued to the eligible candidates. With the aforesaid directions, the writ petition is disposed of.