
(2006) 05 RAJ CK 0015

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3639 of 2005

Saraswati (Smt.) and Another

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 01-05-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2006) 4 RLW 2714

Hon'ble Judges : N.P. Gupta, J

Bench : Single Bench

Advocate : G.R. Punia, V.N. Kalla, B.N. Kalla, R.S. Saluja, Sunil Joshi, D.D. Thanvi and Vinit Sanadhaya and M.S. Panwar, for Sajjan Singh, P.R. Mehta, M.A. Siddiqui, Ashok Kumar Choudhary, on behalf of Deepen Vyas, for the Appellant; S. Ladrecha, B.L. Bhati, AGA and S.N. Tiwari, Dy. G.A., for the Respondent

Final Decision : Dismissed

Judgement

N.P. Gupta, J.—This bunch of the writ petitions (above writ, and the writ petitions listed in the Scheduled involve common question of law, and therefore, all these writ petitions (alongwith the writ petition, listed in the Schedule), are being decided by this common order. Out of this bunch, in some of the writ petitions, show cause notices were issued, while some writ petitions have been admitted, in some matters, an interim order has been issued directing giving of provisional admission to the petitioner, with a rider, that, that will not create any right in favour of the petitioners. However, since the controversy involved is very short, and number of matters had arisen, vide order dt. 6.2.2006 all the matters were ordered to be listed together. It was understood, that at this stage itself, all the matters shall be finally decided, and with that understanding arguments were made in the cases that were listed on 20.3.2006 and 22.3.2006. Accordingly those writ petitions had been finally heard and judgment was reserved. However before the judgment could be pronounced, the remaining matters also came to be listed, and at the request of the learned Counsel for the parties requested that those cases (detailed in the Schedule-A) may also be decided on the same lines,

and along with the above twenty cases, and therefore the matters detailed in the Schedule-A, are also being decided, by this judgment.

2. The expression "this writ petition" hereafter shall mean, the petition described above, as well as all the writ petitions, mentioned in the Schedule. For the sake of convenience, 1 shall take the facts of the leading writ petition No. 3639/2005.

3. The reliefs claimed in the petitions are, for a direction to the respondent to accept the application forms of the petitioners, and to grant admission in the three years "in service" BSTC Correspondence Course starting from 17.6.2005.

4. The averments of the petitioners are, that the State Government had floated a scheme to train the untrained Shiksha Sahayogies/Shiksha Karmies, and Para Teachers, who were appointed under the various government schemes. This scheme was a self financed correspondence course scheme. It was for the first time introduced for the candidates in the year 2002, and now the State had issued guidelines to start a correspondence course in the year 2005-07 in the same manner (on the same curriculum). The copy of the order/guidelines dated 20.5.2005 has been produced as Annex.2.

5. The petitioners in all these cases, are lacking in academic qualifications, as contemplated in Annex. 2, inasmuch as, the eligibility requirement is Senior Secondary pass, and should have passed Secondary Examination with Hindi, English and Mathematics as subjects, and are not having the training of STC or B.Ed. The various Petitioners in this bunch are lacking in this academic qualification, from different stand points, inasmuch as, in some cases, the candidate is not having the three subjects in Secondary School Examination, or if has three subjects, the candidate did not pass in all the three subjects, though was conferred the qualification of Secondary School Examination, then some candidates are not having qualification of Senior Secondary pass, or some candidates were declared eligible to appear in Supplementary Examination, and either could not appear in Supplementary Examination, or could not pass that examination till the cut off date, while in some cases the qualification obtained from other institutions/boards are not recognized as equivalent to the requisite academic qualification of Secondary School or Sr. Secondary. Thus, with variety of circumstances, the common factor is, that all the petitioners are not possessing requisite academic qualifications for admission.

6. In this very sequence, in order to avoid any confusion, I may mention that in Writ No. 3749 of 2005 Smt. Nisha Joshi and Ors. v. State, various candidates have jointly filed the writ petition, and some of them have produced the mark sheet of Board of Secondary Education Madhya Pradesh about having passed the Higher Secondary Examination. However, a letter from Madhyamik Shiksha Mandal, Madhya Pradesh has been produced as Annexure-6 & 6A to the effect that this passing of Higher Secondary School Examination is equivalent to High School Examination, and accordingly the eligibility of the candidates being the petitioners has been considered as to whether they possess the requisite

academic qualification, or not, and it was found that none of the petitioners possess the requisite academic qualifications, and as such this writ is being decided with this bunch. Likewise in Writ No. 3520 of 2005 Samini Zai, the petitioner claims to be possessing the qualification of Adib Mahir to be equivalent to Sr. Secondary Examination, and for that purpose relied upon the decision of the Division Bench of this Court in Altaf Bano v. State of Rajasthan being D.B.S.A.W. 258 of 2004 decided on 6.4.2005. As against which the learned Counsel for the respondent relied upon an earlier judgment of the Division Bench of this Court in Jalaudin Silawat v. State D.B.S.A.W. 522 of 1999 decided on 4.7.2003 which held that this qualification is not recognised as equivalent to Sr. Secondary, and submitted that this judgment was not considered in Altaf Bano's case, in that view of the matter another Division Bench in State of Rajasthan v. Firdos Tarannum reported in 2006(1) RDD 467 considered all the judgments, and has held that the qualification of Adib Mahir is not equivalent to Sr. Secondary. In these circumstances in view of the judgment in Firdos Tarannum's case the petitioner in this case cannot be said to be possessing the requisite academic qualification. Therefore, this case is also being decided along with this bunch.

7. In the main writ it is then alleged, that the Director, Elementary Education, had granted provisional admission to similarly situated candidates in the previous Session of BSTC Course 2002-04, on the basis of undertaking, given by the candidates, that they shall complete their Supplementary Examination during training period. The copy of the said order, being 7.1.2003, is produced as Annex. 4. According to the petitioners, they accordingly obtained application forms, and submitted the same duly filled, alongwith the requisite demand draft, but either they were not accepted in some cases, or in some cases, the candidates were not given admission, on the ground, that they are not possessing requisite academic qualification, enabling them to undergo the correspondence course. Then the petitioners personally appeared, and represented for being granted provisional admission, but to no good, rather they were flatly refused.

8. It is, with these facts, that the writs had been filed, inter-alia on the grounds, that the petitioners are serving as Para Teachers/Shiksha Sahayogies/Shiksha Karmies under various government scheme. The government had started the two years correspondence in the year 2002, and now vide Annex. 2, dated 20.5.2005, again a course has been provided, which probably shall be the last and final course, and since the petitioners are serving in remote areas, if they are allowed to undertake the course, it being a self financed scheme, it will not attract any extra burden upon the State, rather it will support the petitioners to continue their service. Precisely keeping this in view, permission was accorded for provisional admission to the similarly situate candidates in the previous course, pursuant to Annex. 4, while it has been refused now. Most of the petitioners are going to be over age, if they are not given admission, it would cause injustice to them, and would bring about discrimination. The other ground given is, that the candidates, who are awarded supplementary, get three chances

to clear it, and during the intervening period, they were given provisional admission even in higher education, and therefore, it would be quite justified in giving them admission in this course, pursuant to Annex. 2, as well.

9. Reply has been filed in some writ petitions, and according to the reply filed in writ No. 3639, it is contended, that the scheme was floated for, and, with guidelines, and the basic qualification for eligibility was laid down, which the candidate is required to possess. Admittedly the petitioners do not possess the qualifications as required, and that, no exception to this requirement can be taken, as such, they are not entitled to get admission in BSTC Correspondence Course. It is then alleged, that the last date for submission of the application was 13.6.2005, as per the Corrigendum notification dated 7.6.2005, and the petitioners did not submit their application forms, hence they are not entitled to admission. It was denied that the forms were not accepted by the Principal, rather the petitioners, knowing fully well, about their not possessing the requisite basic qualification, as on the last date of submission of application form, did not submit the application forms. It is then contended, that the circumstance of giving provisional admission in higher classes, on the basis of supplementary, is wholly irrelevant in the present context, as the guidelines clearly require, that the candidate must have passed the basic academic qualification, and no exception can be taken. Then it is contended, that earlier admissions, alleged to have been granted were granted on the strength of the order of this Court, but no such order has been produced.

10. Thus, the whole thrust of the reply is, that the petitioners, being not possessing the requisite academic qualifications, are not entitled to admission.

11. Arguing the writ petitions also, these very grounds were stressed, and much reliance was placed on Annex. 4.

12. I have considered the submissions.

13. At the outset, I make it clear, that in the moment I am not called upon, nor am I supposed to make any observation, about the validity of any such action of the State, in floating such a course, or on the validity of such a course, or on the validity of such schemes, wherein such untrained teachers were employed, as are cataloged in Annex. 2, or as to whether, after receiving such training, they would be eligible to be regularized, or not, and therefore, I refrain from making any observation in that regard, so much so, that I also do not feel like, to make any reference to the series of judgments of Hon"ble the Supreme Court, showing its grave concern, about such actions, nor do I propose to refer, even to the solemn undertaking, given on behalf of the State Government, before this Court, that it would not regularise any such candidate.

14. I stand advised to confine myself only to the question, as to whether, the persons like the petitioners, who are not possessing the requisite academic qualification, are entitled to invoke Article 226 jurisdiction, for a direction to be given provisional admission in the B.S.T.C. Correspondence course, under Annex.

2, which is a special course, on the condition of their acquiring the qualification, during the course of training.

15. Coming to the merits of these writs, suffice it to say, that admittedly, the petitioners do not possess the requisite academic qualifications.

16. A look at Annex. 2 shows, that thereby sanction was granted to undertake two years BSTC Correspondence Course, as was run previously for the Session 2002-04, for the Session 2005-07, on the conditions mentioned in Annex. 2. Specific category of employees, and specific number of employees, working in the different schemes, who are not possessing requisite BSTC or B.Ed., training, were entitled to take benefit of this training by correspondence course. It was further stipulated, that if there be any other Para Teacher, or Shiksha Karmi, who is not trained, it should be ensured, that he also gets the benefit of this training. The curriculum for this examination shall be the same, as was for the Session 2002-04, and all the nature of employees mentioned therein, who possess the academic qualification of Senior Secondary pass, and having passed Secondary Examination with Hindi, English and Mathematics as subjects, would be entitled to get admission, on deposit of fees, mentioned therein. Thus, per terms of Annex. 2, the candidate is required to possess the requisite academic qualification.

17. So far Annex. 4 is concerned, this is dated 7.1.2003, and all that it stipulates is, that such incumbents, who were given provisional admission in this Session 2002-04, from them affidavits may be obtained, that they will acquire the prescribed qualification, during the course of training, and on such affidavits being submitted, they are permitted to submit examination forms, and the candidates, from whom affidavits have not been obtained earlier, may be obtained now.

18. In my view, this Annex. 4 cannot be said to be having any effect on Annex. 2, as this is with respect to the incumbents, who had applied during the Session 2002-04, while the scheme floated by Annex. 2 is an independent scheme, only maintaining the previous curriculum, as was there in 2002-04, and therefore, this Annex. 4 can be of no help to the present petitioners.

19. The law in regard to the requirement of possessing the qualification, as on the cut off date is no more res-integra, inasmuch as, in Harpal Kaur Chahah (Smt) v. Director, Punjab Instructions where the applications were called for recruitment as Physical Training Instructor, to be submitted on or before 20.4.68, the candidate applied, but was not possessing the qualification, in the meanwhile the Selection Board was abolished, and the Selection Committee considered the applications, and the applicant was appointed. The case of the candidate was that as on the date she joined, she had acquired the qualification. Noticing the illegality, the incumbent was ordered to be terminated from the ad hoc appointment, which was challenged by the candidate, and in those facts, it was held in para-2, as under:

It is to be seen that when the recruitment is sought to be made, the last date has been fixed for receipt of the applications. Such of those candidates who are possessed of all the qualifications as on that date alone are eligible to apply for and to be considered for recruitment according to rules. Since the appellant had not possessed the Physical Training Instructor qualifications as on that date, her illegal consideration by the Board and recommendation for appointment and the appointment made in furtherance thereof are illegal.

20. Then again, in the case of Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another, on 9.1.82, the advertisement was published, inviting applications for the post of Junior Engineer, and the last date for submission of application was 15.7.82. The academic qualification prescribed was, a pass in BE (Civil) Examination. Out of the various applications, 33 persons (respondents), had not passed the examination, on or before 15.7.82. They had appeared for the said examination earlier to the said date, but the results were published on 21.8.82. Interviews were held on various dates commencing on 24.8.82, and the respondents were interviewed, and were selected alongwith other candidates. Thus, as on the cut off date, the candidates had appeared in the examination, and result was declared after the cut off date, but before interview, and they had passed, even in those cases, their selections were challenged, which challenge was negatived, and the matter went to Hon"ble the Supreme Court, wherein Hon"ble the Supreme Court noticed the contention of the 33 candidates, that they appeared in the examination, prior to applying for the post, and there was some delay in publishing the result, for which the candidates cannot be punished for the delay on the part of the authorities concerned in publishing the result; and negating this contention, it was held in para 7 as under:

In our opinion, the said contention is beside the point. In these proceedings, we cannot examine the reasons for delay - assuming that there was delay in publishing the results. That issue is outside the purview of the writ petition. Whatever may be the reason, the 33 persons were not qualified as on the prescribed date and, therefore, could not have been allowed to appear for the interview.

21. I may further refer to a recent judgment of Hon"ble the Supreme Court, in State of Uttar Pradesh v. Vijay Kumar Misra, reported in 2002 AIR SCW 2608, wherein the learned Single Judge of the High Court directed the State Government, and U.P. Subordinate Services Selection Commission, to appoint the petitioner on the ground of the persons with lower merit having been appointed, and that the petitioner therein can be considered for the said post, since he has, in the meantime, acquired the qualification. This judgment was upheld by the Division Bench. It was contended before Hon"ble the Supreme Court, that the candidate did not have the educational qualification prescribed at the time of submission of the application, and also at the time of selection, and acquired it subsequent thereto, which could not be considered. Examining the sustainability of the High Court's order, Hon"ble the Supreme Court, in para-8 of the

judgment, held as under:

The position is fairly well settled that when a set of eligibility qualifications are prescribed under the rules and an applicant who does not possess the prescribed qualification for the post at the time of submission of application or by the cut off date, if any, described under the rules or stated in the advertisement, is not eligible to be considered for such post. It is relevant to note here that in the rules or in the advertisement no power was vested in any authority to make any relaxation relating to the prescribed qualifications for the post. Therefore, the case of a candidate who did not come within the zone of consideration for the post could not be compared with a candidate who possess the prescribed qualifications and was considered and appointed to the post. Therefore, the so-called confession made by the officer in the Court that persons having lower merit than the respondent have been appointed as SDI (Basic), having been based on misconception is wholly irrelevant. The learned single Judge clearly erred in relying on such a statement for issuing the direction for appointment of the respondent. The Division Bench was equally in error in confirming the judgment of the learned single Judge. Thus the judgment of the learned single Judge as confirmed by the Division Bench is unsustainable and has to be set aside.

22. Thus, it can very safely be said to be the well established consistent legal position; that the requisite academic qualification has to be possessed as on the cut off date, stipulated in Annex. 2, obviously of course, unless any relaxation is granted by the authorities concerned. In the present case, no such relaxation has been granted by the State, and simply because, in the earlier course 2002-04, some relaxation had been granted, this Court, under Article 226 Jurisdiction, cannot direct the State Government to grant such relaxation, in the present course, being conducted vide Annex. 2. Obviously Annex. 4, as found above, does not apply to the course, being conducted vide Annex. 2.

23. It is a different story that if the petitioners subsequently acquire the qualification, they are always free to pursue regular BSTC Course, and compete for the recruitment in accordance with Article 14 and 16 of the Constitution of India.

24. In these circumstances, since the petitioners do not possess the requisite academic qualification, to be eligible for getting admission in the correspondence course, they are not entitled to any relief.

25. The net result of the aforesaid discussion is that all these writ petitions are devoid of merit, and are therefore dismissed. The parties shall bear their own costs.