
(2015) 01 RAJ CK 0134

In the Rajasthan High Court

Case No : DB Civil Special Appeal (Writ) No. 220/2006

Shankar Lal Yadav

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 21-01-2015

Acts Referred:

Citation : (2015) 01 RAJ CK 0134

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

Bench : Division Bench

Advocate : Dinesh Yadav, Counsel, for the Appellant; Anurag Sharma, AAG and Dhruva Rathore, Counsel, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. Instant intra-court appeal has been preferred against order of the Id. Single Judge dt. 29/09/2005.
2. Since the facts are not available in the order of the Id. Single Judge, it can be noticed from the additional affidavit filed by the respondent pursuant to direction of this Court that the appellant is holding qualification of B.Ed. (Child Development) from Rajasthan Vidyapeeth Deemed University, Udaipur and thereafter passed Bridge Course conducted by the said Deemed University which is required for the post of Teacher Gr.II and this been settled after the judgment of the Id. Single Bench of this Court rendered on 18/05/2001 at Principal Seat at Jodhpur in the case of Rajasthan Vidya Peeth v. State and ors. (SB Civil Writ Petition No. 362/1997) and six other similar writ petitions wherein it was finally observed that such of the incumbents, who hold Degree of B.Ed. from Rajasthan Vidhya Peeth, Udaipur, have to be treated as holder of B.Ed. Degree (General) are eligible for the post of Teacher Gr. II and III included in the schedule appended to the Rajasthan Education Subordinate Service Rules, 1971 and it can be further noticed that the matter travelled upto the Hon"ble Apex Court in Civil Appeals No. 8653-8659/2003, State of Rajasthan and Ors. v. Karan Singh Rathore and ors wherein the question arose whether the B.Ed. (Bal Vikas) from

Rajasthan Vidhya Peeth followed by three months" Bridge Course could be considered to be equivalent to B.Ed. Course (General) for the purpose of appointment to the posts of Senior Teacher (Teacher Grade-II) and the Hon"ble Apex Court, took note of the Minutes of the Meeting dt. 04/06/1998 held in the office of Rajasthan Regional Committee, wherein it was inter-alia resolved ad-infra:--

"Looking at the course all members were unanimous that this course fulfills the requirements of both primary and secondary level teacher training. Therefore, the students trained in B.Ed. (Bal Vikas) can work with full competence as that of B.Ed. (General)." 3. Taking note thereof, the appeal preferred by the State of Rajasthan, came to be dismissed by the Hon"ble Apex Court vide judgment dt. 19/07/2006. As such, the question, in respect of the qualification possessed by the present appellant regarding his eligibility for appointment to the post of Teacher Gr.II under the Rules of 1971, is no more res-integra for our consideration.

4. Posts of Teacher Gr.II in (Biology) along with other subjects notified by the respondents vide advertisement dt. 22/11/1996 and the present appellant had participated in the selection process and secured 79.76% marks and indisputably, as per merit list of General Category/ OBC Category, which has now come on record, his name falls at serial No. 14-A (in between 14 and 15) in General Category and in the list of OBC Category, his name falls at serial No. 4-A (in between 4 and 5) but his name was not included in the merit list issued by the respondents for the reason that his Degree of B.Ed. (Bal Vikas) with Bridge Course was not considered eligible to hold the post of Teacher Gr. II, keeping in view the Circular issued by the Government dt. 01/06/1996 but that question regarding eligibility of the present appellant, as already observed, does not remain further res integra to be examined keeping in view the judgment of the Hon"ble Apex Court in upholding that degree of the Rajasthan Vidhya Peeth in B.Ed. (Bal Vikas) followed by three months Bridge Course conducted by it is equivalent to B.Ed. Course (General) and indisputably he holds the eligibility for the post of Teacher Gr. II under the Scheme of Rules, 1971.

5. When the writ petition came to be preferred by the present appellant in 1996 questioning the justification of the State Government in not holding him to be eligible to participate in the selection and compete for the post of Teacher Gr. II which is included in the Schedule appended to Rules of 1971, the Id. Single Judge disapproved his claim vide order impugned order dt. 29/09/2005 on the premise that he had participated in the selection process pursuant to the advertisement in 1996 and his eligibility has been restored by judgment of the Single Bench of this Court in SB Civil Writ Petition No. 362/1997, decided on 18/05/2001, his eligibility could be considered as and when future selections are made. However, as regards 1996 selection is concerned, pursuant to which he had participated, the Id. Single was not inclined to interfere.

6. Counsel for the appellant submits that the appellant approached this Court

without any loss of time in 1996 and pending writ petition, after pronouncement of the Judgment by this Court in SB Civil Writ Petition No. 362/1997, decided on 18/05/2001, at least latches, which the Id. Single Judge considered, could not be attributed to him and once the question has been finally concluded by the Hon"ble Supreme Court and the view expressed by the Id. Single Bench of this Court in its judgment dt. 18/05/2001 has been affirmed, certainly right is vested with the present appellant to seek appointment on the basis of his placement in the order of merit and the Id. Single judge committed apparent error in declining to consider his claim for fair consideration and appointment to the post of Teacher Gr. II under order impugned and that requires interference.

7. Counsel for the respondents submits that the selection process of 1996 is now almost complete and there is no post kept vacant, as such, even if the appellant is considered to be eligible, no relief, in the facts and circumstances, could be granted to him and as regards future selection is concerned, it was kept open by the Id. Single Judge for the appellant to compete as and when the vacancies for the post of Teacher Gr. II (Biology) is being advertised by the State authorities.

8. We have heard Id. counsel for the parties and also perused the material on record.

9. The facts remain in-disputed and as already observed, as regards his eligibility to hold the post of Teacher Gr. II under the Scheme of the Rules, 1971, that has attained finality and he is held eligible after the judgment pronounced by this Court to hold the post of Teacher Gr. II and once he had participated in the selection process pursuant to advertisement dt. 22/11/1996 and placed in the order of merit, certainly he has a fair right of consideration for appointment on the post of Teacher Gr. II (Biology) for which he had participated and the view expressed by the Id. Single Judge that the participation in the selection process of 1996 could not be now reopened after a delay of five years, while holding him to be eligible, in our considered view, is not sustainable in law and once the incumbent has approached this Court without any loss of time ventilating his grievance claiming himself to be eligible, if the matter remain pending at least latches could not be attributed to him and his valid claim will not to divested in seeking appointment obviously when his name finds placed in the order of merit.

10. As regards his placement in the order of merit, that can be noticed from the additional affidavit filed by the respondents that the appellant has secured 79.96% marks and placed in the merit of General Category at serial No. 14-A (in between 14 and 15) and also in the OBC Category at serial No. 4-A (in between 4 and 5) and is eligible for appointment.

11. It is informed to this Court that thereafter the appellant jointed on the post of Teacher Gr. III and later on promoted on the post of Teacher Gr.II but that will not disentitle him to claim his appointment on the post of Teacher Gr. II on the basis o this selection pursuant to advertisement dt. 22/11/1996.

12. Consequently, the appeal succeeds and is hereby allowed. The order of the

Id. Single Judge dt. 29/09/2005 is quashed and set aside and the respondents are directed to pass order regarding appointment of the appellant on the post of Teacher-II (Biology) pursuant to advertisement dt. 22/11/1996 and he will be entitled for all notional consequential benefits including seniority as per his placement in the order of merit, however, will not be entitled for actual monetary benefits for the intervening period. The respondents shall pass necessary orders regarding compliance of this order within a period of three months. No costs.