

(2011) 11 AHC CK 0468

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 62007 of 2011

Smt. Sadhana

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Right of Children to Free and Compulsory Education Act, 2009 — Section 23

Citation : (2011) 9 ADJ 806

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble V.K. Shukla, J.—Petitioner has rushed to this Court for declaring Clause 1 (a) of the Broucher issued by U.P. Secondary Education Board which limits the zone of consideration by imposing 45% marks in graduation for undertaking U.P. Teacher Eligibility Test (UPTET) 2011.

2. Petitioner submits that on account of imposition of such a condition, petitioner's candidature stands rejected under U.P. Teacher Eligibility Test, 2011 and as such aforementioned condition in question is arbitrary and unreasonable, as same has the effect of making their B.Ed Degree as redundant and negatory. Petitioner has stated that she has perused her B.Ed course on the mark obtained by her in written examination of post graduate and now at this juncture of life on account of imposing such condition of having 45% at Graduation level has no nexus with the fixation of such eligibility criteria blocking the road for under taking examination.

3. Sri. P.N. Tripathi, Advocate, Learned Counsel for the petitioner contended that imposition of such condition is completely arbitrary and unreasonable and as such said condition is liable to be struck down.

4. Sri. Rajiv Joshi, Advocate on the other hand contended that fixation of

eligibility criteria is the domain of employer and once employer in his wisdom has chosen to fix eligibility criteria for qualifying examination, then this Court in exercise of its authority of judicial review cannot interfere.

5. After respective arguments have been advanced, undisputed factual position, which is emerging in the present case that Madhyamik Shiksha Parishad, U.P. at Allahabad has issued advertisement dated 22.9.2011 for conducting U.P. Teacher Eligibility Test, 2011 and the said exercise has been undertaken by National Council for Teacher Education pursuant to the mandate provided for u/s 23 of Right of Children to free and Compulsory Education Act, 2009. At this juncture petitioners who have not got to their credit 45% marks at graduation level have rushed to this Court for quashing of the said condition.

6. Once eligibility criteria has been fixed by National Council For Teacher Education and accordingly State Government has proceeded to invite application mentioning therein eligibility criteria and therein clear cut provision has been made that at graduation level, incumbent who have 45% marks, only can apply then qua the said, policy decision fixing particular eligibility criteria, then this Court cannot come to the rescue of the petitioners.

7. Apex Court in the case of P.M. Latha and Another Vs. State of Kerala and Others, has taken the view that fixation of qualification for particular post is matter of recruitment policy. Relevant extract of the said judgment is being quoted below:

We find absolutely no force in the argument advanced by the respondents that B.Ed qualification is a higher qualification than TTC and therefore, the B.Ed. candidates should be held to be eligible to complete for the post. On behalf of the applicants, it is pointed out before us that Trained Teacher's Certificate is given to teachers specially trained to teach small children in primary classes whereas for B.Ed degree, the training imparted is to teach students of classes above primary B.Ed degree holders, therefore, cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools. Whether for a particular post, the source of recruitment should be from the candidates with TTC qualification or B.Ed, qualification, is a matter of recruitment policy. We find sufficient logic and justification in the State prescribing qualification for the post of primary teaches as only TTC and not B.Ed. Whether B.Ed qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider B.Ed candidates for the present vacancies advertised as eligible.

8. Apex Court again in the case of Yogesh Kumar and Others Vs. Government of NTC, Delhi and Others, has taken the view that it is open to the recruiting authorities to evolve a policy of recruitment and to decide the source from which the recruitment is to be made. Paragraph 8 of the aforesaid judgment clearly mentions that fixation of qualification is discretion of recruiting authority as recruiting authority knows the sources from which recruitment is to be made.

Relevant paragraph-8 of the aforesaid judgement is being quoted below:

8. This last argument advanced also does not impress us at all. Recruitment to Public Services should be held strictly in accordance with the terms of advertisement and the recruitment rules, if any. Deviation from the Rules allows entry to ineligible persons and deprives many others who could have competed for the post. Merely because in the past some deviation and departure was made in considering the B. Ed. candidates and we are told that was so done because of the paucity of TTC candidates, we cannot allow a patent illegality to continue. The recruitment authorities were well aware that candidates with qualification of TTC and B. Ed. are available yet they chose to restrict entry for appointment only to TTC pass candidates. It is open to the recruiting authorities to evolve a policy of recruitment and to decide the source from which the recruitment is to be made. So far as B.Ed. qualification is concerned, in the connected appeals [CA No. 1726-28 of 2001] arising from Kerala which are heard with this appeal, we have already taken the view that B.Ed. qualification cannot be treated as a qualification higher than TTC because the natures of training imparted for grant of certificate and degree are totally different and between them there is no parity whatsoever. It is projected before us that presently more candidates available for recruitment to primary school are from B.Ed. category and very few from TTC category. Whether for the aforesaid reasons, B.Ed. qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider B.Ed. candidates for the present vacancies advertised as eligible. In our view, the division bench of the Delhi High Court was fully justified in coming to the conclusion that B.Ed. candidates were rightly excluded by the authorities from selection and appointment as primary teachers. We make it clear that we are not called upon to express any opinion on any B.Ed. candidates appointed as primary teachers pursuant to advertisements in the past and our decision is confined only to the advertisement which was under challenge before the High Court and in this appeal.

9. Apex Court in the case of Sanjay Kumar Manjul Vs. The Chairman, UPSC and Others, has taken the view that it is the statutory authority alone which is entitled to frame Rules as well as the qualification and Courts have no authority to prescribe qualification or to supplant or supplement the same. Relevant paragraphs 23 to 26 of the said judgment is being extracted below.

23. The aforementioned contention of the Fourth Respondent herein has specifically been denied and disputed. It has been contended that recruitment rules of the Deputy Superintending Archaeologist are different from the Superintending Archaeologist. Whereas in the case of the former, two years' research experience in various subjects including Epigraphy was considered to be sufficient, in the case of latter, what was necessary was field experience of five years in Archaeology and knowledge of monuments and antiquities.

24. The statutory authority is entitled to frame statutory rules laying down terms and conditions of service as also the qualifications essential for holding a

particular post. It is only the authority concerned who can take ultimate decision therefore.

25. The jurisdiction of the superior Courts, it is a trite law, would be to interpret the rule and not to supplant or supplement the same.

26. It is well settled that the superior Courts while exercising their jurisdiction under Article 226 or 32 of the Constitution of India ordinarily do not direct an employer to prescribe a qualification for holding a particular post.

10. On the parameter of the judicial pronouncement as quoted above, once an expert body concerned in its wisdom has fixed eligibility criteria and therein term and condition of the advertisement are specific and precise leaving no room of doubt qua the minimum eligibility criteria candidate has to have for enabling him to take the test, then merely because in the past provision had been made that incumbents who have good percentage of marks at Post Graduate level were entitled to peruse their course of B.Ed, the said provision should be relaxed quashed cannot be accepted. For being appointed as teacher, for teaching classes 1 to 8 minimum eligibility criteria has been provided for by an expert body and once petitioners are not falling in the zone of consideration, not having 45% at Graduation level, then this Court, cannot otherwise direct while exercising authority of judicial review. All policy decision are decided by experts and Courts do not have expertise in such matter, and Court can interfere only when there is violation of constitutional provisions or statutory provision. See Basic Education Board, U.P. Vs. Upendra Rai and Others, Here such a situation is not there, and coupled with this similar arguments have already been negated by this Court on 13.10.2004, in Civil Misc. Writ Petition No. 58771 of 2011 Mahesh Kumar Singh v. Union of India.

11. Consequently, present writ petition is dismissed.