

(2012) 01 PAT CK 0025
In the Patna High Court
Case No : CWJC No. 11912 of 2007

Sudhanshu Shekhar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2012) 4 PLJR 185

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Advocate : D.K. Sinha, for the Appellant;

Final Decision : Dismissed

Judgement

Mihir Kr. Jha, J.—Heard counsel for the parties. The prayer of the petitioner in this writ application reads as follows:--

That this is an application for issuance of an appropriate writ/writs, direction/directions directing the respondents not to disturb the petitioner in proper functioning as Assistant Teacher of the High School, Maldah, P.S.-Barbigha, District-Sheikhpura (hereinafter referred to as "the School") with all consequential benefits on the ground that Sahityalankar qualification awarded by the Hindi Vidyapeeth, Deoghar is not equivalent to B.A. and further for quashing of the letter as contained in letter no. 490 dated 4.8.2007 issued by the respondent no. 3, in which he has observed that Sahityalankar, qualification awarded by the Hindi Vidyapeeth, Deoghar is not equivalent to B.A. as it is violative of the Government decisions, circulars and orders in view of the facts that State Government itself by issuing order has treated the Sahityalankar qualification equivalent to B.A. by issuing an appropriate writ.

2. Subsequently an amendment petition has been filed by the petitioner, I.A. No. 3186/2009, wherein apart from the main relief as quoted above, the petitioner has also prayed for the following additional relief:--

That this is an Interlocutory Application on behalf of the petitioner for amendment in the relief sought for in para-1 of the main writ application as certain orders has been passed during the pendency of the said writ application and further for quashing of the order as contained in memo no. 1532 Patna dated 27.7.2007 issued by the respondent no. 2 (Director, Secondary Education) which has been communicated by the District Education Officer on 6.9.2007 and further for quashing of order as contained in memo no. 155 Sheikhpura dated 5.11.2007 issued by the Chief Executive Officer, District Board, Sheikhpura by which the appointment to the petitioner on the post of the Assistant Teacher in High School, Maldah has been cancelled only on the ground that Sahitya Alankar qualification is not equivalent to graduate degree by issuing an appropriate writ and further for issuance of appropriate writ/writs, direction/directions, directing the respondent to allow the petitioner as Assistant Teacher in aforesaid school with all consequential benefit.

3. Mr. Devendra Kumar Sinha, learned Senior Counsel appearing on behalf of the petitioner, would submit that the qualification of Sahityalankar from Hindi Vidyapeeth, Deoghar having been notified by Human Resources Development Department the appointment of the petitioner on the post of teacher in a Zila Parishad High School cannot be said to be illegal much less contrary to the provision made under Rule 4 of the Bihar Zila Parishad Madhyamik Awam Uchchar Madhyamik Shikshak (Niyojah Awam Sewa Sarta) Niyamawali, 2006 and accordingly, the impugned order of termination of service of the petitioner is wholly unsustainable either on fact or in law. In this regard he had also placed reliance on an order of the Division Bench of this Court dated 17.11.2009 in C.W.J.C. No. 5129/2009 Ed.--Reported in Sanjay Kumar Vs. State of Bihar and Others, which was heard alongwith C.W.J.C. No. 18039/2008 Ed.--Reported in Sanjay Kumar Vs. State of Bihar and Others, wherein the provisions contained in Rule 4 of the aforementioned 2006 Rules was gone into for the purposes of appointment on the post of Librarian and it was held that such of the candidates who has been possessing qualification of Sahityalankar from Hindi Vidyapeeth, Deoghar will be entitled for appointment on the post of Librarian in Zila Parishad High School. He has also placed reliance on an order of the Division Bench dated 8.3.2010 in the case of Mukesh Kumar vs. The State of Bihar & Ors., reported in 2010 (3) PLJR 736, to contend that even in that case the Division Bench had taken a view that if the order passed in the case of Sanjay Kumar (supra) was not assailed and could attain finality the same could be relied for future appointment.

4. Counsel for the State, on the other hand, by filing a counter affidavit has clarified that the appointment on the post of teachers in High Schools controlled by Zila Parishad was governed by Rule 4 which only talked of essential qualification of graduation and there was no equivalent qualification mentioned so as to allow the candidates possessing Sahityalankar to be also coming within the ambit of eligible candidates for the post of such teacher. He has further relied on a decision taken by the Director, Secondary Education dated 22.2.2007

wherein it was analyzed that since the students pursuing the course of Sahityalankar are undergoing courses of study six papers of literature only they cannot be equated with the degree of graduation and as such, the qualification of Sahityalankar in terms of Rule 4 cannot be held to be an equivalent degree of graduation. Learned counsel for the State has also submitted that as the petitioner did not possess the requisite qualification his earlier selection and his appointment made on 21.11.2006, was cancelled by an order dated 5.11.2007, in terms of the clarification issued by the Director, Secondary Education in his order contained in the letter dated 27.7.2007.

5. In the considered opinion of this Court the Rules of appointment would hold the forte in the matter of eligibility of a candidate for being appointed on a post of teacher and the relevant portion of Rule 4 of the Rules in this regard reads as follows:--

(Underlining for emphasis)

6. From the reading of the aforementioned underlined portion of Rule it would be abundantly clear that only the qualification of graduation from any recognized University was the prescribed qualification for appointment on the post of teachers. There being thus no prospect for an equivalent qualification (Samkaksha or Samtulya), a candidate had to necessarily possess a degree of graduation from a recognized University. The Rule makers in fact had left nothing for speculation and discretion by providing anything for the candidates of equivalent qualification to be also eligible. The petitioner thus holding the qualification of Sahityalankar from Hindi Vidyapeeth, Deoghar was ineligible for being selected/appointed on the post of teacher in a Zila Parishad High School.

7. It is an undisputed fact that Hindi Vidyapeeth, Deoghar is not a recognized University by the University Grants Commission. The earlier Government letter providing equivalence of Sahityalankar qualification as Bachelor of Arts would also be of no help for the petitioner, inasmuch as, the essential pre-requisite qualification of graduation from a recognized University as prescribed in the Rules was never sought to be compromised by allowing the other candidates having other different equivalent qualification for being eligible for appointment on the post of teachers under the Rules. In that view of the matter, this Court would find it difficult to accept the submission of Mr. Sinha that since there was a Government notification dated 11.1.1991 providing that Sahityalankar qualification from Hindi Vidyapeeth, Deoghar would be equivalent to the degree of Bachelor of Arts, that by itself would not make the petitioner eligible in terms of Rule 4 of the Rules. The said order dated 11.1.1991 issued by the Personnel and Administrative Reforms Department being merely an executive instruction cannot in any way be read into the statutory Rules limiting qualification only of graduation from a recognized university.

8. As a matter of fact the Director, Secondary Education has also made a correct threadbare analysis while rejecting the claim of persons seeking equivalence of

Sahityalankar with graduation wherein he has rightly held that the students undergoing Sahityalankar course have to mainly concentrate on literature whereas a normal graduate has to study three different subjects at the graduation level. The job requirement of a teacher in a High School definitely not being limited only to teach literature if the Rule makers had made a provision for appointment of teachers having only qualification of graduation from recognized university, this Court cannot allow any equivalent qualification to also become an optional qualification for the post of teacher in place of graduation. The Rules as they are, will have to be interpreted for the purposes of appointment on the post of teacher in a Zila Parishad High School and in that light this Court must hold that the petitioner by virtue of having qualification of Sahityalankar only was ineligible for being appointed as a teacher in a Zila Parishad High School.

9. The reliance placed by Mr. Sinha on a Division Bench judgment of this Court in the case of Sanjay Kumar (supra) seems to be wholly misplaced, inasmuch as it was for the post of a Librarian that the Division Bench had held that Rule 4(ka) (vii) of 2006 Rules had to be read down for treating the graduation degree of a recognized University for its being equivalent to Sahityalankar course from Hindi Vidyapeeth, Deoghar. Such Division Bench judgment in the case of Sanjay Kumar (supra) having read down provisions of Rule 4(ka)(vii) only in respect of the post of Librarian, Mr. Sinha, learned Senior Counsel on an earlier occasion had sought leave to file an interlocutory application for challenging the validity of Rule 4(ka) (ii) as quoted above but today he has frankly conceded that the petitioner is not interested in challenging the vires of the Rules and that his case may be disposed of on merits.

10. Thus, once the petitioner does not challenge vires of Rule 4(ka)(ii) they will have to be understood in the manner in which they were brought in the Statute for the purposes of appointment of teachers in a Zila Parishad High School. As noted above, there being nothing by way of equivalence in the Rule, this Court does not find the Rule to be bad only because it would eliminate some of the persons having qualification of Sahityalankar or other degrees which may be also claimed to be equivalent to graduation. As a matter of fact when the said judgment of Sanjay Kumar (supra) was again sought to be relied for the purposes of appointment on the post of teachers in a High School, a Division Bench of this Court in the case of Mukesh Kumar (supra) had not followed the same while making an observation that if the order of the Division Bench in the case of Sanjay Kumar (supra) was not assailed and would attain finality the petitioner Mukesh Kumar could rely on the same for his appointment in future. As noted above, in the case of Mukesh Kumar (supra) the issue before the Division Bench directly was with regard to appointment on the post of a teacher and yet the judgment in the case of Sanjay Kumar (supra) being confined to appointment on the post of Librarian was neither approved nor followed.

11. The scope of Article 226 of the Constitution of India as with regard to equivalence of qualification in fact was gone into by the Division Bench of this

Court in the case of Satyendra Singh and Others Vs. Sanjay Kumar and Others, , wherein for appointment on the post of District Fishery Officer the qualification of graduation (Bachelor's Degree in Fisheries) with that of a Diploma Course of a Deemed University was examined at length and it was held that within the limited parameters of Article 226 there could be no such declaration made for an equivalence of qualification. The aforesaid Division Bench judgment of this Court in the case of Satyendra Singh (supra) stands also affirmed by the Apex Court.

12. In fact a similar question of equivalence of qualification of Intermediate vis-a-vis Maulvi or Up-Shastri for the post of Panchayat Teacher was gone into by the Division Bench of this Court in the case of Parvez Alam and Others Vs. The State of Bihar and Others, wherein it was held as follows:--

-----Mr. Chittranjan Sinha, Senior Advocate as also Mr. Uma Kant Shukla, appearing on behalf of the petitioners contend that the person holding Up-Shastri and Maulvi qualification earlier were held to be eligible in terms of Rules 2006 and therefore the offending rule excluding them from consideration is without any justification and suffers from the vice of arbitrariness. It is pointed out that the qualification of Maulvi or Up-Shastri is equivalent to the Intermediate qualification and therefore excluding them from consideration for appointment to the post of Primary Teacher (General) is irrational. According to them, once the provision is found to be irrational or arbitrary it hits Article 14 of the Constitution of India and therefore the impugned rule deserves to be struck down on this score alone.

Mr. Lalit Kishore, however, contends that fixing the qualification for appointment is within the domain of the rule making authority and the qualification of Up-Shastri and Maulvi may be equivalent for some purposes but that itself shall not mean that both are one and the same. It has been pointed out that in teaching of Up-Shastri and Maulvi emphasis is on the language and therefore there is a reasonable distinction between the qualification of Intermediate and qualification of Up-Shastri and Maulvi.

Having appreciated the rival submission, we do not have the slightest hesitation in accepting the broad submission put forth on behalf of the petitioners that any provision which is arbitrary hits at the root of Article 14 of the Constitution of India and has to be declared unconstitutional if it does so but the question before us is as to whether exclusion of qualification of Maulvi and Up-Shastri, for the purpose of eligibility for appointment as Panchayat Teacher (General) in any way arbitrary.

We are of the opinion that the basic qualification needed for appointment, primarily needs to be decided by rule-making authority. While amending Rule 8 of Rules 2006 by Rule 4 of Rules 2008 the State Government in exercise of its rule making power has excluded the qualification of degrees in language, including Up-Shastri or Maulvi. In such situation this Court in exercise of its power of judicial review cannot term the same to be arbitrary. The purported

similarity in the curriculum of the Intermediate examination and Up-Shastri/Maulvi examination is of no consequence. It is well settled that qualification for appointment is a matter within the domain of the body, which is competent to make that legislation. Simply because in earlier years persons holding the qualification of Maulvi and Up-Shastri were considered eligible in terms of the Rule, later on, the plea that such persons cannot be excluded from consideration by making amendment in the rule in accordance with law does not commend us. Here the rules have been amended in accordance with law and the authority conferred with the power making rule has by the offending rule, specifically excluded the qualification of Maulvi and Up-Shastri, rendering persons holding such qualification ineligible. The plea that contents of the teaching of Up-Shastri and Maulvi is the same as that of Intermediate, we are of the opinion that it is not within the scope of judicial review and is a matter of legislative policy.

The view which we have taken finds support from a Division Bench judgment of this Court in the case of Dhirendra Kumar Singh and Others Vs. The State of Bihar and Others, in which it has been held as follows:--

Whether the rules governing recruitment for any post, in eligibility criterion prescribed for the post must include other equivalent qualification is a matter of legislative policy and not for this Court to decide. Even where rules provide for alternate to main and substantive qualification by recognizing equivalent qualification to be taken into consideration, the question of considering any qualification, is a matter of expert body to decide. Therefore, it is inept for this Court to enter into that territory and decide upon equivalence. From a plain reading of the provision contained in 1983 Rules, it would appear that various teacher training courses referred therein are training qualifications of different grades and cannot by any means be equivalent with each other, a priori. It hardly needs an argument that unless the matter is examined by any expert body, ordinarily, a diploma course is not equivalent for a degree. Likewise, a certificate by itself is not equivalent to a degree or diploma in the subject.

Learned counsel for the petitioners had taken pains to explain the content of training of teaching under different training courses for the purpose of impressing upon the Court that there is hardly any distinction between different courses of training imparted to a candidate. We are afraid, this is not the scope for judicial review while examining the validity of the legislation providing eligibility criteria. Thus is a matter of legislative policy and it is within the domain of the legislative body as to what should be the policy to provide requisite qualification for offering appointment to the intending incumbent.

(underlining ours)

We are of the opinion that the offending rule does not suffer from any arbitrariness or offends any of the constitutional provision and therefore the challenge made to it fails.

13. Considering all these aspects this Court would hold that if the petitioner has

not assailed Rule 4(ka)(ii) and thereby has accepted the Rule as it is, he cannot claim to have qualified for the post of teacher by virtue of his holding qualification of Sahityalankar from Hindi Vidyapeeth, Deoghar. That being so, this Court would not find any infirmity in the consequential order canceling appointment of the petitioner from the post of teacher when it becomes admitted that the petitioner did not possess the statutory qualification.

14. Counsel for the petitioner at this stage would submit that even though the petitioner may not be entitled to continue in service on the post of teacher due to lack of prescribed qualification, he having been allowed to work by virtue of his appointment letter and also paid salary for some time, would be at least entitled for payment of his salary for the rest of the period prior to his termination of service. Learned counsel for the petitioner in this regard therefore submits that a consequential direction to this effect should be issued by this Court for payment of salary to the petitioner for the period 1st March, 2007 to 5.11.2007.

15. In the considered opinion of this Court this issue being not directly related to the present writ application, if the petitioner would file his representation for this purpose to the concerned controlling authority, a decision as with regard to payment of balance salary of the petitioner on being satisfied of his admitted working, will be taken by the competent authority and if the petitioner is found to have worked as a teacher in a Zila Parishad High School, he will also be paid his salary for the work done by him in accordance with law preferably within a period of six months from the date of receipt/production of a copy of this order. Thus, for the reasons indicated above, this Court does not find any merit in this writ application and the same, subject to limited observations made above, is, accordingly, dismissed.