

(2020) 01 RAJ CK 0131
In the Rajasthan High Court
Case No : Civil Writ Petition No. 18539 Of 2019

Surekha Rana

APPELLANT

Vs

Rajasthan Subordinate And Ministerial Service Selection
Board, Jaipur, Durgapura, Jaipur And Ors

RESPONDENT

Date of Decision : 22-01-2020

Acts Referred:

Citation : (2020) 01 RAJ CK 0131

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : Naresh Singh, Vineet Sanadhya, Vishal Jangid, Hemant Choudhary

Final Decision : Dismissed

Judgement

1. The petitioner has approached this Court invoking extraordinary writ jurisdiction being aggrieved of respondents' refusal to give her appointment on the post of Physical Training Instructor Grade-III, as she does not possess Degree of Bachelor in Physical Education.

2. Facts in brief are that on 04.05.2018 the respondents issued an advertisement for recruitment on the post of Physical Training Instructor Grade-III.

3. The eligibility condition for such post, contained in para No.7 of the advertisement reads thus:

"7. पात्रता एवं शैक्षणिक योग्यता:-

(i) राष्ट्रीय अध्यापक शिक्षा परिषद् द्वारा मान्यता प्राप्त शारीरिक शिक्षा में स्नातक (बी.पी.एड.) या शारीरिक शिक्षा में प्रमाण पत्र (सीपी.एड.) या शारीरिक शिक्षा में डिप्लोमा (डी.पी.एड.)"

4. The petitioner, as a Gymnast, had participated in Common Wealth Games 2006 and various other National Level Championships in Gymnastics and has completed Post Graduation in Physical Education in the year 2008.

5. Pursuant to the advertisement aforesaid, the petitioner being a Post Graduate

in Physical Education, competed for the post of Physical Training Instructor Grade-III; appeared and cleared the written examination.

6. The petitioner's marks obtained in such written examination secured her a berth in the merit list, however, at the time of document verification, the respondents realised that she does not have requisite qualification - a Degree/ Certificate/ Diploma in Physical Education, though she was directly conferred a Post Graduate Degree in Physical Education.

7. The Petitioner had graduated in Arts.

8. As the petitioner did not possess Bachelor's Degree in Physical Education, the respondent - Selection Board rejected her candidature.

9. The petitioner's grievance is that when she is having a higher Degree i.e. Master's Degree in Physical Education, the respondents cannot reject her candidature.

10. Mr. Naresh Singh, learned counsel for the petitioner submitted that the required educational qualification for the post of Physical Training Instructor Grade-III is a Degree in Physical Education; whereas the petitioner is having a Master's Degree in Physical Education and thus, the action of the respondents in rejecting petitioner's candidature is arbitrary.

11. In support of the petitioner's cause, he relied upon the judgment of this Court in the case of Deepak Bariya Vs. RPSC & Ors (SB Civil Writ Petition No.5166/2015, decided on 26.05.2017) and judgment of Hon'ble the Supreme Court in the case of Chandrakala Trivedi Vs. State of Rajasthan & Ors reported in (2012) 3 SCC 129.

12. Mr. Sanadhya and Mr. Jangid, learned counsel appearing for the respondents, submitted that the educational qualification given in the Rules or advertisement are required to be strictly adhered to. It was argued that the petitioner has done her graduation in Arts and it is perhaps for the reason of her being a National Champion and played at International Level, she was given admission in Post Graduation by the Kurukshetra University, Rohtak.

13. Mr. Sanadhya vehemently submitted that the subjects she pursued in her Post Graduation do not equip her enough to guide and teach the students at school level. He took the Court through the syllabus of Graduation in Physical Education and compared the same with the petitioner's mark-sheet and emphatically submitted that the petitioner is almost ignorant about many subjects, such as Principle and History of Physical Education, Psychology in Physical Education, Anatomy, Yoga Education, Athletics (Track Events) and knowledge of other games, which a teacher at school level is supposed to know and in the absence of requisite knowledge of such subjects, petitioner would not be able to give instructions and guide the students.

14. In support of his contentions, learned counsel for the respondents relied

upon the judgment of Division Bench of this Court rendered in the case of Pawan Kumar Jain & Anr. Vs. State of Rajasthan & Ors (DB Civil Special Appeal No.173/2011), decided on 23.03.2011, particularly para No.18, to contend that merely because a candidate is having higher Degree, he cannot be held eligible.

15. Heard.

16. Concededly, the eligibility condition requires a candidate to possess a Bachelor's Degree/ Certificate/ Diploma in Physical Education; whereas the petitioner has none.

17. At first glance, petitioner's arguments not only appears to be attractive, but sounds convincing too. How a candidate having higher qualification can be denied his right of being selected? But a deeper scrutiny in the matter, particularly a comparison of the subjects, which the petitioner was taught while pursuing her Post Graduation vis a vis host of subjects a candidate studies, while doing Degree Course or Diploma or Certificate Course in Physical Education suggests otherwise.

18. Needless to be reminded of the fact that the recruitment in question is Physical Training Instructor, who is supposed to instruct students at primary school level. A teacher at primary school level is required to give basic training to the students in relation to a variety of sports, including yoga and routine exercise etc. The petitioner hardly has basic acquaintance with such subjects, as she did not study those particular subjects.

19. Her Graduation is in Arts and Post Graduation is in Physical Education. A Master's Degree is conferred to a candidate in a special branch, hence the petitioner can presumably have expertise in subjects, which she undertook while doing her Post Graduation; but so far as other subjects are concerned, such as Principle and History of Physical Education, Psychology in Physical Education, Anatomy, Yoga Education, Athletics (Track Events) and knowledge of other games, petitioner cannot claim even primary knowledge.

20. Adverting to the judgments cited by the learned counsel for the petitioner, suffice it to say that in case of Deepak Bariya (supra), the recruitment in question was that of Senior Teacher Grade-II (English). Concerned petitioner had Post Graduate's Degree in English and he studied English as a compulsory subject while the respondents wanted that English should be an optional subject. It was in that context, that the Court held that a person having a higher Degree - Master's Degree in English, cannot be denied appointment.

21. In case of Chandrakala Trivedi (supra), the petitioner had done her Bachelor Education on regular basis and thereafter secured Master's Degree in Arts as against the educational requirement for appointment to the post of Teacher Level-II. In the judgment before Hon'ble the Supreme Court, the Rajasthan High Court had rejected the said petitioner's claim that higher qualification cannot be said to be equal to the qualification required in the advertisement.

22. As against this, the facts of the present case are starkly different. The respondents in the present matter required a candidate to have Degree, Diploma or Certificate in Physical Education. They have not rejected petitioner's candidature on the ground of her qualification being higher or unequal.

23. The legal position with respect to possessing higher qualification as against the required qualification has been set at rest by Hon'ble the Supreme Court in State of Punjab & Ors. Vs. Anita Sharma & Ors., reported in (2015) 2 SCC 404, relevant part whereof reads thus:

"15. It was sought to be asserted on the basis of the aforesaid observations, that since the private respondents possess higher qualifications, then the qualification of JBT/ETT, they should be treated as having fulfilled the qualification stipulated for the posts of JBT/ETT teachers. It is not possible for us to accept the aforesaid submission of the learned counsel for the private respondents, because the statutory rules which were taken into consideration by this Court while recording the aforesaid observations in Jyoti K.K.'s case, permitted the aforesaid course. The statutory rule, in the decision relied on by the learned counsel for the private respondents, is extracted hereunder:

"6. Rule 10(a)(ii) reads as follows:

'10.(a)(ii) Notwithstanding anything contained in these Rules or in the Special Rules, the qualifications recognised by executive orders or standing orders of Government as equivalent to a qualification specified for a post in the Special Rules and such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post.'

(emphasis supplied)

A perusal of the rule clearly reveals, that the possession of higher qualification would presuppose the acquisition of the lower qualification prescribed for the posts. Insofar as the present controversy is concerned, there is no similar statutory provision authorizing the appointment of persons with higher qualifications."

24. A similar view has also been taken by a co-ordinate Bench of this Court in S. B. Writ Petition No. 5283/2019 (Dolly Sharma Vs. State of Rajasthan & Ors.), decided on 28.08.2019, relevant part whereof is being reproduced hereinfra:

"In view of the law laid down by the Hon'ble Supreme Court in the case of Zahoor Ahmad (supra), wherein, the earlier judgment in the case of Jyoti K.K. (supra) was thoroughly considered and distinguished on account of the statutory provisions involved therein, which provisions admittedly are not available in the present cases, the mere fact that the petitioners have post graduation i.e. M.A. in English, cannot take away the ineligibility of their lacking requisite and statutory academic qualification under Rule 266(3) of the Rules, 1996 and consequently the rejection of petitioners' candidature in this regard by the

respondents cannot be faulted."

25. True it is, that the petitioner is having a Master's Degree in Physical Education, but there is no material on record to satisfy the Court as to under which provision, the petitioner was admitted in Post Graduation Course of Physical Education.

26. What has been placed on record is only a letter dated 22.02.2019, according to which a candidate seeking admission in M. P. Ed., having played at National Level will not be required to undergo Physical Efficiency Test. Following part of the above communication dated 22.02.2019 needs to be noticed :

"Provided that candidate who has not participated at least in the Inter-State/ Inter-varsity/National Tournaments in recognised games organized by the AIU from time to time shall not be eligible for admission and further no Sports/Game Certificate will be considered for admission without its Graduation Certificate issued from the Director Sports for the State Government concerned."

27. The petitioner has not placed on record any such certificate issued by the Director of Sports for the State Government and, therefore, the petitioner's Post Graduation can not be considered in place of Graduation in Physical Education.

28. There is no merit in the writ petition. The same is thus, dismissed.

29. The stay application is also dismissed.