

(2020) 06 JH CK 0002

In the Jharkhand High Court

Case No : L.P.A. No. 796 Of 2019, I.A. No. 11083 Of 2019

Surendra Kumar Verma

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 02-06-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2020) 06 JH CK 0002

Hon'ble Judges : Dr. Ravi Ranjan, CJ, Sujit Narayan Prasad, J

Bench : Division Bench

Advocate : R.N. Sahay, Rupesh Singh, Sanjay Piprawall

Final Decision : Dismissed

Judgement

1. The matter has been heard through video conferencing with the consent of the learned counsel for the parties. They have no complaint about any audio and visual connectivity.

I.A. No. 11083 of 2019

2. This interlocutory application has been filed for condoning the delay of 1 day in preferring the present appeal.

3. Heard learned counsel for the parties.

4. Having regard to the averments made in the application and submission made on behalf of the parties, we are of the view that the appellant was prevented from sufficient cause in filing the appeal within the period of limitation. As such, the delay of 1 day in preferring the present appeal is hereby condoned.

5. I.A. No. 11083 of 2019 stands allowed.

L.P.A. No. 796 of 2019

6. The instant intra-court appeal has been filed under clause 10 of the Letters Patent against the common order/judgment dated 20.09.2019 passed in W.P. (S)

No. 4707 of 2019, whereby and whereunder, the writ petition has been dismissed holding the writ petitioner ineligible for the selection and appointment as Post Graduate Teacher in History subject and further it has been held that the candidates who have obtained degree exclusively in the subject "HISTORY" as per the advertisement, are entitled for consideration for appointment to the said post, subject to fulfillment of other criteria and requisite position in the merit list and if there is no other legal impediments.

7. The brief facts of the case, as per the pleadings made in the writ petition, which are required to be enumerated herein for proper adjudication of the lis, are hereunder as:

The Jharkhand Staff Selection Commission, herein after referred to as the 'JSSC', has come out with an advertisement being Advertisement No. 10/2017, known as 'Post Graduate Trained Teacher Competitive Examination-2017', inviting on-line applications from eligible candidates for filling up the posts of 'Post Graduate Trained Teacher' for different subjects, including the subject History.

Pursuant thereto, the appellant applied for the said post and participated in the selection process. However, on the date of verification of the testimonials, it was found that the appellant has submitted Post Graduate degree in Ancient/Medieval/Modern/Ancient History, Culture & Archaeology etc. and on being asked by the JSSC-the examining body, the appellant failed to submit the certificate of 'Master of Arts' in Post Graduation with the subject 'History' in terms of the advertisement, as such show cause notice was issued to him.

Being aggrieved thereof, the appellant invoked the writ jurisdiction of this Court by filing writ petition, which was heard together with other analogous cases and have been dismissed by the learned Single Judge by a common order, against which, the present intra-court appeal has been filed.

8. The case of the appellant is that he possesses the educational qualification, as stipulated in the advertisement, with the subject Ancient/Medieval/Modern/Ancient History, Culture & Archaeology etc., as such he is eligible for consideration of appointment on the said post. Further case of the appellant is that even though he has been allowed to participate in the selection process and has obtained more marks than the last selected candidates, who have been taken under consideration zone for selection, his candidature has been rejected.

9. Mr. R. N. Sahay, learned senior counsel for the appellant, in addition to the grounds agitated in the writ petition, has argued that the benefit of reservation has been denied to the appellant, who falls under Economically Backward Class (EBC) and to that effect a caste certificate was submitted before the examining body issued by the Sub-Divisional Officer dated 19.02.2018, which according to respondent-examining body has been obtained after the last date for submission of application form.

Learned senior counsel for the appellant submitted that the aforesaid order was

challenged by way of filing an Interlocutory Application but the learned Single Judge has not adjudicated the said Interlocutory Application and in one line the Interlocutory Application was disposed of and, therefore, the issue which has been agitated before the learned Single Judge pertaining to non-consideration of the caste certificate has grossly prejudiced the case of the appellant and hence the same requires to be considered in this appeal.

It is the contention of the learned senior counsel for the appellant that even though caste certificate has been submitted after last date of submission of application form, but there is no dispute about the caste of the appellant and non-consideration of the caste certificate of the appellant is absolutely illegal and improper that too without taking into consideration the judgment rendered in the case of Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board and Ors. reported in (2016) 4 SCC 754.

10. Mr. Sanjay Piprawall, learned counsel appearing for the respondents-JSSC has defended the order passed by the learned Single Judge by submitting that there is no error in the same as because the selecting/examining body has to go through the conditions stipulated in the advertisement and if the advertisement contains eligibility criteria for consideration of appointment to consider the cases of such candidate with the subject History, there cannot be any deviation from the eligibility criteria as stipulated in the advertisement. The selecting body on the basis of aforesaid principles has proceeded to conduct the selection process, which cannot be faulted with.

He has submitted that the applications have been invited on-line. The appellant has submitted on-line application referring therein about possessing the degree of Graduation/Post Graduation, with the subject "History" and on that presumption his candidature has been accepted and he has been allowed to participate in the process of selection. Though, the appellant has been found to be successful in the screening test, but at the time of verification of his documents, it was found by the selecting body that he is not possessing the requisite educational qualification of having degree of Master of Arts in Post Graduation with the subject History and, therefore, his candidature has been rejected.

He has further submitted that had the correct information been furnished by the appellant at the time of submission of on-line application, his candidature would have been rejected at that stage itself on the ground of lacking degree of Post Graduation with the subject History. Therefore, it is the case of misrepresentation and that is the reason the respondent-examining body in order to get it verified has issued show cause notice to the appellant and pursuant thereto he has put his appearance before the examining body but failed to satisfy the examining body and has taken a plea that since he has degree in Ancient/Medieval/Modern / Ancient History, Culture & Archaeology etc., therefore, it may be construed as degree in "History" but the said reply/explanation has not been accepted by the examining body, hence his candidature has been rejected.

So far as the contention raised by learned counsel for the appellant pertaining to non-consideration of the candidature by not considering the caste certificate, which has been submitted after last date of submission of application form, is concerned, it has been argued by learned counsel for the respondent-JSSC that since the appellant's candidature has not been found to be in consonance with the condition of advertisement on the ground that the appellant is not having Post Graduation in the History subject and as such since he has been found to be not eligible to be considered on the basis of educational qualification, hence even if any positive direction would be passed pertaining to extending the benefit of reservation no purpose would be served as because, only when the candidature of the candidate is found to be in consonance with the eligibility criteria provided in the condition of advertisement, the question of reservation is required to be considered.

11. Learned counsel appearing for the State by adopting the stand taken by the JSSC and in furtherance of his argument has submitted that in absence of any equivalence clause for educational qualification, the candidature of the appellant cannot be considered and if it will be considered it will amount to giving relaxation to such candidate, which is not permissible.

12. This Court, having heard learned counsel for the parties and on appreciation of the rival submissions of the parties, deem it fit and proper first go through the advertisement, basing upon which the entire selection process was initiated.

The Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand vide letter no. 8354(Anu) dated 24.07.2017 forwarded the requisition dated 17.07.2016 of the Department of School Education and Literacy (Secondary Education Directorate), Government of Jharkhand to the JSSC for appointment of candidates to the post of Post Graduate Trained Teachers. Pursuant thereto, the JSSC invited on-line applications from the eligible candidates by publishing Advertisement No. 10/2017, known as 'Post Graduate Trained Teacher Competitive Examination-2017', in which, pay-scale, eligibility criteria etc. have been mentioned.

It is evident from Clause 4 of the advertisement No. 10/2017, which mentions posts, pay-scale and minimum educational qualifications, stipulating therein the minimum educational qualification for the post of Post Graduate Teacher was degree in post graduation in the concerned subject, herein "History" with 50% marks with degree of B.ed or equivalent, as technical education.

13. It is admitted case of the appellant that he does not possess the degree of "History" in its entirety, as per the condition stipulated in the advertisement. In the aforesaid backdrop, the moot question that fell for consideration before the learned Single Judge was as to whether 'History' is equivalent to Ancient History, Medieval History and other branches of History for the purposes of appointment to the post of Post Graduate Teachers?

14. The learned Single Judge, after considering the fact that the degree at post

graduate level, if obtained in some of the streams of History and not in History its entirety, cannot be said to be degree of 'History', as required in the advertisements, has declined to grant positive direction for consideration of his candidature for appointment to the posts in question.

15. This Court, while considering the aforesaid findings of the learned Single Judge, deems it fit and proper to examine the following questions:

(i).Whether the candidate can be allowed to make departure from advertisement, so far educational qualification is concerned?

(ii).Can the Court of law make any relaxation in the terms and conditions of the advertisement?

(iii).Whether the candidature of the candidate if found fit to be rejected, can there be any consideration about giving benefit of reservation?

16. Since issue no. I and II are co-related, hence they are taken up together.

It is settled position of law that if an advertisement is issued on the requisition made by the State authorities to the examining body, all the conditions as stipulated in the advertisement is required to be followed by the examining body.

17. It is also settled position of law that the Court of law cannot grant any relaxation in the conditions stipulated in the advertisement, as has been held by Hon'ble Apex Court in the case of Bedanga Talukdar Vs. Saifudaullah Khan & Ors reported in AIR 2012 SC 1803. The relevant paragraphs, paragraph nos. 28 and 29 of the said judgment, are quoted hereunder as:

"28.We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There can not be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant Statutory Rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.

29.A perusal of the advertisement in this case will clearly show that there was no

power of relaxation. In our opinion, the High Court committed an error in directing that the condition with regard to the submission of the disability certificate either along with the application form or before appearing in the preliminary examination could be relaxed in the case of respondent No. 1. Such a course would not be permissible as it would violate the mandate of Articles 14 and 16 of the Constitution of India."

18. It is further settled position of law, as has been held by Hon'ble Apex Court in the case of Bihar Public Service Commission & Ors vs. Kamini and Ors reported in (2007) 5 SCC 519, wherein the issue fell for consideration before the learned Single Judge of the Hon'ble Patna High Court pertaining to consideration of candidates, who have participated in the process of selection in an advertisement, which contains the minimum qualification of B.Sc. Zoology with two years' diploma in Fisheries Science from Central Institute of Fisheries Education, Mumbai or a graduate degree in Fisheries Science (BFSC) from a recognized university of M.Sc. (Inland Fisheries Administration and Management) with Zoology from the Central Institute of Fisheries Education, Mumbai and when the candidature of the candidate in the said case not been considered due to lack of educational eligibility criteria, the matter went before the Hon'ble Patna High Court wherein the learned Single Judge has dismissed the writ petition but the same has been reversed by the Division Bench in Letters Patent Appeal, against which, the Bihar Public Service Commission has approached to the Hon'ble Apex Court wherein their Lordship at paragraph 5 has been pleased to hold that if the eligibility educational criteria was BSc, Zoology, such person must have passed B.Sc. Zoology as principal/main subject and not as a subsidiary or optional subject.

It has further been held that the Court of law has no jurisdiction to interfere and encroach upon the views expressed by the expert committee. The expert committee in the aforesaid case has opined that the student would be called graduate in the subject if he/she has Honours in that subject at graduate level, meaning thereby it must be the principal subject. The aforesaid opinion of the expert committee was accepted by the Hon'ble Apex Court.

For ready reference, paragraph nos. 5, 7 and 8 of the aforesaid judgment are quoted hereunder as:

"5.The learned counsel for the appellant submitted that the Division Bench of the High Court was wholly wrong in allowing the appeal and in setting aside the order passed by the learned Single Judge and in ignoring the report submitted by the Expert Committee. He also submitted that even otherwise, the action of the Commission could not be said to be illegal or contrary to law. When the requisite educational qualification was BSc, Zoology, such person must have passed BSc with Zoology as principal/main subject and not as a subsidiary or optional subject. Admittedly, the first respondent had passed BSc with Chemistry as principal subject and Zoology as optional/subsidiary subject. She, therefore, could not be held qualified and the action of the Commission was in consonance

with law and was legal and proper. It was also submitted that after the representation was received from the first respondent, the Commission constituted an Expert Committee for considering the grievance of the first respondent and even the Expert Committee opined that in its opinion i.e. in the opinion of the Committee, a student would be called graduate in the subject if he/she has Honours in that subject at the graduate level. If the subject is subsidiary (or side subject), he/she could not be called a graduate in that subject. It was because an Honours student at the graduate level studies eight papers in that subject whereas he/she studies only two papers in subsidiary subject. In accordance with the report, the action was taken which was proper. The counsel also submitted that the learned Single Judge was wholly right in upholding the contention of the Commission that the first respondent could not be said to be BSc Honours in Zoology and dismissed the petition. The Division Bench was in error in setting aside the said order which deserves interference.

7. Having heard learned counsel for the parties, in our opinion, the appeal deserves to be allowed. The advertisement is explicitly clear and states that the candidate must be Honours in BSc, Zoology. It is not in dispute that the first respondent has obtained BSc degree with first class but her main subject was Chemistry of eight papers of 800 marks and in addition to Chemistry, she had two papers of Zoology and Botany. In pursuance of the advertisement, which was clear, the first respondent was not eligible for the appointment to the post of District Fisheries Officer. In spite of that, she applied for the said post. True it is that initially a letter was issued by the Commission on 17-10-2002 calling upon her to appear before the Commission for interview. It was, however, a mistake on the part of the Commission. As soon as the appellant Commission realised that the first respondent was not having requisite qualifications for the post and was not eligible, her candidature was rejected. When a representation was made by the first respondent that cancellation of her candidature was not proper and that the decision should be reconsidered by the Commission, the Commission thought it fit to look into her grievance and an Expert Committee was appointed. The Expert Committee considered the question and submitted a report on 24-11-2002, inter alia, stating that in its "considered opinion", a student would be called a graduate in the subject if he/she has Honours in the subject at the graduate level, meaning thereby that it must be the principal subject. In our opinion, such a decision could not be said to be contrary to law.

8. Again, it is well settled that in the field of education, a court of law cannot act as an expert. Normally, therefore, whether or not a student/candidate possesses requisite qualifications, should better be left to educational institutions (vide *University of Mysore v. C.D. Govinda Rao*¹). This is particularly so when it is supported by an Expert Committee. The Expert Committee considered the matter and observed that a person can be said to be Honours in the subject if at the graduate level, he/she studies such subject as the principal subject having eight papers and not a subsidiary, optional or side subject having two papers. Such a decision, in our judgment, cannot be termed arbitrary or otherwise objectionable.

The learned Single Judge, in our opinion, was, therefore, right in dismissing the petition relying upon the report of the Committee and in upholding the objection of the Commission. The Division Bench was in error in ignoring the well-considered report of the Expert Committee and in setting aside the decision of the learned Single Judge. The Division Bench, while allowing the appeal, observed that the "litmus test" was the admission granted to the first respondent by the Central Institute of Fisheries Education, Mumbai. According to the Division Bench, if the first respondent did not possess Bachelor of Science degree with Zoology, the Institute would not have admitted her to the said course. The Division Bench observed that not only the first respondent was admitted to the said course, she had passed it with "flying colours". In our opinion, the Division Bench was not right in applying "litmus test" of admission of the first respondent by the Central Institute of Fisheries Education, Mumbai. The controversy before the Court was whether the first respondent was eligible for the post of District Fisheries Officer, Class II. The correct test, therefore, was not admission by the Mumbai Institution. If the requirement was of Honours in BSc with Zoology and if the first respondent had cleared BSc Honours with Chemistry, it could not be said that she was eligible to the post having requisite educational qualifications. By not treating her eligible, therefore, the Commission had not committed any illegality."

19. This Court has proceeded to examine the issues framed herein above.

Admitted position herein is that the on-line applications were invited from the eligible candidates for filling up the posts of Post Graduate Teacher in different subjects, including 'History', which is the subject matter of the present intra-court appeal.

20. It is also admitted fact that the appellant has shown himself having obtained post graduate degree in 'History' at the time of filling up on-line application form. On that pretext, he was allowed to appear in the assessment/performance test, as per the process of selection, as stipulated in the advertisement, in which, he has been found to be successful and in consequence thereof, he has been directed to appear for verification of testimonials, as per the conditions stipulated in the advertisement. The examining body, at the time of screening of the application form vis-a-vis testimonials submitted has found discrepancies in giving declaration with respect to having post graduate degree in the subject 'History', as per the advertisement.

21. On such discrepancies, the examining body issued show cause notice to the appellant in order to provide him opportunity of hearing and opportunity to satisfy the examining body, whereupon the appellant appeared and tried to justify the certificate obtained by him from different Universities in different streams of 'History' like that of Ancient/Medieval/Modern/Ancient History, Culture & Archaeology etc., but failed to produce any degree in the subject 'History' in its entirety, as per the advertisement, therefore, his candidature has been rejected.

22. Examining body while rejecting the candidature of the candidate has constituted an expert committee in order to clarify the issue, comprising of Chairman, Jharkhand Academic Council; Regional Director, KDS; R.D.D.E, South Chhotanagpur; Secretary, Jharkhand Academic Council; Deputy Director, Secondary Education; Additional Secretary, Secondary Education; DEO, Ranchi and Senior Advocate of the High Court, who after making various correspondences with the various Universities in the State of Jharkhand came to the conclusion that Ancient History, Medieval and Modern History are the branches of the subject History and candidates having degree in any of the branches only, not the subject History in its entirety, cannot be made eligible for selection in terms of the advertisement.

23. It is also admitted position that if the condition has been stipulated in the advertisement, it cannot be deviated in any way and if any deviation would be made it amounts to relaxation, which is not permissible in law, as per the law laid down in the case of Bihar Public Service Commission & Ors Vs. Kamini Devi (supra), wherein it has been held that if any decree is required in a particular subject at Graduate Level, the degree must be in the said subject by way of principal subject and not as a subsidiary subject.

24. Relying upon the aforesaid proposition of law, we are of the view that since in the advertisement requirement has been made of having degree of post graduation with the subject History, so far appointment as Post Graduate Trained Teacher is concerned, which does mean that a candidate is held to be eligible for consideration in the process of selection only if one or the other candidate is possessing degree of History at post graduate level as a principal subject and not as subsidiary subject.

25. In view of such proposition of law, as has been held by Hon'ble Apex Court in the case of Bihar Public Service Commission & Ors Vs. Kamini Devi (supra), wherein the Hon'ble Apex Court by accepting the opinion of the expert committee has opined that candidate would be called graduate in the subject if he/she has Honours in the subject at graduate level, therefore, the finding of the learned Single Judge by holding the eligibility of such candidate to be considered for selection in the History subject would be considered of such candidates, who are having graduation/post graduation in History subject in its entirety.

26. This Court in view of the fact that the appellant is having no Post Graduation in the subject History and as such his candidature cannot be said to be proper for consideration of selection and appointment on the post of Post Graduate Teacher in the subject History and, therefore, the learned Single Judge while recording finding to that effect in the impugned order cannot be faulted with in view of the fact that if any premium would be given to the appellant, the same would be in the teeth of the Article 14 of the Constitution of India and for no other reason, the other similarly situated candidates will be deprived to participate and avail the process of selection and accordingly, the finding recorded to that effect by the learned Single Judge requires no interference by this Court.

We, after giving our thoughtful consideration of the finding recorded by learned Single Judge and as per the argument advanced by learned counsel for the appellant, which has been negated by denying to issue positive direction in favour of the appellant, are of the considered view that the learned single judge has committed no illegality in passing the impugned judgment, as such the impugned judgment cannot be faulted with.

So far as issue no. III is concerned, which pertains to non-consideration of the caste certificate for the purpose of granting benefit of reservation since the appellant is under the category of EBC, it has been submitted by learned counsel for the appellant that on this ground also, the candidature of the appellant has been rejected, which, has been assailed by filing Interlocutory Application but the learned Single Judge has not adjudicated the same and simply in one line order, Interlocutory Application has been disposed of, therefore, there is no consideration of this by the learned Single Judge.

27. In opposition to this, submission has been made by learned counsel for the respondents-State as well as by respondents-JSSC, the examining body that even accepting that the learned Single Judge has committed any error in not adjudicating the issue about reservation, which according to the appellant has been agitated by filing Interlocutory Application that would not be of much relevance as the learned Single Judge has already found the candidature of the appellant not in consonance with the condition as he is not having requisite qualification of Post Graduation in History. Therefore, his candidature has been found not to be in consonance with the terms and conditions of the advertisement. Hence, even if the issue about reservation has not been adjudicated upon by the learned Single Judge no error will be said to have been committed for the reason that even if such benefit of caste certificate is given to the petitioner, he would still be ousted on the ground of lack of necessary educational qualification.

28. This Court, after appreciating the aforesaid argument advanced on behalf of parties is of the view that in a recruitment process, the conditions stipulated in the advertisement is required to be followed by one or the other candidates. In the instant case, since application was invited online and in the application educational qualification has been described to be Post Graduation in History, the appellant was allowed to appear in the process of selection in which, he was found to be up-to the mark but as per the terms and conditions of the advertisement, which contains a condition that after performance made in the process of selection, the certificate/testimonials would be scrutinized and in terms thereof the respondent-JSSC on screening of the educational certificate found that the appellant was not having Post Graduation in History subject which was one of the eligibility criteria, his candidature has been rejected.

It is not in dispute that question of reservation is to be made after performance of the one or the other candidate in the selection process i.e. after preparation of merit list category-wise. However, when the candidature of any candidate is

rejected on the ground of educational qualification as required in the advertisement, it will be said to be rejection of his candidature at the threshold and once his candidature has been rejected at the threshold there is no question of consideration of candidature of such candidate in the merit list and when there is no consideration of getting such candidate in the merit list there will be no question of consideration about extending benefit of reservation.

29. In that view of the matter, according to us, even if the learned Single Judge has not adjudicated upon the issue about benefit of reservation, as has been agitated in the Interlocutory Application and even if this case is remitted before the learned Single Judge or we will adjudicate upon the same by going on the issue on merit, no purpose would be served since the candidature of the appellant has been found to be not in consonance with the conditions of the advertisement, so far it relates to educational qualification.

In view of the aforesaid aspect of the matter, the issue of reservation is nothing but will be only for the academic discussion, therefore, we are of the considered view that no relief can be granted to the appellant on this ground also.

30. Accordingly, Issue No. III is also answered against the appellant.

31. In the result, the appeal fails and is accordingly dismissed.