

(2002) 07 RAJ CK 0028
In the Rajasthan High Court
Case No : Civil Review Petition No. 22 of 2002

Tayyab Hussain

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 29-07-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2003) 3 RLW 1886 : (2003) 1 WLC 489

Hon'ble Judges : Sunil Kumar Garg, J; Rajesh Balia, J

Bench : Division Bench

Advocate : M.S. Singhvi, for the Appellant; P.R. Singh, for the Respondent

Final Decision : Allowed

Judgement

Balia, J.—This application is to review the order passed by a Division Bench of this Court in D.B. Special Appeal No. 427/98 on 7.9.2000 with consequential relief of allowing the said Special Appeal and writ petition out of which the Special Appeal had arisen.

2. The facts leading to these proceedings are as under:-

The Applicant had applied for the post of Teacher Grade III in Urdu language in pursuance of the Advertisement as amended and notified by the District Education Officer (Boys), Churu, which was published on 8th October 1996 (Annex. P-1).

3. The qualification prescribed for eligibility to be appointed to the Teacher grade-III Urdu in the Advertisement as well as in the conditions prescribed in the form of application reads as under: -

3- fu/kkZfjr ;ksX;rk %&

vnhc@vnhc eghj@vnhc dkfey] led{k ,oa mPp vFkok jktLFkku ljdkj }kjk ekU;rk izkIr f"kk{kk cksMZ lhfu;j ISds.Mjh izek.ki= vkSj jktLFkku ljdkj }kjk ekU;rk izkIr ikap fo"kk;ksa ds lkFk ISds.Mjh ;k lel{k ijh{k ftuesa ls rhu fo"kk; xf.kr] vaxsth

vkSj fgUnh gksus pkfg, vkSj ISds.Mjh@lhfu;j ISds.Mjh esa mnqZ ,sfPNd fo"k; lfgr jktLFkku ljdkj }kjk ekU;rk izkIr v;/kid izf"k{k.k izek.k i= A

4. Qualification prescribed in the condition No. 3 appended to application from reads as under:-

foKkiu& dk;kZy; ftyk f"k{k{k vf/kdkjh ?Nk=?pq: fnukad 30-9-96

1- -----

2- -----

3- r`rh; Js.kh v;/kid gsrq ekU;rk izkIr fo"fo|ky;@cksMZ }kjk ISds.Mjh vFkok led{k ;ksX;rk rFkk jkT; ljdkj }kjk ekU;rk izkIr f"k{k{k izf"k{k.k izek.k i= dh vad rkfydk mnwZ v;/kid gsrq ekU;rk izkIr fo"o fo|ky;@cksMZ }kjk vnhc@vnhc ekghj@vnhc dkfey led{k ,oa mPp vFkok ekU;rk izkIr cksMZ ls ISds.Mjh@lhekfo esa mnwZ ,sfPNd fo"k; lfgr jktLFkku ljdkj }kjk ekU;rk izkIr v;/kid izf"k{k.k izEkk.k i= dh vad rkfydk,a A**

5. The petitioner had passed Secondary examination from Board of Secondary Education in 1982, he had acquired "Adib Kamil" degree from Jamia Urdu Institute of Aligarh. This qualification has been recognised by Govt. of Rajasthan as equivalent to graduate. He holds in addition thereto M.Com. degree and passed B.Ed. from University of Kashmir, Srinagar, with these qualification the petitioner applied for the post in pursuance of the said advertisement.

6. According to the petitioner, in the select list name of the petitioner did not find place, but in the list of rejected candidature published vide Annexure P-7 his name finds place at No. 6. The only reason for cancelling his candidature was that he did not have Urdu as subject in Secondary Examination.

7. This led to filing of the S.B.C. Writ Petition No. 4196/96 in which it was alleged that for a person who holds the qualifications of Adib/Adib Mahir/Adib Kamil or qualification equivalent thereto or higher qualification, is ipso facto eligible for the post in terms of eligibility criterion, and such candidate does not have to have Urdu as a subject in Secondary Examination. It is only those candidates who do not possess any of the specified qualifications in Urdu language but are possessing only Senior Secondary Board certificate, he is required to have passed Senior Secondary or Secondary Examination of the Board, recognised by State of Rajasthan with five subjects or equivalent examinations with three subjects viz. Maths, English and Hindi as compulsory subjects and Urdu as an optional subject coupled with certificate of Teachers Training from as recognised by the State of Rajasthan. The qualifications prescribed are in alternative and not cumulative.

8. In reply to the writ petition also only ground stated by the respondents which weighed for rejection of petitioner's candidature is that the applicant did not have Urdu as subject in his Secondary Board Examination. No other ground for rejection was pleaded or asserted.

9. A Learned Single Judge of this Court without going into the merit of this controversy about eligibility qualification, dismissed on wholly new ground by making out a new case for the respondent. By referring to the fact that posts were advertised for reserved category of Scheduled Caste and Scheduled Tribes, and Ex-Soldiers, it was held that the petitioner is not eligible for the post as he does not belong to any of the categories for which posts were advertised and, therefore, no relief can be granted to the petitioner in exercise of extra-ordinary jurisdiction.

10. This led to special appeal before this Court which is D.B. Special Appeal No. 427/98, was dismissed on 7.9.2000 by recording the following reasons:-

"From the record and the Judgment of the learned Single Judge, it is clear that appellant petitioner, was neither belonging to the category for which the posts of Teacher Grade III were advertised nor he was having "URDU" subject in the Secondary School Examination. It hardly matters that he was having equivalent qualification when the learned Single Judge refused to exercise jurisdiction in favour of the appellant petitioner then we would not interfere with such discretionary orders in Special appeal."

11. A SLP was filed against the aforesaid judgment before the Supreme Court. Hon"ble Supreme Court noticed that the learned counsel for the petitioner has produced documents which clearly show that the degree in Urdu, which the petitioner had obtained from Aligarh had been recognised by the State of Rajasthan. The High Court has proceeded on the basis that as the petitioner did not have Urdu as a subject in the Secondary School Examination, he was not qualified. Case of the petitioner is that he had passed the examination equivalent to B.A. in Urdu and that was recognised. This requires investigation of the fact. This petitioner was permitted to file a Review Petition before the Division bench within one month from the date of order passed in S.L.P.

12. This is, how, this Review Petition is before us.

13. We have heard learned counsel for the parties. We may at the out set notice, apparently the learned Single Judge as well as Division Bench over looked exclusion of the petitioner on the specific ground that he was not eligible for want of Urdu as subject in Secondary Examination and not on the ground that he did not belong to class of person for want the post was advertised. The ineligibility on this ground was assumed , which is a question of face, without any pleading to that effect and without parties joining any issue on that account. Such ineligibility is not even now pleaded by learned counsel for the State.

14. More over the petitioner has drawn our attention to Rule 7(4) of the Rajasthan Educational Sub Ordinate Service Rules, 1971, which prescribes that in case and in the event of no- availability of the eligible and suitable candidates amongst Scheduled Caste and Scheduled Tribes, as the case may be, in a particular year, the vacancies so reserved for them shall be filled in accordance with the normal procedure, and a equivalent number of the additional vacancies

which remain so unfilled shall be carried forward to the subsequent three recruitment years in total, and thereafter such reservation would lapse. Provided that there shall be no carry forward of the vacancies in posts or class/category/group of posts in any cadre or service to which promotion are made on the basis of merit alone. With this premises learned counsel for the applicant has also brought to the notice his assertion made in the writ petition that persons lower in merit of general category has been offered appointment which goes to show that the appointments were extended to candidates of general category as per Rule 7(4) was operated. Such appointments cannot be said to be ultra vires the Rule 7(4) of Rules of 1971.

15. This part of assertion is in para No. 5 of the writ petition has also not been denied that petitioner have 64.66% as per the merit formula. He has named two persons vc. Mohammed Shakil at No. 2 and Sabir Ali At NO.3 of select list, both of whom had lower percentage of marks as per merit formula at 61.55% and 60.53% respectively on merit. In review petition it has further been disclosed that no only candidates less meritorious then the petitioner has been appointed but one Smt. Nayab has been given appointment in Education Department as Urdu Grade III Teaches vide order dated 20.12.96 in Churu district, but she did not have Urdu subject in Secondary and possess the Adib Mahir from Jamia Urdu Institute, Aigarh. These facts are not in dispute.

16. We may also notice that it was not the case of the respondents at any time that recruitment for the post of Teacher Grade III Adib, Adib Mahir/Adib Kamil are not recognised qualification for the purpose of recruitment. The petitioner is holding the certificate of Adib Kamil which is not only included in the requisite qualification for eligibility in the advertisement as well as in the details of conditions appended with application form but has been specifically recognised by the State of Rajasthan as equivalent to B.A. in Urdu.. A notification in this regard issued by the State of Rajasthan which is dt.3.2.1965 declares Adib as equivalent to High School; Adib Mahir is equivalent to Intermediate and Adib Kamil is equivalent to B.A. This question is not contested.

17. Counter by the State of Rajasthan is confined to the fact the petitioner does not hold qualification in Secondary as Urdu as optional subject. So far as eligibility on the ground of Adib, Adib Mahir & Adib Kamil is concerned, is not in dispute even today.

18. Having considered the qualification which is admittedly requisite qualification for recruitment of Teacher Grade III to teach special language of Urdu leaves no room of doubt in mind that senior secondary certificate from a Board recognised by State of Rajasthan is not a necessary or additional qualification required along with the required Adib, Adib Mahir/Adib Kamil or any other equivalent to Adib, Adib Mahir/ Adib Kamil or higher to that. The minimum qualifications which any candidate for Grade III teacher in General under the Rules of 1971 is required to possess is as under:-

Schedule

S.No.

Name of Posts

Source of recruitment with percentage.

1

2

3

9(a)

Teacher

25% by direct recruitment and 75% by transfer from Panchayat samities Schools of the district concerned.

Minimum qualification and experience for direct recruitment.

Post or the post from which promotion, is to be made.

Qualification & experience required for promotion

4

5

6

Senior Secondary Certificate of Board of Secondary Education recognised by Govt. of Rajasthan and Secondary or equivalent Examination recognised by Govt. of Rajasthan with five subject three of them should be Mathematics, English and Hindi with Certificate of Teachers Training recognised by the Government of Rajasthan.

Committee for direct recruitment to the post not within the purview of Rajasthan Public Service Commission and for promotion.

Seniority

Remarks.

7

8

9

1.

DEO (Boys) of concerned district as Districtwise. Chairman.

2.

DEO (Girls) of concerned district as member.

3.

DEO (Elementary) of concerned district as Member.

4.

One Specialist to be nominated by the Range Officer concerned (Male) of the rank not less than principal as Member.

19. In terms of above, the petitioner is eligible for general teacher is also not in dispute as the holds M.Com. B.Ed. qualification, much higher than requisite qualification of Sr. Section or equivalent thereto in as much as Sr. Secondary or equivalent is the basic qualification for securing graduation from any University recognised by law. So also requirement of teachers training course, the petitioner holds a degree in education.

20. No specialised subject is required as such for eligibility as Grade III teacher. If it be held that State cannot provide additional qualification as has been done in the present case for recruiting teacher to teach minority language Urdu, then there is no ground on which the petitioner could have been excluded from consideration and offer appointment to less meritorious than him.

21. The assumption of the petitioner being not member of reserved class raised by learned Single Judge solely on the basis that he belongs to muslim community which do not recognise "class" system as amongst Hindus, then all the candidates appointed belong to Muslim community. For that reason no discrimination could have been made between the petitioner and other candidates who have been appointed.

22. The qualification about Board of Secondary Education has been referred, is only an alternative. Those who do not possess Adib, adib Mahir/Adib Kamil qualification in that event the certificate of Senior Secondary Education from a Board must have been passed with five papers or equivalent examination of which 3 compulsory papers viz. Maths, English and Hindi with an optional subject of Urdu. Those persons who have Adib/Adib Mahir/Adib Kamil which are specialised qualification in Urdu, is not required to have Urdu an optional subject in Secondary.

23. In aforesaid view of the matter, orders under review as well as order made by the learned Single Judge suffer from error apparent on record inasmuch as basic issue raised in the petition was not at all adverted to. Therefore, review petition deserves to be allowed. So also the special appeal and the writ petition are to be allowed. Because the petitioner has been wrongfully kept out of consideration for appointment on the post of Urdu Teacher Grade-III on wholly erroneous assumption about his ineligibility for not having Urdu as an optional subject in Secondary Examination which is not prescribed under the Rules or advertisement or in the terms detailed in the application form which has resulted

in breach of fundamental rights of the petitioner guaranteed under Article 14 and 16 of the Constitution by offering appointments to less meritorious candidates like the respondent by wrongful exclusion of petitioner from consideration.

24. There is no dispute that the petitioner's merit as per formula of merit criteria comes at No. 2 and that fact has not been denied.

25. Moreover, we are of the opinion that when a teacher is needed to teach specialised subject, it is always open to state to provide additional qualification for recruitment to teacher for such specialised subject to have specialised knowledge of the subject. It is in exercise of this requirement in addition to basis qualification required for appointment as grade III teacher in general category, the qualification of having specialised study of Urdu language has been laid for recruitment to the post of Teacher Grade III in Urdu language, to achieve the particular object, viz requiring that a candidate who has to teach Urdu, possesses special knowledge of Urdu, this is very clear from the eligibility criterion detailed in conditions of recruitment attached with application form. It says in no uncertain terms that a candidate for teacher should produce marksheet of secondary or its equivalent qualification or marksheets of teachers training certificate from any institute recognised by Govt. of Rajasthan and proof of specialised knowledge in Urdu the mark sheet of any of the qualification in Urdu subject viz. "Adib" or Adib Mahir or Adib Kamil, or equivalent or higher education or Secondary certificate with Urdu as an optional subject. There is no requirement that the candidates to produce mark sheet of Secondary examination with Urdu as optional subject along with mark sheet of Adib/Adib mahir/ Adib Kamil or equivalent or higher qualification. The purpose of providing additional qualification is obviously to ensure that a general teacher who holds a Senior Secondary Certificate simpliciter may or may not have a Urdu subject at all. Without knowledge of Urdu, one cannot expect to teach Urdu as language to anyone.

26. In these circumstances, we allow the review petition and recall the order passed in D.B. Special Appeal No. 427/88 on 7.9.2000. Further the special appeal is allowed and judgment of learned Single Judge dated 30.9.98 is set aside, consequently S.B. Civil Writ Petition No. 4196/96 is allowed, and we direct the respondents to consider the petitioner's appointment, if otherwise found suitable to appoint him on the post of Urdu Teacher Grade III with effect from the date a person less meritorious in the same selection process has been given appointment, with all consequential benefits of seniority and fixation of pay-scale. The fixation shall be made notionally and no arrears shall be paid to the petitioner for that reason until he is actually appointed and joins the service. If necessary supernumerary post may be created. The order shall be carried out within two months from the date of service of writ on the respondents or on furnishing certified copy of the order by the petitioner to respondents, whichever is earlier.

27. No order as to costs.