

(2015) 12 KAR CK 0128

In the Karnataka High Court

Case No : Writ Petition No. 34208/2015 (S-CAT)

The Joint Commissioner, Kendriya Vidyalaya Sangathan (HQ)

APPELLANT

Vs

Reena Tripathi and Others

RESPONDENT

Date of Decision : 09-12-2015

Acts Referred:

Citation : (2015) 12 KAR CK 0128

Hon'ble Judges : Mohan M. Shantana Goudar and B. Veerappa, JJ.

Bench : Division Bench

Advocate : Vishnu Bhat, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Mohan M. Shantana Goudar, J.—The order dated 9th June 2015 passed by the Central Administrative Tribunal ("CAT" for short), Bangalore Bench, Bangalore in Original Application No. 1496/2014 is called in question in this writ petition.

By the impugned order, the Tribunal while allowing the Original Application, directed the petitioner herein to consider the case of Respondent No. 1 herein for selection for appointment to the post of Primary Teacher pursuant to the Advertisement No. 7 and to declare the result of such selection within two months.

2. The records reveal that Advertisement No. 7 was issued by Kendriya Vidyalaya Sangathan i.e., the petitioner herein for recruitment of Teaching and Miscellaneous Teaching Posts for the years 2012-13 and 2013-14. The copy of the Advertisement No. 7 is produced at Annexure-A6 alongwith the writ petition. As per the said Advertisement, the commencement of Online Registration was from 29.7.2013; the last date for Online Registration was upto 11.59 p.m. on 28.8.2013; and the last date for receipt of print out of completed application alongwith the bank challan etc., was 12.9.2013. The essential qualification for appointment to the post of Primary Teacher as notified in Advertisement No. 7 is as under:

3. Undisputedly, Respondent No. 1 had passed Senior Secondary School Certificate Examination with 50% marks. It is also not in dispute that she has passed in Central Teacher Eligibility Test OCTET" for short) conducted by the Central Board of Secondary Education OCBSE" for short) in accordance with the guidelines framed by the National Council for Teacher Education ONCTE" for short) for the said purpose, on 26.7.2011. The validity period of the CTET qualifying certificate for all categories will be seven years from the date of issue. Thus the CTET Certificate issued in favour of Respondent No. 1 on 26.7.2011 will have the validity till 26.7.2018. According to Respondent No. 1, she is competent to teach through Hindi & English media and that she has got knowledge of Computer Applications. Since Respondent No. 1 has got all the essential qualifications prescribed for the post of Primary Teacher as notified in Advertisement No. 7, she also applied for the post of Primary Teacher. The written examinations were conducted on 16.12.2013 and the results of the written examinations were announced on 4/5.3.2014 wherein the Respondent No. 1 was declared "pass". The viva-voce was to be conducted from 25.4.2014 onwards. In the meanwhile, the petitioner started corresponding with NCTE to know as to whether the B.Ed graduates can also be considered for selection to the post of Primary Teacher. Since there was confusion in that regard, by the order dated 8.5.2014 vide Annexure-A8, the candidates having B.Ed Degree were also permitted to appear for interview. It is not in dispute that Respondent No. 1 has got B.Ed Degree also. She also appeared for viva-voce on 10.5.2014. One week prior to the announcement of results, it seems the petitioner got clarification as per Annexure-A9 dated 25.8.2014 to the effect that B.Ed candidates are not eligible to be appointed to the post of Primary Teachers for teaching classes I to V beyond 1.1.2012. Based on such clarification Annexure-A9 dated 25.8.2014, the candidates who had passed B.Ed Degree including Respondent No. 1 were not considered for being appointed to the posts of Primary Teachers and their results were not announced. Being aggrieved by such action of the petitioner, the Respondent No. 1 approached the CAT, Bangalore Bench, Bangalore by filing O.A. No. 1496/2014, which came to be allowed by the impugned order on 9.6.2015.

4. Sri Vishnu Bhat, learned advocate appearing on behalf of the petitioner submits that the clarification Annexure-A9 issued by NCTE dated 25.8.2014 disentitles the Respondent No. 1 from being appointed as Primary Teacher inasmuch she has the B.Ed degree to her credit. He further submits that though the qualification supra was wrongly prescribed in Page-6 of the Advertisement No. 7 as mentioned supra, subsequently NCTE has clarified that the actual qualification which ought to have been prescribed was Senior Secondary (or its equivalent) with atleast 50% marks and two years Diploma in Elementary Education (by whatever name known). Sri Vishnu Bhat further submits that since Respondent No. 1 did not have two years Diploma in Elementary Education, which is a minimum qualification prescribed for the post of Primary Teacher, she is not entitled for being considered for appointment.

The said submissions are opposed by Respondent No. 1, who appeared before us as party-in-person.

5. We do not find any ground to agree with the submissions made by the learned advocate for the petitioner. Undisputedly, the Advertisement No. 7 was issued by the petitioner inviting applications for Teaching and Miscellaneous Teaching Posts for the years 2012-13 and 2013-14, pursuant to which Respondent No. 1 applied for the post of Primary Teacher, who has the qualification as mentioned in page-6 of the Advertisement. It is also not in dispute that Respondent No. 1 was called for Written Test and she has appeared for the Written Test also. So also, it is not in dispute that Respondent No. 1 has passed in the Written Test and she has appeared for viva-voce on 10.5.2014. Only thereafter the petitioner started corresponding with NCTE for getting clarification as to whether B.Ed Degree holder should be considered or not for being appointed as Primary Teacher. Since the petitioner is bound by the Advertisement No. 7 inviting applications, it is not open for the petitioner to take "U" turn and to contend that whatever qualification prescribed in the Advertisement No. 7 is not a required qualification. The Respondent No. 1 being the candidate for the post of Primary Teacher, has applied on going through the Advertisement No. 7. Since she has got all the requisite qualification as found in Advertisement No. 7, her candidature cannot be refused only on the basis of change of qualification pursuant to the clarification subsequently issued by the NCTE. It is also relevant to note at this stage that for subsequent recruitment for the years 2014-15 and 2015-16, Advertisement No. 10 is issued and in the said Advertisement, it is clarified that the candidates having professional qualification of B.Ed or Spl. B.Ed are not eligible to apply for the post of Primary Teacher. Such qualification was not issued in Advertisement No. 7. It is not in dispute that Advertisement No. 7 is not withdrawn by the petitioner subsequently. On the other hand, the entire recruitment process proceeded based on the eligibility prescribed in Advertisement No. 7 itself. Therefore it is not open for the petitioner now to contend that the essential qualification prescribed in Advertisement No. 7 will not be adhered to by the petitioner.

If really the petitioner has committed fault in prescribing the eligibility qualification in Advertisement No. 7, it was for the petitioner to withdraw the said Advertisement prior to selection and to issue one more notification inviting applications prescribing necessary eligibility qualification. Such procedure is not adopted. Hence in our considered opinion, the Tribunal is justified in granting the relief in favour of Respondent No. 1 inasmuch as she is entitled for being considered for appointment to the post of Primary Teacher, if she has qualified in viva-voce.

In view of the above, the writ petition fails and the same stands dismissed. The result of selection of Respondent No. 1 shall be announced within one month from the date receipt of this order.