

(2020) 01 RAJ CK 0405
In the Rajasthan High Court
Case No : Civil Writ Petition No. 23192 Of 2018

Usha Kumari And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 20-01-2020

Acts Referred:

Right Of Children to Free and Compulsory Education Act, 2009 — Section 23, 23(1)
Rajasthan Panchayati Raj Rules, 1996 — Rule 266, 266(3)(b)

Citation : (2020) 01 RAJ CK 0405

Hon'ble Judges : Pankaj Bhandari, J

Bench : Single Bench

Advocate : Himanshu Jain, C.L. Saini, Srijana Shrestha, R.R. Choudhary,
Mahendra Shah, Anoop Dhand, Anuradha, Balkishan Saini, Ram Pratap Saini,
H.R. Kumawat, S.L. Kumawat

Final Decision : Dismissed

Judgement

1. The matter comes up on application filed by the petitioner for disposing of the case in light of the Judgment dated 09.12.2019 passed in SBCW

No.17833/2018.

2. With the consent of counsel for the parties, the matter was heard for final disposal.

3. Petitioners have preferred this petition inter-alia seeking following prayer:-

(i). Issue writ, order or direction in the nature thereof, the impugned order dated 26.09.2018 issued by the respondents may kindly be quashed and set

aside.

(ii). Issue writ, order or direction in the nature thereof the respondents may kindly be directed to allow the petitioners to participate in the process of

counseling in their respective District and give them appointment on the post of

Teachers Grade-III Level- II (Special Education) in their respective subjects with all consequential benefits by considering the qualification of one year Post Graduate Diploma in Special Education equivalent to Diploma of two years duration.

(iii). Any other order which this Hon'ble Court deems just and proper in the facts and circumstances of the case may also be passed in favour of the petitioners.

4. In nutshell, the case of the petitioners is that respondents issued advertisement dated 31.07.2018 for recruitment to the post of Teacher Grade-III (Special Education) Level-II. Petitioners candidature was not considered by the respondents on the ground that they were not having requisite B.Ed. degree in Special Education.

5. The main contention of counsel for the petitioners is that as per Section 23 of Right of Children to Free and Compulsory Education Act, 2009, any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher. It is contended that RCI is an academic authority and RCI has considered the qualifications of the petitioners as a requisite valid qualification for being appointed to the post of Teacher Grade-III (Level-II).

6. Counsel for the petitioners has placed reliance on ""Rajni vs. State of Rajasthan & Ors. decided by Rajasthan High Court dated 09.12.2019"", wherein High Court has held that the State Government is not empowered to declare the petitioners ineligible. Declaration of equivalence of educational qualifications is in the sole domain of the special statutory bodies, which have been formed for the said purpose. Court further held that Rehabilitation Council of India has declared the qualifications as equivalent, namely, B.Ed. Special Education being equivalent to Diploma in Special Education and there is no scope left for the State Government, but to accept the same.

7. Counsel for the petitioners has also placed reliance on ""Pritam Kumar Tak vs. State of Rajasthan & Ors. SBCWP No.14481/2012"" decided by the Rajasthan High Court on 26.08.2014, wherein one year diploma was treated as a valid qualification for the purpose of appointment to the post of Teacher Grade-III Special Education Level (I).

8. It is also contended that Rehabilitation Council of India has considered B.Ed in General Education with post Graduate Diploma in Special Education

as equivalent to B.Ed. Special Education.

9. Learned counsel appearing on behalf of the State has vehemently opposed the writ petition. It is contended that the appointments were to be made

in pursuance of the Rajasthan Panchayati Raj Rules, 1996. As per Rajasthan Panchayati Raj Rules 1996, academic qualifications has been prescribed in

Rule 266 and for Special Education, Sub-clause (b) of Clause (3) of Rule 266 provides the qualifications for appointment to the Post of Teacher

Grade-III for Level-II (Special Education). The qualifications as laid down by National Council for Teacher Education (NCTE) under the provisions of

Sub-Section (1) of Section 23 of Right of Children to Free and Compulsory Education Act, 2009, from time to time.

10. It is contended by counsel for the respondents that NCTE has laid down the minimum qualifications for appointment to the post of Teacher Grade-

III Level-II. In the advertisement itself, it is mentioned that for appointment to the post of Teacher Grade-III (Level-II), graduate with atleast 50%

marks and one year bachelor in B.Ed. Special Education is the requisite minimum qualifications. It is contended that a gazette notification has been

issued to this effect on 23.08.2010 by NCTE wherein also, the requisite qualifications for being appointed as Teacher Grade-III Level-II was notified.

As per which also, the requisite qualifications is B.A./B.Sc with atleast 50% marks and one year B.Ed Special Education.

11. It is argued that petitioners are not having the requisite B.Ed Special Education degree and thus not qualified to the appointment as Teacher

Grade-III (Level-II). It is also contended that similar controversy came up before the Court in ""Sarita Sharma vs. State of Rajasthan S.B. Civil Writ

Petition No.20022/2012"" decided by Rajasthan High Court on 22.02.2013, wherein also the petitioner was having qualification of Diploma in Special

Education. The Court held that Diploma in Special Education pertains to eligibility for appointment as Teacher Gr.III (Level-I). The Court further

observed that if a candidate with Diploma in Education (Special Education) is held eligible for Level-II then there was no need for the NCTE to

provide different qualifications for Level-I and Level-II. It is contended that the said Judgment was challenged before the Division Bench in D.B.

Special Appeal (Writ) No.485/2013 and vide order dated 20.10.2016, appeal preferred by the petitioner in that case was dismissed.

12. Counsel for the respondents has also placed reliance on ""Jatin Kumar Pareek & Ors. vs. State of Rajasthan & Ors. in D.B. Civil Writ Petition

No.8305/2012"" decided by the Division Bench on 28.05.2012"", wherein it was prayed that the minimum qualification prescribed in the notification

dated 23.08.2010 and 29.07.2011 issued by the National Council for Teacher Education (NCTE) may be declared ultra vires to the extent of post of

Special Teacher. The Court held that there is no doubt that under Section 11 of the Act of 1992, The RCI has the powers to recognise the

qualifications granted by the University in India, but what are to be the other eligibility conditions, besides the qualification recognised, for the purpose

of a particular service, have not been dealt with under the provisions of the Act of 1992. NCTE is academic authority notified under Section 23(1) of

the Act of 2009. Section 23(1) of the Act of 2009 provides that any person possessing such minimum qualifications, as laid down by an academic

authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher. Laying down of minimum qualifications

by the NCTE has been provided under the provisions of Section 23(1) of the Act of 2009, whereas the recognition of qualification by the RCI has

been provided under the provisions of Section 11 of the Act of 1992 and the same is totally a different concept. In exercise of the powers conferred

by Section 23(1) of the Act of 2009, notification has been issued by the NCTE, which has statutory force and is not ultra vires.

13. I have considered the contentions.

14. Admittedly, as per the notification, the minimum requisite qualification for appointment to the post of Teacher Grade-III (Level-II) is graduate with

atleast 50% marks and one year Bachelor in Education (B.Ed. Special Education) degree. Petitioners herein do not have one year Bachelor in

Education (B.Ed. Special Education) degree. Their claim is based on the one year Diploma degree that they are possessing which as per their claim is

approved by R.C.I. and is at par with B.Ed. Special Education.

15. As to whether one year Diploma in Special Education can be considered as requisite qualification for being appointed to the Post of Special

Teacher Grade-III (Level-II) was the controversy before the High Court in S.B.

Civil Writ Petition No.20022/2012. The notification wherein minimum qualification is prescribed was issued by the NCTE on 23.08.2010. It was held that as per Section 23 of Right of Children to Free and Compulsory Education Act, 2009, NCTE is the only authority authorised by the Central Government for prescribing the minimum qualification. High Court further held that R.C.I. has not been given authority to provide minimum qualification for recruitment to the post of Special Teacher Grade-III (Level-I & Level-II), it is only the NCTE which is competent. The Court further observed that as per Section 23 of the Act of 2009, only the Central Government can authorise an academic authority to provide minimum qualification and that for the aforesaid purposes the only authority authorised is NCTE, thus, the minimum qualification as provided by the NCTE would prevail. Court further dealt with qualifications provided for appointment to the Post of Teacher Grade-III (Level-I & II) and observed that for appointment to the post of Special Education Level-I, the requisite minimum qualification is only Senior Secondary with 50% marks and two years Diploma in Special Education. The present petitioners also have Diploma in Special Education and thus have the eligibility for the appointment to the post of Teacher Grade-III (Level-I). For Level-II, the qualification is B.A./B.Sc. With 50% marks and one year B.Ed. Course in Special Education. It was observed by the Court that if a candidate with Diploma in Special Education is held eligible for Level-II then there was no need for the NCTE to provide different qualifications for Level-I and Level-II.

16. The said Judgment was upheld by the Division Bench. The Judgment referred to by the counsel for the petitioners, Rajni vs. State of Rajasthan & Ors. (Supra) have not taken note of the earlier Judgment passed by the High Court and which was affirmed by the Division Bench. In the advertisement itself it was mentioned that the minimum qualification would be B.Ed. (Special Education). There was nothing mentioned with regard to Diploma in Special Education. Since, the Judgments cited by counsel for the petitioners have not taken note of the earlier Judgment which was affirmed by the Division Bench the earlier Judgment holds ground.

17. I am of the considered view that RCI is not authorised by Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 to prescribe the minimum qualification for appointment and it is only the NCTE

which has been authorised to prescribe the minimum qualifications.

18. I am also of the considered view that the law laid down by the Court in *Sarita Sharma vs. State of Rajasthan* (Supra) holds ground, hence, writ

petition is devoid of any merit and the same is dismissed.

19. Stay application stands disposed.