
(2017) 03 RAJ CK 0188
In the Rajasthan High Court
Case No : 10927 of 2010

Vimla Bai Meena

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 21-03-2017

Acts Referred:

[Rajasthan Educational Service Rules, 1970](#), [Rule 19](#) — [Rule 20](#)

Citation : (2017) 03 RAJ CK 0188

Hon'ble Judges : Alok Sharma

Bench : SINGLE BENCH

Advocate : Naina Saraf, D.K. Garg, S.N. Kumawat, Kamlesh Kumari, S.K. Gupta

Judgement

1. Under challenge is the merit list dated 20.07.2010 relating to appointments to the post of School Lecturer (Home Science) in the Secondary Education Department pursuant to the advertisement No.03/2004-05 and corrigendum No.1/2005-2006 followed by an interview. It has been prayed that the appointments made be quashed and the petitioner be appointed to the post in issue with consequential benefits.

2. The necessary facts for the adjudication of the petition are that pursuant to the advertisement dated 18.08.2004 as modified, the petitioner applied for appointment as School Lecturer (Home Science) in the category of Schedule Tribe (ST) in which category 8 of the 41 posts advertised were available. On receipt of applications, RPSC in the exercise of its power under Rule 19 of the Rajasthan Educational Service Rules, 1970 (hereinafter "the Rules of 1970"), conducted a screening test. The petitioner was allowed to participate in the test only with the intervention of this Court in SBCWP No.6320/2006 titled Smt. Pushpa Meena & Anr. Versus State & Anr. as a dispute had arisen as to whether the petitioner had the requisite educational qualification for the said post. Be as it may, the petitioner participated in the screening test conducted by RPSC solely for the purpose of short listing for interview-the prescribed mode of recruitment

in view of the large number of applicants (635) seeking appointment, to three times the number of vacancies i.e. 41. The petitioner then participated in the interview but in the result declared she did not find place in the merit list. Hence this petition.

3. The case of the petitioner is that only three candidates in the ST category have been appointed as against the eight vacancies reserved for them in their quota. It was submitted that, in the circumstances non appointment of the petitioner, a ST candidate despite 5 vacant posts in the category was most unjust and arbitrary. It was then submitted that the selection/appointments to the post of School Lecturer (Home Science) are also vitiated for reason of the respondent-RPSC not having reckoned for the amendment to the Rules of 1970 effective 01.04.1998 and making the selections/appointments on the basis of interview alone without taking into consideration the performance of the candidates in the written test. In the alternative it was submitted that the petitioner was even otherwise arbitrarily found unsuitable for the appointment with reference to a criteria for suitability not disclosed under the advertisement dated 18.08.2004 as amended by corrigendum No.1/2005-06 and ultra vires the Rules of 1970.

4. In reply to the petition, the respondent-RPSC has submitted that the petitioner was not found suitable for the post in issue and aside of a bald challenge on a mechanical incantation of arbitrariness no good ground to impugn the selection process or appointment of the candidates to the post of School Lecturer (Home Science) on the merit ascertained by the interview board has been set out. It was submitted that in any event the petition is largely founded upon a misapprehension with regard to the state of law on the method of appointment to the post of School Lecturer (Home Science) under the Rules of 1970. It was submitted that the amendment to the Rules of 1970 vide notification dated 01.04.1998 was wholly irrelevant for appointment to the post of School Lecturer (Home Science) and relevant only for selections/appointments to the post of District Education Officer (Boys/Girls), Deputy Director (Junior) as also Vice President (I.A.S), Ajmer, Professor I.A.S.E. Ajmer/Bikaner. It was submitted that for selection inter-alia to the post of School Lecturer (Home Science) Rule 19 of the Rules of 1970 still provides that the Commission shall scrutinize the applications received and then require as many qualified candidates it considers appropriate to appear before it for an interview in the selection process. And Rule 20 of the Rules of 1970 further provides that the Commission shall thereupon based on an interview prepare a list of candidates who its finds suitable for appointment to the post concerned in order of the rank of their merit and forward it to the appointing authority. It was submitted that the written examination was only a screening test a mechanism for short listing of the large number of candidates against the posts advertised for the purpose of interview. Marks/performance in the said test were wholly irrelevant to the determination of the merit list of successful candidates prepared following interviews, and suitable for appointment. It was submitted that the petitioner was considered by the Interview Board and not found suitable in view of the fact that she secured only

27 marks at the interview as against the 45 marks required under the decision of the Full Commission taken as early as 04.08.1994 for passing the suitability test, leading to an appointment. It was submitted that in this view of the matter even though five vacancies on the post of School Lecturer (Home Science) in the category of ST remained unfilled, the petitioner was not appointed. It was pointed out that the petitioner was evaluated for her suitability for the post of Lecturer (Home Science) under the Rules of 1970 by the interview board consisting of subject experts as also the Chairman, RPSC. No mala fides have been alleged against either of them nor any extraneous considerations in the selection process by the interview Board attributed. It was submitted that in this view of the matter the petition is wholly misdirected and clearly a consequence not of the petitioner seeking vindication of her Legal/Fundamental right but a mere outcome of her pique at not having been selected for reasons of being found unsuitable by the Interview Board. It has been prayed that the petition be therefore dismissed.

5. Heard. Considered.

6. The issue of applicability of the amendment of 01.04.1998 to the Rules of 1970 for appointment to the post of School Lecturer is no more res-integra. This Court in SBCWP No.9283/2010 titled Satya Narayan Gupta & Ors Versus State & Ors. decided on 03.12.2010 has held that the amendment notification dated 01.04.1998 made it explicitly clear that it did not even remotely concern itself with the post of School Lecturers under the Rules of 1970. It was held that the said notification amending the Rules of 1970 related only to the posts of District Education Officer(Boys/Girls), Deputy Director (Junior), Vice President (I.A.S), Ajmer, Professor I.A.S.E., Ajmer/Bikaner included in Schedule-III of the Rules of 1970 and no other posts. It was held that under Rule 19 of the Rules of 1970 RPSC had the right to hold screening tests for short listing of the large number of candidates applying for a post limiting their number to three times the number of vacancies to a post and requiring them to then appear at an interview for selection in terms of Rule 20 of the Rules of 1970. Consequently the posts of School Lecturer under the Rules of 1970 were to be filled up on the basis of interview alone.

7. There is thus no force in the contention of the counsel for the petitioner that the selections to the post of School Lecturer (Home Science) pursuant to the advertisement dated 18.08.2004 followed by corrigendum No.1/2005-06 on the basis of interview alone were illegal. It is reiterated that in terms of the extant Rules of 1970, appointments to the post of School Lecturer are required to be made on the basis of interview alone, as has been rightly done in the instant case.

8. As far as the contention of the counsel for the petitioner with regard to the selection to the post of School Lecturer (Home Science) being based on the minimum 45 mark at the interview for candidates of ST category RPSC being arbitrary, is concerned the issue is again no more res-integra and has been

addressed at length by this Court in the case of Tarun Kumar Bairwa vs. State of Rajasthan & Ors. SBCWP No.4419/2004. In the aforesaid case this Court held as under :- "Where selection(s) are solely on the basis of an interview, as for the post of Senior Scientific Officers in the Forensic Science Laboratory department, the importance of assessment of suitability cannot be overemphasized. However, assessment of suitability can be inherently subjective. Seized of this dilemma, the RPSC at its Full Commission meeting of 4-8-1994 decided that standardization for determining assessment of suitability was well in order and that could be so done only by a quantitative description of the threshold performance. It was in this context that a norm @ performance at 45% for reserved category candidate and 50% for open category candidate at the interview were decided upon. A test, so to say, of suitability ascertainment formulated to exclude the less meritorious."

It was further observed by the Court that :-

"It is also important to note that the Full Commission of RPSC on 4-8-1994 decided to set up a threshold performance/ requirement of 45% at interviews for reserved posts to be filled up only on the basis of interviews under the governing recruitment rules. That is not under challenge. But in any event did the Full Commission act ultra vires Rule 21 of the Rules of 1979 in so providing for? The answer to the question would be dependent on the finding as to whether the RPSC's Full Commission's decision on 4-8-1994 for ascertaining suitability of reserved category candidates at an interview at 45% performance and for open category candidates at 50% entail(s) a change in the rules of game after commencement of the selection process which put candidates such as the petitioner at an unfair disadvantage and resulted in their arbitrary rejection. The answer lies in recognizing the fine distinction as has been done by the Apex Court in Yogesh Yadav Vs. Union of India (supra), the State of Haryana Vs. Subash Chander Marwaha (supra), and Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar (supra) between providing for minimum marks at an interview for determining merit where the operating recruitment rules did not so provide on the one hand and fixing a threshold performance and norms therefor for ascertaining suitability on the other. From a reading of Yogesh Yadav Vs. Union of India (supra), State of Haryana Vs. Subash Chander Marwaha (supra) and Madhya Pradesh Public Service Commission v. Navnit Kumar Potdar (supra) on the one hand and K Manjushree Vs. State of Andhra Pradesh [(2008)3 SCC 514], Hemani Malhotra Vs. High Court of Delhi [(2008)7 SCC 11] on the other, it is vivid that fixing of a threshold performance for ascertaining suitability of a candidate for appointment is distinct from providing for minimum marks at the interview for ascertaining a candidate's merit".

The Court then held in the case of Tarun Kumar Bairwa (supra) that "the limitation of the court's jurisdiction in interfering with the assessment of experts in an interview and questioning the marking of candidate at an interview have been delineated in DB Civil Special Appeal No.638/2009 (State of Raj. Vs. Madan

Gopal Paliwal) decided on 25-1-2011 holding that this court cannot interfere in the grant of marks by the interview Board" in the absence of allegations of malafide in the selection process".

9. In the instant case, against the 41 posts of School Lecturer (Home Science) advertised, 635 applications were received. Therefore, as stated above in the exercise of its power under Rule 19 of the Rules of 1970, RPSC conducted a screening test. The successful were called for interview. The marks of the screening test were not to be reckoned while determining the merit of candidates whose suitability and merit was ascertained in the interview. Thus was as warranted by the plain reading of the Rule 20 of the Rules of 1970. The petitioner, a reserved category candidate, participated in the interview and was considered by the interview Board, which included subject experts but having received only 27 marks against the threshold of 45% determined by the full commission of RPSC on 04.08.1999 for reserved category candidates was not found suitable. No challenge has been made to the full commission decision on 04.08.1999. No malafide have been alleged against any of the member of the interview Board. No extraneous consideration informing the interview Board has been attributed to it/its member.

10. I am of therefore of the view that the mere fact that there were 8 vacant posts of School Lecturer (Home Science) in the quota of Scheduled Tribes and only three in the category were finally selected, is of no consequence to confer the petitioner with any right which can be agitated in a petition under Article 226 of the Constitution of India. The petitioner not having been found suitable for the said post by the Interview Board, cannot claim appointment only for reason of an available vacancy.

11. The petition is thus without force and liable to be dismissed.

12. Dismissed.