

(2009) 04 CAL CK 0085
In the Calcutta High Court
Case No : F.M.A. 383 of 2009

West Bengal Central School Service Commission	APPELLANT
Vs	
Tauhid Alam and Others	RESPONDENT

Date of Decision : 17-04-2009

Acts Referred:

West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Teachers) Rules, 2006 — Rule 5

Citation : (2009) 3 CALLT 346

Hon'ble Judges : Prasenjit Mandal, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Bikash Ranjan Bhattacharyay, Mr. Abhijit Gangopadhyay and Mr. Kansic Kiran Bandyopadhyay for the School Service Commission, Joydeep Kar, Mr. Aikat Banerjee, Mr. Jasojeet Mukherjee, Mr. Raj Pal and Mrs. Juin Datta Chakraborty for the State of West Bengal, for the Appellant; Amal Baran Chatterjee, Animesh Goswami, Abdul Alim and Mr. Habibur Rahaman for Tauhid Alam and Ors., Tapabrata Chakraborty and Mr. Abhijit Basu for the Learned Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ashim Kumar Banerjee, J.—West Bengal School Service Commission published an advertisement on July 12, 2006 appearing at page 206 of the Paper Book inviting application for the 7th Regional Level Selection Test (hereinafter referred to as "RLST") scheduled to be held on November 12, 2006 inter alia for the post of Urdu Teacher (Male Vacancy) in Bengali Medium School for the Northern Region.

2. The West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Teachers) Rules, 2006 came into force on June 6, 2006. Rule 5 of the said rules of 2006 being relevant herein is quoted below

5. Additional qualification of candidate. - A candidate willing to be selected as a Teacher in any school, having Bengali or English or Hindi or Nepali or Telegu or Santhali or Urdu as the medium of instruction, must have Bengali or English or

Hindi or Nepali or Telegu or Santhali or Urdu as first or second or third language-

(a) at secondary level of the Board or Board of Madrasah or equivalent; or?

(b) at higher secondary level of the Council or equivalent, or

(c) at any subsequent higher level of education in that language paper.

3. As per the said Rule quoted (supra) a candidate willing to be selected as a teacher in any school having a particular language as medium of instruction must have such language as first or second or third language in course of his study at the Secondary Level/Higher Secondary Level or any subsequent Higher Level of education.

4. The respondents, in these appeals, being Tauhid Alam and Md. Mansur Alam wanted to apply for the post of Urdu Teacher in respect of the vacancies Northern Region earmarked for Bengali Medium Schools although, they not have Bengali as a combination subject either at Secondary or Higher (sic) or in any subsequent level of education. They filed a writ petition (sic) W.P. No. 184905 (W) of 2006 inter alia challenging the advertisement purposing such condition in terms of Rule 5 of the said Rules of 2006. The (sic) single Judge passed an interim order permitting them to appear at the said selection test. The School Service Commission preferred an appeal being aggrieved by the said interim order. The Division Bench dismissed the appeal. Tauhid and Mansur participated in the selection test. However, their results were not declared. The School Service Commission filed an affidavit-in opposition in the writ proceeding inter alia contending that in absence of a Challenge to Rule 5 they were not entitled to be considered for appointment.

5. It now appears that out of four vacancies one vacancy was filled up by this School Service Commission giving appointment to Md. Imran Kuresi who satisfied the requirement having Urdu, English as well as Bengali as combination subjects at the Secondary Level. The other three vacancies were carried forward for the next RLST. The School Service Commission published advertisement on October 6, 2007. Challenging such action on the part of the School Service Commission Tauhid and Mansur filed second writ petition being W.P. No. 22720(W) of 2007 inter alia challenging the vires of Rule 5 of the said rules of 2006 as well as permission to appeal in the 8th RLST without prejudice to their rights and contentions. The writ petition was heard and disposed of by the learned single Judge by judgment and order dated September 5, 2008 appearing at page 109-163 of the Paper Book impugned in this appeal.

6. The learned Judge allowed the writ petition by striking down Rule 5 inter alia on the following grounds:

i) u/s 8(1) of the West Bengal School Service Commission Act, 1997 manner and scope of selection of persons for appointment to the post of teachers were prescribed. Section 17 provided that the State by notification would be entitled to make Rules for carrying out the purposes of the said Act. Such power, however,

could not mean that the authorities could frame Rules which were unreasonable or in violation of the fundamental rights guaranteed by the Constitution.

ii) Rule 5 was arbitrary and violative of the provisions of Article 14 as there was no provision for any third language at the Madhyamik, Higher Secondary or Graduation Level in the State.

iii) The restriction imposed by Rule 5 was wholly unreasonable.

7. Being aggrieved, the State as well as School Service Commission preferred the instant appeals.

8. Appearing for the appellant, School Service Commission, Mr. Abhijit Gangopadhyay led by Mr. Bikash Ranjan Bhattacharyay, learned senior counsel contended that the Rule 5 required a particular language to be a combination subject at the study level to compete for the post in a particular school having the medium of instruction in the said language. This (sic) required to facilitate proper teaching in the concerned school. The respondent had Urdu and English in their study level. Hence, they were fit for the post Urdu Teacher both in Urdu medium as well as English medium. The respondents admittedly did not have Bengali at any level as contemplate under Rule 5. Hence, in case, they were admitted in a Bengali Medium School it would be difficult for them to teach in the said school without having proficiency in such language being the medium of instruction. Mr. Gangopadhyay produced the Mark Sheet of Md. Imran Kuresi, a successive appointee who had Bengali as additional subject at the Secondary Level. Hence, the contention made before the learned single Judge that there was no scope for studying three languages at any level of education in this State was not correct.

9. Mr. Joydeep Kar, learned counsel appearing for the State while adopting the submission made by Mr. Ganguly contended that u/s 17 of the said Act of 1997 the State was empowered to frame Rules for appointment of teachers. The said Rules of 2006 was accordingly framed by the State. Rule 5 stipulated the requirement of additional qualification compelling a candidate to have a particular language at his study level which was the medium (sic) instruction in the school where he intended to be appointed. This could not be called either arbitrary or unreasonable. Mr. Kar, in support of his contention relied on two Apex Court decisions in the case of J. Ranga Swamy v. Government of Andhra Pradesh & Ors., reported in 1990 Volume 1 Supreme Court Cases page 288 and Basic Education Board, U.P. Vs. Upendra Rai and Others, .

10. Opposing the appeals Mr. Amal Baran Chatterjee, learned counsels appearing for the Tauhid and Mansur contended as follows:

i) Rule 5 stipulated inter alia, Bengali as first or second or third language at any level of education, for being considered for appointment in all Bengali Medium School. The respondents had Urdu and English as combination subjects in language group. English was a compulsory subject. Hence, there could be no

scope for them to study Bengali as a third language in absence of any such curriculum at any level of education within the State.

ii) Since the candidates competed for the post of Urdu being the subject studied at all levels up to Post Graduate Level they could not have studied Bengali as a third language at any level as English was a common language being compulsory at the Secondary and Higher Secondary Level.

iii) The concerned schools were situated at Islampur Division, district of Uttar Dinajpur which was earlier a part of Bihar and the concerned schools were having multi-lingual students. Hence, those vacancies could not be earmarked in Bengali Medium category.

iv) There was no scope for study of any third language at any level of education in the State. Hence, Rule 5 contemplating study of Bengali as a third language was impossible to be performed.

11. Mr. Chatterjee while distinguishing the cases cited by Mr. Kar Intended that the Apex Court observed that comparative study of two qualifications was not within the domain of the Court. Such ratio was not, at all applicable having regards to the facts and circumstances of the present case.

12. Article 14 of the Constitution denotes equal opportunity to all. Articles 14, 16 and 19 read together would, inter alia, mandate equal opportunity to all being similarly circumstanced. When State is giving appointment through a selection process the State must give equal opportunity to all having eligible qualifications to compete for the said selection process. If any Rule or Statute offends the basic structure of our Constitution such Rule or Statute is liable to be struck down. The State is however, entitled to discriminate between one and the other having an intelligible differentia between them. Hence, to test a particular provision to find out whether it offends the basic structure of our Constitution one has to look to the impugned provision to find out, whether the restriction, if any, imposed by the said provision was reasonable having an intelligible differentia between two persons or two groups or whether such restriction was arbitrary.

13. State, by way of a policy decision, decided to bear the cost of providing teachers in aided schools through out the State meaning thereby, all the teachers of the aided schools in the State are entitled to draw their salary and other service benefits from the State Exchequer. Hence, State is entitled to direct the mode of recruitment. As and by way of a policy decision the State decided to form a Commission for the purpose of recruitment of teachers. Hence, the West Bengal School Service commission Act, 1997 came into force. Section 17 empowered the State to frame Rules to facilitate appointments. Rule 5 was one of such Rules which came in existence in June 2006. The said Rules of 2006 prescribed the qualification, age and other requirements to be followed in the matter of recruitment of teachers. Rule 5 prescribed the additional qualification. Hence, per se, such Rule could not be called as ultra vires the said Act or the Constitution. We have carefully perused the writ petition and the grounds

stipulated therein. We are unable to find out as to how this particular Rule could be termed as arbitrary or discriminatory.

14. A student in a Bengali Medium School participates in study having Bengali as medium of instruction. Hence, the teachers appointed in the said school must have Bengali as a language in course of their study at any level. It is required to facilitate proper teaching so that the concerned teacher could easily communicate with his students. The respondents admittedly did not study Bengali at any level of education. Mr. Chatterjee tried to contend that they studied Bengali up to class VIII, although we do not find any definite assertion in the petition. The petitioners, however, made an indirect averment in paragraph 22 of the petition to the extent that a provision for study of third language was available up to class VIII.

15. We find that before the learned single Judge emphasis was put on the particular phraseology "third language". Mr. Chatterjee also put emphasis before us on that score. If we read Rule 5 carefully we would find that the true purport of the said rule was to have Bengali as a subject at any level to be in a Bengali Medium School. Whether it was a third language or an additional subject, is immaterial. Bengali admittedly is a subject in language group. In case any candidate studies Bengali as a subject in addition to other two languages it would automatically be a third language although not specifically mentioned either in the Mark Sheet or in the syllabus. We have also perused the syllabus to find out the subjects available at the Secondary Level under the West Bengal Board of Secondary Education. We find that in the first language group Bengali, English and Urdu are available, in the second language group English, Bengali and Nepali are available, in additional subject group Bengali, English, Hindi, Nepali, Urdu, Sanskrit, Persian, Arabic, French are available. Hence, it is possible for a candidate to have at least three language subjects at the Secondary Level. The respondents could have done so while undergoing study at the Secondary Level. They did not do so. The successful appointee Imran Kuresi had three subjects at the Secondary Level. Hence, he was given appointment. This aspect perhaps, was not considered by the learned single Judge. On perusal of the judgment and order impugned we do not find any such discussion. Hence, the plea that applicability of the said Rule was impossible, is far from truth. It might be true that it would be difficult for the Commission to get sufficient, candidates for the said post. We are told that in the 7th RLST only Imran could be found suitable. The rest three vacancies were carried forward at the 8th RLST level where also all the posts could not be filled up. The Commission is, however, trying to fill up the post by carrying forward the rest of the vacancy for the next RLST. Hence, the plea of impossibility cannot be accepted.

16. The learned Judge held that, such restriction was unreasonable. As observed earlier, the true purport of the Rule was to facilitate proper communication between the teacher and the student so that the students may not suffer due to language problem. We are unable to find out as to how this Rule could be stated

to be unreasonable. The respondents are fit for appointment to any Urdu or English Medium School. They could very well offer their candidature for the vacancies in either Urdu or English Medium as and when advertised. Restriction on their participation in Bengali Medium cannot be called as unreasonable as we feel that the interest of the students is paramount and cannot be compromised to accommodate the petitioners relaxing the Rule so that they could fit in for the post.

17. Mr. Kar cited the Apex Court decisions referred to (supra) where the Apex Court was of the opinion that whether a particular qualification would be just and appropriate for the post, should be left to the appointing authority. The Apex Court also held that policy decision cannot be interfered by Court unless it violates Constitutional or statutory provision. As already held by us, neither the subject Rule offends any fundamental right guaranteed to Constitution nor it could be said to be de hors the provisions of the said Act of 1997.

18. We repeat, welfare of the student is of paramount importance. The restriction, if any, imposed by the special Rule is only to facilitate proper teaching availing a particular medium of instruction. A teacher having no appropriate qualification in the said medium would not be fit for the said post. The said Rule is neither arbitrary nor discriminatory, as on a plain reading the true purport is apparent as discussed above.

19. The appeals succeed.

20. The judgment and order under appeal is set aside.

21. The writ petition is dismissed.

22. There would be, however, no order as to costs.

Urgent xerox certified copy would be given to the parties, if applied for.

Prasenjit Mandal, J.

13. I agree.