

RAJASTHAN PUBLIC SERVICE COMMISSION

v.

KAILA KUMAR PALIWAL AND ANR.

MAY 2, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Service Law—Promotion—To the Post of Headmaster, Secondary Schools—Entitlement of Teacher Grade III, initially appointed as Laboratory Assistant—Held: Such teachers not entitled to promotion to the post of Headmaster—In order to be considered for promotion to a higher post, person must possess essential qualification—Such qualification cannot be relaxed even by the Selection Committee in absence of express power for the same—Determination of criteria for qualification would depend on the rules operating in the field—Rajasthan Educational Service Rules, 1970—Rajasthan Education (Subordinate Services) Rules, 1971.

The respondents were initially appointed as Laboratory Assistants. They had also worked on the post of Teacher Grade III. Their cases for recruitment to the post of Headmaster of the Secondary Schools were not considered by the appellant-Commission. Their Writ Petitions seeking direction to call them for interview was dismissed by Single Judge of High Court. In intra-court appeal, Division Bench of High Court allowed the plea of the respondents.

In appeals to this Court, the question for consideration was as to whether the experience of respondents as Laboratory Assistant and Teacher Grade III entitled them to be considered for promotion to the post of Headmaster.

Allowing the appeals, the Court

HELD: 1.1. Posts of Head Master are governed by Rajasthan Educational Service Rules, 1970. Five years' teaching experience is required for consideration for appointment to the post of Head Master which in turn is referable to teaching in certain capacity on certain categories or posts. Therefore, those who had been holding posts of Teacher Grade III with the minimum educational qualification of Matriculation or Secondary Education with a certificate in training would not be entitled to teaching in secondary classes or higher classes in view of the scope and purport of both 1970 Rules

A as also Rajasthan Education (Subordinate Services) Rules, 1971, the Commission was correct in its view.

[Paras 13, 14 and 17] [1137-C, D, E; 1138-A-B]

B 1.2. In the instant case, the rules are absolutely clear and explicit. Not only the posts of Head Master is governed by a separate set of rules, the posts of Teacher Grade III provides for a promotional avenue to the posts of Teacher Grade II which in turn provides for promotion to the other grades of teacher. It is, thus, inconceivable that experience gained by a person holding the post of Teacher Grade III governed by the subordinate services rules would be entitled to be considered for promotion to the post of Head Master although experience of teaching in particular classes is relevant therefor.

C [Paras 26 and 27] [1140-F, G]

A. Umarani v. Registrar, Cooperative Societies and Ors., [2004] 7 SCC 112, relied on.

D *State of Rajasthan v. Manmohar Singh and Ors.*, [2003] 1 CDR 839, disapproved.

E 2.1. A person in order to be considered for promotion to a higher post must possess the essential qualification. If he does not do so, he cannot be considered therefor. Even the selection committee in absence of any express power conferred upon it cannot relax such essential qualification.

[Para 20] [1138-D]

F *J.C. Yadav and Ors. v. State of Haryana and Ors.*, [1990] 2 SCC 189 and *Dr. Bhanu Prasad Panda v. Chancellor, Sambalpur University and Ors.*, [2001] 8 SCC 532, referred to.

G 2.2. Recruitment to a post must be made strictly in terms of the Rules operating in the field. Essential qualification must be possessed by a person as on the date of issuance of the notification or as specified in the rules and only in absence thereof, the qualification required till the last date of filing of the application would be the relevant date. [Para 21] [1138-E, F]

Ashok Kumar Sharma and Ors. v. Chander Shekhar and Anr., [1997] 4 SCC 18; *U.P. Public Service Commission U.P., Allahabad and Anr. v. Alpna*, [1994] 2 SCC 723 and *Harpal Kaur Chahal (Smt.) v. Director, Punjab Instructions, Punjab and Anr.*, [1995] Supp. 4 SCC 706, referred to.

H 2.3. Even where there exists a provision for relaxation, for example

relaxation in age, the same must be strictly complied with.

[Para 22] [1138-G]

Kendriya Vidyalaya Sangathan and Ors. v. Sajal Kumar Roy and Ors., [2006] 8 SCC 671 and *P.K. Kamachandra Iyer and Ors. v. Union of India and Ors.*, [1984] 2 SCC 141, referred to.

2.4. The question as to whether a person fulfils the criteria of teaching experience or not would depend upon the rules operating in the field. When the rules are clear and explicit, the same has to be given effect to. Only in a case where the rules are not clear, the candidate concerned must place adequate material to show that he fulfils the requisite qualification.

[Para 23] [1138-H; 1139-A]

State of Bihar and Anr. etc. etc. v. Asis Kumar Mukherjee and Ors., etc. etc. A.I.R. (1975) SC 192, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2317 of 2007.

From the Final Judgment and Order dated 02.09.2005 of the High Court of Judicature of Rajasthan at Jodhpur in D B Civil Special Appeal (Writ) No. 785 of 2004 in S B Civil Writ Petition No. 7031 of 2003.

WITH

C.A. No. 2318 of 2007.

Manish Kumar, Ansar Ahmad Chaudhary, Madhurima Tatia and Aruneshwar Gupta for the Appellant.

B.D. Sharma and Vikram Jeet Sikand for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Respondents herein were Laboratory Assistants in the Government High Schools. They were appointed on or about 24.1.1992 to the said posts. They worked in the post of Teacher Grade-III from 13.10.1997.

3. The Rajasthan Public Service Commission (for short as "Commission") issued an advertisement on or about 7.3.2002 for the posts of Headmaster of Secondary Schools. The minimum qualification and other conditions laid down therefor in terms of Rajasthan Educational Service Rules, 1970 are as under:

S. No	Name of Post	Method of recruitment with percentage	Minimum qualification and experience for direct recruitment	Post or posts from which promotion in to be made	Minimum qualifications and experience required for promotion	Maximum age limit for direct recruitment
1	2	3	4	5	6	7
[1a]	Headmasters, Sec. School for boys	50% by direct recruitment and 50% by promotion	1(a) Bachelor's degree or diploma in education (b) Experience of teaching High/Jr. HSS/Hr. Sec. Class for 5 years or experience of administrative charge of Middle Schools for 4 years and of teaching High/Jr. HSS/Hr. Sec. classes for 3 years OR Five years' experience on the posts of Teachers Grade II or	Teacher's in grade II in Section C, D, E and F of the Schedule appended	1.(a) Bachelors Degree with a degree or diploma in Education (b) Experience of teaching High/Jr. Hr. Sec./Higher Sec./classes for 5 years or experience of Administrative charge of Middle Schools for 4 years and of teaching	33 years

1	2	3	4	5	6	7
			<p>above under any of the Sections C,D, E and F of the Schedule appended to the Rajasthan Educational Subordinate Service Rules, 1971]</p> <p>Note 1. Degree or Diploma referred to above shall be of a University established by Law in India or of foreign University recognised as equivalent hereto by the Government</p> <p>Note 2. Teaching in RTS/BSTC/Schools will be deemed as equivalent to teaching in High/Jr. Higher Sec./Hr. Sec. Classes.</p>		<p>High/Jr. Hr. Sec./Hr. Sec. classes for 3 years</p> <p>OR</p> <p>Qualifications prescribed in 1(a) of column 4 and should have been exempted by the Board of Sec. Education, Rajasthan from possessing of qualifications prescribed in sub-rule (1) (b) in regard to the number of years</p>	

A 4. *Inter alia* on the premise that the respondents did not fulfil the requisite eligibility criteria contained in the said rules, their cases for recruitment to the posts of Headmaster of the secondary schools were not considered by the Commission.

B 5. Indisputably, in terms of the said Rules, 50% of the post of Head Master were to be filled up by direct recruitment; whereas the rest 50% by promotion.

C 6. Respondents filed a writ petition praying inter alia for issuance of a writ of or in the nature of mandamus directing the Commission to call them for interview for consideration of their appointments to the said posts pursuant to the aforementioned advertisement dated 7.3.2002 having regard to their experience as Laboratory Assistants. A learned Single Judge of the High Court by a Judgment and Order dated 17.12.2003 relying on or on the basis of an earlier decision of a coordinate Bench of the said Court in *Smt. Manjulata v. RPSC & Anr.*, SBCWP No. 421/1997 disposed on 24.1.1997, dismissed the said petition. Intra court appeals were preferred thereagainst and by reason of the impugned judgment, the Division Bench following another Division Bench judgment rendered in *State of Rajasthan v Manmohar Singh & Ors.*, (2003) 1 CDR 839, allowed the same.

D 7. The State of Rajasthan and Rajasthan Public Service Commission are thus, before us.

E 8. The only question which arises for consideration in these appeals is as to whether the High Court was correct in opining that the experience gained by the respondents while working as Laboratory Assistants or Teacher Grade-III satisfies the requirements laid down in the said advertisement dated 7.3.2002.

F 9. The services of the teachers working in the schools in the State of Rajasthan are governed by the Rajasthan Educational Service Rules, 1970 and Rajasthan Education (Subordinate Services) Rules, 1971. Subordinate service consists of the posts as specified in the schedule appended thereto. A Teacher Grade-III as also a Laboratory Assistant come within the purview of the term 'subordinate services'. The minimum qualification for holding the post of a Teacher Grade-III is Matriculation with certificate of training, whereas that of Laboratory Assistant is Secondary with Science as an optional subject.

G 10. The Rajasthan Educational Service Rules, 1970, on the other hand, deal with appointment inter alia of Head Masters, Assistant Head Masters,

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Deputy Inspectors of Schools etc; the minimum qualifications wherefor are Bachelors' degree and Degree or Diploma in Education. A

11. In the Rajasthan Education (Subordinate Services) Rules, 1971, there exist posts of Teachers Grade-II. Post of Teacher Grade-III, Laboratory Assistants and Teachers in deaf and dumb, blind schools provide for avenues of promotion to the post of Teachers Grade-II, Sub-Deputy Inspectors and Enforcement Assistant etc. B

12. The said posts also provide for avenue, to the posts of Senior Teachers which was substituted for Teachers Grade-II by notification dated 6.1.1990. Indisputably, there are certain other posts which are filled up by promotion inter alia from amongst the category of Teacher Grade-II as for example Lecturer etc., Technical Testing Assistants in Bureau of Educational and Vocational Guidance etc. C

13. Posts of Head Master, it would bear repetition to state, are governed by the 1970 Rules. Five years' teaching experience is required for consideration for appointment to the post of Head Master which in turn is referable to teaching in certain capacity on certain categories or posts. D

14. It is, therefore, difficult to accept that those who had been holding posts of Teacher Grade-III with the minimum educational qualification of Matriculation or Secondary Education with a certificate in training would be entitled to teaching in secondary classes or higher classes. E

15. In the case of *Manjulata* (supra), the Rajasthan High Court whereupon the learned Single Judge placed reliance upon, stated;

“A show cause notice had, therefore, been issued to the respondent-RPSC, who on appearance, has informed this Court that the petitioner does not qualify for the post as she has been working as Lab. Assistant, which is a lower post than the post of regular teachers and her experience as a Lab. Assistant does not give her any credit towards teaching experience. Shri Kumawat on behalf of R.P.S.C. also informed that this question had been ascertained from a Body of the Experts by the R.P.S.C. in which the Committee has given its opinion in the negative, and hence, no Lab. Assistants are held to be eligible for the post of Head-Mistress/Head Master.” F G

16. It is, therefore, evident that Public Service Commission which is an expert body upon obtaining opinion from other experts came to the conclusion that for the purpose of appointment to the post of Head Master of a Secondary H

A School, whether by way of direct recruitment or promotion, qualifications requisite for a candidate as in the post of Teacher Grade-III are not sufficient.

17. We, having regard to the scope and purport of both 1970 Rules as also 1971 Rules, are of the opinion that the Commission was correct in its view.

B 18. The Division Bench of the Rajasthan High Court in *Manmohar Singh* (supra) was considering a case of clubbing of experiences of Grade-III teacher with that of Grade-II teacher. It proceeded on the premise that once an academic qualification was prescribed, a person having such qualification need not acquire the teaching experience separately both as Grade-II and
C Grade-III teacher.

19. The learned judges with respect, were not correct in taking such a view.

D 20. A person in order to be considered for promotion to a higher post must possess the essential qualification. If he does not do so, he cannot be considered therefore. Even the selection committee in absence of any express power conferred upon it cannot relax such essential qualification. See *J.C. Yadav and Ors v State of Haryana and Ors.*, [1990] 2 SCC 189 and *Dr. Bhanu Prasad Panda v Chancellor, Sambalpur University and Ors.*, [2001] 8 SCC 532.

E 21. Recruitment to a post must be made strictly in terms of the Rules operating in the field. Essential qualification must be possessed by a person as on the date of issuance of the notification or as specified in the rules and only in absence thereof, the qualification acquired till the last date of filing of the application would be the relevant date. See *Ashok Kumar Sharma and Ors. v. Chander Shekhar and Anr.*, [1997] 4 SCC 18, *U.P. Public Service Commission U.P., Allahabad and Anr v. Alpana*, [1994] 2 SCC 723 and *Harpal Kaur Chahal (Smt.) v. Director, Punjab Instructions, Punjab and Anr.*, [1995] Supp 4 SCC 706.
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G 22. Even where there exists a provision for relaxation, for example relaxation in age, the same must be strictly complied with. {See *Kendriya Vidyalaya Sangathan and Ors. v. Sajal Kumar Roy and Ors.*, [2006] 8 SCC 671 and *P.K. Ramachandra Iyer and Ors. v. Union of India and Ors.*, [1984] 2 SCC 141}.

H 23. We are not oblivious of the fact that the question as to whether a person fulfils the criteria of teaching experience or not would depend upon

the rules operating in the field. When the rules are clear and explicit, the same has to be given effect to. Only in a case where the rules are not clear, the candidate concerned must place adequate material to show that he fulfils the requisite qualification. {See *The State of Bihar and Anr etc. etc. v. Asis Kumar Mukherjee and Ors. etc. etc.*, A.I.R. (1975) SC 192}.

24. We may notice that in *P.K. Ramachandra Iyer* (supra) this Court held;

“31. In this context one more submission may be disposed of. It was said that the committee consisted of experts and they were highly qualified persons who would be able to evaluate and assess the relative merits of each of the candidates before it and the Court is least competent to do so and therefore it would be unwise to substitute experts’ decision by Court’s decision. In this connection reliance was placed on *Dr. M.C. Gupta v. Dr. Arun Kumar Gupta*, in which this Court held as under :

When selection is made by the Commission aided and advised by experts having technical experience and high academic qualifications in the specialist field, probing teaching/research experience in technical subjects, the Courts should be slow to interfere with the opinion expressed by experts unless there are allegations of mala fides against them. It would normally be prudent and safe for the courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the courts generally can be. Undoubtedly, even such a body if it were to contravene rules and regulations binding upon it in making the selection and recommending the selectees for appointment, the Court in exercise of extraordinary jurisdiction to enforce rule of law, may interfere in a writ petition under Article 226.....

It was urged that once it is conceded that as the power of selection and appointment vests in the ICAR, the Court should not usurp that power merely because it would have chosen a different person as better qualified (see *State of Bihar v. Dr. Asis Kumar Mukherjee*). Undoubtedly, the Court must look with respect upon the performance of duties by experts in the respective fields as has been said in *Dr. M.C. Gupta* case. However, the task of ushering a society based on rule of law is entrusted to this Court and it cannot abdicate its functions. Once it is most satisfactorily established that the selection

A committee did not have the power to relax essential qualification pertaining to experience, the entire process of selection of respondent 6 was in contravention of the established norms prescribed by advertisement and power of the selection committee and procedure of fair and just selection and equality in the matter of public employment and to rectify resultant injustice and establish constitutional value this Court must interfere. Selection of respondent 6 is contrary to rules and orders and in violation of prescribed norms of qualification. He was ineligible for the post when selected. His selection and appointment would be required to be quashed and set aside.”

25. In *A. Umarani v. Registrar, Cooperative Societies and Ors.*, [2004] 7 SCC 112, this Court held;

“Regularisation, in our considered opinion, is not and cannot be the mode of recruitment by any “State” within the meaning of Article 12 of the Constitution of India or any body or authority governed by a statutory Act or the Rules framed thereunder. It is *also now well settled that an appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal*. Such illegality cannot be cured by taking recourse to regularisation. (See *State of H.P. v. Suresh Kumar Verma*)”

(Emphasis Added)

26. In the instant case, the rules are absolutely clear and explicit.

27. In the instant case, not only the posts of Head Master is governed by a separate set of rules, as has been noticed hereinbefore, the posts of Teacher Grade-III provides for a promotional avenue to the posts of Teacher Grade-II which in turn provides for promotion to the other grades of teacher. It is, thus, in our opinion inconceivable that experience gained by a person holding the post of Teacher Grade-III governed by the subordinate services rules would be entitled to be considered for promotion to the post of Head Master although experience of teaching in particular classes is relevant therefor.

28. For the reasons aforementioned, the impugned Judgment of the Division Bench cannot be sustained which is set aside accordingly. The Appeals are allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.