

(2016) 02 OHC CK 0012

ORISSA HIGH COURT

Case No: W.P.(C) No. 52 of 2015

Prajnya Parimita Barik

APPELLANT

Vs

State of Orissa and
Others

RESPONDENT

Date of Decision: Feb. 16, 2016

Acts Referred:

- Constitution of India, 1950 - Article 14, Article 226
- Right of Children to Free and Compulsory Education Act, 2009 - Section 23, Section 38, Section 8 (g)

Citation: (2016) LIC 2668

Hon'ble Judges: S.N. Prasad, J.

Bench: Single Bench

Advocate: Chandra K. Nayak and S. Samal, for the Appellant; Buddhiman Rout, Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

S.N. Prasad, J.

1. This writ petition has been filed for issuance of direction upon opposite party Nos. 3 and 4 to publish a fresh notification recommending the name of the present petitioner under the heading of trained applicant for Sikshya Sahayak for the year 2014-15 for the district of Balasore and further to issue direction upon opposite party Nos. 3 and 4 to issue appoint letter as per the serial in favour of the petitioner by directing the District Project Co-ordinator, Balasore i.e., opposite party No. 3 to strike out the name of the petitioner from the category of untrained applicant and inserting in the category of trained applicant for the purpose of the appointment of Sikshya Sahayaks under the heading of trained category under the district of Balasore for the year 2014-15.

2. Case of the petitioner in short is that a notification was issued for engagement of Sikshya Sahayak for the year 2014-15 on the basis of the guideline dated 11.09.2014

issued by the School and Mass Education Department, Govt. of Odisha in which the name of the petitioner was considered since she has made application in the list of trained eligible candidates and the name of the petitioner found place in the Sl. No. 191 in the category of eligible trained applicants for the post of Sikshya Sahayak for the year 2014-15.

3. The name of the petitioner has come at Sl. No. 191 in the category of eligible trained applicant on the basis of recommendation made by the District level authority since the petitioner is a B. Ed., but the D.P.C., Balasore without any application of mind has strike out the name of the petitioner from the Sl. No. 191 and placed her name in the category of untrained CT candidate for the post of Sikshya Sahayak under +2 category in Balasore district for the year 2014-15 where the petitioner's name finds place in Serial No. 51.

4. According to the petitioner, action of the DPC is illegal and not sustainable in the eye of law as because the petitioner is eligible trained applicant and due to that reason her name was reflected in the list of trained category but subsequently his name has been brought under the untrained CT category hence this writ petition.

5. Opposite party-School and Mass Education Department has appeared and filed counter affidavit having been shown that opposite party No. 3 who under the authority of opposite party Nos. 1 and 4 stating inter alia therein that the petitioner had applied for the post of Sikshya Sahayak under CT category for Balasore district as first preference district for the year 2014-15. Her name finds place at Sl. No. 191 in the list of eligible applicant but on verification of application form of the petitioner, it is revealed that she has obtained her Graduation degree with B. Ed. qualification but not qualified CT training. Thus, one cannot apply for the post of Sikshya Sahayak meant for CT category with B. Ed. mark/certificates. However, the said fact has been suppressed by the petitioner while making application.

6. The petitioner has given a declaration to the effect that "if at any point of time any of the information/documents supplied by her in the application form is found incorrect; she shall be legally responsible for it and my candidature shall be cancelled." Vide letter No. 20383/SME, dated 29.08.2013 issued by the Addl. Secretary to Government in School and Mass Education Department, it has been clarified that "candidates passed in OTET-I cannot apply under B.Ed. category posts though the candidate has B. Sc. qualification. Similarly passed in OTET-II cannot also apply under CT category of posts."

7. Subsequently, it came to the notice of the authorities that the petitioner is a Graduate and has obtained B. Ed. degree from Dr. C.V. Raman University, Bilaspur, Chhatisgarh and he has passed OTET in Paper-I during the year 2013 but not have CT qualification for the post meant for CT category, hence she has been treated as untrained candidate. She has not qualified OTET-II, hence she could not be considered under B. Ed. category of post on the strength of her B. Ed. training.

8. It has been submitted by the learned counsel for opposite parties that since the petitioner is not possessing required qualification as per the resolution of the Government dated 06.08.2013 hence she has been put under untrained category as such there is no illegality in the same.

Heard learned counsel for the parties and perused the documents on record.

9. Before coming to the fact of the petitioner, it would be relevant to make discussion about the resolution dated 6.8.2013 issued by the Department of School and Mass Education having been issued by the order of his excellence by the Governor of the State with the Subject caption heading "Guidelines for engagement of Sikshya Sahayaks". From its perusal, it is evident that this resolution has been issued in accordance with the provision of Section 38 of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter called the Act 2009) which has come into force w.e.f. 01.04.2010. Section 8 (g) of the Act 2009 stipulates the State Government shall ensure good quality elementary education conforming to the standards and norms specified in the schedule.

10. In pursuance to Section 23 of the Act 2009, the National Council of Teacher Education (NCTE), being the academic authority had laid down minimum qualifications for a person to be eligible for appointment as a Teacher in classes I to VIII vide Notification No-215 dated 25.08.2010. Keeping this fact in mind, the eligibility conditions for engagement of Sikshya Sahyaks has been formulated and issued by virtue of this notification under Clause-6 with the caption heading "Eligibility". Under clause-6.1 which deals with engagement of Sikshya Sahyak for Category-1 which is meant for CT having prescribing the following qualification;

"6.1. Category-1

(a) Higher Secondary (+2 or its equivalent) with at least 50% marks and 2 year Diploma in Elementary Education (CT) "OR" Higher Secondary (+2 or its equivalent) with at least 50% marks and 2 year Diploma in Education (Special Education) "OR" Graduation and 2 year Diploma in Elementary Education/2 year Diploma in Special Education.

And

(b) Pass in the Odisha Teacher Eligibility Test (OTET-Category-I)

(c) Candidates must have Odia as MIL up to Class-VII or pass in Odia language test equivalent to ME standards conducted or declared equivalent by BSE (O)

Category-2

(a) Graduation with at least 50% marks and 1 -year Bachelor in Education "OR" Graduation with 50% marks and 1-year B. Ed. (Special Education) "OR" Higher Secondary (+2 or its equivalent) with at least 50% marks and 4-year B.A. Ed./B.Sc.Ed.

And

(b) Pass in the Odisha Teacher Eligibility Test (OTET-Category-II)

(c) Candidates must have Odia as MIL up to Class-X.

Provided that relaxation of 5% in minimum qualifying marks in Higher Secondary (+2) or in graduation level. As the case may be, shall be allowed to the candidates belonging to SC, ST, OBC/SEBC category.

Provided further that if trained candidates having the above percentage of marks in Higher Secondary (+2) or in graduation level as the case may be, are not available and posts remained unfilled, trained candidates having the minimum percentage of marks prescribed at the time of admission in teacher education course with OTET pass shall also be considered for engagement."

Thus, it is evident that for being engaged as CT under Category-1, a candidate is required to have higher secondary with at least 50% marks and 2 year Diploma in Elementary Education (CT) or Higher Secondary (+2 or its equivalent) with at least 50% marks and 2 year Diploma in Education (Special Education) or Graduation and 2 year Diploma in Elementary Education/2 year Diploma in Special Education.

For B. Ed. which comes under Category-2 it is evident that the required qualification prescribed for B. Ed. Under Category-2, a candidate is required to have Graduation with at least 50% marks and 1-year Bachelor in Education or Graduation with 50% marks and 1-year B. Ed. (Special Education) OR Higher Secondary (+2 or its equivalent) with at least 50% marks and 4-year B.A. Ed./B.Sc.Ed. and pass in the Odisha Teacher Eligibility Test (OTET-Category-II).

11. Thus, for being a candidature eligible for B. Ed. OTET Category-2 is required to be possessed along with Graduation or Higher Secondary with B. Ed. or Higher Secondary (+2 or its equivalent) with at least 50% marks and 4-year B.A. Ed./B.Sc.Ed.

12. It is in the light of this guideline, the petitioner has made application for consideration of her candidature for the post of Sikshya Sahayak for the year 2014-15.

13. Admitted position is that the petitioner is B.A.B. Ed. with OTET-1 but not having CT training qualification. She has made application and at initial stage she was enlisted in the list of eligible trained applicants for Sikshya Sahayak having her name finds place at Sl. No. 191 but subsequently her name has been deleted from the list of eligible trained applicants and inserted in the list of untrained CT candidates where her name found place at Sl. No. 51.

14. The petitioner being aggrieved with the action of the authorities by deletion from the list of eligible candidates and enlisting of her name as untrained is before this Court.

15. Ground taken by the petitioner is that he is B.A. with B. Ed. and OTET-1 and when the Government has come out with General Instructions incorporating Clause No. 7 which provides regarding consideration of candidature for CT post who has passed OTET-1 and untrained but if a candidate is of SC, ST or Physically Handicapped, they may apply for CT posts.

16. Petitioner's case is that when such type of relaxation to the members of SC, ST and PH candidates be extended then why this cannot be extended to the petitioner who is having OTET-1 and as such she ought to have been considered for CT posts in view of the relaxation having been granted to the members of SC, ST and PH under Clause-7 of the General Instructions to the candidates as contained in Annexure-1 to the writ petition.

17. While on the other hand, the case of opposite parties is that there cannot be any relaxation in the qualification and whatever relaxation has been given under the General Instructions for the candidates under Clause-7 i.e., the policy decision of the Government and this Court cannot command the authority for formulating policy decision for granting relaxation to treat the petitioner at par with the SC, ST and PH candidates.

18. Further stand has been taken that when there is specific educational qualification prescribed for a post, there cannot be any deviation from the same and the admitted position is that the petitioner is not having required qualification as provided under the Resolution dated 6.8.2013, hence she has been brought under the list of untrained candidate for CT category although initially she was incorporated in the list of trained candidates for CT candidates which was due to wrong information having been furnished by the petitioner. When it came to the notice of the authorities, they have rectified the mistake hence there is no illegality in the action of the State authorities.

19. From perusal of the Resolution dated 6.8.2013, post of CT category for Sikshya Sahayak can only be fulfilled if a candidate having 2-year Diploma in Elementary Education which is the mandatory condition as would be evident from Clause-6.1 of the Resolution dated 6.8.2013 and admittedly the petitioner is not possessing 2-year Diploma in Elementary Education (CT).

20. Now, the question which fell for consideration which has been raised by the petitioner regarding relaxation to Educational Qualification since it has been given to the untrained SC, ST and PH candidates as per the General Instructions for the candidates (Annexure-1) why it cannot be given to the petitioner.

21. For deciding this issue, it needs to refer certain decision of the Hon"ble Apex Court. Reference in this regard needs to be made of judgement rendered in the case of R. Prabha Devi and others vrs. Government of India and others reported in , AIR 1988 SC 902 wherein their lordships has been held that providing in the eligibility condition for consideration for promotion is within the competency of the rule making authority and the eligibility conditions has to be fulfilled by the candidate.

Another judgment needs to be referred in the case of P.M. Latha and another vrs. State of Kerala and others reported in , (2003) 3 SCC 541 wherein their lordships has been held at paragraph-10, which is being reproduced herein below:--

"10. We find absolutely no force in the argument advanced by the respondents that Bed qualification is a higher qualification than TTC and therefore, the Bed candidates should be held to be eligible to compete for the post. On behalf of the appellants, it is pointed out before us that Trained Teachers Certificate is given to teachers specially trained to teach small children in primary classes whereas for Bed degree, the training imparted is to teach students of classes above primary. Bed degree-holders, therefore cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools. Whether for a particular post, the source of recruitment should be from the candidates with TTC qualification or BEd qualification, is a matter of recruitment policy. We find sufficient logic and justification in the State prescribing qualification for the post of primary teachers as only TTC and not Bed. Whether Bed qualification can also be prescribed for primary teacher is a question to be considered by the authorities concerned but we cannot consider Bed candidates, for the present vacancies advertised, as eligible."

Another judgement may be referred in the case of Bihar Public Service Commission and others vrs. Kamini and others reported in , (2007) 5 SCC 519, wherein their lordships has been held at para-8 is being reproduced herein below:--

"8. xxxx If the requirement was of Honours in B.Sc with Zoology and if the first respondent had cleared B.Sc Honours with Chemistry, it could not be said that she was eligible to the post having requisite educational qualifications. By not treating her eligible, therefore, the Commission had not committed any illegality."

Another judgement may be referred in the case of State of Punjab and others vrs. Anita and others reported in , (2015) 2 SCC 170, wherein their lordships has been held that the possessing higher qualification does not confer any right upon a candidate to say that he/she is eligible for the post if there is no such specific rule is available in this regard.

22. Thus, the law is well settled that there cannot be any relaxation in the educational qualification to be given by the High Court sitting under Article 226 of the Constitution of India and there cannot be any relaxation to be given in absence of any provision made in the statute or the guideline or the resolution.

23. If the case of the petitioner will be analysed, there is no dispute about the fact that the petitioner is not having CT training which is the required qualification for being engaged under CT posts which is under Category-1 of Sikshya Sahayak since the petitioner is not possessing the required qualification hence she cannot be considered for CT trained category i.e., Category-1 as per the resolution dated 6.8.2013. She can also not be considered for B. Ed. under Category-2 since she is not having OTET-2 pass.

24. So far as claim of the petitioner regarding the General Instructions (Annexure-1) is concerned, by which OTET-1 passed untrained SC, ST and PH candidates have been made eligible to apply for CT posts and as such the petitioner be also given the said consideration but that cannot be accepted because the competent authority has come out with a decision in the shape of General Instructions for candidates for the year 2014-2015 regarding granting some relaxation to the OTET-1 passed untrained SC, ST and PH candidates making them eligible to apply for CT posts but no such preference having been given to the candidates like the petitioner, hence this Court sitting under Article 226 of the Constitution of India cannot grant any relaxation regarding educational qualification which has been incorporated in the Resolution dated 6.8.2013.

25. It is settled that making a policy decision is the exclusive domain of the Recruiting authorities and once they have formulated a policy decision by granting some relaxation to the member of particular class of the society, the petitioner cannot derive any benefit from it since it pertains to the policy decision of the Government and the State Govt. while taking decision in this regard for a particular community, it cannot be extended to other community in absence of specific decision by competent authority and in absence thereof petitioner cannot claim same benefit as a matter of right. It is also settled that a writ can be issued only if there is any legal vested right but nothing has been brought on record regarding vested legal right by the petitioner, hence no relief is admissible to the petitioner.

26. Further, it is also not in violation of Article 14 of the Constitution of India as because it is not the case of the petitioner that he has been discriminated by extending said benefit to similarly situated candidates rather his case is that other communities of candidates i.e., untrained SC, ST and PH candidates have been given relaxation but rule is settled that no parity can be claimed as a matter of right, if policy decision has been made by competent authority to extend any relaxation to a particular group of candidate.

27. However, the petitioner has not challenged the said policy decision rather he prays to give same benefit which cannot be allowed for the foregoing reasons.

In view thereof, I find no reason to pass positive direction in favour of the petitioner.

Accordingly, the writ petition is dismissed being devoid of merits.