

Krishna Chandra Halдар Vs State Of Jharkhand

Court: Jharkhand High Court

Date of Decision: Jan. 17, 2025

Acts Referred: Constitution of India, 1950 Article 14

Hon'ble Judges: M. S. Ramachandra Rao, CJ; Deepak Roshan, J

Bench: Division Bench

Advocate: Shubham Mishra, Kumar Pawan, Shivam Utkarsh Sahay, Sankalp Goswami, Rahul Saboo, Gaurang Jajodia, Radha Krishna Gupta, Pinky Shaw

Final Decision: Allowed

Judgement

M.S. Ramachandra Rao, CJ

1) In this writ petition the petitioners have challenged the Memo No.127 dt. 29.01.2024 under which an amendment was made to the Sahayak

Aacharya Samwarg (Niyukti, Pronatti and Seva Sart) (Third Amendment) Niyamawali, 2022 (for short "2022 Rules"), by adding a note which

stated that the requirement of category-wise minimum marks for appointment to the post of Assistant Teacher will not be applicable in the case of

Para Teacher.

2) The 2022 Rules deal with appointment, promotion and service conditions to the post of Assistant Teachers.

3) An advertisement was issued on 19.07.2023 by the Jharkhand Staff Selection Commission for conducting Jharkhand Trained Primary Teacher

Combined Competitive Examination, 2023 for appointment of Assistant Teachers in the Primary and Secondary Schools situated in the State of

Jharkhand.

4) Petitioners applied for appointment to the said posts in Non-Para Category and admit cards were also issued to them. Examination was conducted

by the Commission and was concluded in June and July 2023.

5) Clause 6 of the Advertisement No.13/2023 stipulated that 50% of the posts of Assistant Teachers were earmarked for Para Teachers.

6) Clause 8 (Cha)(i) of the 2022 Rules mentioned as under:-

"Clause (Kha)(B)(i) and Clause (Ga)(A)(i)(ii) of the mandatory subject prescribed for the post of intermediate trained and graduate trained assistant teacher

(from mother tongue as per secondary examination) it will be mandatory to score minimum 30% in anyone. The answer sheets of other subjects will be checked

only after securing minimum 30% marks in the compulsory subject. Its marks will not be added for the preparation of merit list.

7) Clause 8 (Cha)(ii) of the 2022 Rules states:-

“It will be mandatory to score 33% marks in each subject to Clause (Ga)(C)(I)(II)(III). Only after that, merit list will be prepared on the basis of marks

obtained in all subject.

8) The impugned amendment made vide Memo No.127 dt. 29.01.2024 amended Clause 8 and had added a Note stating:

“Note:- The requirement of category wise minimum marks for appointment to the post of Assistant Teacher will not be applicable in the case of Para

Teacher.

This Note is under challenge in this case.

9) Petitioners contend that it is violative of Article 14 of the Constitution of India to exempt any particular type of candidates from the criteria for

obtaining minimum qualifying marks in the examination. According to them, Para Teacher category candidates were already granted reservation of

50% and this exemption from obtaining minimum qualifying marks is an unreasonable exercise of power and is arbitrary and violative of Article 14.

10) Petitioners relied on the judgment of the Supreme Court in Sureshkumar Lalitkumar Patel & Ors v. State of Gujarat & Ors 2023 (2) Supreme

492.

In the said judgment, it was held that there is a difference between qualification for making an application, and the eligibility to be determined in the

process of selection. It was held that once an advertisement is issued fixing the eligibility, it binds all the parties and a change, if any, can only be

brought forth if it is valid under Article 14 of the Constitution of India. A change cannot be introduced to give an entry to special reservation. The

Supreme Court held in paragraphs 25 and 26 as under:-

“25. Admittedly, in the case on hand, the appellants are entitled to get the respective post as per the advertisement issued. The said advertisement has not been

amended. It was sought to be modified on the advice of the Government, though an earlier decision as taken on the similar line but wisely withdrawn. Fixing cut-

off marks for a particular category has got a rationale behind it. Reducing it only for the purpose of providing employment to a particular category, when the

others have already acquired some right would be an affront to Article 14 of the Constitution of India.

26. We have already discussed the scope and ambit of the relevant clauses contained in the advertisement, particularly sub-clauses (15) and (10). In our

considered view, they do not confer unbridled power either on the State Government or on the Selection Committee to modify the selection process, and thereby,

reduce the cut-off marks after the results are published. The submission made that the selection as made only thereafter, will not hold water. What was done by

way of publishing the selection list after the change is nothing but a ministerial act.

11) Thus, the Supreme Court held that reducing cut-off marks as in that case for purpose of providing employment to a particular category when

others have already acquired some right, would be violative of Article 14 of the Constitution of India and that the State Government has no unbridled

power to modify the selection process. It relied on the judgment of the Supreme Court in Tamil Nadu Computer Science B.Ed. Graduate Teachers

Welfare Society (1) v. Higher Secondary School Computer Teachers Association & Others (2009) 14 SCC 517 where the Supreme Court held

that changing qualifying norms by reducing the minimum qualifying marks from 50% to 35% after holding examination and at the time when the result

of the examination was to be announced is arbitrary and unjustified and that in a recruitment process changing rules of the game during selection

process or when it is over are not permissible. In that case, the Supreme Court held:

“33. We, however, cannot hold that the subsequent decision of the Government thereby changing qualifying norms by reducing the minimum qualifying marks

from 50% to 35% after the holding of the examination and at the time when the result of the examination was to be announced and thereby changing the said

criteria at the verge of and towards the end of the game as justified, for we find the same as arbitrary and unjustified. This Court in Hemani Malhotra v. High

Court of Delhi (2008) 7 SCC 11 has held that in recruitment process changing rules of the game during selection process or when it is over are not permissible.

34. Thus we hold and declare that those candidates who had secured more than 50% qualifying marks would be held to have qualified in the said test and the

remaining candidates would be treated as unsuccessful/failed and therefore became ineligible to be permanently recruited and absorbed in government

schools.

12) In the counter affidavit filed on behalf of the respondents, it is stated that Para Teachers were consistently discharging their duties for several

years and their contribution towards improving quality of education is substantial and cannot be disregarded.

It is stated that their continued service plays a pivotal role in the education system and their efforts significantly enhance the standard of education. It

is stated that as a measure of affirmative action, the Department has implemented a policy of providing reservation to Para Teachers.

13) While there can be no two opinions about the stand, there is no justification in the counter affidavit filed by respondent No.3 as to the basis of

introducing the Note by way of impugned amendment after the examination was held and why total exemption from obtaining minimum cut-off marks

for purpose of qualifying the examination was granted.

14) In *our*, *opinion*, *the*, *judgments*, *of*, *the*, *Supreme*, *Court*, *in* *ureshkumar Lalitkumar Patel and Others* (*Supra* 1) and *Tamil*

Nadu Computer Science B.Ed. Graduate Teachers Welfare Society (1) (2 *supra*) apply to the instant case.

15) We hold that it is not permissible for the respondents to reduce the cut-off marks to accommodate the Para Teachers who are otherwise ineligible

candidates, particularly when the unamended Rule fixed a cut-off marks on a conscious consideration of the marks required to be eligible for the

posts; and when there is no sound reason assigned for totally removing the cut-off marks, that too, after the examination has been held. The action of

the respondents is clearly arbitrary and violative of Article 14 of the Constitution of India.

16) Accordingly, the Writ petition is allowed and the relaxation provided in the 2022 Rules vide Memo No.127 dt. 29.01.2024 to the Para Teachers

Category candidates with regard to securing minimum qualifying marks to be scored in each of the respective subjects is quashed.

17) The respondents shall prepare the select list of Para Teacher Category candidates without reference to the Note contained in Memo No.127 dt.

29.01.2024 granting exemption to Para Teachers Category and then proceed to issue appointment letters to eligible qualified candidates who secured

the cut-off marks as prescribed in unamended Rule 8 only. They shall also consider the cases of the petitioners in the Non-Para Teachers category in

the seats falling in the said category (in case, seats remain vacant at the time of appointment).