

(2016) 11 RAJ CK 0049

RAJASTHAN HIGH COURT

Case No: Civil Writ Petition No. 9263 of 2015

Sumitra Meghwal

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision: Nov. 8, 2016

Acts Referred:

- Constitution of India, 1950 - Article 309
- Rajasthan Vidyalay Sahayak Subordinate Service Rules, 2015 - Rule 15, Rule 2(j), Rule 25

Citation: (2017) LIC 169

Hon'ble Judges: Mr. Govind Mathur and Mr. Deepak Maheshwari, JJ.

Bench: Division Bench

Advocate: Mr. S.S. Ladreacha, AAG with Mr. Vikas Choudhary and Mr. P.R. Singh, AAG with Mr. Dinesh Kumar Ojha, Advocates, for the Respondents; Mr. Deepak Nehra, Mr. Ramdeo Potaliya, Advocates, for the Petitioners

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Mr. Govind Mathur, J. - These petitions for writ are before us to examine constitutional validity of Rule 2(j) and Rule 15 of the Rajasthan Vidhyalay Sahayak Subordinate Service Rules, 2015 (hereinafter referred to as "the Rules of 2015"). The Rules of 2015 are framed by the Governor of Rajasthan exercising powers conferred by proviso to Article 309 of the Constitution of India to regulate recruitment to the posts in, and the conditions of service of persons appointed to the Rajasthan Vidhyalay Sahayak Subordinate Service. The cadre of Vidhyalay Sahayak Subordinate Service consists of one post only i.e. Vidhyalay Sahayak.

2. As per Rule 6 of the Rules of 2015, recruitment to the post of Vidhyalay Sahayak is required to be made by way of direct recruitment in accordance with the procedure laid down in Part-IV of the Rules.

3. As per Rule 15 of the Rules of 2015, a candidate for direct recruitment to the post enumerated in the Schedule-I i.e. of Vidhyalay Sahayak must have attained the age of 18 years and must not have attained the age of 35 years on the first day of January next following the last date fixed for receipt of applications. As per proviso (x), the persons serving under the State Government School/State Government Educational Projects viz. Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/District Primary Education Programme/Rajiv Gandhi Pathshala/Shiksha Karmi Board and Madarsa listed under the Madarsa Board, shall be deemed to be within the age limit, had they been within the age limit when they were initially engaged even though may have crossed the age limit at the time of direct recruitment.

4. As per Rule 25 of the Rules of 2015, the committee consisting of District Education Officer (Elementary Education), District Education Officer (Secondary Education), nominee of Director, Elementary Education not below the rank of District Education Officer and the nominee of Collector not below the rank of Tehsildar, shall award marks to the candidates, whose names included in the list prepared under rule 24, on the basis of such weightage as may be specified by the State Government for the marks obtained in qualifying examination mentioned in the Schedule-I and such marks as may be specified by the State Government having regard to experience of working in the State Government School, State Government Educational Projects viz. Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/District Primary Education Programme/Rajiv Gandhi Pathshala/Shiksha Karmi Board and Madarsa listed under the Madarsa Board.

5. As per Schedule-I appended with the Rules of 2015, minimum qualification and experience for direct recruitment to the post of Vidhyalay Sahayak, is as under:-

1. Senior Secondary (10+2) from recognised Board or its equivalent.

2. Minimum one year experience of working is essential in State Government School/State Recognised non-Government School/State Government Educational Projects (other than those engaged through placement agency) viz. Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/District Primary Education Programme/Rajiv Gandhi Pathshala/Shiksha Karmi Board and Madarsa listed under the Madarsa Board.

Schedule-II appended with the Rules of 2015 provides nature of work pertaining to the post of Vidhyalay Sahayak and i.e. as follows:-

(i) Mid-Day Meal-Supervision, Monitoring and Record keeping.

(ii) Child Traking Survey.

(iii) Student Dropouts Monitoring.

(iv) School Building and Campus Sanitation.

(v) Supervision, Monitoring of Child Enrolments in schools.

(vi) Collector of DISE Datas. (District Information System for Education)

(vii) Any other non teaching work assigned by Authority.

The term "experience", as referred in Rule 16 Rule 25 and Schedule-I appended with the Rules of 2015, as per Rule 2(j) of the Rules of 2015 means- "the experience gained by Academic/Non-Academic work in State Government School, State Recognised Non Government School/State Government Educational Projects (other than those engaged through placement agency) viz. Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/District Primary Education Programme/Rajiv Gandhi Pathshala/Shiksha Karmi Board and Madarsa listed under the Madarsa Board".

6. The grievance of the petitioners is that the term "experience", as defined under rule 2(j) of the Rules of 2015 is discriminatory as much as that it excludes the persons having work experience with other State Government Educational Projects, such as "Maa Baadi Yojna" from eligibility to be considered for appointment as "Vidhyalay Sahayak".

7. It is asserted that the nature of work attached with the posts in "Maa Baadi Yojna" is akin to the nature of work of Vidhyalay Sahayak as given under Schedule-II of the Rules of 2015 and further the "Maa Baadi Yojna" being a government scheme deserves to be included in Rule 2(j) with other similar government schemes for the purpose of determining experience while making appointment to the post of Vidhyalay Sahayak.

8. The petitions for writ have been opposed by the respondents with submission that the schemes referred in Rule 2(j), Rule 15, Rule 25 and Schedule-I appended with the Rules of 2015 are the schemes run by the State Government through the Department of Education, therefore, those form a distinct class than the other schemes, such as "Maa Baadi Yojna". As per the respondents, the experience required while making appointment to the post of Vidhyalay Sahayak is confined to the educational schemes and, therefore, the allegation of discrimination is absolutely illfounded.

9. It is further pointed out that a Division Bench of this Court at Jaipur, in a batch of writ petitions led by **Govind Prasad Sharma & Ors. v. State of Rajasthan & Ors., DB Civil Writ Petition No.11829/2015, decided on 17.9.2015**, after examining scope of the Rules of 2015 and nature of the "experience" required, held that the provisions of the Rules of 2015 does not suffer from any constitutional wrong. As per learned Additional Advocate General Shri S.S.Ladreacha, the law laid down in the case of Govind Prasad Sharma (supra) squarely covers the issue involved in the instant petitions for writ.

10. Learned Additional Advocate General also relied upon a Division Bench judgment of this Court at Jaipur, in the case of **Atar Singh Gurjar & Ors. v. State of Rajasthan & Ors., DB Civil Writ Petition No.10038/2013, decided on 26.11.2014**,

wherein too the Court examined validity of the provisions of the Rajasthan Education Assistant Services Rules, 2013, the Rules predecessor to the Rules of 2015.

11. In rejoinder, learned counsel appearing on behalf of the petitioners states that in the case of Govind Prasad Sharma (supra) the Division Bench examined and compared scope and nature of the working of certain government schemes, their area of operation and control vis-a-vis the schemes referred in the Rules of 2015, but the "Maa Baadi Yojna" was not part of that. According to learned counsel, the nature of working, area of operation and control relating to "Maa Baadi Yojna" is similar to the schemes referred in Rule 2(j), Rule 15, Rule 25 and Schedule-I appended with the Rules of 2015. With regard to the judgment given by Division Bench of this Court in the case of Atar Singh Gurjar (supra), it is submitted that the Rules of 2013 have already been repealed by the Rules of 2015 and under the new rules Schedule-II is appended, which clearly mentions nature of work relating to the post of Vidhyalay Sahayak. The nature of work as given in Schedule-II was not available for consideration by the Court being not part of the Rules of 2013 while adjudicating the case of Atar Singh Gurjar (supra). The "Maa Baadi Yojna" was also not under consideration in the case of Atar Singh Gurjar (supra), hence, the law laid down in the case aforesaid cannot be applied in the instant matters.

12. Without prejudice to the above, it is further submitted that in the case of Govind Prasad Sharma (supra) the Division Bench held that "the classification which is made under the Rules, 2015 for counting experience as noticed under the Schedule-I appended to R.16 & R.2(j) of the scheme of Rules, 2015 which has been confined to all such persons, whose experience has been recognised by the rule making authority have been working in connection with school education under the direct or indirect supervision of the Education Department of the State Government and thus, they constitute a separate class which is identifiable and distinct from the other categories of employment of which discussion has been made by us in detail", and this was in tune to the law settled in the case of Atar Singh Gurjar (supra).

13. The "Maa Baadi Yojna" is also having indirect supervision of education department as that is available for Madarsas under the control of the Rajasthan Madarsa Board, as such, the judgments on which learned Additional Advocate General has placed reliance, supports the petitioners.

14. Heard learned counsels.

15. Precisely, the issue deserves consideration in the instant matters is that whether the "Maa Baadi Yojna" is a scheme distinguishable with the schemes examined by the Division Benches of this Court in the cases of Atar Singh Gurjar and Govind Prasad Sharma (supra), if so, then to what extent the "Maa Baadi Yojna" is akin to the educational schemes referred in Rules 2(j), 15, 25 and Schedule-I appended with the Rules of 2015.

16. So far as the "Maa Baadi Yojna" is concerned, it was initiated under the control of Tribal Area Development Department with its sanitation, water and community health project. The Government of Rajasthan provided an additional limb to this project by introducing "Maa Baadi Yojna" for Kathodi, Sahariya and other tribal areas of the Rajasthan with following objects :-

"a) To register/enroll 30 children in the age group of 6 to 12 years belonging to the Tribal/Kathodi and Sahariya community, who are deprived from education, for pursuing elementary education.

b) To make available breakfast and nutritious food in afternoon for the boys/girls at the Maa-Badi centre.

c) To make available Uniform, Shoes, Shocks, Tie, Belt and Sweater for each of the boys/girls.

d) To prevent the flight/fleeing of children of tiller labour families from education and to include them in continuous education.

e) To attach the mothers of the studying children with the activities of the Maa-Baadi Programme."

The structure of the educational institutions and Day Care Centres at "Maa Baadi Yojna" is as follows:-

"a) Maa-Badi Day Care centre is opened at morning 8 A.M. and continued till evening 6 p.m.

b) In every Maa-Badi centre there are 2 teachers, 1 male and 1 female, and three helpers.

c) At every centre, class 1st to 4th is taught, so qualification of teachers is 12th pass compulsory.

d) At every centre 30 boys/girls are to be nominated.

e) Every centre is closed only on Government holidays, rest all days, centre is open.

f) At centre morning breakfast, day lunch, evening meal and dinner for boys/girls is to be provided as per following time table:-

Morning entrance and breakfast- 8 a.m.

Day lunch- 12 p.m.

Evening meal- 3 p.m.

Dinner- 5:30 p.m.

g) It is the responsibility of teachers and coordinators that food is of good quality.

h) Every centre is to be inspected by coordinators weekly and the he is liable to report to project officer and Director office.

i) Along with education; sports, exercise and entertainment like song etc. is to be taught to Boys/Girls for their attraction towards centre and for that all equipments are to be provided.

j) For creating interest of Boys/Girls in Cleanliness and good Health, bathing arrangement is to be made by all three lady helper of the same area as per requirement.

k) Monthly 10% inspection by Project officer and minimum 25% inspection of Centers by Maa-Badi incharge has to be done, whose report is to be directly provided to in-charge of Director Office in decided format.

l) All responsibility to run day care center is of Village education Committee, whose meeting is to be cognized on 18th of every month, in which all decisions are to be taken related to Day Care Center. Working register of meeting is to be submitted by coordinator in SWACH office meeting and Project Officers are responsible for submitting the factual report of all Day Care Centers of their district to Director Officer."

17. A teacher, to be posted in "Maa Baadi Yojna", is required to have the qualification of Senior Secondary Examination. The post of teacher in this Yojna is known as Shiksha Karmi. The persons working, beside the teaching job, are also required to satisfy non-teaching work like nutritious food and sanitised environment for the children coming to the schools. They are also supposed to monitor and supervise the problem of dropping out, non-coming to the schools, adequate standards of the schools and extension of necessary civic sense with pupil. It is also pertinent to note that the educational institutions run under "Maa Baadi Yojna" are recognised by the Department of Education, Government of Rajasthan.

18. The Division Bench, in the case of Govind Prasad Sharma (supra), examined nature of the institutions other than the "Maa Baadi Yojna". The consideration of such institutions and findings arrived in the case aforesaid reads as follows:-

"The Preraks were working in a non-formal education programme and the method of appointment, source of recruitment, method of teaching, hours of teaching and mode of payment to Preraks are entirely different from the persons who are specifically included under the scheme of Rules, 2015 and even the computer operators are appointed in Sarva Shiksha Abhiyan by the placement agencies along with computer for providing computer instructions to the students and the nature of their employment cannot be equated with a kind of experience which is required by the rule making authority under the present scheme of Rules, 2015.

As regards Anganwadi Workers are concerned, they are appointed by the Gram Panchayats under the Integrated Child Development Scheme and they carry out the

work of integrated child development including their health and elementary education and such of the employees are engaged by Gram Panchayats and paid by the funds allocated to the Gram Panchayats. They are neither concerned with school education nor are working under the control and supervision of the Director of Elementary Education looking after the elementary education.

So far as the persons engaged in the Mid-day Meal Programme are concerned, they are not the employees of State Government and neither they work directly under the control & supervision of the State Government nor paid by the State Government and the experience gained by them is not in any manner similar to the "experience" gained by academic/non-academic work in State Government School/State Recognised Non-Government School/State Government Educational Projects, as provided u/R.2(j) of the Rules, 2015 and they are not eligible to participate in the selection process initiated by the respondents pursuant to the advertisement dated 21.07.2015.

As regards the persons engaged as Guest Faculty Teachers are concerned, they too are not the employees of the State Government and they are part timers and neither work directly under the control & supervision of the State Government and the experience gained by them is not in any manner similar to the experience which has been taken note of by the rule making authority under the existing scheme of Rules, 2015 and they could not be considered eligible to participate in the selection process for the post of Vidhyalay Sahayak under the Rules, 2015.

As regards persons engaged in Child Labour Project are concerned, the Labour Schools are run by NGOs, in which the employees are required to motivate the children of the labourers by visiting Chokhati, where the labourers gather for daily labour and wages. Such employees are not appointed by the State Government nor working directly under the control and supervision of the State Government, nor paid by the State Government.

After having gone through the submissions & discussions which has taken place, we are of the view that the classification which is made under the Rules, 2015 for counting experience as noticed under the Schedule-I appended to R.16 & R.2(j) of the scheme of Rules, 2015 which has been confined to all such persons, whose experience has been recognised by the rule making authority have been working in connection with school education under the direct or indirect supervision of the Education Department of the State Government and thus, they constitute a separate class which is identifiable and distinct from the other categories of employment of which discussion has been made by us in detail. The R.2(j), R.16 & Schedule-I appended to the Rules, 2015 do not cause any discrimination for counting the experience of those categories of persons which have been taken note of by the rule making authority and in our considered view, it does not cause any discrimination to other categories of employments. The prayer made in the writ petitions to declare the R.2(j), R.16 & Schedule-I appended to the Rajasthan Vidhyalay Sahayak

Subordinate Service Rules, 2015 as ultra vires is without any substance and all the writ petitions being devoid of merit deserves to be dismissed."

Similarly, in the case of Atar Singh Gurjar (supra), the Division Bench examined nature of work in certain government schemes other than the "Maa Baadi Yojna" and held as under:-

"37. The Aanganwari Workers under the Integrated Child Development Scheme are appointed by the Gram Panchayats. They carry out the work of integrated child development including their health and primary education. Such employees, however, are employees of Gram Panchayats and paid by the funds placed in the hands of the Gram Panchayats. They are not concerned with school education nor are working under the control and supervision of the State Government nor directly paid by the State Government through Education Department, looking after the primary education.

38. The Kasturba Gandhi Balika Vidhayalas are run under the Scheme of development of the girl child belonging to the Backward Classes and communities living below the poverty line. These are fully residential Schools for the Classes-VI to VIII for the girls living in rural and backward classes under poverty for their overall development. In the State of Rajasthan, 145 Schools of Kasturba Gandhi Residential Balika Vidhayala of Model-I, and 55 Kasturba Gandhi Residential Balika Vidhyalas are operational, in which the girls from backward areas and living in poverty are admitted and given admission from Classes-VI to VIII. The staff of these Schools are appointed by deputation of the Government Teachers and through the Placement Agencies under the terms and conditions provided under the Scheme. The Wardens, Assistant Wardens and Teachers appointed through the Placement Agencies are required to look after the overall development of the girls in the Schools and in the Residential Schools. All of them are working under the Scheme for looking after the hostels and development of the girls.

39. The Labour Schools are run by NGOs, in which the employees are required to motivate the children of the labourers by visiting Chokhati, where the labourers gather for daily labour and wages. The Airtel Schools are run under Memorandum of Understanding executed between the State Government and Bhartiya Foundation, which is funded by the Airtel Company, which has adopted a few government Schools in the District of Alwar and Jaipur. Under the MOU the government building of school is provided by the State Government in which the Teachers and Staff are provided by the Bhartiya Foundation. Such employees are not appointed by the State Government nor working directly under the control and supervision of the State Government, nor paid by the State Government.

40. The Caregivers under the Sarva Shiksha Abhiyan are employed for betterment of visually impaired and handicapped children. They are also employed on contract and not directly concerned with school education nor are appointed and working

under the control and supervision of the State Government.

41. In view of the aforesaid discussions, we are of the view that the classification under the Rules of 2013 for counting the experience for giving weightage is confined to those employees, who are employed in connection with school education and are directly under the control and supervision of the State Government and their salary and wages are paid directly from the public exchequer. All such employees, who have been given weightage of experience, have been working in connection with school education under the supervision of the Education Department of the State Government and thus, they form a separate class, which is identifiable and is distinct from the other categories of employment. The Rules of 2013, therefore, do not cause any discrimination for counting the weightage of only those categories of employees, and that the age relaxation to them also does not cause any discrimination to other categories of employments. The prayers made in the writ petition to declare the Rules 15 and 25 of the Rajasthan Education Assistant Services Rules, 2013 as ultra vires is without any substance and further, to provide the relaxation in age and other benefits to the petitioners, is meritless."

19. It would be appropriate to mention here that at the time of disposal of Atar Singh Gurjar's case (supra) the rules regulating recruitment to the post of Vidhyalay Sahayak were not enumerating the nature of work pertaining to post concerned. It is also pertinent to notice that in both the cases the Division Benches did not examine the nature of "Maa Baadi Yojna" and the essentials of work of the persons appointed to "Maa Baadi Yojna". In the judgments referred above the schemes under consideration were distinguished with the schemes referred in the Rules of 2013 and 2015 being not totally under the control and supervision of the State Government including the payment of salary and wages to their employees. The Court noticed that all the schemes which were sought to be addressed as schemes similar as to referred in the rules aforesaid were operating in different fields than the education. It was held that the weightage given in the terms of "experience" is confined to those persons who are employed in connection with school education directly under control and supervision of the State Government and to whom salary and wages are paid directly from the public exchequer. The schools where such persons are employed, are having supervision of the education department of the Government of Rajasthan, as such, they form a class identifiable separately.

20. So far as "Maa Baadi Yojna" is concerned, true it is, it was also initiated by the Department of Tribal Area Development, but it is nothing except an educational campaign for tribal people. Under this scheme several schools are in operation where regular teachers are working. The schools are recognised by the education department of the Government of Rajasthan. The teachers working in these schools possess eligibility to hold the post as required in the schemes referred in Rule 2(j), Rule 15, Rule 15 and Schedule appended with the Rules of 2015. The teaching as well as the non-teaching staff in "Maa Baadi Yojna" is also required to work for

promotion of awareness relating to education in tribal area as well as specific tribe communities such as Kathodis and Sahariyas. Every Maa Baadi Centre is a school with two teachers (one male and one female) and three helpers. The schooling upto 4th standard is available in these schools. The schools also adhere calendar prescribed by the Government of Rajasthan.

21. In view of it, we are satisfied with the argument advanced by learned counsel appearing on behalf of the petitioners that scope and nature of work, area of operation and supervisory control in relation to "Maa Baadi Yojna" is similar to the schemes referred in Rule 2(j) and other relevant provisions of the Rules of 2015.

22. An important aspect of the matter is that in the Rules of 2013 the nature of work pertaining to the post of "Vidhyalay Sahayak" was not prescribed which is now available in the Rules of 2015 under Schedule-II. The nature of work prescribed under Schedule-II is completely covered by the work and job duties prescribed for the personnels working in "Maa Baadi Yojna".

23. It is well settled that the "experience" wherever is prescribed as an eligibility to be considered for appointment, is only with an object to have efficient hands to implement the work assigned.

24. A Division Bench of this Court in the case of **Mitendra Singh Rathore & 121 Ors. v. State of Rajasthan & Ors., reported in 2013(4) WLC (Raj.) 523**, while examining need of the experience in service, held that "an experienced person by examining, understanding and factually undertaking same task catch an insight and propound understanding of the job concern. Such insight and understanding of the work extends an edge to such persons in doing the work assigned with passion and interest. It also introduces such persons with the world of work and to learn dos and dont's attached thereto. The experience comprises knowledge, skill, exposure, concept of the task given and procedural knowledge thereof. All these ingredients provides a merit that is necessary for service. This merit helps in accomplishing the task successfully, as such, the grant of weightage for experience is in interest of service so also in interest of the objects for which service is created".

25. The petitioners, in the instant matters, who are working in "Maa Baadi Yojna", are having experience of work which is same as given in Schedule-II of the Rules of 2015. The experience gained by these persons in no manner places them at a pedestal lower or different with the experience gained by the persons working in the schemes referred in Rule 2(j) of the Rules of 2015 and other relevant provisions. The only difference which largely appears is that the "Maa Baadi Yojna" is not administered by the department of education. This distinction as a matter of fact is also illusory.

26. At the threshold, we would like to state that the schools run under the "Maa Baadi Yojna" are also recognised by the department of education, Government of Rajasthan, as the schools run under the schemes referred in the Rules of 2015.

Beside that, the persons having experience of work at "Madarsa" are also treated eligible to be considered for appointment on the post of "Vidhyalay Sahayak". The Madarsas are not under the control and supervision of the department of education. The Madarsas were initially started by the Board of Muslim Wakf for the purpose of catering modern education to those children who were getting only religious education in their Madarsas. These Madarsas were subsequently taken over by the Rajasthan Madarsa Board. The Rajasthan Madarsa Board is not controlled or supervised by the department of education. It is a body independent to cater modern education mainly to the children of minorities as per the schedule given by the department of education. In the "Maa Baadi Yojna" too the syllabi for studies is as prescribed by the department of education and the schools under this scheme too are recognised by the department of education.

27. In view of whatever stated above, we do not find any reason for not treating the experience gained while working with "Maa Baadi Yojna" at a pedestal different than the experience gained in the schemes viz. Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/District Primary Education Programme/Rajiv Gandhi Pathshala/Shiksha Karmi Board and Madarsa listed under the Madarsa Board. If the stand as addressed on behalf of the respondents be accepted, then the rule under challenge shall germinate a discrimination among the persons similarly situated without having any rational or nexus with the objects sought to achieve. In our considered opinion, the rule under challenge is required to be read to stop such mischief and, therefore, "Maa Baadi Yojna" is required to be read as a part of term "experience" wherever used in the Rules of 2015.

28. Accordingly, the writ petitions are allowed. The respondents are directed to treat "Maa Baadi Yojna" at par with the schemes referred in Rule 2(j), Rule 15, Rule 25 and Schedule-I of the Rules of 2015 and further to grant all benefits and weightage against the experience to the persons who worked and acquired experience under the "Maa Baadi Yojna".

29. No order to costs.