

CASE NO.:
Appeal (civil) 2317 of 2007

PETITIONER:
Rajasthan Public Service Commission

RESPONDENT:
Kaila Kumar Paliwal & Anr

DATE OF JUDGMENT: 02/05/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T
[Arising out of S.L.P. (C) No. 5371 of 2006]
WITH
CIVIL APPEAL NO.2318/2007 @ SLP (C) NO. 13163 OF 2006

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 above
under any of the
Sections C,D, E and
F of the Schedule
appended to the
Rajasthan
Educational
Subordinate Service
Rules, 1971]

Note \026 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

Note \026 2. Teaching
in
RTS/BSTC/Schools
will be deemed as
equivalent to
teaching in High/Jr.
Higher Sec./Hr. Sec.

Classes.
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
High/Jr. Hr.
Sec./Hr. Sec.
classes for 3
years

OR

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
33 years

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.

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.

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 Vs. 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.

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

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.

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.

10. The Rajasthan Educational Service Rules, 1970, on the other hand, deal with appointment inter alia of Head Masters, Assistant Head Masters, Deputy Inspectors of Schools etc; the minimum qualifications wherefor are Bachelors' degree and Degree or Diploma in Education.

11. In the Rajasthan Education (Subordinate Services) Rules, 1971, their 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.

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.

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.

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.

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."

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 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.

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 Grade-III teacher.

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

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 Others v State of Haryana and Others [(1990) 2 SCC 189] and Dr. Bhanu Prasad Panda v Chancellor, Sambalpur University and Others [(2001) 8 SCC 532]

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 Others v Chander Shekhar and Another [(1997) 4 SCC 18], U.P. Public Service Commission U.P., Allahabad and Another v Alpana [(1994) 2 SCC 723] and Harpal Kaur Chahal (Smt.) v Director, Punjab Instructions, Punjab and Another [1995 Supp (4) SCC 706].

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 Others v Sajal Kumar Roy and Others [(2006) 8 SCC 671] and P.K. Ramachandra Iyer and Others v Union of India and Others [(1984) 2 SCC 141] }.

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 Another etc. etc. v Asis Kumar Mukherjee and Others 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 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 Others [(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.