

Ajit Kumar Giri and Ors Vs. Human Resources Department

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Court : Jharkhand

Decided On : Dec-16-2016

Appellant : Ajit Kumar Giri and Ors

Respondent : Human Resources Department

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No.5144 of 2015

----- 1. Ajit Kumar Giri, son of Baidyanath Giri, resident of Baratola, P.O. Daltonganj College, P.S. Medininagar Sadar, District Palamau.

2. Ravindra Nath Singh, son of Sri Rajkumar Singh, resident of Matri Sadan, Janakpuri, Baratola, P.O. Daltonganj College, P.S. Medininagar Sadar, District Palamau.

3. Ashok Kumar Pathak, son of Raj Kumar Pathak, resident of village Kulhi, P.O. Joga, P.S. Bishrampur, District Palamau.

4. Rakesh Kumar, son of Pramod Sinha, resident of Mohalla Nawatoli, Behind Navketan Cinema, P.O. Nawatoli, P.S. Medininagar, District Palamau.

5. Anil Kumar Singh, son of Balmukund Singh, resident of village Meral, P.O. Sikki Kala, P.S. Patan, District Palamau.

6. Sunil Kumar, son of Dharmdeo Mahto, resident of village Oriya, P.O. Gurua, P.S. Lesliganj, District Palamau. Petitioners. -Versus- 1. The State of Jharkhand,

through the Principal Secretary, Human Resources Development Department (Primary Education), Government of Jharkhand, Ranchi, H.E.C. Dhurwa, P.O. & P.S. Dhurwa, District Ranchi.

2. The Principal Secretary, Human Resources Development Department (Primary Education), Government of Jharkhand, Ranchi, H.E.C. Dhurwa, P.O. & P.S. Dhurwa, District Ranchi.

3. Director, Human Resources Development Department (Primary Education), Government of Jharkhand, Ranchi, H.E.C. Dhurwa, P.O. & P.S. Dhurwa, District Ranchi.

4. Deputy Commissioner, Palamau, P.O., P.S. & District Palamau.

5. District Superintendent of Education, Palamau, P.O., P.S. & District Palamau.

Respondents. ----- CORAM: HONBLE MR. JUSTICE SHREE CHANDRASHEKHAR HONBLE MR. JUSTICE RAJESH SHANKAR ----- For the Petitioner : Mr. Pandey Neeraj Rai, Advocate For the State : Mr. Lalan Kumar Singh, J.C. to G.P.I ----- 14/16.12.2016: (Rajesh Shankar, J.) 1. By way of present writ petition, the petitioners have prayed for striking down the Jharkhand Elementary School Teachers Recruitment Rules, 2012 as arbitrary, particularly, the 2 provision contained in Rule 14 which renders Para Teachers with two years of uninterrupted service as eligible for selection and not the teachers with teaching experience in elementary schools and the provision contained in Rule 21 which allows consideration of marks obtained in Teachers Eligibility Test (for short TET) but not the marks obtained in the examination for selection of teachers conducted by the Jharkhand Public Service Commission. The petitioners have further prayed for a direction upon the respondents to consider the petitioners for direct recruitment to the post of Graduate Trained Teachers for Class-VI to Class-VIII being the subject matter of the advertisement dated 4th July, 2015.

2. The factual matrix of case is that the Government of Jharkhand framed Jharkhand Elementary School Recruitment Rules, 2002 (hereinafter to be referred as the Rules 2002) and as per the Rules 2002 (particularly Rule 4 read with Rule 2(Kha) read with Rules 7 and 11), the eligibility criteria was matriculate with

training and having passed the recruitment examination conducted by the Jharkhand Public Service Commission in two stages i.e. Preliminary Test and Mains Examination. Moreover, Rule 9 postulated that a district-wise merit list was to be prepared by the Jharkhand Public Service Commission, based on the marks obtained in the Mains Examination, leading to appointment of candidates. Further, Rule 11 provided that the appointment shall be in Matric Trained Scale only.

3. Subsequently, vide Notification No.1691 dated 14th August, 2007, the Government of Jharkhand made an amendment in 3 the Rules 2002 by way of Jharkhand Elementary School Recruitment (Amendment) Rules, 2007 (hereinafter to be referred as the Rules 2007), wherein provision was inserted for eligibility to be Intermediate Trained. Subsequent to Rules 2007, the Jharkhand Public Service Commission published an advertisement, setting out the amended instructions for the purpose of recruitment against which the petitioners applied and eventually got selected and appointed. The petitioners, thereafter, joined in their respective schools.

4. On 14th May, 2011 vide a notification, contained in Memo No.1341, the Jharkhand Elementary School (2nd Amendment) Rules, 2011 (hereinafter to be referred as the Rules 2011) was brought into force by the Government of Jharkhand, whereby the Preliminary Test conducted by the Jharkhand Public Service Commission was declared to be treated as equivalent to TET albeit only for one recruitment examination. In the said Rules, further provision was made that the only those teachers selected out of the said process shall be posted in upper primary classes (Class-VI to Class-VIII) whose educational qualification would be graduate.

5. Thereafter, on 5th September, 2012, the Government of Jharkhand framed new Rules, being Jharkhand Elementary School Teachers Recruitment Rules, 2012 (hereinafter to be referred as the Rules 2012), which, inter alia, provided that middle school shall mean those elementary schools where education is provided from Class-I to Class-VIII or Class-I to Class-VII or Class-VI to Class-VIII or Class-VI and Class-VII [Rule 2(kh)]. The elementary schools have been defined as 4 schools having Class-I to Class-VIII [Rule 2(k)]. The primary schools have been

defined as Class-I to Class-V and upper primary schools as Class-VI to Class-VIII. The elementary class has been defined as Class-I to Class-VIII [Rule 2(th)(da) & (dha)]. Rules 2012 further provided for direct recruitment to be made on the basis of marks obtained in TET and in academic examination (Rule 21). In Rule 14, the provision was made for 50% reservation for para teachers with two years of continuous service.

6. Vide Notification No.1533 dated 31st July, 2014, 7926 existing posts of Intermediate Trained Teachers in the State of Jharkhand were converted into the posts of Graduate Trained Teachers. The conditions mentioned in the notification provided that out of newly sanctioned 7926 posts, 50% post shall be filled up by way of direct recruitment in terms with Rules 2012 and rest 50% by way of promotion in terms with Teachers Promotion Rules.

7. According to the petitioners, due to the said decision of the State Government, there has been radical reduction in the numbers of available posts to be filled up by way of promotion and the petitioners are adversely affected by the said decision of the Government.

8. Subsequently, on 4th July, 2015, Advertisement No.4/Palamau/2015 was issued from the office of the District Superintendent of Education, Palamau for appointment of teachers for Class-VI to Class-VIII and according to the petitioners the said process of direct recruitment has deprived 5 the petitioners from being directly recruited, as they are serving teachers and have not cleared the TET.

9. So far as the challenge made to Rule 14 of Rules 2012 is concerned, the said issue is no more res integra and has already been decided by a Division Bench of this Court vide judgment dated 9th February, 2016 passed in W.P.(C) No.4237 of 2014 (Praveen Kumar Mishra, Vs. The Secretary, Human Resources Development Department, Government of Jharkhand & Anr.). In Paragraph 7 of the said judgment, it has been held as under:-

7. The petitioners challenge to Rule 14 is equally untenable. Under Rule 14, 50% seats in direct recruitment of Inter-trained Teacher and Graduate Trained Teachers have been reserved for the Para Teachers working continuously for 2

years under Sarva Shiksha Abhiyan. Such reservation would be applied category-wise that is, the reservation would be horizontal. The contention of the learned counsel for the petitioner that there cannot be more than 50% reservation is also liable to be rejected. By applying reservation under Rule 14 in each category, it has been ensured that the reservation does not exceed the reservation policy of the State Government. Moreover, seats reserved on the basis of experience do not violate the mandate of Article 14, 16 and 335 of the Constitution of India. In fact, reservation of 50% seats for the Inter- trained Teachers and Graduate Trained Teachers serves a meaningful purpose and it achieves the goal of providing education through experienced teachers.

10. Further, in another judgment dated 19th February, 2016 passed in W.P.(S) No.135 of 2016 (Chaitali Nandan & Ors. Vs. The State of Jharkhand & Ors.), a Division Bench of this Court has also considered the issue of parity raised by the teachers working in Kasturba Gandhi Girls Schools with Para Teachers working under Sarva Shiksha Abhiyan in the State of Jharkhand. The Division Bench, on meticulous consideration of Rule 14 of the Rules 2012 and other relevant laws, has dismissed the said writ petition. In Paragraph 14, it has been held as under:-

1. There may be thousand of other equally well-equipped teachers working in different private/minority, aided/unaided schools however, they cannot claim parity with the para- teachers. The group of para-teachers working continuously for two years in the Government schools furnishes a rational basis for classification and such classification does not violate the mandate of Article 14 and 16 of the constitution. The para-teachers working continuously for two years in Government schools thus, form a separate class. The petitioners have not been denied equal opportunity to compete with the other candidates. The prayer seeking a direction to the respondent- State to provide reservation upto reasonable limit for the petitioners is misconceived. Grant of reservation and fixing limits of reservation are the policy decisions of the government. In our considered opinion, the funding pattern or a condition that the teachers working in KGBVs must reside within the residential complex, would not equate them with the para-teachers and, the provision for reservation of 50% seats for para teachers cannot be held arbitrary or discriminatory on that count.

11. In view of the aforesaid judgments rendered by the Division Bench of this Court, challenge made by the petitioners to Rule 14 of the Rules 2012 fails.

12. By way of second prayer, the petitioners have prayed for striking down Rule 21 of Rules 2012, which according to them allows consideration of marks obtained in TET but not the marks obtained in the examination for the selection of teachers conducted by the Jharkhand Public Service Commission.

13. For better appreciation of the issue involved, Rule 21 of Rules 2012 is quoted herein under:-

21. RIKT PADON PAR SHIKSHKON/ANUDESHKON KI NIYUKTI HETU NIMNLIK HIT PRAKRIYA KE ANUSAR JILA ASTAR PAR MEGHA SUCHI TAIYAR KI JAYEGI- KA. .. KHA. ASNATAK PRASHIKSHIT SHIKSHKON KI NIYUKTI HETU MEGHA SUCHI KA NIRMAN- 7 (i) ABHAYARTHIYON KE KUL MEGHA ANK KE AADHAR PAR VISHYAVAR EVAM KOTIVAR MEGHA SUCHI JILA SHIKSHA ASTHAPANA DWARA TAIYAR KI JAYEGI. (ii) KUL MEGHA ANK ABHAYARTHIYON KE SHAIKSHANIK MEGHA ANK EVAM SHIKSHAK PATRATA PARIKSHA KE MEGHA ANK KA YOGFAL HOGA, JISKI GANANA NIMNVAT KI JAYEGI- (AA) (BA) GA. ..

14. The learned counsel for the petitioners submits that the petitioners, who are already teaching in the Elementary Schools in Class-I to Class-VIII, are going to be deprived of certain benefits which the teachers, who would be directly recruited under the ongoing process initiated vide advertisement dated 4th July, 2015, would get. While the directly recruited teachers would get Grade pay of Rs.4600/-, the petitioners would continue in their existing Grade Pay of Rs.4200/- only. Furthermore, besides suffering monetary loss in terms of Grade Pay, the newly recruited individuals would score over the petitioners in terms of seniority also, because they would get seniority and length of service counted with effect from their dates of appointment, the petitioners who have so far had experience of only five years and odd, would have to wait till completing eight years of service to get promoted to the same level as these direct recruits, under the Promotion Rules applicable to the petitioners. The learned counsel further submits that such disparity and deprivation against the petitioners is unreasonable and arbitrary in

view of the fact that like the proposed direct recruits, the petitioners are also having academic qualification 8 of graduation or above or due training. All of them were graduate at the time of their initial appointment in the year 2009. They are also within the age limit as prescribed for direct recruitment. Paradoxically, while the direct recruits would be selected on the basis of passing TET only, the petitioners have passed two-tier examination conducted for selection i.e. Preliminary Test as well as Mains Examination, that too conducted by the Jharkhand Public Service Commission. It is further submitted that TET, which is just an eligibility test and not a selection test, is at best comparable with the PT of Jharkhand Public Service Commission. In fact, the 2nd Amendment Rules 2011 dated 14th May, 2011 furnishes evidence in support of the said proposition. The marks in academic qualification are available with the petitioners also just as any candidate for direct recruitment. Moreover, the petitioners have experience of five years and nine months in teaching in those classes while the direct recruits have got NIL experience.

15. Per contra, the learned counsel for the respondents, while referring to the counter affidavits filed on behalf of the respondents, submits that Right of Children to Free and Compulsory Education Act, 2009 (in short to be referred as RTE Act 2009) came into existence with effect from 1st April, 2010, wherein it is provided that any person possessing such minimum qualifications, as laid down by an academic authority, authorized by the Central Government, shall be eligible for appointment as a teacher. Learned counsel further submits that the National Council for Teacher Education (in 9 short to be referred as NCTE) laid down the minimum qualifications for a person to be eligible for appointment as a teacher for Class-I to Class-VIII vide notification dated 23rd August, 2010, wherein it is provided that besides requisite educational qualification, a person must pass the TET to be conducted by the appropriate Government in accordance with the guidelines framed by the NCTE for the purpose. The Jharkhand Primary Teachers Appointment Rules, 2002 (as amended from time to time) was not in conformity with the Right of Children to Free and Compulsory Education Act, 2009 and the guidelines issued by the NCTE under the aforesaid Act and, accordingly, Rules 2012 was framed denovo, which contains the provisions related to conducting of TET and procedure of appointment, both, for the post of teacher in the elementary

schools. Rule 9 of the said Rules stipulates that all vacancies against the posts of Intermediate Trained Teacher will be filled up through direct recruitment process, meaning thereby 50% vacancies will be filled up by Graduate Trained Teacher through direct recruitment process and remaining 50% vacancies through promotion from among the working teachers.

16. Learned counsel for the respondents further submits that the provision as contained in Rule 9 with respect to appointment of Graduate Trained Teachers, on one hand, gives equal opportunity, both, to the lakhs of eligible candidates, who are not government teachers and, on the other hand, gives same opportunity to get appointed through promotion to eligible teachers working in the schools. This is evidently a prudent and judicious personnel policy and allows the government to harness the talent from both the world. The mode of appointment for filling up the posts of teacher in the government schools is a policy matter and the government is the competent authority to decide the policy in this regard. To fulfill the norms and standards with regard to subject teachers, the State Government has created 7926 posts of Graduate Trained Teacher in the subject of science/math, social studies and languages in government middle schools vide Notification No.1533 dated 31st July, 2014.

17. Learned counsel for the respondents also submits that the petitioners were selected by the Jharkhand Public Service Commission as per the advertisement published in the month of September, 2007 and after selection, they have been appointed as Assistant Teachers in the year 2009 in different elementary schools of Palamau district. He further submits that as per Notification No.1341 dated 14th May, 2011, Amended Rules 2011 came into force by which it was provided that Preliminary Test conducted by the Jharkhand Public Service Commission shall be treated as equivalent to TET for only one transaction. In the month of September, 2012, a fresh Elementary School Teachers Appointment Rule was notified on 5th September, 2012, known as Jharkhand Elementary School Teachers Recruitment Rules, 2012 by which the elementary education have been categorized in two parts, wherein Class-I to Class-V have to be detained as Primary Classes, whereas classes from VI to VIII have been defined as Upper Primary Classes. He further submits that as per provision made in Right to Free and Compulsory

Education Act, 2009, the State Government had to provide at least three Trained Graduate Teachers for every upper primary classes to teach (i) science subject; (ii) social science subject; and (iii) language, but due to lack of sanctioned units of Trained Graduate Teachers, the earlier unit of 7926 Intermediate Trained Teachers, which was kept in abeyance (dormant) after recommendation of the 4th Pay Revision Commission Report, were again revalidated and upgraded as Trained Graduate post by the decision taken in the Cabinet on 10th July, 2014 with the condition that 50% of this converted post shall be filled by direct recruitment and 50% by way of regular promotion. He further submits that the petitioners were appointed on the basis of recommendation of Jharkhand Public Service Commission after passing the Preliminary Test and Mains Examination in the year 2009, as per existing Rules, whereas the teachers for primary classes and upper primary classes were appointed as per the advertisement published in the year 2015, based on Jharkhand Elementary Schools Teachers Appointment Rules 2012.

18. On consideration of rival contentions made on behalf of the parties, it appears that the main contention of the petitioners is that since they have already been appointed as Assistant Teacher in different schools in a two tier recruitment process i.e. Preliminary Test as well as Mains Examination, conducted by the Jharkhand Public Service Commission, Rule 21 deprives the petitioners to complete for direct recruitment as the marks obtained in TET is also to be added in preparing 12 the merit list of the candidates. Since the petitioners have not qualified the TET, the said clause in Rule 21 is arbitrary and discriminatory, particularly in view of the fact that the Preliminary Test conducted by the Jharkhand Public Service Commission has already been treated as equivalent to TET by virtue of Rules 2011, issued vide notification dated 14th May, 2011 by the Department of Human Resources Development, Government of Jharkhand.

19. In our considered view, the aforesaid contentions raised by the learned counsel for the petitioners are unfounded, since after promulgation of Right to Free and Compulsory Education Act, 2009, the TET was made compulsory and, thereafter, the National Council for Teachers Education (NCTE) vide notification dated 23.8.2010 also made the provision that the candidates applying for the post

of teacher for Class-VI to Class-VIII have also to pass the TET to be conducted by the appropriate Government. However, the provision of Rules 2002 (amended vide second Amendment Rules 2009) was not in conformity with Right to Free and Compulsory Education Act, 2009 as well as the notification issued by the NCTE dated 23rd August, 2010, the Government of Jharkhand considering the paucity of teachers as was existing during that period, made provision vide notification dated 14th May, 2011 (Rules 2011) that the Preliminary Test to be conducted by the Jharkhand Public Service Commission shall be treated equivalent to TET, but the same would be valid only for one transaction that too for the purpose of the only recruitment process for which the said Preliminary Test is to be conducted. The petitioners cannot derive any benefit from the said provision of Rules 2011 issued vide notification dated 14th May, 2011, as it has specifically been made clear that though the Preliminary Test has been treated as equivalent to TET, but the same is confined only for one transaction and limited to the Preliminary Test of the said recruitment process. Moreover, subsequently with a view to make the existing Teachers Appointment Rules in inconformity with the Right to Free and Compulsory Education Act, 2009 and the notification dated 23rd August, 2010 issued by the NCTE, the State Government in its wisdom has framed the Rules 2012 and made the provision that passing of TET shall be mandatory for being eligible to be appointed as teacher in Elementary Schools through the process of recruitment to be undertaken by the State Government. The TET is now the mandate of law and the same cannot be bypassed on any pretext whatsoever. TET has been made a mandatory qualification. Moreover, the legality or validity of TET is not in question in the present writ petition. It is merely contended that the Preliminary Test conducted by the JPSC should be treated as equivalent to TET. If the said plea is accepted, then the same would lead to a situation where all those candidates who do not possess the mandatory qualification for any examination (here it is TET), they will go on questioning the justification of the said mandatory qualification on one pretext or the other.

20. In view of the discussions made herein above, we are of the considered view that Rule 21 of the Rules 2012 is neither arbitrary nor discriminatory and, therefore, the challenge made by the petitioners to the said Rule 21 has no legal or factual ground to stand and, thus, fails.

21. Moreover, we wish to add that it is a policy decision of the Government, which has been taken in pursuance of mandate of Right to Free and Compulsory Education Act, 2009. It is well settled that the Court should not generally interfere with the policy decisions of the Government unless the same are found to be arbitrary and unreasonable. In the case of Census Commissioner & Ors. Vs. R. Krishnamurthy, reported in (2015)2 SCC796 the Honble Supreme Court, in Paragraph 33, has held as under:-

33. From the aforesaid pronouncement of law, it is clear as noon day that it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded ipse dixit offending the basic requirement of Article 14 of the Constitution. In certain matters, as often said, there can be opinions and opinions but the court is not expected to sit as an appellate authority on an opinion. Further, in the case of State of M.P. Vs. Narmada Bachao Andolan, reported in (2011)7 SCC639 after referring to the judgment rendered in the case of State of Punjab Vs. Ram Lubhaya Bagga [(1998)4 SCC117, the Honble Supreme Court ruled thus:

36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power. (See Ram Singh Vijay Pal Singh V. State of U.P., Villianur Iyarkkai Padukappu Maiyam Vs. Union of India and State of Kerala V. Peoples Union for Civil Liberties.)

1. 22. Resultantly, the present writ petition, being devoid of merit, is accordingly dismissed. (Shree Chandrashekhar, J.) (Rajesh Shankar, J.) Sanjay/AFR

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