

Mohd. AmeenuddIn Vs. Govt. of A.P. and Others

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Court : Andhra Pradesh

Decided On : Aug-24-2000

Reported in : 2000(5)ALD311; 2000(5)ALT127

Judge : B. Subhashan Reddy and;Ghulam Mohammed, JJ.

Acts : Andhra Pradesh Public Employment (Organisation of Local Cadets and Regulation of Direct Recruitment) Order, 1975; [Constitution of India](#) - Articles 142, 367(1), 371-D and 372; [General Clauses Act, 1897](#) - Sections 14(1) and 21; Andhra Pradesh Public Employment Organisation of Local Cadets and Direct Recruitment (Amendment) Order, 2000

Appeal No. : WP No. 13389 of 2000 and Batch

Appellant : Mohd. Ameenuddin

Respondent : Govt. of A.P. and Others

Advocate for Def. : Mr. D. Prakash Reddy, Additional Advocate-General

Advocate for Pet/Ap. : Mr. P.V. Subrahmanya Sarma, Adv.

Judgement :

ORDER

B. Subhashan Reddy, J.

1. This batch of writ petitions have been filed questioning the judgments rendered by the Andhra Pradesh Administrative Tribunal relating to Teachers selection.
2. A notification was issued on 4-7-2000 inviting applications for Teachers recruitment and the petitioners herein are aggrieved by the said notification in respect of local area specified therein treating the post as district-wise, prescription of maximum age of 36 years as on 1-7-1999, mode of computation of the said maximum age and imposition of annexing the copy of pass certificates of B.Ed. or equivalent examination.
3. In Writ Petition Nos. 13389 and 13569 of 2000 the principal contention raised is that the President of India was not empowered to amend Para 6 of the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 (hereinafter referred to as 'the Presidential Order'). In addition, in WP No.13389 of 2000 the contention is that the sole petitioner therein, who was born on 5-6-1963 and was age barred ought to be treated as within the age by relaxing the same. In WP No.13569 of 2000, the additional ground taken is that having studied B.Ed. in Uttar Pradesh (Digambar Jain College, Badode, Baghpat district, affiliated to Choudhary Charan Singh University, Meerut) and appeared for the examinations held in this month, the petitioners cannot annex the pass certificate as it will take considerable time for declaration of results.
4. In WP Nos.13446, 13447, 13549, 13689, 13756, 13812 and 13818 of 2000, the petitioners had appeared for B.Ed. examinations in various Universities like Osmania, Annamalai, Central Institute of Hindi, Agra, Madurai Kamaraj and Bharatiar of Coimbatore. They contend that since the results have not been declared, the pass certificates cannot be annexed and that they cannot be found fault with for the inaction of the educational institutions mentioned above.
5. In WP Nos.13810 and 14427 of 2000, the complaint is that the cut-off date as 1-7-1999 is arbitrary and it ought to be 1-7-1998.
6. In WP Nos.13884 and 13887 of 2000, the contention raised is that the petitioners having born on 1st July in their respective years of birth, did not

complete their maximum age limits, be it OC or reserved categories, as on 1-7-1999, and they have completed the maximum age limit only on 2-7-1999 and as such, they are eligible to write written examination and participate in the further selection process depending upon their performance.

7. A different contention is raised in WP No.13930 of 2000 and the contention raised in this writ petition is no way concerned with the above writ petitions and as such, this was not generalised and is being specifically dealt with. In this writ petition, there are 20 petitioners, who belong to Aditabad district. They belong to Bengali minority and were rehabilitated during Pakistan war in 1965 by locating 13 camps at Easagaon and the Government had established 18 Primary Schools to teach the students in Bengali Medium as their mother tongue was Bengali. The Government established only Primary Schools upto IV Class and thereafter the medium of instruction was Hindi and till date the Government has not established any High School to teach Bengali upto 10th Class and all the students are pursuing their education in Bengali medium only upto IV Class and thereafter shifting to Hindi medium to pursue their higher studies. Applications were called for to fill-up 13 posts of Secondary Grade Teachers in Bengali medium to teach in Bengali at the above rehabilitation Centres in Adilabad district, wherein the conditions stipulated are that the candidate should possess Intermediate qualification with TTC or equivalent qualification and with a Note that the candidates with the medium of Bengali as first language in the concerned subject of X Class and eligible to teach, are entitled for competing for the recruitment to the post of Secondary Grade Teachers in Bengali medium.

8. Having regard to the above pleadings, the contentious issues are:

(i) that the President having issued the A.P. Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975, had no power to amend it and as such A.P. Public Employment Organisation of Local Cadres and Direct Recruitment (Amendment) Order, 2000 issued on 4-2-2000 is unconstitutional and void;

(ii) that the fixation of maximum age limit with a cut-off date as 1-7-1999 is irrational and arbitrary;

(iii) that the requirement of annexation of qualifying educational certificate along with the application is arbitrary;

(iv) that the maximum age limit should be computed as on 2-7-1999 and not on 1-7-1999; and

(v) Proficiency in Bengali language to teach upto IV Class is sufficient and not the qualification.

9. Mr. P. V. Subrahmanya Sarma, the learned Counsel for the petitioner in WP No.13389 of 2000 led the arguments followed by other learned Counsel for the petitioners raising their respective contentions. The contention of the learned Counsel for the petitioners is that once the power was exercised by the President of India in exercise of clauses (1) and (2) of Article 371-D of Indian Constitution and issued the Presidential Order organising the Teacher post into a local cadre making it a zone-wise post, the power is exhausted and that since there is no provision in Article 371-D of Constitution, the Presidential Order was not amendable and the Amended Order of 2000 making the Teacher post as district wise is unconstitutional and void.

10. With regard to prescription of maximum age, it could not be demonstrated as to how the fixation of the said age with a cut-off date as 1-7-1999 is arbitrary. But a vague argument is raised that in the selection for Teachers held in the year 1998 the cut-off date was mentioned as 1-7-1997 and since no selections were made in the year 1999 and as the same was cancelled after the issuance of notification, the cutoff date ought to have been mentioned as 1-7-1998. This contention has no legs to stand and we reject the same outright.

11. With regard to other contention that the computation of maximum age as on 1-7-1999 is incorrect and it ought to have been 2-7-1999, the same is also liable to be rejected outright, even though a judgment in *M. Khamar Pasha v. Commissioner and Director of School Education, Andhra Pradesh*, : 1998(4)ALD512, has been cited, as the facts in that case have got no bearing on the facts of these cases, as the words employed therein were 'not exceed 36 years' as on the cut-off date 1-7-1996. But, in the instant notification, the words

employed are 'not completed 36 years as on 1-7-1999'. Admittedly, all the petitioners concerning the said point, had completed their maximum age limits, be it 36 years for OC or the extended years for reserved classes, on 30-6-1999. Hence, this contention fails.

12. We now deal with the other contentions in detail. The Presidential Order has been issued in exercise of the powers conferred in sub-clauses (1) and (2) of Article 371-D of Indian Constitution. We need not go to the historical background leading to the incorporation of the said provision contained in Article 371-D. Suffice it to say that the said provision is special to the State of Andhra Pradesh and has been made in the wake of serious agitations alleging discrimination in public employment. Of course, provision with regard to admissions to educational institutions has also been made, but that is a question apart in this batch of cases. The purpose and object of the Presidential Order was to give preferential right to the local residents and what is a 'local area' etc., has been defined. We need not even go into those details for the reason that the contention of the learned Counsel for the petitioners is that the posts of Teachers, which were hitherto zone-wise, should continue to be zone-wise, as there is no power to amend the Presidential Order, while the contention of Mr. D. Prakash Reddy, the learned Additional Advocate-General is that power to issue the Order by the President includes the power to amend or rescind the same and also submits that the underlying object of Article 371-D and the Presidential Order has not been changed to the detriment of the locals and in fact, it is more beneficial to locals, as, the locals in the district will have preference than a general preference in a zone and that the object and intendment of Article 371-D is to organise a post into a local cadre and merely because hitherto the Teachers post was zonal, no detriment is caused if it is made district-wise, as, all the candidates, who are locals in their respective districts would get equal chance. Another explanation which is given is that because of the parity of pay-scales, the Teacher post was made zonal and because of the changed circumstances, the same is made district-wise. But the crux of the question is as to whether there is a power vested in the President to amend the Presidential Order and particularly Para 6 therein, subject to, of course, not altering the very object and intendment of such protection given to locals. The argument that the power to issue the order includes the power to

withdraw or amend the same found favour with the Tribunal. A glance at Section 21 of the [General Clauses Act, 1897](#) supports the said reasoning and approach of the Tribunal. Section 21 of the General Clauses Act reads:

'Where, by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notifications, orders, rule or bye-laws so issued.'

Even Section 14(1) of the above General Clauses Act is relevant. It reads :

'Where by any Central Act or Regulation made after the commencement of this Act, any power is conferred then, unless a different intention appears, that power may be exercised from time to time as occasion requires.'

A question may arise as to whether the above provisions of General Clauses Act, which is a Central Act, are applicable only to the statutory power and not the constitutional power; but in view of Article 367(1) of Indian Constitution, which reads 'Unless the context otherwise requires, the [General Clauses Act, 1897](#), shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India', there cannot be any doubt whatsoever that the [General Clauses Act, 1897](#) is applicable to the Presidential Order and as the Presidential Order issued on 4-2-2000 is not in deviation or contradictions of the Presidential Order issued in 1975 and as the object underlying the issuance of the Presidential Order of 1975 is not defeated and on the other hand benefits the local candidates more closely, we hold without any hesitation that the amended Presidential Order dated 4-2-2000 is intra vires the Constitution and is valid.

13. Then we come to the next contention regarding the arbitrariness of requirement of annexing the certificate evidencing educational qualification. The last date was extended upto 27-7-2000 and as on that date, the requirement was to annex a copy of the certificate having passed B.Ed, or equivalent examination recognised by the University. The contention is that the petitioners had appeared

for the qualifying examination, but the results have not yet been announced and for the delay so caused, they cannot be penalised and that they should be allowed to produce the said certificates even at the time of selections. We reject this contention for the reason that it is for the authorities to prescribe the age and educational qualifications and if a person was to be qualified for B.Ed. or equivalent examination, then a certificate was necessary in evidence thereof and the said certificate had to be annexed or otherwise it will be difficult for the authorities to make a scrutiny as to whether a person has acquired the qualification or not. Existing of educational qualification as on the date of application or at least on the last day set for filing applications is a prerequisite and such a requirement cannot be termed as arbitrary as there is a nexus for the object to be achieved, i.e., making a scrutiny of the eligible candidates; otherwise, ineligible candidates can be admitted giving entry for the written test and ultimately, if they fail in their qualifying examination, they cannot be called for oral Interview. This will lead to so many uncertainties and anomalies. That apart, the said requirement imposed by the authorities cannot by any stretch of imagination be termed as arbitrary, as any inaction or delay in either conducting the examinations for the qualifying degree or the delay in declaration of results thereof, cannot form a valid basis for facilitating the candidates to procure such certificates and file the same at the time of interviews or selection. In fact, such a question arose in number of cases and we need not multiply the cases and it is suffice to refer to a case which landed in Supreme Court, i.e., Bhupinderpal Singh v. State of Punjab, : (2000)5SCC262 , in which (he Supreme Court had upheld the decision rendered by the High Court in holding that the cut-off date for the purpose of educational eligibility qualification cannot be indefinite and that it is for the authorities to fix the same and not for the Courts to interfere. Of course, in the said case, the Supreme Court had invoked the extra-ordinary jurisdiction under Article 142 of Indian Constitution in not disturbing the appointments already made. But the ratio in the said judgment of the Supreme Court is against the contention raised by the learned Counsel for the petitioners and supports the contention raised on behalf of the State.

14. Now, we come to the last case of the rehabilitated Bengalis. Per force, the said rehabilitated Bengalis or their children, who became eligible to apply should be locals only and that too locals of the district. But the handicap is that in Adilabad

district where they were rehabilitated, there were only Primary Schools teaching Bengali medium and students after passing out Primary School had to take education in Hindi in higher education. Such being the anomalous position and the primary education being a fundamental right and having regard to the fact that Presidential Order bars the non-locals, the only solution is to make amends to suit the situation and in fact, the Government had earlier in the years 1997, 1998 and 1999 allowed such candidates who had studied in Bengali upto IV Class and thereafter in Hindi medium upto X Class to compete for selection and had selected them. Three memos successively issued bear testimony for the same. They read as follows :

'Proceedings of the Director of School Education : A.P. : Hyderabad

Rc. No.416/MC-2/97 Dated 28-10-1997.

Sub :--Representation of Unemployees of Bengali Teachers who have requisite qualifications for appointment as S.G.Ts. in Bengali Medium Schools in the Dist.

Read :--1. This Office Procs. No.Rc. 416/ MC-2/97, dated 10-9-1997.

2. Representation made by the Bengali Teachers (Unemployees) dated 22-9-1997.

3. Lr. No.Nil, dated 29-8-1997 from Sri P. Purushothama Rao, MLA, Sirpur Assembly Constituency.

In continuation of the proceedings 1st read above, the District Educational Officer, Adilabad, is requested to conduct written test and Interview to the eligible Bengali candidates in Bengali language, in order to fill up all vacant Bengali S.G.B.T. posts existing in Adilabad district scrupulously, following the rules and regulations laid down in G.O. Ms. No.221, Edn. (Ser. III) Dept., dated 16-7-1994 and intimate the same to this office.

This has got the approval of the Director of School Education, Andhra Pradesh, Hyderabad.'

'Proceedings of the Director of School Education. A.P., Hyderabad

Rc. No.416/MC-2/97 Dated : 31-7-1998

Sub:--Representation of unemployed Bengali Teachers who have requisite qualifications for appointment as -S.G.Ts. in Bengali Medium Schools under Isagaon Rehabilitation Project in Adilabad District - Reg.

Read :--1. This Office Procs. Re. No.416/ MC-2/97, dated 28-10-1997 and 6-4-1998.

2. From the D.E.O., Adilabad Rc. No.B1/3698/1997, dated 14-5-1998.

3. Representation from certain unemployed Bengali Teachers of Adilabad District, dated 24-7-1998.

In the circumstances explained by the District Educational Officer, Adilabad in the reference 2nd read above, he is requested to appoint these Bengali Medium unemployed Teacher candidates who applied for 1998 District Selection Committee to the vacant S.G.T. posts in Isagaon Rehabilitation Bengali Medium Schools, who are possessing the qualifications of Intermediate and T.T.C (Diploma in Education of R.G. Polytechnic, New Delhi as a special case)following the rules and regulations laid down in G.O. Ms. No.221, Edn., dated 16-7-1994.

The District Educational Officer, Adilabad is requested to take action accordingly duly acknowledging these proceedings.

This has got the approval of the Director of School Education, Andhra Pradesh, Hyderabad.'

'Proceedings of the Commissioner and Director of School Education, Andhra Pradesh. Hyderabad

Rc. No.416/MC-2/97, Dated : 27-7-1999

Sub :--Recruitment of Unemployed Bengali Teachers in Easagaon Rehabilitation Project Schools in Adilabad Dist --Supply of question papers --Clarification sought for -- Reg.

Read :--1. C&DSE;'s Procs. Rc. No.416/ MC-2/97, dated 28-10-1997.

2. C&DSE;'s Procs. Re. No.416/MC-2/97, dated 31-7-1998.

3. Govt. Memo No.3873/Ser.V/99-I, Edn., dated 11-2-1999.

4. Lr. Rc. No.B2/3858/97, dated 27-6-1999 of the DEO, Adilabad.

While inviting the attention of the District Educational Officer, Adilabad to the reference 4th read above, he is informed that necessary instructions were already issued in the references 1st to 3rd cited and he is requested to take action accordingly. Further, he is requested to refer the Notification issued for recruitment of Teachers in District Selection Committee, regarding teacher posts notified for.'

As there are no candidates available, who satisfy the requirements of pass of X Class with Bengali medium or Bengali as firstlanguage, it is necessary that the above procedure, which was followed for the years 1997, 1998 and 1999 with regard to Bengali candidates has to be adopted for DSC-2000 also.

15. In view of what is stated supra, all other writ petitions excepting WP No. 13930 of 2000 are dismissed. Insofar as WP No.13930 of 2000 is concerned, the procedure adopted for the years 1997, 1998 and 1999, as extracted above, should be followed and the said exercise be done as expeditiously as possible, but not later than one month from the date of receipt of a copy of this order so that the student-community is not put to any hardship and in order to ensure the free and compulsory education upto Primary School level which has been held to be a fundamental right by the Supreme Court in Unni Krishnan J.P. v. State of A.P., : [1993]1SCR594 . Accordingly, WP No.13930 of 2000 is disposed of. In the circumstances, we direct the parties to bear their own costs.