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Court : Jharkhand

Decided On : Apr-01-2005

Reported in : [2005(2)JCR283(Jhr)]

Judge : Altamas Kabir, C.J. and; S.J. Mukhopadhaya, J.

Appeal No. : W.P. (S) No. 921 of 2005

Appellant : Krishna Kumar Jha and anr.

Respondent : State of Jharkhand and ors.

Advocate for Def. : Indrani Senchaudhury, SC III

Advocate for Pet/Ap. : Rajeev Ranjan,; Abhoy Kumar Mishra and; Sanjay Agrawal

Disposition : Application allowed

Judgement :

Altamas Kabir, C.J.

1. This writ petition has been referred to the Division Bench for disposal having regard to an earlier decision rendered by a learned Single Judge of this Court involving a similar question in WP (S) No. 394 of 2005.

2. The said writ application had been filed by one Shekhar Gupta, inter alia, for issuance of a direction on the respondents to consider his case for appointment to the post of a Primary Trained Teacher in a primary school taking into consideration the fact that he had completed the teacher's training course and had obtained a B.Ed. certificate prior to the written examination held for the purpose of filling up the vacant posts of Primary Trained Teachers.

3. As will appear from the order dated 8th February, 2005 disposing of the said writ application, it terms of an advertisement published in the newspapers, a 2-years' Teacher Training or a B.Ed diploma of CPD was one of the qualifications prescribed for appointment of a primary trained teacher, Admittedly, the petitioner had not passed the B.Ed. Examination or Teachers' Training Examination by the last date fixed for receiving such applications and, accordingly, he was not eligible for appointment at the time of making such an application.

4. Having regard to the said condition, although the petitioners obtained their B.Ed. Certificates prior to the written examination, their claim was disallowed on the ground that they were initially ineligible to apply and no provision had been made for relaxation of the said condition.

5. A similar question being involved in the instant writ application, the learned Single Judge who was hearing the matter, by his order dated 28th February, 2005 observed that having regard to the letter dated 21st May, 2004 issued by the Commissioner and Secretary, Human Resources Development Department, Government of Jharkhand, Ranchi, which had been brought to the notice of the learned Single Judge, his Lordship was of the view that the matter required further consideration by a Division Bench. The said letter has been made Annexure-6 to the writ application and, inter alia, provides that the candidates who had appeared at the Teachers' Training examination, but whose results had not been published, would be entitled to apply and to be appointed after being declared successful in the said examination. The case made out in the writ application is that having regard to the said letter containing the policy statement of the State Government, the writ petitioners were also entitled to be appointed as primary teachers, since the policy decision contained in the said letter is squarely applicable in their cases.

According to the writ petitioners, at the time of making applications, they had already appeared for B.Ed. Examination and prior to the written examination conducted for filling up the posts of primary teachers, their results of B.Ed. had been declared/published and they had been declared successful. In fact, it is their case that when they had appeared for the examination, they had already qualified and had obtained certificates in support of having passed the B.Ed. Examination.

6. It is also the case of the writ petitioners that in the district of Dhanbad, there were six candidates, who were declared successful, but whose B.Ed. Examination results had not been declared on or before the last date for submission of the applications for the examination. The names of the remaining four candidates, apart from the writ petitioners, have been set out in paragraph 15 of the writ petition and in paragraph 16 thereof, it has been averred that irrespective of the said fact, all the said four persons had been issued appointment letters, while in the case of the writ petitioners, they have been denied such appointment. It is claimed by the writ petitioners that apart from the above, having regard to the policy of the State Government regarding appointment of candidates as declared in their letter dated 21st May, 2004, the petitioners too are entitled for appointment, since they had successfully completed and qualified themselves before the date of the examination conducted by the Jharkhand Public Service Commission.

7. The question that arises for consideration in the instant writ application is whether in view of the earlier decision in the writ application filed by Shekhar Gupta, the writ petitioners are entitled to any relief on account of the policy as declared by the State Government in letter dated 21st May, 2004.

8. Admittedly, the said letter dated 21st May, 2004 had not been brought to the notice of the learned Single Judge when the decision was rendered in the case of Shekhar Gupta and the learned Single Judge observed that no provision had been made for relaxation of the eligibility criteria, it has therefore to be considered whether in view of the policy declared subsequently, the writ petitioners are entitled to the benefit thereof having appeared at the examination before declaration of such policy.

9. Although, the general rule in such cases would be that the cases of the candidates would be governed by the rule as was existing when they had appeared for the examination, in the instant case, there is a departure on account of the fact that four other candidates who were similarly circumstanced, have been given appointment, although they too were not eligible in terms of the advertisement, to be considered for appointment when they had filed their respective applications.

10. In such circumstances and also having regard to the policy declaration of the State Government and having further regard to the fact that the letter dated 21st May, 2004 had not been brought to the notice of the learned Single Judge who had decided the writ application filed by Shekhar Gupta, we are inclined to allow this writ application. In our view, the policy declaration of the State Government contained in its letter dated 21st May, 2004 makes all the difference between the earlier decision in Shekhar Gupta's case and the instant case.

The writ application is, accordingly, allowed and the concerned respondents are directed to issue to the writ petitioners letters of appointment, within a period of three months from the date of communication of this order, as primary trained teachers, if they are otherwise eligible for such appointment. There will be no order as to costs,

S.J. Mukhopadhaya, J.

11. I agree.