

**Rajendra Tudu and Ors Vs. Human Resource Development**

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**Court :** Jharkhand

**Decided On :** Oct-09-2015

**Appellant :** Rajendra Tudu and Ors

**Respondent :** Human Resource Development

**Judgement :**

IN THE HIGH COURT OF J HARKHAND AT RANCHI. W.P.(C) No. 7472 of 2013  
1. Rajendra Tudu 2. Ramesh Turi 3. Prafulla Chandra Das. . . . . Petitioners  
Versus 1. State of Jharkhand 2. Principal Secretary, Ministry of Human Resources  
Development Department, Govt. of Jharkhand,Ranchi 3. Secretary, Ministry of  
Law & Justice, Govt. of Jharkhand, Ranchi 4. Secretary, Jharkhand Academic  
Council,Ranchi 5. Deputy Commissioner, Ranchi. Respondents. ----- CORAM :  
HON'BLE MR. JUSTICE PRASHANT KUMAR ----- For the Petitioners :  
Mr.Mahesh Tewari For the Respondents : Mr. Rajesh Kumar, G.P.IV -----  
Reserved on :07.08.2015 Delivered on :

09. 10/2015 ----- Prashant Kumar,J.

This writ application has been filed for quashing the Notification No. 1682 dated 05.09.2012, whereby and whereundere Respondent no.2 notified Jharkhand Primary School Teacher Appointment Rules, 2012. It is further prayed that Condition No.2 (Jha) of the Advertisement No. 95/12 be also quashed, whereby qualifying marks in the Jharkhand Eligibility Test for Scheduled Caste and Scheduled Tribe candidtes have been increased from 50% to 52%.

2. It is stated that petitioners are members of the Scheduled Castes and Scheduled Tribes community. It is further stated that petitioners participated in the eligibility test examination for appointment on the post of Assistant Teacher, in response to the advertisement No. 95/12, issued by Jharkhand Academic Council. It is submitted that petitioner No.1 secured 75 marks, petitioner no.2 secured 77 marks, whereas petitioner no.3 secured 74 marks out of 150 marks, but they have not been declared successful, because their marks are below 52%. It is stated that in the previous Rule, issued in the year 2011, the qualifying marks for the Scheduled Caste and Scheduled Tribe candidates was 50%, whereas qualifying marks for O.B.C. Candidates was 60%. But in the impugned, the qualifying marks of the Scheduled Caste and Scheduled Tribe candidates have been increased from 50% to 52%, whereas the qualifying marks of O.B.C.candidates have been reduced from 60% to 52%. It is submitted that the aforesaid action of the respondents in increasing the qualifying marks of Scheduled Caste and Scheduled Tribe candidates is -2- violative of the Articles 14 and 16 of the Constitution of India, therefore, part of the impugned Rule is liable to be quashed. It is further submitted that since the advertisement has been issued on the basis of aforesaid unconstitutional Rule, therefore, the advertisement as well as examination held on that basis are liable to be quashed.

3. A counter affidavit filed on behalf of Respondent no.2-State, wherein it is stated that Government of India had enacted an Act namely, Right of Children to Free and Compulsory Education Act, 2009, which provides that any person who are possessing minimum qualification, laid down by an Academic Authority, authorised by the Government of India shall be eligible for appointment on the post of teacher. It is stated that the Government of India authorised the National Council for Teacher Education ( N.C.T.E.) for laying down minimum qualification for appointment on the post of teacher. Accordingly, N.C.T.E has laid down the minimum qualification vide notification dated 03.08.2010 for a person to be eligible for appointment on the post of teacher of Class I to Class VIII. It is provided in the above notification that besides requisite educational qualification, a person must pass Teacher Eligibility Test ( herein after referred as the TET ) conducted by the appropriate government in accordance with the guidelines framed by the N.C.T.E. It appears that N.C.T.E. issued a guideline vide letter dated 11.02.2011 (

Annexure-A to the said counter affidavit). As per the said guidelines, a person who secured 60% or more marks in the TET examination will be considered as TET pass. However, in the said guidelines, it is also stated that the State Government may consider for giving concession to the persons belonging to Scheduled Caste, Scheduled Tribe, O.B.C and differently abled persons in accordance with their reservation policy. It is stated that in pursuance of the above guidelines, a Rule framed in the State of Jharkhand vide Notification No. 1632 dated 05.09.2012, wherein it is made mandatory for General candidate to obtain 60% marks for qualifying in TET examination, whereas 52% qualifying marks fixed for the candidates belonging to Scheduled Castes, Scheduled Tribe, O.B.C and differently abled persons. It is further stated that the aforesaid fixation of qualifying marks have been done as per the guidelines of N.C.T.E.. Thus, there is no illegality in the same. It is submitted that all the candidates belonging to reserved category have been treated equally, thus, there is no discrimination.

4. Sri Mahesh Tiwari, learned counsel appearing for the petitioners submits that petitioners are members of Scheduled Caste and Scheduled Tribe -3- community. Thus, as per Article 16 of the Constitution of India, they are entitled for reservation. Under the said circumstance, action of the respondent-State in increasing the qualifying marks from 50% to 52% would amount to stopping the SC and ST candidates at the threshold so that they may not appear in the main examination. Thus, the impugned notification issued with a view to frustrate the scheme of the reservation available to the SC and ST candidates. Mr. Tiwari further submits that in the instant case the qualifying marks had been decreased from 60% to 52%, so far OBC candidates are concerned, but surprisingly, respondent increased the qualifying marks of SC and ST candidates from 50% to 52%, which is discriminatory, therefore, violative of Article 14 of the Constitution of India. Accordingly, he submits that part of the impugned notification, by which the qualifying marks for passing the TET Examination increased for Scheduled Caste and Scheduled Tribe Candidates is violative of Article 14 and 16 of the Constitution of India. It is submitted that any consequential action taken by the respondents on the basis of the aforesaid Rule is illegal and unconstitutional.

5. On the other hand, Sri Rajesh Kumar, learned G.P.IV submits that only by passing of TET examination, nobody will be entitled for appointment on the post of teacher, rather passing of the TET examination is one of the eligibility criteria for being appointed as teacher. Under the said circumstance, petitioners are not entitled to get any reservation in the aforesaid examination. However, he submits that keeping in view the guidelines of N.C.T.E. and also with a view to uplift the weaker section of the society, which includes SC, ST, OBC and differently abled persons, the State Government gave concession in the qualifying marks. It is submitted that the qualifying marks for TET examination have been fixed with a view to ensure that the quality of the teachers should not be diluted at any cost, because it is necessary to ensure that the persons recruited as teachers must have essential aptitude and ability to meet the challenges of teaching job. It is submitted that keeping in view the object for holding TET examination, the criteria fixed for passing the said examination is not arbitrary and unfair, thus requires no interference by this court. It is further submitted that it is an admitted position that petitioners appeared in the examination of TET held on the basis of advertisement (Annexure-1) without any protest. It is submitted that when the petitioners become unsuccessful, they challenged the impugned Rule and Advertisement, which is not permissible in view of the judgment of Hon'ble Supreme Court in "Manish Kumar Shahi Vs State of Bihar and others" -4- reported in 2010(12) SCC-576.

6. Having heard the submissions, I have gone through the records of the case.

7. In the instant case, petitioners, who are members of Scheduled Caste and Scheduled Tribe have challenged the Rule as contained in Annexure-4 only to the extent that the qualifying marks fixed by the said Rule for the Scheduled Caste and Scheduled Tribe candidates is arbitrary, therefore, violative of Articles 14 and 16 of the Constitution of India. Whereas the case of the respondents is that the said qualifying marks fixed with a view to ensure the quality of the teachers going to be recruited in the teaching job. According to the respondents, it is necessary to ensure that a person recruited as teacher must possess the essential aptitude and ability to meet the challenges of teaching job at the primary and upper primary level.

8. It is true that Article 16 of the Constitution of India enables the State Government for making provisions of reservation in the appointment for Scheduled Caste and Scheduled Tribe candidates, so that they should be adequately represented in the service under the State. The aforesaid provisions of the Constitution of India only speaks for giving reservation to the Scheduled Caste and Scheduled Tribe candidates in the matter of appointment on a post, so that the aforesaid categories of citizen should be adequately represented in the service. The said provision does not require that an un-qualified persons, belonging to scheduled caste and scheduled tribe categories, be also appointed. In this regard, it is worth mentioning that Article 335 of the Constitution of India provides that the claim of members of the scheduled caste and scheduled tribe candidates shall be taken into consideration consistently with the maintenance of efficiency of administration. Thus, the object for fixing the qualifying marks in the TET examination become relevant. The guidelines issued by N.C.T.E for conducting TET examination has been annexed as Annexure-A to the counter affidavit filed by respondent no.2. The background for issuance of said guidelines is as follows : "The implementation of the Right of children to Free and compulsory Education (RTE) Act, 2009 requires the recruitment of a large number of teachers across the country in a time bound manner. In spite of the enormity of the task, it is desirable to ensure that quality requirement for recruitment of teachers are not diluted at any cost. It is therefore necessary to ensure that persons recruited as teachers possess the essential aptitude and ability to meet the challenges of teaching at the primary and upper primary level." -5- 9. From perusal of the aforesaid background in which the guidelines issued, it is clear that N.C.T.E has taken into account the quality of the teachers to be recruited for the job of teaching. Thus, the aforesaid guideline is in consonance with the provision of Constitution of India as enshrined under Article 335 of the Constitution of India. From perusal of Clause (9) of the said guideline, it is clear that only by passing the TET examination, a candidate has got no right to be recruited on the post of teacher, rather the same is only one of the eligibility criteria for appointment. A Division Bench of Andhra Pradesh High Court in " S.Jaffer Saheb v. State of A.P." reported in (1985)2 APLJ-380 has held at paragraph no.16 is as follows : "16.....When a candidate is ineligible or does not come up to a basic standard, no relaxation can be granted. As already pointed out

such concession or preference based on reservation is not granted for a pass in the HSC examination or intermediate examination or BA degree examination, because they are eligibility tests and not proficiency tests." 10. Thus, in view of the aforesaid judgment of the Andhra Pradesh High Court and which was affirmed by the Supreme Court in "Andhra Pradesh Public Service Commission Vs Balaji Badhavath and Others" reported in 2009(5) SCC-1, it is clear that in the matter of basic standard of a particular service, no relaxation can be granted. Under the aforesaid facts and circumstances, I find no illegality in the impugned Rule by which the qualifying marks for passing of TET examination have been fixed by the State Government. Thus, I am of the view that the said Rule is not violative of the Articles 14 and 16 of the Constitution of India.

11. I further find that the present writ application is liable to be dismissed on the ground of doctrine of acquiescence.

12. Admittedly, in the instant case, petitioners appeared in the TET examination conducted by the Jharkhand Academic Council, Ranchi on the basis of advertisement no. 95/12. It is also an admitted position that all the petitioners had been declared unsuccessful in the aforesaid examination, because they had not secured requisite qualifying marks, as mentioned in the advertisement. Thereafter, the present writ application has been filed. It has been held by the Hon'ble Supreme Court in Manish Kumar Shahi Vs State of Bihar and others " ( Supra ) at paragraph no.16 that : "We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of -6- selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the judgments in Madan Lal.V. State of J&K (1995)3 SCC-486, Marripati Nagaraja v. Govt. of A.P.(2007)11 SCC-522, Dhananjay Malik v. State of

Uttaranchal(2008)4 SCC-171, Amlan Jyoti Borooah v. State of Assam(2009)3 SCC-227 and K.A. Nagamani v. Indian Airlines (2009)5 SCC-515".

13. As noticed above in the instant case, petitioners appeared in the TET examination, without any protest and when they become unsuccessful they challenged the criteria & process of TET, which they are not entitled to do so.

14. In view of the discussions made above, I find no merit in this writ application. Accordingly, the same is dismissed. ( Prashant Kumar,J.) Jharkhand High Court,Ranchi The October, 2015. Raman/

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