

State of Rajasthan and ors. Vs. Hari Ram and ors.

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Court : Rajasthan

Decided On : Sep-13-2000

Reported in : 2001(1)WLC124; 2001(1)WLN446

Judge : Dr. Ar. Lakshmanan, CJ. and; Ashok Parihar, J.

Acts : Rajasthan Educational Subordinate Service Rules, 1971; [Constitution of India](#) - Articles 14, 16, 226 and 227

Appeal No. : D.B. Civil Special Appeal (Writ) No. 801 to 815 and 712 & 793 of 1999

Appellant : State of Rajasthan and ors.

Respondent : Hari Ram and ors.

Advocate for Def. : M. Mridul, Sr. Advocate,; Ajay Rastogi,; R.D. Rastogi

Advocate for Pet/Ap. : R.N. Mathur, Additional Advocate General,; Shashi Jain and;

Judgement :

ORDER

Lakshmanan, CJ.

(1). Heard Mr. R.N. Mathur, learned Additional Advocate General, Mrs. Shashi Jain and Mr. M.C. Gupta for the respective appellants and Mr. M. Mridul, Sr.

Counsel along with Mr. Ajay Rastogi, Mr. R.D. Rastogi, Mr. S.K. Gupta and Mr. Bhanwar Bagri, learned counsel for the respondents.

(2). These appeals are filed against the common order dated 21.5.1999 passed by a learned single Judge Hon'ble Mr. Justice J.C. Verma. The writ petitions were filed by the respondents as petitioners who are holding a Bachelor's degree in Physical Education known as B.P.Ed. from Indira Gandhi University, Nagpur and other Universities. It is their contention that the degrees stand recognised by the respective authorities of the Rajasthan. The post of Physical Training Instructors Grade II, called as PTIs, are to be filled up under the Rajasthan Educational Subordinate Service Rules, 1971 (hereinafter, to be referred as 'the Rules of 1971'). 50% of the posts are to be filled up by direct recruitment and 50% by promotion. In these cases we are concerned only with regard to the filling up of 50% posts by direct recruitment. The respondents herein, in response to the various advertisements had applied for consideration. As already noticed, the respondents are holding graduates degree in physical education. However, their applications have been rejected on the ground that none of the respondents/petitioners holds a graduate degree. The rejection of the application was challenged by all the writ petitioners by filing above writ petitions.

(3). Before the learned Single Judge, a judgment rendered by Hon'ble Mr. Justice V.S. Kokje Brijesh Chand vs. State of Rajasthan & Ors. (1), was relied on by the State. The petitioner in that case also holds a degree in Physical Education from a recognised University. The petitioner, therefore, contended before the learned Judge that he is a graduate within the meaning of the rules. Since the qualification prescribed by the rules for the post of Physical Instructor Gr. 11 is graduate or equivalent examination with diploma in Physical Education. The qualification stated in the advertisement is also the same. The petitioner in the above case submitted that the word 'graduate' in the provision means graduate in any of the faculty and, therefore, his degree in Physical Education obtained by him satisfies the requirement of the rules. Hon'ble Mr. Justice V.S. Kokje, in the above judgment held that the word 'graduate' cannot be taken to be a graduate in Physical Education and that there is no four years diploma course in Physical Education anywhere in India and, therefore, the prescribed qualification of secondary with

four years diploma in Physical Education is impossible to obtain. In the circumstances, the learned Judge has interpreted the rule to the effect that the petitioner in the above case is not eligible for the post and, therefore, he is not eligible for consideration. This judgment was placed before Hon'ble Mr. Justice J.C. Verma at the time of the hearing of the writ petitions.

(4). In the present cases as already noticed, the petitioners have challenged the Schedule II of the Rules of 1971. The qualification for Physical Training Instructor Gr.II is prescribed in Column 4. It was argued before the learned Judge that since no ratio decendi has been decided in the case of Brijesh Chand (supra), the same cannot be treated as an authority on the proposition. The learned Judge on a consideration of arguments advanced by the petitioners in the writ petition allowed the same with the direction that B.P.Ed. (three years course) degree obtained by the petitioners from the recognised Universities as recognised by the U.G.C. be considered as degree of graduation in Physical Education and all these petitioners shall be eligible for consideration for the said post along with other candidates who possess the graduate degree or equivalent to the graduate degree and the diploma in Physical Education. The respondents therein, appellants herein were directed to reconsider the cases of the petitioners in the writ petition as per the observations made in the common order and prepare a merit list accordingly by treating them to be eligible for applying for the post of P.T.I. Gr.II and give them postings if the petitioners after consideration found eligible and satisfy the merit and qualification prescribed. The learned Single Judge allowed the writ petition with the above direction and by directing the respondents therein to offer the appointments after considering the vacancies which may be made available. These present writ appeals have been filed by the State.

(5). Mr. Mathur, learned Additional Advocate General submitted that the course in Physical Education is known by the name of B.P.Ed. and one year's Teachers Training course in Physical Training is known by the name as B.P.E. and that these two terms have been used interchangeable by the learned Single Judge under the impression that the three years course in Physical Education is a Teachers Training course in Physical Instructor and is commonly known by the name of B.P.Ed. It is further submitted that the pointed issue was the eligibility of

the B.P.E. or B.P.Ed. holders for the post of Physical Training Instructor Gr.II and thus the eligibility of the petitioners should have been judged in the light of the criteria prescribed in the Rules of 1971 and the advertisement dated 28.8.98 and the clarificatory circular dated 6.3.98. According to the learned counsel, the learned Single Judge has committed an error by not considering the rules in their proper perspective and that for the purpose of appointment on the post of Physical Training Instructor Gr.II, special physical practical training is most essential and if untrained persons are recruited and appointed on the post of Physical Training Instructors, they would not be able to impart physical training to their students and it will not only be damaging to the students' interest but in the long run it will reflect of their performance also.

(6). Per contra, Mr. M Mridul, Sr. Advocate with Mr. Ajay Rastogi, Mr.-R.D. Rastogi, Mr. S.K. Gupta, and Mr. Bhanwar Bagri submitted that pursuant to the advertisement for making recruitment on the post of Senior Teachers and Physical Training Instructors Gr.II which was published in the Rajasthan Patrika dated 27.8.98, the respondents have applied for the same. The petitioners in the writ petitions who were possessing the qualification and degree in Physical Education as per their application of their candidature. The petitioners were not informed in respect of consideration of their candidature. Later they came to know that their applications were not considered because they are not holding graduate degree. It is submitted by the learned counsel for the respondents that the service conditions of P.T.I. Gr.II are governed by the Rules of 1971 and the qualification for P.T.I. Gr.II as prescribed under the Rules is as follows:-

1.

Name of Posts

P.T.I. Gr. II.

2.

Source of recruitment with percentage

50% by promotion 50% by direct recruitment.

3.

Minimum Qualification & experience

Graduate or equivalent examination with diploma in Physical Education or Secondary with 4 years diploma in Physical Education.

4.

Post or (he posts from which promotion is to be made.

P.T.I Gr.III

5.

Qualification. & Experience;

Graduate or equivalent examination recognised by Govt. of Rajasthan with certificate of Physical Education and 5 years experience on the post mentioned in.

6.

Committee for direct recruitment to the post not within the purview of RPSC and for promotion

1. Dy. Director of Education of the Range

2. One DEO to be nominated by the Director of Education (P&S);.

3. One expert to be nominated by the Director.

7.

Seniority

Range wise.

(7). We have carefully considered the qualification prescribed. The aforesaid qualification mentioned in column 5 requires that the person for being recruited as

P.T.I. Gr.II on direct recruitment basis shall be a graduate with certificate of Physical Education or Secondary with four years diploma in Physical Education. In the instant case, the petitioners have apprised the respondents that while pursuing the course of degree in Physical Education, they have undergone more theoretical studies and also more practical training in comparison to those persons who have acquired diploma in Physical Education. The petitioners have represented and apprised to the respondents that they are qualified in comparison to those persons who have been treated eligible merely on possession of diploma in Physical Education. It is also urged that the persons who have acquired degree from the same Universities from where the petitioners have also acquired their degree have been considered eligible and have been provided appointment by the respondents in various regions. At the time of hearing, it is submitted that the department has provided certain appointment to the persons mentioned in paragraph 8 of the writ petition filed by Pratap Singh Hada and others (S.B. Civil Petition No. 5125/98). It is also pointed out that the candidature of the afore-mentioned persons mentioned in paragraph 8 was considered solely on the basis of degree in Physical Education possessed by them. The photo stat copies of the orders dated 20.12.1996, 22.1.1997 and 20.6.1994 have been filed and marked as Annex. 9, 10 & 11 respectively. Under these circumstances, we are of the opinion that the petitioners who have come before this Court are discriminated by being left out by the respondents, the appellants herein from consideration. Thus, it has to be construed that the petitioners have been discriminated and excluded from consideration. Thus, the action of the respondents, the appellants herein is discriminatory and, therefore, is liable to be interfered with. It is also established before us that the appellants earlier have treated the petitioners eligible and now appellants cannot take a different stand and are estopped to resile from their earlier stand on their own actions. The Government had issued letter dated 16.3.1998 directing all the concerned authorities to treat B.P.Ed. degree as qualifying degree for the purpose of appointment to the post of Physical Training Instructor Gr.II and Gr.III.

(8). We have given our anxious consideration to the question at issue. In our view, the qualification prescribed by the rules only postulates that the person possessing the graduate degree shall also possess in addition a diploma in Physical

Education. The construction rules out the possibility of those cases where person is possessing the degree in Physical Education, such construction of the rules is meaningless and it causes miscarriage of justice with regard to the rights of the persons like the petitioners who are qualified and are in possession of the degree in Physical Education. This apart, a person who undergoes a degree course in particular subject has to pursue the said course for such education, study more papers and has to undergo more practical training in comparison to those persons who acquired diploma course which is comparatively of short duration. There is no jurisdiction on the part of the appellants herein to stress upon the respondents/petitioners who acquire diploma in Physical Education especially in the circumstances where they are possessing the degree in Physical Education. As already noticed, the persons who have acquired degree from the same Universities from where the petitioners have also acquired the degree, have been considered eligible and have been provided appointment in various regions. Under such circumstances, the non-consideration of the applications made by the petitioners is discriminatory and the right to equality as enshrined in Articles 14 & 16 of the Constitution have been given a go-bye. It is stated that the names of the petitioners were placed in the merit list but for the reasons known to the respondents/appellants, the said merit list was never acted upon. We are of the opinion that the petitioners should be declared eligible for being recruited as P.T.I. Gr.II on the basis of the degree they have obtained in the University in the Physical Education and, therefore, they are entitled for consideration for appointment for the post of P.T.I Gr.II. All the appeals have no merit and are hereby dismissed.

(9). The appellants are directed to consider the cases of all the respondents/petitioners who hold the degree in Physical Education from the respective Universities and consider their applications and give them appointment, if they are otherwise satisfy the other qualifications prescribed. This exercise shall be done within three months from today. We make it clear that the controversy raised in these appeals relate to the degree obtained by the respondents in Physical Education and for appointment to the post of Physical Training Instructor Gr.II & Gr.III only.

