

Sumer Singh Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : May-14-2003

Reported in : RLW2003(3)Raj1731; 2003(4)WLC107

Judge : Sunil Kumar Garg, J.

Acts : [Constitution of India](#) - Articles 14 and 16

Appeal No. : S.B. Civil Writ Petition No. 4316 of 1999

Appellant : Sumer Singh

Respondent : State of Rajasthan and ors.

Advocate for Def. : Kusum Rao, Adv.

Advocate for Pet/Ap. : Rameshwar Hedau, Adv.

Disposition : Writ petition allowed

Judgement :

Garg, J.

1. This writ petition under Article 226 of the [Constitution of India](#) has been filed by the petitioner against the respondents on 22.10.99 with a prayer that the respondents No. 1 (Secretary, Gramin Vikas and Panchayati Raj Department, Jaipur) and 2 (Chief Executive Officer, Zila Parishad, Barmer) be

directed to give appointment to the petitioner on the post of Teacher Grade III from the date the respondent No. 3 (Rajesh Kumar Sharma) and other like persons were appointed with all consequential benefits.

2. The facts of the case as put forward by the petitioner are as under :

(i) That the petitioner passed his Secondary examination from the Board of Secondary Examination in the year 1987 and secured 42.125% marks. In the year 1988, the petitioner passed higher Secondary examinations with 44.5% marks.

(ii) That the petitioner passed B.A. examination in the year 1991-92 from the Board of External Examination, Osmania University which was recognized degree by the Government of Rajasthan at that time.

(iii) That thereafter the petitioner obtained B.Ed. degree from Kota Open University, Rajasthan in the year 1996.

(iv) That the respondent No. 2 (Chief Executive Officer, Zila Parishad, Barmer) issued a notification dtd. 15.6.98 (Annex. 5) inviting application for recruitment to the post of Teacher Grade III in the various schools of Panchayat Samitis of Barmer District. As per the notification dtd. 15.6.98 (Annex. 5), following qualification were necessary for recruitment to the post of Teacher Grade III.

1. Having passed from the Board of Secondary Education, Rajasthan, Ajmer Higher Secondary as per old Scheme or Senior Secondary as per new Scheme of 10+2.

2. B.S.T.C. Course.

(v) That in pursuance of notification dtd. 15.6.98 (Annex. 5), the petitioner applied for recruitment to the post of Teacher Grade III.

(vi) That the respondents prepared a merit list of 544 candidates (Annex. 6) in which the petitioner stood at serial No. 512 as he secured 72.163% marks. Out of this merit list (Annex. 6) initially 469 candidates were given appointment on the post of Teacher Grade III and the candidates who stood in the merit from serial No. 470 to 544 were kept in waiting list.

(vii) That further case of the petitioner is that the respondent No. 2 (Chief Executive Officer, Zila Parishad, Barmer) gave appointment to all the candidates who stood in the merit, but denied appointment to the petitioner. A copy of appointment order dtd. 13.9.99 is marked as Annex. 7.

(viii) Further case of the petitioner is that no reasons have been assigned for not giving appointment to the petitioner despite the fact that the candidate below him in the merit list i.e. the respondent No. 3 (Rajesh Kumar Sharma) who stood at serial No. 513 was given appointment. Hence, this writ petition with the abovementioned prayer.

3. Reply to the writ petition was filed by the respondents and their main case is that the petitioner had passed degree examination of B.A. in the year 1992 from the Board of External Examinations, Osmania University through marksheet (Annex. 3) which is now not a recognized University by the Government of Rajasthan as per letter dtd. 27.10.99 (Annex. R/1). Further case of the respondents is that the petitioner qualified B.A. degree in one year though degree of B.A. was to be completed in three years and from this point of view also, the degree obtained by the petitioner cannot be said to be a recognized degree. Hence, the writ petition be dismissed.

4. Heard and perused the record.

5. There is no dispute on the point that the petitioner stood in merit at serial No. 512 and persons junior to him have been given appointment in pursuance of notification dtd. 15.6.98 (Annex. 5), but the petitioner had been denied appointment on the ground that the B.A. degree obtained by the petitioner from the Board of external examination, Osmania University in the year 1992 was derecognized by the Government of Rajasthan through letter dtd. 27.10.99 (Annex. R/1).

6. There is also no dispute on the point that in the notification dtd. 15.6.98 (Annex. R/1), the requisite qualification for appointment on the post of Teacher grade III is B.S.T.C. Course. There is also no dispute on the point that the degree of B.Ed. obtained by the petitioner from Kota Open University is equivalent to B.S.T.

Course. Thus, the petitioner had requisite qualification for appointment on the post of Teacher grade III as he had passed Higher Secondary Examination from the Board of Secondary Education, Rajasthan and he had B.Ed. degree which is equivalent to B.S.T.C. Course.

7. There is also no dispute on the point that the petitioner obtained B.A. degree from Osmania University through Annex. 3 in the year 1992 in one year.

8. There is also no dispute on the point that on the basis of B.A. degree (Annex. 3), the petitioner was given admission in B.Ed. degree course in Kota Open University. There is also no dispute on the point that the recognition of Osmania University was cancelled by the Government of Rajasthan through letter dtd. 27.10.99 (Annex. R/1), meaning, thereby that when the advertisement dtd. 15.6.98 (Annex. 5) was issued, the degree of B.A. (Annex. 3) obtained by the petitioner from Osmania University was recognised degree.

9. In my opinion, derecognition of any degree could be prospective only and not retrospective. From this point of view, on the date when the petitioner applied for appointment on the post of Teacher Grade III in pursuance of notification dtd. 15.6.98 (Annex. 5), he was qualified otherwise as in the year 1992, the B.A. degree obtained by the petitioner from Osmania University was recognized one by the State of Rajasthan. This is one of the aspects of the matter.

10. That apart the petitioner has obtained B.Ed, degree (Annex. 4) from Kota Open University which is equivalent to B.S.T.C. Course and after getting B.Ed, degree (Annex. 4), the degree of B.A. (Annex. 3) obtained by the petitioner from Osmania University loses its importance and in other words becomes redundant. From this point of view also, the arguments of the learned counsel for the respondents that the petitioner was not having requisite qualification stands rejected.

On the point of expiry of select list

11. Now, the petitioner cannot be denied appointment on the post of Teacher Grade III in pursuance of notification dtd. 15.6.98 (Annex. 5) on the ground that the

period of select list had expired, for that judgments of this Court in the cases of Idan Singh v. State of Rajasthan (1), and Anita Chopra v. State of Rajasthan (2), and the judgment of Hon'ble Supreme Court in the case of Purushottam v. Chairman, M.S.E.B. and Anr. (3), may be referred to.

12. The Hon'ble Supreme Court in the case of Purushottam (supra) held that duly selected candidate could not be denied appointment on the pretext that panel's term had expired and the post had been filled by someone else. Such denial creates discrimination and is arbitrary and cannot be sustained.

13. Hence, it may be concluded that if the select list expires because of no fault of the petitioner and the petitioner was found otherwise suitable to be appointed, then expiry of select list would not come in the way of the petitioner for giving appointment as denial of appointment is violative of fundamental right as enshrined under Articles 14 and 16 of the [Constitution of India](#). Thus, from every point of view, the petitioner was entitled to be appointed on the post of Teacher Grade III in pursuance of notification dtd. 15.6.98 (Annex. 5) as the persons below the petitioner in merit have been given appointment and denial of appointment to the petitioner now is in violation of fundamental right of the petitioner and thus, the petitioner is entitled to seek remedy under Article 226 of the [Constitution of India](#).

14. For the reasons mentioned above, this writ petition is liable to be allowed.

Accordingly, the present writ petition is allowed and the respondents are directed to give appointment to the petitioner as teacher, Grade III in pursuance of the advertisement dtd. 15.6.98 (Annex. 5) within a period of two months subject to other eligibility criterion. On his appointment, the petitioner shall not be entitled for the emoluments of the post for the past, however he will be entitled to claim seniority over the persons who were lower in merit but have been offered appointment prior to him.

Cost made easy.