

MoinuddIn Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Aug-20-1993

Reported in : 1993WLN(UC)236

Judge : V.K. Singhal, J.

Appeal No. : S.B. Civil Writ Petition No. 7530 of 1992

Appellant : Moinuddin

Respondent : State of Rajasthan and ors.

Judgement :

V.K. Singhal, J.

1. All the writ petitions mentioned at Schedule-I are disposed of by this common order because the point involved is the same in nature.

2. The petitioners were appointed as general teachers. Two years Teachers Training Diploma of Vidhya Bhawan Kala Sansthan Udaipur was obtained by them. The aforesaid diploma was recognised by the Government of Rajasthan as equivalent to B.S.T.C. vide G.A.D. (Gr. III) Dept. No. 9(63) Sa/Fra/Sa/71 dated 8.2.1973. Similarly, two years' Diploma of Teachers Training of the Govt. Teachers Training School Parsuramdwar was recognised by the Government equivalent to B.S.T.C. vide circular Gramin Vikash and Panchayat Department dated 10.9.1987.

It is on the basis of these certificates obtained that the appointment to the teachers were given as general teacher in Panchayat Samiti. The appointment was made on probation. An order dated 30th October, 1992 was issued withdrawing the recognition of the teachers training diploma and the diploma holders who were employed as teachers temporarily, their services were sought to be terminated. In pursuance of the order of the Govt. the Zila Parishad also issued an order dt. 12.11.1992 directing all the Vikas Adhikaries of Panchayat Samitis to terminate the services of such diploma holders. The grievance of the petitioner is that the withdrawal of the recognition by the Special Secretary Cum Director Gramin Vikas & Panchayati Raj Department is without jurisdiction as in accordance with the rules of business of the State under Article 166 of the Constitution of India, the Special Secretary to the Government & Director Gramin Vikas and Panchayat Raj Deptt. has no such jurisdiction to withdraw the government order which was issued by the GAD. It is also submitted that the eligibility has to be examined as at the time of initial appointment and if there is any change of policy then it will not effect the right of those persons who have already obtained the diploma certificate and have been given the appointment. The retrospective withdrawal of the recognition has been alleged to be violative of the fundamental rights of the petitioners. It has also been submitted that the posts are still existing and, therefore, there would be no justification in terminating the services of the petitioner.

3. The order dated 8.2.1973 of the GAD of Govt. of Raj. mentions that the Government of Rajasthan has decided to recognise the diploma certificate issued by Vidhya Bhawan Handi Craft Institute Udaipur in respect of Arts and Handicrafts equivalent to B.S.T.C. from the date the training has been imparted by that institution.

4. The letter dated 10th August, 1987 issued by the Deputy Director Primary Education Rajasthan mentions that the teachers who have obtained the diploma certificate from Govt. Industrial Training Institute Parsuramdwar Jaipur and Vidhya Bhawan Kala Sansthan Udaipur will be considered equivalent to B.S.T.C. for giving the appointment as general teacher. The appointment of the petitioner was given for a period of two years on probation. A circular was issued by the Director and Special Secretary Gramin Vikas and Panchayat Raj Department in

which the recognition which was given on 6.4.1984 was completely withdrawn on the ground that in the primary schools the education has to be given for Hindi, Maths and general science and general knowledge whereas in respect of Art, Music, Physical education and craft no subjects are being taught. The circular dated 28.1.1985 of Jharparkar Training College Bombay was also withdrawn. The circular dt. 7.1.1985 by which the ITI certificates were considered not entitling for appointment as a teacher and circular dated 6.12.1985 by which the National Trade Certificates holders teachers' services were directed to be terminated was held effective. The Circular dated 10.8.1987 in which the recognition was given to the government Industrial Training Institute Parsuramdwar Jaipur and Vidhya Bhawan Kala Sansthan Udaipur which was considered equivalent to B.S.T.C. has been withdrawn and such teachers are not competent to teach the general subjects. It was further clarified that any circular or order issued by which the holders AIC/STC or From Vidhya Bhawan Kala Sansthan Udaipur/Govt. Industrial Training Institute Parasramdwara Jaipur having the certificates and the certificates issued by any other institution by which the craft, music, physical training, Arts training were recognised for the appointment as teacher in Panchayat Samiti equivalent to B.S.T.C. are not eligible for appointment as teacher. The services of those teachers who are temporary have to be terminated after giving them notice.

5. The submission of the learned Counsel for the respondents is that the recognition dt. 8.2.1973 is pertaining only to the department of education and the rules for appointment as teacher in Panchayat Raj Vibhag is altogether different. The rules/notification/circulars of Govt. of Rajasthan department of Gramin Vikas and Panchayati Raj Vibhag governs the cases of such appointments. It is submitted that the government is competent to withdraw the circular/instructions or orders which have been given earlier wrongly. It is submitted that the qualification in respect of general teacher is of different category and teachers who have passed BSTC or B. Ed. are qualified to teach the students upto primary standard. The certificates which are recognised by the department of Technical education and the holders of these certificates cannot teach general subjects upto primary standard and, therefore, recognition which was given has been withdrawn. The petitioners who are not having B.S.T. Certificate or B. Ed. certificate and are working temporarily have no right to continue.

6. A point was raised that there are thousands of untrained teachers and, therefore, at the most the petitioner could be considered as untrained teacher but if the appointment has once been given in accordance with the procedure followed by the Establishment Committee, the services should not be terminated because even during the period of their services, the same were not found to be unsatisfactory in any manner.

7. The matter was considered by the Full Bench of this Court at the main seat Jodhpur in the case of Ram Chandra Swami and Ors. v. State of Rajasthan and Anr. Full Bench Reference arising out of S.B. Civil Writ Petition No. 1287/92 decided on 27th April, 1993 wherein this matter was considered in detail. The Full Bench has taken into consideration the decision of the Apex Court in the case of Andhra Desari Education Society v. Director of School Education AIR 1989 Supreme Court 183 and Ram Sukh and Ors. v. State of Raj. and Ors. : (1990)ILLJ107SC in which it was held by the Apex Court that the training in teaching is essential in primary schools and following observations were made respectively as under:

Before parting with the case, we should like to add a word more. Though teaching is the last choice in the job market, the role of teacher is central to all processes of formal education. The teacher alone could bring out the skills and intellectual capabilities of students. He is the engine of the educational system. He is a principal instrument in awakening the child to cultural values. He needs to be endowed and energised with needed potential to deliver enlightened service expected of him. His quality should be such as would inspire and motivate into action the benefited. He must keep himself abreast of ever changing conditions. He is not to perform in a wooden and unimaginative way. He must eliminate fissiparous tendencies and attitudes and infuse nobler and national ideas in younger minds. His involvement in national integration is more important, indeed indispensable. It is, therefore, needless to state that teachers should be subjected to rigorous training with rigid scrutiny of efficiency. It has greater relevance to the needs of the day. The ill trained or such standard teachers would be detrimental to our educational system; if not a punishment on our children. The Government and the University must, therefore, take care to see that inadequacy in the training of

the teacher is not compounded by any extraneous consideration.

The primary school teachers are of utmost importance in development of a child's personality in the formative years. It is not just enough to teach the child alphabets and figures, but much more is required to understand child psychology and aptitudes. They need a different approach altogether only trained teachers could lead them properly. The untrained teachers can never be proper substitute to trained teachers. We are, therefore, unable to give them any relief.

8. The Full Bench of this Court at main Seat Jodhpur in the case of Ram Chandra Swami (supra) has taken into consideration the provisions of Rule 11 wherein it was provided that 'A recruit to the various categories of service must possess the minimum educational qualification or technical qualification and experience detailed in Schedule to these rules.' Item No. 2 of Schedule of the Rules relates to the Primary Schools which prescribe the minimum experience and qualification as under:

S. Category Qualification Post from Minimum Remarks

No. of post & required which experience

grade (if for direct appointment and

any) recruitment can be qualification

made by on required

promotion for

promotion.

Primary Matric (i) Holders must be No direct recruitment

School trained of untrained Matric and in Grade III & IV will

Teacher Matric trained. now made.

Grade

(ii) Holders Trained Matric and
of Prained Grade III trained
Middle middle shall
Grade automatically be
allowed to the persons
fulfilling the
qualification laid down
for these grades.

(2) The minimum
qualifications required
for direct recruitment
n i respect of women
candidates shall be
middle standard and
condensed course of
training conducted by
institutions recog-
nised by the State
Government or the
Central Government.

13. This Schedule contains three Notes relating to the posts of Primary School Teachers. It would be best to quote them here. They run as under:

FIRST 'The minimum qualification for direct recruitment in respect of women candidates shall be Metric and STC trained or any other qualification declared equivalent to Metric trained by the Education Department of Government of Rajasthan.

Provided that in case of non-availability of trained women candidates in Tribal districts of Dungarpur and Banswara and Desert Districts of Barmer and Jaisalmer, the minimum qualifications may be untrained Metric or equivalent.

SECOND Provided that candidates who have passed Secondary/Higher Secondary examination or possess any other qualification declared equivalent to them by the Government in the Education Department and are undergoing training in the regular B.S.T.C. course or in the short-term courses held at the various centers started by the State Education Department shall also be eligible to apply for direct recruitment to the posts of Primary School Teachers advertised under Advertisement No. 42 dated 9.4.1973 for the academic session 1972-73 only but final selection shall be made only after they pass the above courses and subject to their being otherwise found suitable by the Commission.

THIRD Whenever certain qualifications are specified, it shall include such qualifications which may have been declared equivalent by the State Government as equivalent to any such qualification.

9. It was observed that the job of the primary school teacher is to teach tiny tots in primary schools of the villages as per prescribed syllabus and not to teach art or handicrafts or any trade. They are not taught there Letter dated January 7, 1985 of the Department of Rural Development and Panchayati Raj. Government of Rajasthan, Jaipur clearly states that the courses of Basic School Training Certificate (BSTC) and State Trade Certificate (STC) are quite different and distinct. It was held that the word 'trained' means persons holding basic School Training certificate (B.S.T.C.) or School Training Certificate (STC) or B. Ed, degree or who have undergone some short term course held by the Education

Department in teaching. Training in other subjects or trade or in other vocation of life will not enable such a trainee to teach children in village primary schools as teachers holding BSTC or B. Ed. degree can teach them. A detailed analysis of the various subjects which are being taught was also made and it was observed that it is correct that the Rajasthan Government has recognised art and handicraft examination of Vidhya Bhawan Udaipur equivalent to training imparted by the Education Department vide order dated 8.2.1973. It was also held that the certificate of Industrial Examinations of Rajasthan Govt. cannot be considered equivalent to Basic School Training Certificate. Reference was also made to the Circular dated 7.1.1985 and 6.11.1985 clarifying that there is a difference between the course of BSTC and STc. The State Trade Certificate has been recognised for the purpose of teaching trade only and the holders of state trade certificate are not eligible for appointment as primary school teachers (general category) and the services of the teachers so appointed be terminated with immediate effect. The Circulars date 6.4.1988, 11.8.1989 and 30.10.1992 were also taken into consideration and it was held that recognising the state trade certificate equivalent to BSTC cannot be said to be reasonable and in public interest particularly in view of the observations of the Apex Court in AIR 1989 SC 183 and AIR 1990 SC 592 that most of the rules and syllabus on the various courses were held not in accordance with law and the decision given in the case of D.B. Civil Writ Petition No. 1458/88 Babu Lal v. State decided on 17.11.1988 was approved.

10. An S.L.P. was filed in the case of Ram Sukh and Ors. v. State of Rajasthan and Ors. numbering 11301/88 and two others wherein the various persons who were appointed as primary school teachers for a short fixed term which was renewed from time to time and they were paid a fixed salary and were not paid the salary for summer vacations the Apex Court has taken into consideration the relief which was given to the petitioners whose services were terminated were held to be entitled for one month salary in the minimum pay scale admissible to the cadre with dearness allowance and Additional Dearness Allowance admissible in accordance with law but will not be entitled to grade increment and they will be re-employed in the next academic session to continue till the regular selections take place (of course subject to availability of vacancies). Amongst these class of persons if trained teachers are available then priority shall be given to the trained

teachers. These teachers who are already serving shall be paid the minimum of pay scale admissible to the particular cadre concerned with Dearness Allowance or Additional Dearness Allowance admissible according to law. They will not be entitled to any grade increment. However, they will be entitled to salary for the vacation period as well. The State Government is also directed to get the untrained teachers trained in view of the communication referred to above so that these lowly paid teachers may improve their prospects for the employment in phased programme.

11. A contention was raised before the Apex Court that the petitioner should be absorbed in service and they should also be provided with the facilities to undergo prescribed training. It was observed by the Hon'ble Supreme Court that these persons cannot be directed to be taken back in service till they are trained. There is no obligation on the government to continue the untrained teachers till they are properly trained. It was observed that we cannot forget the welfare of those who are not before the Court. They are tiny tots who require proper handling by well trained teachers. This Court had an occasion to observe about the need for proper training to teachers in the interests of students. The primary teachers were found utmost importance in developing a child's personality in the formative years. It is not just enough to teach the child alphabets and figures but much more is required to understand child psychology and aptitudes. They need a different approach altogether. Only trained teachers could lead them properly. The untrained teachers can never be proper substitute to trained teachers. The observations were however, made that it would be proper for the Government to allow them relaxation in age to the extent of service rendered as teachers, for appointment under the State if they possess other requisite qualifications and the petition was disposed of accordingly.

12. The appointments of teacher grade-III is governed by rules of 1959 in various Panchayat Samitis. If the appointment has been made by Chief Executive Officer on the basis of the selection made by the District Establishment Committee of the Zila Parishad then it will be considered that their appointment is against the regular vacancy. The dispute has cropped in because of the mistake which was committed in issuing the various circulars referred to above in which the crafts

services were recognised equivalent to BSTC. The intention might have/been that those teachers were eligible for appointment for crafts training but there was no staff available of crafts in the primary schools and, therefore, no appointment could have been made. The observations of the Supreme Court that the trained teacher alone could bring out the skills and intellectual capabilities of students. He is the engine of the educational system. He is a principal instrument in awakening the child to cultural values and, therefore, he should have the quality such as to inspire and motivate into action the benefitter leads only to one conclusion that for imparting education to the children and for development of their personality in the formative years the teacher should be trained one. It has also been submitted that in certain cases untrained teachers have also been given the appointment. If that is so it is contrary to the decision of the Apex Court and the untrained teachers can never be equated with the trained teachers.

13. It is, therefore, directed that the respondents would evolve a procedure by which the teachers who have been selected regularly by District Establishment Committee and are not qualified in accordance with the clarification made above shall get the proper training within a period of three years and their services shall not be terminated. They shall be entitled for the leave for the period for which they have to attend the training and other correspondence courses.

14. The teachers who are on urgent temporary basis and their selections have not been made by the District Establishment Committee, their services could be terminated on availability of the trained teachers. If any person has been given the appointment on the basis of a certificate which was forged one then the decision given in this case will not be applicable to him and the respondents would be free to terminate the services of such persons in accordance with law.

15. So far as writ petitions No. 4030/93, 614/93, 4033/93, 4682/93, 4683/93, 4644/93, 4522/93 and 4020/93 are concerned, the prayer was made for seeking for appointment or to consider their candidature on the basis of the certificate obtained from STC/Vidhya Bhawan/Parasram Dwara. This matter was dealt with in detail in the case of Indira Kumari Arya v. State of Rajasthan S.B. Civil Writ Petition No. 5655/93 decided on 21.7.1993 and these candidates are not entitled

for appointment in the service as a general teacher Class-III. These writ petitions are dismissed and the rest of the writ petitions are disposed of in accordance with the directions given above.

16. In the matter of writ petition No. 7567/92 since the petitioner is in service with the respondents from 10.10.1985 through District Establishment Committee the same relief which has been given to the other employees referred to at Page 11 shall be available to the petitioner.

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