

Vinod Kumar Sharma Vs. State and ors.

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Court : Rajasthan

Decided On : Jul-02-2008

Reported in : RLW2008(4)Raj3579

Judge : Mohammad Rafiq, J.

Appellant : Vinod Kumar Sharma

Respondent : State and ors.

Disposition : Petition allowed

Judgement :

Mohammad Rafiq, J.

1. This writ petition has been preferred by the petitioner Vinod Kumar Sharma feeling aggrieved by the action of the respondent refusing to appoint him on the post of L.D.C in spite of his selection by Rajasthan Public Service Commission (for short-RPSC). The RPSC conducted Lower Divisional Clerk Joint Competitive Examination-1986 and an advertisement to this effect was issued by RPSC in 1986.

2. Shri R.D. Tripathi, learned Counsel for the petitioner has contended that the petitioner was fully eligible to apply for such appointment. A copy of the information booklet issued by RPSC has been placed on record at Annexure-5. Clause-10 of the said information booklet would clearly indicate that those possessing the qualification of high school or secondary school certificate from the Board of Secondary Education, Rajasthan or any other equivalent qualification from any University or Board would be eligible to apply for such appointment. The petitioner had passed the High School Examination from Board of High School and Intermediate Education, UP, conducted by Madyamic Shiksha Parishad, Uttar Pradesh in the year 1979. Copies of the mark-sheet dt. 25.7.79 and certificate issued to the petitioner on 12.7.97 are enclosed with the petition. The petitioner thereafter passed intermediate examination from the same Board in the year 1981. Copy of the mark sheet dated 2.7.81 and the certificate of having passed such examination dated 26.6.81 have been placed on record with the petition. The RPSC scrutinised the application forms and thereafter permitted the petitioner to appear in the aforesaid competitive examination. There was some controversy in regard to appointment of those selected in the recruitment process of 1986 conducted by RPSC and the Hon'ble Supreme Court ultimately directed the Government to give appointment to some of the selected candidates who were earlier not appointed and such direction was issued in regard to the petitioner as well. The District Education Officer (Secondary), Jhunjhunu by his letter dated 2.5.2000 required the petitioner to appear before him along with the certificates of his educational qualification, age relaxation, if any claimed, medical certificate issued from competent medical authority and character certificate issued by two Gazetted Officers, for his appointment.

3. The petitioner was required to appear before the District Education Officer on 15.5.2000. The petitioner appeared before the District Education Officer and produced the certificates of his qualification such as high

school certificate and intermediate examination certificate along with other educational certificates referred to supra, yet the appointment order was not issued to the petitioner. He thereafter submitted representations to the respondents on 1.9.2000, 11.9.2000 and 14.9.2000; followed by the representation dated 27.9.2000. Ultimately, he approached this Court by way of filing this writ petition on 30.1.2001.

4. Smt. Parinitoo Jain, learned Deputy Government Advocate has contested the writ petition and submitted that the Government in its Department of Education issued a Circular on 25.5.1992 containing guidelines to the effect that though the equivalent qualification of Board of High School and Intermediate Education, U.P. would be valid/recognised, but the candidates in such cases must have passed the high school examination with minimum 33% marks in at least five subjects including 'English'. The petitioner acquired the high school qualification in the year 1979 in Hindi, Sanskrit, General Mathematics, Civics and Economics only. Smt. Parinitoo Jain, therefor submitted that as per Rule 12 of the Rajasthan Subordinate Offices Ministerial Staff Rules, 1957 only such qualification would be valid as equivalent qualification which is recognised by the Government; The Government can make such recognition, with or without condition. When the Government has required that subjects in which such equivalent qualification is obtained must include English, as well, the qualification on the strength of which the petitioner was allowed to appear in the competitive examination of 1986, which does not include English, cannot be said to be equivalent, qualification in the meaning of the clause.

5. Shri R.D. Tripathi, learned Counsel for the petitioner rejoined and argued that in the first place the petitioner was permitted to appear in the examination by the RPSC which was recruiting agency of the respondents and secondly having scrutinised his application form where he was found eligible to appear for such competitive examination, the respondent-RPSC now cannot question eligibility of the petitioner. Moreover, the Circular issued by the Government on which reliance is now placed was so issued much thereafter on 25.5.1992, therefore, it cannot be applied from a retrospective date with regard to the competitive examination of the year 1986. The qualification possessed by the petitioner at the time of examination of 1986 was equivalent to those awarded in the State of Rajasthan by the Board of Secondary Education, therefore, the respondents cannot deny the petitioner his right of appointment, especially when such right accrued to him pursuant to his selection and recognition thereof by the Hon'ble Supreme Court.

6. I have given my thoughtful consideration to the rival submissions and perused the material forming part of the record as also the relevant rules on the subject.

7. The fact that the petitioner was permitted to appear in the competitive examination by RPSC in the year 1986 when it held the combined competitive examination for appointment on the post of LDC is not in dispute. It is also admitted that petitioner was selected by RPSC and eventually when the Hon'ble Supreme Court passed the order, those similarly situated candidates possessing the qualification from the State Government were granted appointment in the year 2000-01 itself. The petitioner was denied appointment only because respondents held that he was not possessing equivalent qualification and such assumption was based on Circular issued by the Government on 25.5.1992. Nothing has been brought on record that a certificate of intermediate examination secured by the petitioner from the Board of High School and Intermediate Education, Uttar Pradesh, would not be valid for appointment on the post of L.D.C. It is not the case of the respondents that when in 1986, the petitioner was permitted to attempt the competitive examination for appointment on the post of L.D.C. any such condition of possession 'English' as one of the subjects amongst the five subjects in Secondary was existing. Their total reliance is based on the Circular which the Government has issued six years thereafter on 25.5.1992. The Circular which was issued at later point of time cannot be retrospectively applied so as to deprive a candidate of his legitimate right to appointment which got crystallized in his favour upon his selection by RPSC much there before.

8. In my considered view, therefore, the refusal by the respondents to appoint the respondents on the post of L.D.C., in spite of the equivalent qualification possessed by him, is nothing but an arbitrary and colourable exercise of power and is wholly illegal and unconstitutional being violation of Article 14 and 16 of the

Constitution of India. The petitioner is therefore held entitled to appointment on the post of L.D.C. w.e.f. 15.5.2000, the date on which such appointments were made by District Education Officer, Jhunjhunu. However, since this matter has remained pending before this Court for so long and the petitioner has not actually been required to discharge the duties of the said post, he should now get only notional benefits for the intervening period including the benefit of seniority and any other right based on such seniority and addition of increments and revision of pay etc. would be reserved to him.

9. The writ petition is accordingly allowed. Compliance of this judgment be made within a period of two months from the date certified copy of this judgment is produced before the respondents.

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