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Court : Rajasthan

Decided On : Jan-25-2002

Reported in : 2002WLC(Raj)UC516; 2002(3)WLN449

Judge : Rajesh Balia, J.

Appeal No. : S.B. Civil Writ Petition No. 4998 of 1999

Appellant : Nisha Salve

Respondent : State and ors.

Disposition : Petition allowed

Judgement :

Rajesh Balia, J.

1. Heard learned counsel for the parties.

2. The petitioner has been an aspirant for seeking employment as Teacher Gr.III in the Department of Education Rajasthan at Jila Parishad, Chittorgarh. The petitioner has cleared her Higher Secondary Certificate Examination in 1985 from the Board of Secondary Education, Madhya Pradesh, Bhopal. As the papers included in that examination did not include subject Mathematics, the petitioner further undertook the examination in Mathematics conducted by the Board of Secondary Education, Rajasthan in 1990 and passed that examination. A

certificate in that regard was also issued. Therefore, she passed the Senior Higher Secondary Examination in 1991 as a private candidate from Board of Secondary Education, Rajasthan. However, by ignoring the petitioner's qualification she was not considered eligible for appointment on the post of Primary Teacher under Panchayati Raj General Rules, 1996.

3. The grievance of the petitioner against keeping her out of employment is ventilated in Para 13 of the petition, which reads as under:

13. That as far as petitioner's knowledge goes, she has secured aggregate 78% marks in merit. It has also come to her knowledge that Shri Shyam Sunder S/o Shri Dhanraj and Shri Satyanarayan S/o Shri Dev Kishan from General Category who have secured 75.71 % marks have been offered appointment on the post of teacher. As soon as this fact came to the notice of the petitioner, petitioner approached the office of respondent No. 2 and inquired about the matter. It has been informed to the petitioner that since she passed her Higher Secondary Examination from Board of Secondary Education, Madhya Pradesh, therefore, appointment was not offered to her.

4. This assertion finds support from the reply also that the petitioner has been kept out of consideration solely because she has secured her Secondary certificate from the Board of Secondary Education, Madhya Pradesh in 1985. It has been the case of the respondents in their reply; firstly that as per the consideration given to the points raised by the Director, Primary Education, Bikaner, it was found that the Higher Secondary passed candidates from Madhya Pradesh and Delhi Education Boards which do not provide for any Secondary Examination and permit the students directly to pass Higher Secondary Examination be not considered eligible.

5. However, we find from the Rules, under which recruitment is made, that no such rider has been placed on the eligibility criteria prescribed for consideration for the post of Teacher Gr.III under the Rajasthan Panchayati Raj Rules, 1996 under which the appointments were being considered. Under Rule 266, to which attention was invited by learned Counsel for the respondent himself, lays down the academic qualification necessary for Primary School Teacher, which is a 100%

direct recruitment post, a 'Senior Secondary with B.S.T.C. course. Moreover, a note has been put under Item (3) in Rule 266 which reads that 'Recruits who passed out prior to 1990 shall be eligible even if they have passed Secondary or Higher Secondary Examination.'

6. Apparently, the examinations of Senior Secondary have been passed by the petitioner from the Rajasthan Board of Secondary Education itself in 1991. In these circumstances, there was no occasion for the respondents to have held the petitioner to be ineligible for consideration and keep her out of consideration for appointment on the basis of so called circulars of the Government Annexure R/1 and Annexure R/2. Annexure 4 is the marksheet of Senior Higher Secondary Examination of 1991 which the petitioner has taken.

7. The petitioner has earlier in 1985 also obtained Higher Secondary School Certificate Examination from Board of Secondary Education, Madhya Pradesh, Bhopal vide Annexure 1.

8. We find from the Rule that no classification has been made in the matter of Senior Secondary qualification which may have been obtained by an aspirant from any Board which has been established under any law. The eligibility is not confined to the candidate who has passed Senior Secondary Examination from the Board of Secondary Education, Rajasthan alone. Notice may be taken of the fact that prior to adopting 10+2+3 Scheme of integrated education for graduation, nomenclature of the final school examination was Secondary Examination and Higher Secondary Examination. The Secondary Examination refer to the examination which were held at the close of a regular study of 10 years and Higher Secondary Examinations' regular course was for one year after passing of the secondary examinations. The Senior Secondary Examination nomenclature has come after the adaptation of the 10+2 Scheme for the school education. The examinations of Secondary referred to 10th standard examinations, and examinations of Senior Secondary were referable to 12th standard examinations. As the petitioner has passed examinations of Senior Higher Secondary of the Board of Secondary Education, Rajasthan in 1991, petitioner cannot but be held to be eligible for the post.

9. Even referring to the qualification obtained by him from the Madhya Pradesh Board of Secondary Education, Bhopal in 1985, he has to be considered eligible in view of note appended to Rule 266(3). This note make it abundantly clear that any person who has attained Secondary or Higher Secondary qualification prior to 1990 shall still be considered eligible for the post. The Madhya Pradesh examination taken by the petitioner in 1985 is of Higher Secondary School Certificate which has been considered equal to the Higher Secondary of the Board of Secondary Education by the Rajasthan Board itself, and therefore, in the absence of the qualification prescribed Under Rule 266, circumscribed by any condition of having passed the qualifying examination from any particular Board, the petitioner has to be considered eligible for appointment to the post of Primary School Teacher within the meaning of Rule 266 of the Rajasthan Panchayat Raj Rules, 1996, which has been relied on by the learned Counsel for the respondents. The Government by its executive order cannot override the requirement of eligibility laid under the Rules so as to render any person ineligible who is eligible under the Rules.

10. We find further from the pleadings that so far as merit of the petitioner amongst the applicants is concerned, the petitioner has specifically averred that the two persons who have been offered appointment amongst the general category had secured 75.71% marks whereas she has obtained 78% marks. These facts have not been denied rather it has been affirmed by the respondents in their reply that last person given appointment in order of merit had secured 75.71% of marks. They have not denied the petitioner's placement in the merit in case she is found eligible.

11. As a result of above discussion, it must be held that the petitioner though eligible for recruitment to post of Primary Teacher under Panchayati Raj Rules of 1966, has wrongly been excluded from consideration for appointment and, on the facts disclosed in the writ petition and not denied by the respondents, persons lower in merit than him have been offered appointment, which is denial of equal opportunity in the matter of employment by State and violates petitioner's fundamental right guaranteed Under Article 16.

12. In this view of the matter, the petition is allowed and the respondents are directed to consider the case of the petitioner by treating him eligible for appointment and if not disqualified on any other ground to offer him appointment in order of merit, as found by aforesaid discussion. This exercise should be carried out within a period of two months from the date of service of this writ or production of certified copy of the order, whichever is earlier. The petitioner, if offered appointment, shall not be entitled to any emoluments for the period prior to the date of appointment. However, she shall be assigned seniority with effect from the date persons lower in merit than petitioner in the same selection were offered appointment and she shall be eligible for all consequential benefits flowing from that placement including fixation of pay, notionally on that basis.

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