

Dilip Kumar Ghosh & Ors vs Chairman & Ors on 12 September, 2005

Equivalent citations: AIR 2005 SUPREME COURT 3485, 2005 (7) SCC 567, 2005 AIR SCW 4500, 2005 LAB. I. C. 4248, 1 (1) SERVLJ 39 SC, 2005 (9) SRJ 76, 2005 (7) SLT 186, 2005 (7) SCALE 263, (2005) 8 JT 271 (SC), (2006) 1 SERVLJ 39, 2005 SCC (L&S) 986, (2005) 107 FACLR 634, (2005) 4 LAB LN 370, (2005) 4 SCT 332, (2005) 7 SCJ 242, (2005) 5 SERVLR 795, (2005) 6 SUPREME 236, (2005) 7 SCALE 263, (2005) 4 ESC 513, (2006) 1 CAL LJ 27

Author: H.K.Sema

Bench: Arijit Pasayat, H.K. Sema

CASE NO.:
Appeal (civil) 7119 of 2003

PETITIONER:
Dilip Kumar Ghosh & Ors.

RESPONDENT:
Chairman & Ors.

DATE OF JUDGMENT: 12/09/2005

BENCH:
ARIJIT PASAYAT & H.K. SEMA

JUDGMENT:

J U D G M E N T H.K.SEMA,J This appeal preferred by the appellants is against the judgment of the Division Bench dated 14.12.2001 passed by the Calcutta High Court in MAT No.4285/2000 whereby the appeal filed by the respondents herein was allowed by setting aside the order of the learned Single Judge. Briefly stated, the facts are as follows:

The appellants are the holders of B.Ed. Degree. They applied for the post of Primary School Teacher in the District of Nadia, West Bengal. Pursuant to the advertisement for filling up the post of Primary School Teachers, their candidature were sponsored by the Employment Officer and their names were forwarded to Chairman, District Primary School Council for the interview. The trained candidates who possessed qualification JBT/PTTC who were also sponsored by the District Employment Exchange were forwarded along with the candidature of the appellants. The appellants along with other trained teacher candidates were directed to appear for written test to be held on 18.7.1999. However, they were denied awarding marks

against the training qualification as they were not holders of Junior Basic Training/Primary Teachers Training Certificate (JBT/PTTC). Aggrieved thereby, the appellants filed a writ petition which was allowed by the learned Single Judge. On appeal being preferred by the respondents herein, the Division Bench set aside the order of the learned Single Judge and the writ petition was dismissed, hence, this appeal by special leave.

(a) The whole controversy revolves around for determination is as to whether the appellants who have obtained B.A./B.Ed./Ph.Ed degrees can be equated with the candidates who are the holders of Junior Basic Training/Primary Teacher Training Certificate for the purpose of appointment to the post of Primary School Teacher under the Rules.

(b) What is the true and correct interpretation and ambit of Rule 2(n) of the Recruitment and Leave of Teachers in Primary Schools in West Bengal Rules of 1991(hereinafter referred to as the 'rules').

In order to address the aforesaid two issues, it is necessary to have a quick survey of the provisions of rules relevant for the present purpose.

It is significant to note that Rules were framed for Recruitment and Leave of Teachers in Primary Schools in West Bengal.

"Rule 2(n) defines 'Trained Candidate' means a candidate who has obtained a Junior Basic Training/Primary Teacher Training Certificate or equivalent issued under the authority of the Director or any other officer empowered in this behalf by the Government."

"Rule 6. Qualifications

(a) No person shall be appointed by the Council as a teacher unless he satisfied the conditions:

(i) that he is a citizen of India; and

(ii) that he is not below 18 years of age and above 40 years of age; and

(iii) that he possesses the minimum educational qualification as mentioned in sub-rule (b);

(b) The required educational qualifications for the post of teacher shall be-

(i) School Final/Madhyamik pass or equivalent, or;

(ii) Higher Secondary (XI-Class) pass under the West Bengal Board of Secondary Education or equivalent.

(c) The decision of the State Government on the question of equivalence for the purpose of sub-rule (b) shall be final.

(d) No extra credit shall be given for higher academic qualification at the time of selection of a teacher; (emphasis supplied).

Provided that a trained candidate shall be given extra credit in the manner prescribed under sub-rule) of Rule 9.

(e) A trained candidate belonging to schedule tribe category who have not passed Madhyamik examination or its equivalent shall be eligible for appointment as teacher in Primary School."

Rule 9. Selection Procedure

(a) On after the names of the candidates for the posts of teachers are obtained from the employment exchange, all candidates shall be communicated in writing to produce testimonials certificates for computation of their marks in the score sheets prepared for the purpose of such selection.

(b) Credit shall be given and computed in the following manner:

(i) there shall be 100 marks in total as full marks;

(ii) the full marks shall be allotted to four different aspects of the candidate' eligibility in the following manner:-

1. Academic qualification 65 marks
2. Training 20 marks
3. Written Marks/Oral Interview 10 marks
4. Co-curricular activity 5 marks

Total 100 marks

(iii) the percentage of marks to the total full marks obtained by the candidate in School Final/Madhyamik/Higher Secondary (XI Class) shall be computed as percentage of 64 and recorded

in the score sheet, and if a candidate has passed two of the above public examinations, the better result only shall be computed.

(iv) the percentage of marks to the total full marks obtained in Junior Basic Training Certificate Examination or equivalent shall be computed as percentage of 20(twenty) and recorded in the score sheet;

(v) marks obtained in the interviews shall be recorded in the score sheet;

(vi) In awarding marks for co-curricular activities one mark shall be credited for each of the certificate mentioned below:-

(A) a candidate that he/she has represented the district in State level games, sports, issued by district level sports authority;

(B) a certificate that he/she has shown excellence in cultural activities representing the district in State level competitions issued by district level authority;

(C) minimum 'A' certificate of Natinal Cadet Corps;

(D) a certificate of successful participation in literating the illiterates by a district level officer;

(E) a diploma/certificate in Music/Arts and Craft on completion of a course of at lease one year's duration from any University/recognized Government institutions;

Provided that the maximum of such marks to be credited shall not exceed five.

vii) 18 (eighteen) marks shall be credited for academic qualification to an eligible candidate belonging to Scheduled Tribe category who have required qualification as mentioned in sub-rule) of Rule 6. Awarding of marks for training, interview and co-curricular activities shall be done in accordance with clauses (iv), (v) and (vi) respectively.

(c) (i) The total marks obtained by each candidate for academic qualification training and co-curricular activities shall be computed in the manner prescribed in clauses (iii), (iv) and (vi), and a list of names of all candidates of each category, namely, Scheduled Caste, Scheduled Tribe, physically handicapped and others shall be prepared in descending order of total marks obtained by them;

(ii)The Staff Selection Committee in its meeting shall finalise the total number of candidates from the top of the lists mentioned in clause (i) of sub-rule), to be called for interview. The number of candidates to be called for interview shall be five times the number of vacancy unless the total number of candidates is insufficient for the same;

(iii) The candidate selected for interview shall be intimated the date, time and place for their interview.

(d) After the interview all the scores shall be recorded and the marks obtained by a candidate shall be added up and the name of candidates shall be arranged according to marks obtained in a descending order;

(e) After the process as laid down in sub-rule (b) is complete, the Selection Committee shall arrange the names serially down from the top of the list. A panel of such number of candidates as there are vacancies plus 10% of such vacancies shall be prepared. The reservation for Scheduled Castes, Scheduled Tribes and physically handicapped persons shall have to be strictly maintained in the panel. The panel shall show separately names of Scheduled Tribe, Scheduled Caste, Physically handicapped and other eligible candidates.

(f) Thereafter the panel thus prepared shall be placed in the meeting of the Council for passing and the total number of eligible candidates included in the panel shall be the same as the number of vacancies plus 10% of such existing vacancies."

Rule 35 of the Rules deals with the repealing provision reads as under:

"All rules and orders made under the Bengal (Rural) Primary Education Act, 1930 and the West Bengal Urban Primary Education Act, 1963 and the West Bengal (Rural) Primary Education (Temporary Provisions) Act, 1969 regarding appointment of teachers, contrary to the provisions of these rules are hereby repealed in the districts where the West Bengal Primary Education Act, 1973 (43 of 1973) has come into force.

Provided that appointment of all teachers made with the approval of the Director prior to the framing of these rules, shall be deemed to have been approved under these rules."

At this stage, we may dispose of the argument of Mr. Vijay Hansaria learned senior counsel for the appellants. It is his say that the Circular issued on 27th July, 1971 by the Director of Public Instructions in which the teachers in the primary schools were considered as 'A' category teachers. It is clear that the aforesaid circular was issued permitting the incumbents to draw higher pay scales because they were teaching for a long time in the institution without qualification of JBT/PTTC. This argument is not tenable because it is well settled principle of law that circular cannot override the rules occupying the field. This apart, Rule 35 of the rules, as referred to above, repeals all previous rules and orders and therefore after the recruitment rules came into force in 1991 the circular of 1971 relied on by the counsel is non est. We may also refer the syllabus and courses of studies of the primary teachers training institutes which reads as under:

"Aim and Object : Special.

Knowledge: Formation of scientific idea about child and its environment, child's demand, child's growth and child's development.

View Point and mentality: To be affectional and sympathetic towards the child and to grow interest on child study.

To grow mentality on the role of education.

IIInd Chapter :- Education cum Evaluation Teacher's training syllabus has been classified into four groups:

(A) Professional knowledge.

(B) Professional Expertness, practical knowledge of primary school book;

(C) Practical knowledge.

(D) Different stages of primary education.

IIIrd Chapter :-

A) Professional knowledge:

i) Modern concept of primary education and its problem. Aim & Syllabus

ii) Child psychology and child study.

Syllabus:

i) development of child:-

(a) Childhood; b) Boyhood; c) Adolescence;

d) Early adolescence.

Physical development, mental development, working development, social development, speaking development.

2.(A) At different stages child's demand, problem and its remedy;

3. Learning what is learning? Value of learning in human life. (a) Initial experience. (b) Preservation of experience, (c) Review of experience, (d) marked off memory.

4. Learning condition (a) Inspiration and attention, (b) Repeatability and repeated study. Learning method recitation and meaning in total or part.

5. Classification of learning Knowledge learning, data collection experience gather, idea.

6. Different process of learning method :-

(a) learning through copy, (b) learning through endeavour, learning through understanding changeable process.

7. Classification of Students:-

(a) advanced child, (b) general child, (c) backward child, cause of backwardness and its remedies. Special arrangement for advanced child.

8. Child Philosophy :- Why child philosophy and why ?

Different process of child philosophy :-

(a) Observation, (b) Child/s surroundings (home, school and society) Explanations."

In B.Ed curriculum such subjects like child psychology is not found. On the other hand, curriculum is of generic nature deals with subjects like the principle of education curriculum studies, educational psychology, development of education in modern India, social organization and instructional methods etc. The rules, as noticed above, were framed primarily for recruitment of teachers for primary school and the rules were designed to give an incentive to the teachers who are specifically trained to teach in primary schools. The rationale behind the framing of this rule is that the JBT/PTTC certificate trained teachers should be appointed so that they can impart proper education to the primary school students in terms of the aims and object with a trained hand. The rules purposely laid an emphasis that all the candidates for teachers in primary schools who possessed JBT/PTTC should be appointed for the development of the child. The primary education is upto 4th standard. There is a middle education and then secondary and higher secondary education. For teaching in the primary school, therefore, one must know the child psychology and development of a child at tender age. As already noticed, the candidates like the appellants who are trained in B.Ed degree are not necessarily to be equipped to teach the students of primary class. They are not trained and equipped to understand the psychology of a child of tender age. It is in this context, Rule 2(n), Rule 6 and Rule 9 are to be read in conjunction.

Rule 2(n) defines trained candidate. The term 'trained candidate' if read and understood in the context of appointment of teachers in the primary school, would mean a candidate who possessed JBT/PTTC. Rule 6(d) as quoted above expressly put a prohibition that no extra credit shall be given to higher academic qualification for the purpose of selection of a teacher. A conjoint reading of Rule 2(n) and Rule 6(d) would make up abundantly clear that for appointment of a teacher in primary school only the candidates who possessed the academic qualification prescribed under the rules

JBT/PTTC shall be considered and the candidates like the appellants who possessed higher academic qualification like BA/B.Ed shall not be given any credit.

What emerges from the above interpretation of rules, curriculum, syllabus for appointment of teachers in primary schools are these:

" (i) In the case of the Junior Basic Training and Primary Teachers Training Certificate the emphasis is on the development of child. The Primary Education is upto IV standard. Thereafter there is middle education and then the secondary and higher secondary education. But in the primary school one has to study the psychology and development of child at tender age. The person who is trained in B.Ed. Degree may not necessarily be equipped to teach a student of primary class because he is not equipped to understand psychology of a child at that early stage.

(ii) This is only peculiar to the curriculum of the Junior Basic Training Course and Primary Teachers Training Certificate Course. Therefore, looking to the curriculum one can appreciate the distinction between the two courses and same policy is reflected in Rules framed by the State in exercise of its statutory power.

(iii) To accept a proposition that a candidate who holds a B.Ed. Degree, that is, higher degree cannot be deprived appointment to the post of primary school teacher would negate the aims and objects of the rules for the purpose for which it is framed.

(iv) These rules were framed primarily for recruitment of the teachers for primary schools and in that context the Rules were designed to give a credit to the candidates who are specifically trained to teach in primary schools. The idea behind the framing of these rules was that the Junior Basic Training and Primary Teachers Training Certificate trained teachers should be appointed so that they can impart proper education to the child of tender age who require expert and tending hand.

(v) There is prohibition contained in Rule 6(d) that no extra credit shall be given for higher qualification."

Having said so, we are also of the view that the decision involving present controversy are no more res integra. In the case of Medical Council of India & Anr. Vs. State of Rajasthan & Anr, [(1996) 7 SCC 731] that the Division Bench of this Court considered an identical question with regard to the registration as medical practitioner of the Medical Council Act of 1956. This Court held that the qualification of MBBS is a condition precedent for a candidate being registered in State Medical Register maintained by the State board. In that case the 2nd respondent though possessed M.Sc. (Bio- Chemistry) which was the higher qualification included in the schedule but this Court held unless the 2nd respondent have qualified in medicine he is not eligible to register as a medical practitioner. In the case of P.M.Lata & Anr. Vs State of Kerala & Ors. [(2003) 3 SCC 541] the facts of which are identical to the facts of the case in hand. In that case also the posts were advertised for recruitment to the post of lower primary/upper primary teachers in Govt. Schools. The

qualifications prescribed for the post in the advertisement published in official gazette notification was 'pass in TTC' means trained teachers. Instead of selecting holders of TTC candidate, the candidates holding B.Ed. degree were selected on ground that B.Ed is higher qualification then TTC. This Court held that in terms of the advertisement B.Ed degree holders were not eligible for selection. This Court further held that fixation of qualification for a particular post is a matter of recruitment policy. This Court held at SCC page 546:-

"We find absolutely no force in the argument advanced by the respondents that B.Ed. qualification is a higher qualification then TTC and therefore, the B.Ed. candidates should be held to be eligible to compete for the post. On behalf of the applicants, it is pointed out before us that Trained Teacher's Certificate is given to teachers specially trained to teach small children in primary classes whereas for B.Ed. degree, the training imparted is to teach students of classes above primary. B.Ed. degree holders, therefore, cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools. Whether for a particular post, the source of recruitment should be from the candidates with TTC qualification or B.Ed. qualification, is a matter of recruitment policy. We find sufficient logic and justification in the State prescribing qualification for the post of primary teachers as only TTC and not B.Ed. Whether B.Ed. qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider B.Ed. candidates, for the present vacancies advertised. as eligible."

The same view was reiterated in the case of Yogesh Kumar & Ors. vs. Government of NCT, Delhi & Ors. [(2003) 3 SCC 548]. For the reasons afore stated, we find no merit in this appeal. The same is accordingly dismissed with no order as to costs.