

Arun Tewari & Ors vs Zila Mansavi Shikshak Sangh & Ors. Etc on 1 December, 1997

Equivalent citations: AIR 1998 SUPREME COURT 331, 1998 (2) SCC 332, 1997 AIR SCW 4310, 1998 LAB. I. C. 414, 1997 (7) SCALE 461, (1997) 9 JT 593 (SC), 1997 (9) JT 593, (1998) 1 LAB LN 368, (1998) 1 SCT 533, (1997) 7 SCALE 461, (1997) 10 SUPREME 281, 1998 SCC (L&S) 541, (1998) 1 ESC 257, (1998) 1 JAB LJ 114, (1998) 1 SERVLR 219

Author: Sujata V.Manohar

Bench: Sujata V. Manohar

PETITIONER:
ARUN TEWARI & ORS.

Vs.

RESPONDENT:
ZILA MANSABI SHIKSHAK SANGH & ORS. ETC.

DATE OF JUDGMENT: 01/12/1997

BENCH:
SUJATA V. MANOHAR, M. JAGANNADHA RAO

ACT:

HEADNOTE:

JUDGMENT:

THE 1ST DAY OF DECEMBER, 1997 Present:

Hon'ble Mrs.Justice Sujata V.Manohar Hon'ble Mr.Justice M.Jagannadha Rao P.P.Singh, Prakash Srivastava, B.S.Banthia, S.K.Agnihotri, A.K.Singh, Anoop G.Choudhary, K.V.Sreekumar, R.C.Gubrele end Ms.Nanita Sharma, Advs. for the appearing parties.

J U D G M E N T The following Judgment of the Court was delivered:

[With CA Nos. 813/95, 4168/95, C.A. Nos 8443-8446/97 (Arising out of SLP (C) Nos. 10462/95, 14389/95, 26032/95 and 4579/97)] Mrs. Sujata V.Manohar, J.

Delay in S.L.P(C) Nos. 10462, 14389 & 26032 of 1995 is condoned.

Leave in S.L.P. (C) Nos. 10462, 14389 26032 of 1995 and 4579 of 1997 is granted.

Intervention applications are allowed. Civil Appeal No.77 of 1995 and appeals arising from the four special leave petitions are from a judgment and order of the Madhya Pradesh Administrative Tribunal at Jabalpur, dated 18.3.1994 in a group of applications challenging the amendments made in the Madhya Pradesh Non-Gazetted Class III Education Service (Non-Collegiate Service) Recruitment and Promotion Rules, 1973 by a notification published in Madhya Pradesh Government Gazette (Extra Ordinary) dated 10.5.1993 and another notification published in Madhya Pradesh Government Gazette (Extra Ordinary) dated 17.6.1993; as also the circulars of the School Education Department dated 5.8.1993 and 9.8.1993. By the impugned judgment and order, the Madhya Pradesh Administrative Tribunal struck down the two amendments and the circulars. These related to criteria and procedure for selection of Assistant Teachers in the Madhya Pradesh Education Service under the Operation Black Board Scheme. As a result, selection of around 7000 Assistant Teachers and the ongoing process of selection of such teachers in some districts was set aside at the instance of the applications who were persons not eligible for selection under the impugned amendments.

C.A.No.813/95 challenges a subsequent order of the Madhya Pradesh Administrative Tribunal dated 31.10.1994. In the group of applications finally decided on 18.3.1994, the Tribunal had granted on 14.9.1993 an interim stay of the impugned amendments and circulars. On 15.9.1993, the Deputy Director of Education, Hoshangabad issued appointment letters to 86 selected persons. These appointment letters have been set aside by the Tribunal in the light of its judgment and order of 18.3.1994, by the impugned order of 31.10.1994.

C.A.No. 4168/95 is against the order of the Madhya Pradesh Administrative Tribunal dated 26.11.1994. After the above interim order of 14.9.1993, the Deputy Director of Education, Dhar had issued on 16.9.1993 appointment letters to 48 selected candidates. He cancelled the appointments by his order of 26.7.1994 in view of the Tribunal's judgment and order of 18.3.1994. The selected candidates applied to the Tribunal for their continuation. Their applications have been dismissed by the Tribunal in view of its judgment and order of 18.3.1994, by the impugned order of 26.11.1994.

The recruitment, inter alia, of Assistant Teachers of Madhya Pradesh is governed by the Madhya Pradesh Non- Gazetted Class III Education Service (Non-Collegiate Service) Recruitment and Promotion Rules, 1973 (hereinafter called the 'Recruitment Rules'). The method of recruitment is direct recruitment by competitive examination followed by an interview. During the eight Plan

period i.e. from 1992 to 1997 the Central Government sponsored a scheme known as Operation Black Board Scheme. Under this scheme the Government of India gave financial clearance to the State of Madhya Pradesh to implement this scheme by appointing an Additional Teacher in all primary/middle schools which had only one teacher in order to improve the standards of education. In order to implement the scheme the State of Madhya Pradesh decided to fill in about 7,000 to 11,000 posts of Assistant Teachers in such schools.

As the scheme was to be implemented within the Eighth Plan period, in order to expedite implementation, the respondent-State, on 10.5.1993, amended Rule 10(3) of the Recruitment Rules by adding a proviso. Rule 10 is as follows:-

"10. Direct Recruitment by Selection:

(1) There shall be a committee for selection by direct recruitment, the membership of which shall be like the membership of the Committee constituted for selection by promotion.

(2) Selection for recruitment to the service shall be held at such intervals as the appointing authority may fix time to time determine.

(3) The Selection of candidates for service shall be made by the committee by conducting a competitive examination and after interviewing them."

The proviso which has been inserted by the amendment of 10.5.1993 is as follows:-

"Provided that in any specific circumstance the State Government may, in consultation with the general Administration Department prescribe the criteria and procedure for the selection of candidates."

By publication in Madhya Pradesh Government Gazette Extra Ordinary dated 7th of June, 1993 a further amendment was made in Schedule III Item at serial No.7 in column 5 of the Recruitment Rules by inserting the following qualification for recruitment of L.D.Ts. (Assistant Teachers): "Basic Training Certificate or B.Ed. Degree".

On 21.5.1993 the School Education Department proposed a scheme for selection of Assistant Teachers under the said proviso for the purposes of the Operation Black Board Scheme. It was proposed that selections would be made district-wise by inviting applications from employment exchanges. The selection would be made by selection committees constituted in each district to be presided over by a nominated officer in each district. The administrative department of the Government put up this scheme for approval of the Governor and the Governor approved the proposal on 16.6.1993. On 30.7.1993 the Secretary, School Education Department sent the file to the Secretary of the General Administration Department for the purposes of approval under the proviso to Rule 10(3). The Secretary, General Administration Department returned the file with there marks "since the Administration Department approval of Hon'ble Governor had already been obtained the

consent of the General Administration Department was not essential". With the approval of the Principal Secretary, General Administration Department, the file was returned to School Education Department on 4.8.1993.

As a result, instructions were issued in the exercise of powers under the proviso to Rule 10(3), prescribing the criteria as per amended Recruitment Rules and procedure for selection of eligible candidates. The prescribed qualifications under Schedule IV as amended were: Basic Training Certificate or B.Ed. qualification. District Employment Exchanges were asked to sponsor eligible candidates from their list. The selection was to be made district-wise. The Secretary, Education Department sent D.O. letters in August 1993 to Deputy Directors of Education in the State informing them about the decision of the State Government for implementation of Operation Black Board Scheme. Keeping in view the need for a time-bound programme, the recruitment process was initiated and a time-bound programme to implement the scheme was launched. The instruction provided that the power to select Assistant Teachers during 1993 was withdrawn from the purview of Junior Service Selection Board by G.A.D. order dated 19.5.1993. The selection of Assistant Teachers in 1993 will be made by a Committee which shall be presided over by a nominated officer. The Revenue District shall be the unit for selection of the teachers. The instruction further stated that the criteria for selection and the weight to be given on each head were detailed in Schedule III.

As a result, lists of eligible candidates were obtained from District Employment Officers, who were matriculates or above and had B.T.I. or B.Ed. qualification. They were interviewed by a Selection Committee in accordance with the criteria in Schedule III. Select lists were thereafter prepared in the order of merit. Appointment letters were issued to selected candidates in most districts before these were challenged before the Tribunal. These assistant teachers have been appointed initially on probation for a period of two years and on successful completion of probationary period their pay would be in accordance with the minimum of the regular scale and admissible allowances.

All the original applications before the Tribunal who have challenged the provisions for recruitment of Assistant Teachers under the Operation Black Board Scheme did not possess the requisite qualifications for being selected under the said scheme as Assistant Teachers. Their names do not figure among the lists forwarded by the concerned District Employment Exchanges. Surprisingly, the applications filed by all these persons and/or groups before the Tribunal did not make the selected/appointed candidates who were directly affected by the outcome of their applications, as party respondents. The Tribunal has passed the impugned order without making them parties or issuing notice to any of them. The entire exercise is seriously distorted because of this omission. They have now filed the present appeals after they have been granted leave to file the appeals. In the case of *Prabodh Verma & Ors. Vs. State of Uttar Pradesh & Ors.* (1984 [4] SCC 251 at page 273), this court observed that in the case before them there was a serious defect of non-joinder of necessary parties and the only respondents to the Sangh's petition were the State of Uttar Pradesh and its concerned officers. The employees who were directly concerned were not made parties -- not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. This Court observed that High Court ought not have decided a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them before it as

respondents in a representative capacity. These observations apply with equal force here. The same view has been reiterated by this Court in *Ishwar Singh & Ors. Kuldip Singh & Ors.* (1995 Supp [1] SCC 179), where the Court said that a writ petition challenging selection and appointments without impleading the selected candidates was not maintainable. (Vide also *J. Jose Dhanapaul Vs. S. Thomas & Ors.* (1996 [3] SCC 581, paragraph 4). On this ground alone the decision of the Tribunal is vitiated. However, even on merit we do not find that the judgment of the Tribunal can be sustained.

The first contention is to the effect that the proviso to Rule 10(3) is bad in law because it confers unguided and excessive delegation of powers to that State Government in the matter of criteria and procedure for recruitment. Now, the Recruitment Rules have been framed under the proviso to Article 309 of the Constitution of India. These Rules, inter alia, prescribe the procedure for selection and the criteria for selection. The proviso which has been inserted in Rule 10(3) gives to the State Governments in consultation with the General Administration Department, power to prescribe separate criteria and procedure for selection of candidates in specific circumstances. The power to frame these criteria and procedure is not delegated to any subordinate authority. The very authority which framed the original Rules is delegated the power to frame special Rules prescribing criteria and procedure in specific circumstances in consultation with the General Administration Department. The question of excessive delegation does not, therefore, arise because the rule-making authority has given to itself the power to prescribe criteria and procedure for selection in specific circumstances.

In the case of *Workmen of Meenakshi Mills Ltd. & Ors. Vs. Meenakshi Mills Ltd.* Anr. (1993 [3] SCC 336, at page

372), a Constitution Bench of this Court considered a similar question which arose before it and held that when the discretion is given to the Government itself and not to a subordinate officer, it cannot be said that there is excessive and uncontrolled delegation. The provision for consideration before the Court in that case was "the State Government or any authority so specified in this behalf". The validity of this provision was assailed on the ground that it gave unfettered and uncontrolled discretion to the State Government or to the offices authorised by it. Rejecting this contention, this Court said that the discretion is given in the first place to the State Government itself and not to a very subordinate officer like the licensing officer. The fact that the power of delegation is to be exercised by the State Government itself is a safeguard against the abuse of this power of delegation.

In the present case the criteria and procedure have to be prescribed by the State Government itself in exercise of power conferred on it by statutory Rules. This cannot be considered as excessive delegation. Also, prescribing of separate criteria and procedure is permitted only in specific circumstances. In the present case, the departure from normal recruitment process has been occasioned on account of the time-bound programme of the Operation Black Board Scheme. This necessitated a large number of Assistant Teachers being recruited to strengthen the education programme of the State within a time-bound schedule. If the State Government felt that the existing procedure would be unduly time-consuming, and provided a special procedure which is not unfair, no objection can be raised to such procedure when an express power has been conferred on the State in this connection.

It was next contended that the criteria and the procedure prescribed under the proviso require consultation with the General Administration Department. This was not done. From the facts which have been set out above, however, it is clear that the scheme which was framed by the Central Government was placed by the General Administration Department before the Governor for approval and was sent back to the School Education Department by the General Administration Department. When a formal approval of the General Administration Department was asked for subsequently, it was pointed out by the General Administration Department that this was not required when their department had itself obtained the approval of the Governor to the scheme. This contention has, therefore, no substance.

The next contention challenge the qualifications which are prescribed by the amendment to Scheduled III as being unfair. The prescribed qualifications are Basic Training Certificate or a B.Ed. Degree. It was contended that the prescription of these qualifications is unreasonable and discriminatory because there are other qualifications which, according to the original applicants, are equivalent and which should have been included. It is urged that Montessori and Mahilla Bal Sevika Prasikshan Pramanpatras and Diploma T are equivalent qualifications. It has been pointed out by the State that the B.T. Certificate qualification is superior to the qualifications of Diploma T, Montessori and Mahilla Sevika Prasikshan Pramanpatras. The criteria for selection of students, syllabus and period of training are all different for pre-primary prasikshan (Montessori) and Bal Sevika Prasikshan. Minimum qualification for admission is middle school and High School and the period of training in both the courses is one year only. For Diploma T the minimum qualification for admission is a Higher Secondary School Education. For B.T.I. the minimum qualification is passing of the Higher Secondary School Examination in the Second Division and the courses are also different. The State Council of Educational Research and Training considered the question of equivalence of B.T.I. and Diploma This recommendation was accepted by the State Government. The State Government has, therefore, submitted that B.T. qualification is superior to the other training qualification and, therefore, they have prescribed only B.T. qualification apart from a B.Ed.

Looking to the above reasons set out by the State Government for recognising a B.T. qualification as superior to Diploma T and other qualifications the exclusion of other qualifications cannot be held to be discriminatory or unreasonable. A higher qualification which is prescribed for a particular scheme cannot be considered as violative of Article 14. When candidates with higher qualifications are available, choosing them instead of candidates with inferior qualifications is not violation of Article 14 or 16.

The next contention relates to inviting applications from Employment Exchanges instead of by advertisement. This procedure has been resorted to looking to the requirement of a time-bound scheme. The original applicants contended that if the posts had been advertised, many others like them could have applied. The original applicants who so complain, however, do not possess the requisite qualifications for the post. As far as we can see from the record, nobody who had the requisite qualifications, has complained that he was prevented from applying because advertisement was not issued. What is more important, in the special circumstances requiring a speedier process of selection and appointment, applications were invited through employment exchanges for 1993 only. In this context, the special procedure adopted is not unfair. The State has relied upon the case of

Union of India & Ors. Vs. N. Hargopal & Ors. (1987 [3] SCC 308), where Government instruction enjoining that the filed of choice should, in the first instance, be restricted to candidates sponsored the first instance, be restricted to candidates sponsored by the Employment Exchanges, was upheld as not offending Article 14 and 16 of the Constitution. In the case of Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi & Ors. (1992 [4] SCC 99, at page 111). this Court approved of recruitment through employment Exchanges as a method of preventing malpractices. But in the subsequent and more recent case of Excise Superintended Malkapatnam, Krishna District A.P. V. K.B.N. Visweshwara Rao & Ors. [(1996) 6 SCC 216], this Court has distinguished Union of India V. Hargopal (supra) on the basis of special facts of that case. It has observed that the better course for the State would be to invite applications from employment exchanges as well as to advertise and also give wide publicity through TV, Radio etc. The Court had to consider whether persons who had applied directly and not through employment exchange should be considered. The Court upheld their claim for consideration.

There are different methods of inviting applications. The method adopted in the exigencies of the situation in the present case not be labelled as unfair, particularly when, at the relevant time, the two earlier decisions of this Court were in vogue.

We do not see any reason to fault procedure prescribed or the qualifications prescribed or to set aside these selections and consequent appointments since none of the grounds on which the amendments, circulars and selection have been challenged, is sustainable in law. We have been informed that after the stay of the judgment of the Tribunal by this Court, those who were selected/appointed under the prescribed procedure have been given appointments and they have been functioning as Assistant Teachers. In the case of selected candidates not joining, the persons kept on the relevant waiting list in order of merit have been given appointments. There is no reason to set aside these appointments.

In the premises, the impugned amendments to the Recruitment Rules as also the circulars relating to the procedure for selection and the criteria for selection are upheld. All these are allowed and the impugned judgments and orders of the Tribunal are set aside. There will, however, be no order as to costs.