

Manilal

v.

The State of Rajasthan & Ors.

(Civil Appeal No. 10440 of 2024)

10 September 2024

[B.R. Gavai and K.V. Viswanathan,* JJ.]

Issue for Consideration

Matter pertains to the appointment of the appellant to the post of Teacher Grade-III for TSP Area.

Headnotes[†]

Service law – Appointment – Post of Teacher Grade III Level II in the Scheduled Area (TSP) – Eligibility was graduation with minimum 45% marks and one year Bachelor of Education (B.Ed) – However, candidates who had taken admission in B.Ed course after issuance of notification dated 31.8.09 of National Council for Teacher Education, had to secure minimum 50 % at graduation level or equivalent examination – Appellant applied for the post, he had 44.58% marks in his graduation and had taken admission in the B.Ed course on 23.10.2009-after the cut-off date – Appellant, being from the reserved category, qualifying percentage for admission to the B.Ed Course was 40% marks in graduation (45% for general category) – Rejection of appellant's candidature since he had secured less than 45% marks in his graduation – Appellant and similarly situated candidate filed writ petitions, which were dismissed – Appellant then filed an appeal – Meanwhile, notification by NCTE that minimum percentage of marks in graduation shall not be applicable to those incumbents who had already taken admission to B.Ed or equivalent course prior to 29.07.2011 – Interim order passed directing the respondents to accord appointment to the appellant and pursuant thereto, the appellant was appointed – However, the Division Bench relying on a matter, dismissed the appeal, and thereafter his appointment was cancelled, though the appeal filed by the similarly situated candidate had already been allowed:

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Manilal v. The State of Rajasthan & Ors.

Held: It would be improper to discriminate inter se among a homogenous group of students admitted for the academic session 2009-10 – It could not be that those students admitted in the first round of counselling would be eligible, even with less than 50% marks in graduation, while the others admitted in the subsequent rounds of counselling would not be – It was on this reasoning that an identically situated student who had taken B.Ed admission after the appellant, was given relief – One person or situation should be treated the same as another – Judgment of the High Court is set aside – Authorities directed to treat the appointment given to the appellant, pursuant to the interim order of the Division Bench, as a regular appointment and after reinstating the appellant, grant him consequential benefits – Rajasthan Panchayati Raj Act, 1994 – Rajasthan Panchayati Raj Rules, 1996. [Paras 15, 16]

Case Law Cited

Neeraj Kumar Rai and Ors. v. State of U.P. and Others [\[2017\] 6 SCR 444 – referred to.](#)

List of Acts

Rajasthan Panchayati Raj Act, 1994; Rajasthan Panchayati Raj Rules, 1996.

List of Keywords

Appointment; Post of Teacher Gade-III for TSP Area; Graduation with minimum 45% marks and One year Bachelor of Education (B.Ed); Reserved category; Discriminate inter se among homogenous group of students; Back wages; Fitment of pay.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 10440 of 2024

From the Judgment and Order dated 27.04.2022 of the High Court of Judicature for Rajasthan at Jodhpur in DBSAW No. 997 of 2019

Appearances for Parties

Nishant Bishnoi, Saurabh Ajay Gupta, Ms. Srishti Prabhakar, Advs. for the Appellant.

Divyank Panwar, Milind Kumar, Advs. for the Respondents.

Digital Supreme Court Reports**Judgment / Order of the Supreme Court****Judgment****K.V. Viswanathan, J.**

1. Leave granted.
2. The present appeal calls in question the correctness of the judgment of the Division Bench of the High Court of Judicature for Rajasthan at Jodhpur dated 27.04.2022 in D.B. Special Appeal Writ No. 997 of 2019. By the said judgment, the Division Bench dismissed the appeal of the appellant and confirmed the order dated 27.11.2018 of the learned Single Judge dismissing the writ petition of the appellant.
3. We have heard Mr. Nishant Bishnoi, learned counsel for the appellant and Mr. Milind Kumar, learned counsel for the respondent-State and perused the records of the case. We have also considered the written submissions filed by the parties.
4. The facts lie in a very narrow compass. The respondent-authorities under the provisions of the Rajasthan Panchayati Raj Act, 1994 and the Rajasthan Panchayati Raj Rules, 1996, on 11.09.2017, issued an advertisement inviting applications for the post of Teacher Grade III Level II in the Scheduled Area (TSP). A total of 1455 posts were advertised. The relevant clauses of the advertisement were as under:-

“6. MINIMUM EDUCATIONAL QUALIFICATIONS:-

Under sub-section (1) of section (23) of the Free and Compulsory Education Act 2009, the notification of the National Council of Teacher Education vide notification dated 23 August 2010 and 29 July 2011 and given by the Hon'ble High Court in the order of instructions and according to the notification dated 29.08.2017 of the State Government, the minimum qualifications and minimum percentage for various categories to be included in Rajasthan Teacher Recruitment 2016 (Revised) will be as follows:

6.1 For Class 6 to 8 (Level-II):

General Education (Class 6 to 8):

Manilal v. The State of Rajasthan & Ors.

A. Graduation and 2-year Diploma in Elementary Education (by whatever name known) Graduation and 2-year Diploma in Elementary Education (by whatever name known).

OR

Graduation with minimum 50% marks and one year Bachelor in Education (B.Ed) Graduation with at least 50% marks and 1-year Bachelor in Education (B.Ed).

OR

Graduation with minimum 45% marks and One year Bachelor of Education (B.Ed) obtained in accordance with the National Council for Teacher Education (Recognition Norms and Procedure) Regulations issued from time to time in this regard.

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 year Bachelor in Elementary Education (B.El.Ed).

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year B.A/B.Sc.Ed. or B.A.Ed./B.Sc.Ed.

OR

Graduation with minimum 50% marks and one year B.Ed. (Special Education)

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“6.3 In seriatim of the judgment dated 20.5.2011 passed in various petitions by the Division Bench of Hon’ble High Court, Jodhpur, according to School Education Department, Rajasthan letter number F 7(1)/Plan/2011 dated 17th June 2011, the following candidates would also be eligible to participate in Rajasthan High Primary School Teachers Direct Recruitment 2016 (amended):-

(I) All such candidates who have taken admission in teacher training courses before issuance of notification dated 27.09.07 by the National Teachers Education

Digital Supreme Court Reports

Council; for them there is no binding to secure minimum percentage in graduation level or equivalent examination.

(2) All such candidates who have after issuance of notification dated 27.09.07 by the National Teachers Education Council; but before issuance of notification dated 31.8.09, for them it is binding to secure minimum 45 percent at graduation level or equivalent examination.

(3) All such candidates who had taken admission in various teachers training courses after issuance of notification dated 31.8.09 of National Council for Teacher Education, for them it is binding to secure minimum 50 percent at graduation level or equivalent examination."

(Emphasis supplied)

5. The appellant applied for the post of Teacher under the said advertisement. It is undisputed that the appellant had 44.58% marks in his graduation. It is also undisputed that the appellant secured admission in the Bachelor of Education (B.Ed) course on 23.10.2009 i.e. the date on which he deposited the fee. This fact is admitted in the counter affidavit of the State filed before this Court in Para 7 and in the written submissions filed by the State in Para 1. The appellant, being admittedly from the reserved category, the qualifying percentage required for admission to the B.Ed Course was 40% marks in graduation (45% for general category) as is clear from the 12.04.2019 Press Release. The appellant fulfilled this criteria and obtained admission.
6. When the matter stood thus, the appellant's name did not appear in the provisional list of selected candidates despite securing 44.58% marks, which was way above the cut-off marks. The appellant contends that he was informed that his candidature was rejected for the reason that he had secured less than 45% marks in his graduation.
7. Being aggrieved, the appellant filed S.B. Civil Writ No. 16005 of 2018 and one Rakesh Gaur, who was similarly situated, also filed S.B. Civil Writ No. 14129 of 2018 [**Rakesh Gaur vs. The State of Rajasthan**]. Both the writ petitions were dismissed on 27.11.2018. Undeterred, the appellant filed D.B. Spl. Appl. Writ No. 997 of 2019. Rakesh Gaur filed D.B. Spl. Appl. Writ No. 224 of 2019.

Manilal v. The State of Rajasthan & Ors.

8. At this stage, on 13.11.2019, the National Council for Teacher Education [NCTE] issued a clarification by way of a supplementary notification which stated that minimum percentage of marks in graduation shall not be applicable to those incumbents who had already taken admission to the Bachelor of Education or Bachelor of Elementary Education or equivalent course prior to 29th July, 2011. It further stated that the notification of 13.11.2019 was to be made applicable from 29.07.2011. The relevant extracts of the notification is as follows:-

“(B). After clause (b), at the end, the following proviso shall be inserted namely:

“Provided that minimum percentage of marks in graduation shall not be applicable to those incumbents who had already taken admission to the Bachelor of Education or Bachelor of Elementary Education or equivalent course prior to the 29th July, 2011.

2. This notification shall be deemed to have come into force on the 29th July, 2011.

Sanjay Awasthi,
Member Secy
(Advt III/4/ Exty/304/19)

Note: The principal notification was published in the Gazette of India, Extraordinary, Part III, Section 4, Vide number F.No. 61-3/20/2010 NCTE (N & S) dated the 23rd August, 2010 and was subsequently amended vide number F.No. 61- 1/2011 NCTE (N & S) dated the 29th July, 2011.

Explanatory Memorandum

The amendment notification number F.No. 61-1/2011 NCTE (N & S) dated the 29th July, 2011 issued by the National Council for Teacher Education was challenged before the Supreme Court in the case of Neeraj Kumar Rai and others Vs. State of U.P. and Ors. in Civil Appeal No. 9732 of 2017 and the Hon'ble Court vide its order dated the 25th July, 2017 had directed the National Council for Teacher Education to issue a clarification by way of a supplementary notification regarding the percentage of

Digital Supreme Court Reports

marks specified therein. Necessary amendment is required to be made retrospectively from the date of notification of the said rules. It is certified that none will be adversely affected by the retrospective effect being given to the amendment rules.

(Emphasis supplied)

9. The supplementary notification of 13.11.2019 was a sequel to the judgment of this Court in *Neeraj Kumar Rai and Ors. Vs. State of U.P. and Others* [Civil Appeal No. 9732 of 2017 decided on 25.07.2017].
10. It was noticed by this Court in *Neeraj Kumar Rai (supra)* that the 2009 Norms and Standards for Secondary Teacher Education Programme through Open and Distance Learning System leading to B.Ed. did not provide for any minimum percentage of marks in Bachelor's degree. Thereafter, this Court noticed that in the NCTE notification dated 23.08.2010, the requirement of prescribed percentage of marks in graduation was laid down and on that basis the said requirement was incorporated in the 29.07.2011 notification. The appellants in *Neeraj Kumar Rai (supra)* relying on the judgments delivered by a Division Bench of the Rajasthan High Court in D.B. Civil Writ Petition No. 3964 of 2011 etc. [***Sushil Sompura and Ors. Vs. State (Education) and Ors.***] and the learned Single Judge of the Uttarakhand High Court in Writ Petition No. 772(SS) of 2011 etc. [***Baldev Singh and Ors. Vs. State of Uttarakhand and Ors.***] respectively contended that in case the admission to the B.Ed. course had been obtained prior to the prescription of the minimum qualifying marks by NCTE in Bachelor's Degree, the minimum qualifying marks in graduation ought not to be insisted. Recording the submission of the learned Additional Solicitor General to the effect that the appellants therein are to be treated on par, this Court granted relief to the appellants therein on par with the relief granted by the Rajasthan and Uttarakhand High Courts.
11. Independently, in the matter of ***State of Rajasthan vs. Ankul Singhal*** - D.B. Special Appeal Writ No. 545 of 2020, by an order dated 08.09.2020, the Division Bench, while dismissing the appeal of the State, had the following to say insofar as the facts in Ankul Singhal were concerned:

Manilal v. The State of Rajasthan & Ors.

"Admission to the said post was initiated in terms of advertisement issued in the month of April, 2009. Eligibility for admission was 45% marks at graduation level. Respondent had secured 49.61% marks in his graduation examination. Respondent cleared the Pre-Shiksha Shastri test. Counseling for allotment of colleges on merit cum-preference was notified on 04.07.2009. The respondent deposited the necessary fee on 07.07.2009. First round of counseling was held between 31.07.2009 and 03.08.2009. Second round of counseling was held between 26.08.2009 and 28.08.2009. As per notification dated 21.08.2009, respondent was allotted college for pursuing Shiksha Shastri course 2009-10 and was admitted on 04.09.2009.

Clauses 9.3(ii) and 9.3(iii) of the advertisement dated 31.07.2018 read as under:

9.3 The Hon'ble High Court of Rajasthan, Jodhpur Division Bench, in order of judgment dated 20.05.2011 passed in various petitions, according to School Education Department, Rajasthan letter number F 7(1) E.E/ Plan/2011 dated 17 June, 2011 and clarification dated 16.09.2013, the following candidates would be eligible to participate in Rajasthan Primary and Upper Primary School Teachers Direct Recruitment, 2018:-

- (i) All such candidates who have taken admission in teacher training courses before issuance of notification dated 27.09.2007 of the National Teachers Education Council, they are not obliged to obtain minimum percentage marks at bachelors level or equivalent examination.
- (ii) All such candidates who have taken admission in teacher training courses after issuance of notification dated 27.09.2007 of National Teachers Education Council but before issuance of notification dated 31.08.2009 in teaching training courses, for them it is compulsory to obtain minimum 45 percent marks at graduation level or equivalent examination.

Digital Supreme Court Reports

- (iii) All such candidates who had taken admission in teachers training courses after issuance of notification of National Teachers Education Council dated 31.08.2009, for them it is compulsory to obtain minimum 50 percent marks at graduation level or equivalent examination.

Learned Single Judge rightly observed that the admission of the respondent in the course would relate back to the date of admission after the first round of counselling which took place before 31.08.2009. If that is not so, then an absurd classification of homogeneous group of students admitted in Shiksha Shastri course in the academic session 2009-10 would arise and the same would have no nexus to be achieved. Thus, some students in respondent's class admitted after first round of counseling would be eligible, even with less than 50% marks in graduation, to be appointed as Teacher Grade-III, Level-II while the respondent who was also from the same class and admitted through the same process would not be eligible for appointment for the reason of less than 50% marks in graduation.

Learned Single Judge rightly held that the said uneven and discriminatory situation between equals (students of Shiksha Shastri class of 2009-10) would be unsustainable and was liable to be declared ultra vires Article 14 of the Constitution of India.

Learned Single Judge then rightly drew the conclusion that Clause 9.3(iii) read with clause 9.3(ii) of the advertisement dated 31.07.2018 entitling eligibility for those with 45% marks at graduation who had substantially undergone the admission process to Shiksha Shastri course and were allotted college for the purpose before 31.08.2009 though admitted later and the case of the respondent would fall in the said category as he had taken admission to Shiksha Shastri course pursuant to advertisement in April, 2009 when notification dated 27.09.2007 was operative and as per the said notification eligibility criteria was 45% marks in graduation course.

Manilal v. The State of Rajasthan & Ors.

Hence, the learned Single Judge rightly held that the case of the respondent was liable to be considered for appointment as Teacher Grade-III, Level-II as per his competitive merit in the category subject to his fulfilling other requirements eligibility on his application in pursuance of advertisement dated 31.07.2018.”

(Emphasis supplied)

The Special Leave Petition (C) No. 15793/2020 filed by the State against the judgment in **Ankul Singh (supra)** was dismissed by this Court on 01.02.2021.

12. By an order of 23.10.2021, in the appellant's D.B. Spl. Appl. Writ No. 997 of 2019, relying on the NCTE notification of 13.11.2019, an interim order was passed directing the respondents to accord appointment to the appellant on the post of Teacher Gade-III pursuant to the Advertisement No. 02 of 2017 in question for TSP Area (English subject), if otherwise eligible. It is not disputed that the appellant has, pursuant to the interim order was appointed. Thereafter, it is contended that after the impugned order, the appellant's appointment was cancelled on 07.06.2022.
13. On 10.03.2022, the D.B. Spl. Appl. Writ No. 224 of 2019 of **Rakesh Gaur (supra)**, who was identically situated, was allowed by relying on the Division Bench judgment in **Ankul Singh (supra)**. In fact, the said Rakesh Gaur has taken admission on 05.11.2009, after the appellant herein.
14. However, when the appeal of the appellant came up on 27.04.2022, by relying on D.B. Civil Special Appeal (Writ) No. 1205 of 2019 (**Dinesh Chandra Damor vs. State of Rajasthan**), the appeal was dismissed. The appellant herein had joined the course on 23.10.2009 whereas as is clear from the facts of **Dinesh Chandra Damor (supra)** that candidate has joined on 20.10.2010 i.e. one year and two months (approx.) after the cut-off date of 31.08.2009.
15. The appellant's case was more akin to the case of **Rakesh Gaur (supra)**, who had taken admission on 05.11.2009. We are clearly of the opinion on the special facts of this case that the Division Bench erred in applying the case of **Dinesh Chandra Damor (supra)** instead of applying the reasoning in the judgment in **Ankul Singh (supra)** and **Rakesh Gaur (supra)** to the facts of this case. As was held in

Digital Supreme Court Reports

Ankul Singhal (supra), it will be improper to discriminate *inter se* among a homogenous group of students admitted for the academic session 2009-10. As was pointed out therein, it could not be that those students admitted in the first round of counselling would be eligible, even with less than 50% marks in graduation, while the others admitted in the subsequent rounds of counselling would not be. It was on this reasoning that **Rakesh Gaur (supra)** was given relief. **Rakesh Gaur (supra)** was a case identically situated with the case of the appellant. What is sauce for the goose should be sauce for the gander too.

16. In view of the same, we allow the appeal and set aside the impugned judgment of the High Court dated 27.04.2022 in D.B. Spl. Appl. Writ No. 997 of 2019. We direct the respondent-authorities to treat the appointment given to the appellant, pursuant to the interim order of the Division Bench dated 23.10.2021, as a regular appointment and after reinstating the appellant grant consequential benefits. We direct that except for the period the appellant actually worked, he shall not be entitled to any back wages. However, fitment of pay shall be granted. Necessary orders shall be passed within a period of four weeks from today. No order as to costs.

Result of the case: Appeal allowed.

[†]*Headnotes prepared by:* Nidhi Jain