

CHANDRAKALA TRIVEDI

v.

STATE OF RAJASTHAN & ORS.

(Civil Appeal No. 400 of 2012)

JANUARY 12, 2012

[ASOK KUMAR GANGULY AND T.S. THAKUR, JJ.]

Service Law – Appointment – Qualification – Educational qualification – Appointment to the post of Teacher – Provisional selection of appellant cancelled as he had not passed Higher Secondary/Senior Secondary Examination after passing the Secondary Examination – Plea of appellant that at the time when she passed the Secondary Examination, it was permissible for a candidate passing the Secondary Examination to get admission in the higher classes with a preparatory course; and that she had thereafter acquired higher qualifications such as B.Ed. Degree as also a M.A degree and thus, satisfied the criteria of the required qualification for appointment to the post in question – Plea of appellant negated by the High Court, inter alia, on the ground that as the appellant had not passed the Senior Secondary Examination, which is the basic qualification for the post in question, the candidature of appellant cannot be considered – Held: The view taken by the High Court cannot be appreciated – The basic qualification required was Senior Secondary or Intermediate or its equivalent – High Court erroneously did not consider higher qualification as equivalent to the qualification of passing Senior Secondary examination even in respect of a candidate who was provisionally selected – The word ‘equivalent’ must be given a reasonable meaning – By using the expression, ‘equivalent’ one means that there are some degrees of flexibility or adjustment which do not lower the stated requirement – There has to be some difference between what is equivalent and what is exact –

A *Apart from that after a person is provisionally selected, a certain degree of reasonable expectation of the selection being continued also comes into existence – Appellant should be considered reasonably and the provisional appointment which was given to her should not be cancelled.*

B *Words and Phrases – “equivalent” – Meaning of.*

The appellant was provisionally selected for appointment to the post of Teacher. After the appellant was provisionally selected, she received a letter from the State Public Service Commission informing her that provisional selection has been cancelled as the appellant did not pass the Higher Secondary/Senior Secondary Examination after passing the Secondary Examination.

The case of the appellant was that at the time when she passed the Secondary Examination, it was permissible for a candidate passing the Secondary Examination to get admission in the higher classes with a preparatory course; that the appellant thereafter completed her graduation, and also obtained B.Ed. Degree as also a M.A degree and in that view of the matter, the appellant satisfies the criteria of the required qualification for appointment to the post in question.

The case of the appellant was, however, dismissed by the High Court, *inter alia*, on the ground that as the appellant had not passed the Senior Secondary Examination, which is the basic qualification for the post in question, the candidature of the appellant cannot be considered.

G Disposing of the appeal, the Court

HELD:1. The view taken by the High Court cannot be appreciated. From the qualifications mentioned, it is clear that the basic qualification is Senior Secondary or Intermediate or its equivalent. [Para 7] [963-D]

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2. In the impugned judgment, the High Court has given a finding that the higher qualification is not the substitute for the qualification of Senior Secondary or Intermediate. One fails to appreciate the reasoning of the High Court to the extent that it does not consider higher qualification as equivalent to the qualification of passing Senior Secondary examination even in respect of a candidate who was provisionally selected. The word 'equivalent' must be given a reasonable meaning. By using the expression, 'equivalent' one means that there are some degrees of flexibility or adjustment which do not lower the stated requirement. There has to be some difference between what is equivalent and what is exact. Apart from that after a person is provisionally selected, a certain degree of reasonable expectation of the selection being continued also comes into existence. [Para 8] [963-E-G]

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3. Considering these aspects of the matter, it is clear that the appellant should be considered reasonably and the provisional appointment which was given to her should not be cancelled. It is hoped and expected the respondent Public Service Commission shall make a suitable recommendation in the light of the observation in this judgment and the State, which is also a party, will make an appointment accordingly thereafter. [Paras 9, 10] [963-H; 964-A-C]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 400 of 2012.

From the Judgment and Order dated 19.01.2009 of the High Court of Rajasthan at Jodhpur in Special Appeal (Writ) No. 409 of 2008.

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Aishwarya Bhati for the Appellant.

Surya Kant, Pranav Vyas, Dushyant Parashar, Neeraj

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A Kumar Sharma, Purnima Jauhani, A.V. Rangam, Buddy A. Rangadhan and Milind Kumar for the Respondents.

The Judgment of the Court was delivered by

B **GANGULY, J.** 1. Leave granted.

2. We have heard learned counsel for the parties.

C 3. This appeal is directed against the impugned judgment and order dated 19.01.2009 passed in Special Appeal No. 409 of 2008 of the High Court of Rajasthan. The controversy arises out of the appellant's appointment to the post of Teacher for primary and upper primary schools.

D 4. The appellant was provisionally selected for appointment to the post of Teacher. The educational qualification required for appointment to the Level(II) Upper Primary Middle School Section is;

(I) Senior Secondary School Certificate or intermediate or its equivalent; and

E (II) Diploma or certificate in elementary teachers training of duration of not less than two years OR Bachelor of Elementary Education (B.E. Ed.) OR Graduate with Bachelor of Education(B.Ed) or its equivalent"

F 5. After the appellant was provisionally selected, she received a letter dated 26.09.2007 from the Rajasthan Public Service Commission informing her that provisional selection has been cancelled as the appellant did not pass the Higher Secondary/Senior Secondary Examination after passing the Secondary Examination.

G 6. The case of the appellant is that at the time when she passed the Secondary Examination, it was permissible for a candidate passing the Secondary Examination to get admission in the higher classes with a preparatory course. The H appellant thereafter completed her graduation from the Indira

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Gandhi Open University. Then the appellant got her B.Ed. Degree on a regular basis from Maharishi Dayanand Saraswati University, Ajmer, Rajasthan. The appellant then also got her M.A degree from the same University. In that view of the matter, learned counsel for the appellant submits, that the appellant satisfies the criteria of the required qualification for appointment to the post in question. The case of the appellant has, however, been dismissed both by the Single Judge and also by the Division Bench of the High Court, inter alia, on the ground that as the appellant has not passed the Senior Secondary Examination, which is the basic qualification for the post in question, the candidature of the appellant cannot be considered.

7. We fail to appreciate the aforesaid view taken by the High Court. We find that from the qualifications which have been mentioned, it is made clear that the basic qualification is Senior Secondary or Intermediate or its equivalent. We find that the appellant on the basis of her qualification was provisionally selected after she had submitted her requisite testimonials.

8. In the impugned judgment, the High Court has given a finding that the higher qualification is not the substitute for the qualification of Senior Secondary or Intermediate. In the instant case, we fail to appreciate the reasoning of the High Court to the extent that it does not consider higher qualification as equivalent to the qualification of passing Senior Secondary examination even in respect of a candidate who was provisionally selected. The word 'equivalent' must be given a reasonable meaning. By using the expression, 'equivalent' one means that there are some degrees of flexibility or adjustment which do not lower the stated requirement. There has to be some difference between what is equivalent and what is exact. Apart from that after a person is provisionally selected, a certain degree of reasonable expectation of the selection being continued also comes into existence.

9. Considering these aspects of the matter, we are of the

A view that the appellant should be considered reasonably and the provisional appointment which was given to her should not be cancelled. We order accordingly.

B 10. However, we make it clear that we are passing this order taking in our view the special facts and circumstances of the case. We hope and expect the respondent Rajasthan Public Service Commission shall make a suitable recommendation in the light of the observation in this judgment within four weeks from today and the State, which is also a party, will make an appointment accordingly within four weeks thereafter.

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11. The appeal is disposed of. No costs.

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Appeal disposed of.