

PRAKASH CHAND MEENA & ORS.

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v.

STATE OF RAJASTHAN & ORS.

(Civil appeal Nos. 3057-3058 of 2015)

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MARCH 19, 2015

[V. GOPALA GOWDA AND SHIVA KIRTI SINGH, JJ.]

Service Law – Recruitment – Advertisement for two different posts, having different qualifications – In the midway, the State Government as well as the Public Service Commission changing the qualification for the posts – Permissibility – Held: Recruitment process must be completed as per terms and conditions in the advertisement and as per rules existing when the recruitment process began – The equivalent qualification must be recognized as such in the recruitment rules or Government Order existing on or before initiation of recruitment process – In the present case, the State Government as well as the Commission departed from the qualification laid down in the advertisement as well as the rules – Hence recruitment on the basis of subsequently changed qualification, not permissible.

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Allowing the appeals, the Court

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HELD: 1. Recruitment process must be completed as per terms and conditions in the advertisement and as per rules existing when the recruitment process began. In the present case, the Division Bench has gone to great lengths in examining the issue whether B.P.Ed. and D.P.Ed. qualifications are equivalent or superior to C.P.Ed. qualification but such exercise cannot help the cause of the respondents who had the option either to cancel the recruitment process if there existed good

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- A reasons for the same or to complete it as per terms of advertisement and as per rules. They chose to continue with the recruitment process and hence they cannot be permitted to depart from the qualification laid down in the advertisement as well as in the rules which were
- B suitably amended only later in 2011. In such a situation, factual justifications cannot change the legal position that respondents acted against law and against the terms of advertisement in treating such applicants successful
- C for appointment to the post of PTI Gr.III who held other qualifications but not the qualification of C.P.Ed. Such candidates had not even submitted separate OMR application form for appointment to the post of PTI Gr.III which was essential as per the terms of advertisement.
- D [Para 9] [735-A-E]

2. In the matter of eligibility qualification, the equivalent qualification must be recognized as such in the recruitment rules or Government order existing on or before the initiation of recruitment process. In the
- E present case, this process was initiated through advertisement inviting application which did not indicate that equivalent or higher qualification holders were eligible to apply nor the equivalent qualifications were
- F reflected in the recruitment rules or Government Orders of the relevant time. [Para 10] [735-H, 736-A-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3057-3058 of 2015.

- G From the Judgment and Order dated 01.07.2013 of the High Court of Judicature for Rajasthan, Bench at Jaipur in D. B. Civil Special Appeal (Writ) Nos. 1157 & 1181 of 2012.

- H M. R. Callá, Vijay Hansaria, Pratiksha Sharma, Ankit Acharya, Subodh Pathak, Dharmendra Kumar Sinha, Akhilesh Kumar Pandey, Swati Chandra, Anjul Dwivedi, Sarad Kumar

Singhania, H. D. Thanvi, Mukul Kumar, Surya Kant, Aishwarya Bhati, Anshuman, Madhurima Ghosh, Hemendra Sharma, S. S. Shamsbery, Amit Sharma, Sandeep Singh, Ruchi Kohli, Arjun Harkauli, Aftab Ali Khan for the appearing parties. A

The Judgment of the Court was delivered by B

SHIVA KIRTI SINGH, J. 1. Heard learned counsel for the parties. Leave granted.

2. The issue in these appeals is whether the Division Bench of Rajasthan High Court is correct in reversing the judgment of the learned Single Judge and permitting the qualification of B.P.Ed. to be treated as equivalent to qualification of C.P.Ed. for the purpose of selection and recruitment to the post of Physical Training Instructor Grade-III (PTI Gr.III). C D

3. The facts necessary for deciding the main issue noted above are as follows. Rajasthan Public Service Commission (hereinafter referred to as 'the Commission') published an advertisement dated 03.09.2008 inviting applications for recruitment to the post of PTI Gr.II under Code No.35 and PTI Gr. III under Code No.36. The educational qualification for posts under Code No.35 and 36 were indicated separately and read thus: E

(i) Graduate or equivalent examination with diploma in physical education OR Secondary with four years' diploma in Physical Education. F

(ii) Working knowledge of Hindi written in *Devnagari* script and knowledge of Rajasthan culture. G

The educational qualification for posts under Code No.36 read thus:

(i) Senior secondary certificate of Board of Secondary Education recognized by the Government of H

A Rajasthan and Secondary or equivalent examination recognized by the Government of Rajasthan with five subjects, three of them should be Mathematics, English and Hindi with Certificate in Physical Education.

B (ii) Working knowledge of Hindi written in *Devnagari* script and knowledge of Rajasthan culture.

C Special note in the advertisement indicated that in Column 11 of OMR application the post of Code No.35 or Code No.36 had to be mentioned and separate applications had to be submitted for the two different categories of posts. Through a press note issued on 22.09.2009, the Commission informed the applicants to indicate the post code clearly in the OMR application and in the event of any error in specifying the post code, the result of such candidate shall be cancelled.

D 4. A combined competitive examination for both the posts was held on 04.10.2009. The Commission, by letter issued on 04.12.2009, directed the candidates to submit their testimonials/documents by 04th January 2010. On 18.12.2009 a news item was published in a daily newspaper that the State Government had directed the Commission to treat such candidates also eligible for appointment to the post of PTI Gr.III who possess Diploma in Physical Education (D.P.Ed.) and/or Degree of Bachelor in Physical Education (B.P.Ed.) on the premise that these qualifications should be treated as higher than or equal to Certificate in Physical Education (C.P.Ed.).

E For this purpose, the State Government sent a letter to the Commission on 06.01.2010 and thereafter the Commission declared the result on 29.10.2010 wherein it declared such applicants also as successful for the post of PTI Gr.III who held the qualification of B.P.Ed. and had applied for appointment

F to the post of PTI Gr.II only.

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5. Applicants for the post of PTI Gr.III having qualification of C.P.Ed. were aggrieved with the clarification issued by the State Government and the result declared by the Commission on its basis and hence they preferred writ petitions which were allowed on three different occasions. Twice, the Division Bench allowed the Special Appeals only to remand the matter to the learned Single Judge for fresh consideration. The second remand was on the basis of an amendment made in the Rajasthan Education Subordinate Service Rules, 1971 (for brevity, 'the Rules of 1971') vide notification dated 09.12.2011. The Division Bench, by its judgment dated 30th March 2012, observed that amendment made in the Rules of 1971 was not brought to the notice of the Single Bench and, therefore, by agreement of the parties, it set aside the impugned order and matter was remitted to the Single Bench for deciding again for the third time. The learned Single Judge found that the amendment vide notification dated 09.12.2011 was prospective and, therefore, it could have no bearing on the recruitment process initiated on the basis of advertisement issued on 03.09.2008. Accordingly, the writ petitions came to be allowed for the third time by the learned Single Judge vide judgment dated 04.07.2012. That judgment has been set aside by the impugned order dated 01.07.2013 which is under challenge in these appeals.

6. On behalf of the appellants, reliance has been placed upon judgments rendered by the learned Single Judge on three occasions. Their main contention is that learned Single Judge had taken a correct view in law that once advertisement had been issued and recruitment process had begun by asking for separate applications for the two different posts having different qualifications, the State Government as well as the Commission erred in changing the qualification midway through issuance of a letter on the ground that it was only to

A clarify the actual position pursuant to a query made by the Commission. It was pointed out that the relevant Rules of 1971 which were the basis for the advertisement were amended only subsequently on 09.12.2011 and as per law settled by a catena of decisions by this Court, the rules which existed at the time of issuance of advertisement shall govern the recruitment process and not the subsequently amended rules.

7. In reply, the stand of the respondents is that the clarification issued by the State Government was only to explain the factual position that qualification of B.P.Ed. and D.P.Ed. were either equivalent or superior to the qualification of C.P.Ed. and hence there was no illegality or arbitrariness in permitting holders of such equivalent or higher degrees to compete for the post of PTI Gr.III even if they did not have the precise qualification of C.P.Ed. mentioned in the advertisement.

8. It was also highlighted on behalf of the respondents that whereas there were only 62 posts of PTI Gr.II, there were 405 posts of PTI Gr.III advertised and as against such large number of 405 posts there were only limited number of applicants having qualification of C.P.Ed. and, therefore, permitting applicants having higher or equivalent qualifications was a rational and proper decision. According to appellants also there are only 231 applicants having C.P.Ed. qualification against 405 vacancies for the posts of PTI Gr.III.

9. Having heard the parties, we have also perused the written submissions filed on behalf of some of them and have perused the judgment of the learned Single Judge and the impugned judgment of the Division Bench. In our considered view, the issue noticed at the outset must be decided on the basis of settled law noticed by learned Single Bench that recruitment process must be completed as per terms and conditions in the advertisement and as per rules existing when the recruitment process began. In the present case, the

Division Bench has gone to great lengths in examining the issue whether B.P.Ed. and D.P.Ed. qualifications are equivalent or superior to C.P.Ed. qualification but such exercise cannot help the cause of the respondents who had the option either to cancel the recruitment process if there existed good reasons for the same or to complete it as per terms of advertisement and as per rules. They chose to continue with the recruitment process and hence they cannot be permitted to depart from the qualification laid down in the advertisement as well as in the rules which were suitably amended only later in 2011. In such a situation, factual justifications cannot change the legal position that respondents acted against law and against the terms of advertisement in treating such applicants successful for appointment to the post of PTI Gr.III who held other qualifications but not the qualification of C.P.Ed. Such candidates had not even submitted separate OMR application form for appointment to the post of PTI Gr.III which was essential as per the terms of advertisement.

10. The candidates who were aware of the advertisement and did not have the qualification of C.P.Ed. also had two options, either to apply only for PTI Gr.II if they had the necessary qualification for that post or to challenge the advertisement that it omitted to mention equivalent or higher qualification along with qualification of C.P.Ed. for the post of PTI Gr.III. Having not challenged the advertisement and having applied for the other post, they could not have subsequently claimed or be granted eligibility on the basis of equivalence clarified or declared subsequently by the State Government. In the matter of eligibility qualification, the equivalent qualification must be recognized as such in the recruitment rules or Government order existing on or before the initiation of recruitment process. In the present case, this process was initiated through advertisement inviting application which did

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A not indicate that equivalent or higher qualification holders were eligible to apply nor the equivalent qualifications were reflected in the recruitment rules or Government Orders of the relevant time.

B 11. For the aforesaid reasons, in our view the Division Bench erred in interfering with the judgment of the learned Single Judge who had correctly allowed the writ petitions filed against the result declared by the Commission on the basis of State Government's letter dated 06.01.2010. The impugned judgment under appeal is, therefore, set aside and the judgment and order of the learned Single Judge is restored. That should be complied forthwith. The appeals are accordingly allowed but without any order as to costs.

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Kalpana K. Tripathy

Appeals allowed.