

RAM KUMAR AND OTHERS v. STATE OF HARYANA AND OTHERS (*K. Kannan, J.*) 57

Before K. Kannan, J.

RAM KUMAR AND OTHERS—Petitioner

versus

STATE OF HARYANA AND OTHERS—Respondents

CWP No. 17547 of 2000

January 8, 2014

Constitution of India, 1950 - Arts. 14 and 16 - Haryana State Education School Cadre (Group C) Service Rules, 1998 - Rl. 6 - Punjab Education Service Class-III (School Cadre) Rules, 1955 - Appointment - Merit list - Petitioners challenged selection of teachers made from State Merit List discarding district-wise Merit List for respective vacancies in each District - Held, that merit list has to be at State level and constitution of district-wise selection Committee or receipt of district-wise applications may be permissible but selection cannot be on a district-wise merit.

Held, that the issue of whether the selection to each district could be made making the domicile in the particular district as a relevant criterion, the Full Bench of this Court considered the same in the context of Punjab Panchayati Raj Primary Teachers Recruitment of Conditions of Service Rules of 2006 in *Abhishek Rishi v. State of Punjab and others-2013(3) SCT 1*. The Full Bench ruled that the qualification laid down in the notifications restricting the eligibility on the basis of domicile and residence was unconstitutional and fell foul of Article 16(3). The Bench cautioned that it was the State which was constitutionally and statutorily bound to provide education cannot make public appointment *de hors* the constitutional mandates of Articles 14 and 16. Taking up the issue of whether appointment to the post of ETT teachers through district-wise recruitment was justified, the court held that the district-wise recruitment would be legally bad and not supported by the rules. Even an advertisement calling applications district-wise was constitutionally impermissible and there was no place for inter-district discrimination. The emphatic pronouncement of this court is that application for a district cadre appointment, the selection cannot be on district-wise merit. The

constitution of district-wise Selection Committee or receipt of district-wise application forms may be permissible but a restriction of applications only for candidates belonging to that particular district will bring in a preference on the basis of residence and allow for a lopsided selection of varying merit criterion for each district which will be arbitrary. The merit list has to be at the State level and at best, the allocation of seats to various districts for filling up the district cadre posts, the selection authority may take preferences of candidates belonging to the particular district or nearby places as relevant for their postings. Beyond this level, there can be no constitutionally permissible district preference in the manner of selection.

(Para 10)

D.S. Patwalia, Advocate, *for the petitioners* in C.W.P. Nos. 16924 of 2000 and 4001 of 2001.

H.N. Khanduja, Advocate, *for the petitioners* in C.W.P. Nos.17545, 17547, 17556 of 2000 and 672 of 2003.

Sanjiv Gupta, Advocate, *for the petitioners* in C.W.P. Nos. 14025, 17196 of 2001.

Navneet Singh, Advocate *for the petitioners* in C.W.P. Nos.17428 of 2000 and 1236 of 2001.

Mahavir Sandhu, Advocate *for the petitioners* in C.W.P. No. 3187 of 2001.

Shakti Singh, Advocate for S.N. Yadav, Advocate *for the petitioners* in C.W.P. No.17980 of 2000.

Surinder Mohan Sharma, Advocate *for the petitioners* in C.W.P. No.16675 of 2000.

N.D. Kalra, Advocate *for the petitioners* in C.W.P. No.14863 of 2000.

I.D. Singla, Advocate, *for the petitioners* in C.W.P. Nos.17260, 17263 of 2000; 1145 of 2001.

K.L. Dhingra, Advocate, *for the petitioners* in C.W.P. Nos.14999, 14859, 15560 of 2000; and 3406, 1927 of 2001.

Tara Chand Dhanwal, Advocate, *for the petitioners* in C.W.P. Nos. 2673 and 3958 of 2001.

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Shish Pal Laler, Advocate and Ravinder Malik Ravi, Advocate *for the petitioners* in C.W.P. No.15414 of 2001.

Madan Pal, Advocate for respondent No.7 in C.W.P. No.16353 of 2000.

G.K. Chatrath, Senior Advocate with Ms. Alka Chatrath, Advocate, *for petitioners* in C.W.P. No.16485 of 2000.

Ravi Verma, Advocate, *for the petitioners* in C.W.P. Nos.16353, 17815, 17958 of 2000 and 10615 of 2001.

Jai Vir Yadav, Advocate, *for the petitioners* in C.W.P. No.16519 of 2000.

Rakesh Sobti, Advocate, and Ms. Harmanpreet Kaur, Advocate, *for the petitioners* in C.W.P. Nos.16290, 16542, 16645 and 16918 of 2000.

D.D. Gupta, Additional Advocate General, Haryana.

K. KANNAN, J.

(1) This batch of writ petitions concern the advertisement in selection of teachers in the following categories:

Hindi, Punjabi and Sanskrit as subjects and PTI and Art & Craft teachers.

(2) The batch of writ petitions contained a challenge to the selection to the posts on the ground that the selection was made from a State merit list pooling all the candidates interviewed in various districts *en bloc* discarding district-wise merit list for the respective vacancies in each district. This, according to the petitioners, constitute an infraction of the relevant rules that stipulate the posts as belonging to the district cadre and the appointing authority as DEO. The State of Haryana has framed rules called, the Haryana State Education School School Cadre (Group C) Service Rules, 1998 (for short, the 1998 Rules) that has come into force after the publication of official gazette on 29.01.1998. Prior to the issuance of these rules, the selection had been governed by the Punjab Education Service Class III (School Cadre) Rules, 1955. Rule 6 of the 1998 Rules provided for appointment to the posts were to be made by the respective District Education Officer of the concerned district. The

advertisement issued, contained a condition at serial No.12 that candidates submitting more than one application at one or more places will be declared disqualified. As far as PTI teachers, they would, therefore, contend that the State had committed an error in advertising 622 posts with the State as a whole. A similar challenge is mounted for the other categories also. According to them, since the number of posts in each district ought to have been given in the advertisement which was not given, the number of posts existing on the last date fixed for the receipt of applications ought to be taken as the number of posts for which the selection was required to be made.

(3) The advertisement specified the category of posts mentioned in the advertisement for various classes of persons like general, SC, BC, ESM and PH. It is not necessary for us to go into the details but this is merely to set forth for the consideration to the fact that there had been appropriate posts reserved for the scheduled castes and backward candidates. To paraphrase all the objections coming through various writ petitions:-

- (i) Since the cadre was district-wise, the selection must have been also at the district level and a State-wise selection list prepared was erroneous;
- (ii) The Selection Committee was comprised of 5 members, namely, of the District Education Officer, Deputy District Education Officer, Principal, Lecturer and Subject expert for each district. The Chairman of the State level Interview Committee had died before the declaration of results. There was no new composition of the Committee and the list released was, therefore, vitiated as the person competent to authorize the approved list was not alive on the date when the results were announced;
- (iii) There were 11 persons with the same roll numbers, who had been appointed;
- (iv) Timing granted for the candidates was less than a minute and it is anybody's guess as to how any objective

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assessment of talent of the persons could have been made;

- (v) The selection was also affected by bias inasmuch as the Selection Committee of Hisar District was headed by the District Education Officer S.P. Chaudhary and his son Pawan Kumar having Roll No.10977 had applied in BC-B category, while his daughter Sunita having Roll No.11400 had applied in general category.

(4) The respondents have filed written statement through the District Education Officer Shri S.P. Chaudhary. The respondents would explain that the selection criteria had been so framed as giving the maximum emphasis on academic merit. 70% marks had been allotted for academic qualification with weightage of 5% for still higher qualification. 5% weightage for experience and only 20 marks had been kept for the interview. The contention was, therefore, the element of subjectivity at the interview was kept to the minimum. Explaining that the State level merit list was most appropriate to avoid discrimination with meritorious candidates in one district, the justification was that it was strictly in accordance with Articles 14 and 16 of the Constitution. Referring to the contention of personal bias and the allegations that the son and daughter of the Chairman had applied in various categories, the respondents would state that the son Pawan Kumar had applied only in general category under Roll No.10977 and the daughter Sunita had also applied as a general category candidate. Their selection itself was considered on the basis of the decision of the High Court in CWP No.18201 of 1999. He would also claim that he had not been sitting in the process of selection/interview when his son and daughter had appeared and in his absence one Shri Rajinder Singh, senior member of the Committee was the Head of the Interview Committee. Joining issues on the mistakes in roll numbers given to the candidates and the repetition of the same numbers to several candidates, the answer is that the mistake was rectified and separate roll numbers had been later assigned.

(5) The counsel for the petitioners at the time of arguments also mentioned that the entire selection of PTI teachers was made about the

same time when the selection process for JBT teachers was made. The Supreme Court had appointed CBI for investigation and they had reported that the selection process was vitiated and a criminal court verdict convicting the former Chief Minister and his son vindicated the claim of political interference in the selection. The present selection was similarly vitiated although not vouched by similar investigations.

(6) To take the last point stated above for immediate consideration, I must observe that all the writ petitions were filed immediately after the selection had been announced in the year 2000. Apart from the specific objections which I have referred to above, the general arguments of the political interference and nepotism do not find place in the writ petitions. If there was even the slightest hint about it, the petitioners themselves ought to have moved the court for appropriate direction and secured details of any level of interference that had vitiated the selection process. The result that has obtained through CBI enquiry for JBT teachers cannot simply be assumed as having visited the selection process for PTI teachers as well. I would, therefore, reject the plea that the entire selection process was vitiated by political interference.

(7) The discrepancy in the roll numbers as several candidates being assigned the same roll numbers cannot also be a matter for complaint at the instance of the petitioners. There is no one among the petitioners who would claim that he had also been assigned the same roll number as a selected candidate and, therefore, there was some confusion. The respondents have admitted to discrepancy at some level when the same roll numbers had been assigned to more than one candidate but it is only stated by them that the mistake was sorted out and the ultimate selection was made identifying the particular candidates who had been selected. If amongst the selected candidates, there is no confusion and the petitioners cannot elicit any particular detail of anyone selected candidate, who was not qualified or who had not obtained the minimum benchmark for selection, I cannot take the discrepancy in the roll numbers as giving any specific reasons for the petitioners to challenge the selection. I would, therefore, reject this contention as well. The contention by the petitioners that the interview was an eyewash and more

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than 300 candidates were interviewed in less than 1½ hours was an argument that was placed in court with no particular details in the writ petitions. The marks assigned in the interview had been limited only to 20% and, therefore, I cannot see this as making possible a big dent in the ultimate result. In situations where prodigious unemployment status exists with large number of candidates vying in stiff competition for limited number of posts, it is inevitable that the time slot for each candidate is limited. It is only for this reason that it is seen desirable that the element of subjectivity is minimized if not fully eliminated, by limiting the marks reserved for interview. Indeed the extent of interference by courts for assessment made at the interview itself is exceedingly limited and unless there is something very serious brought out at the interview, there is no scope for making any intervention. The element of bias in favour of some candidates of the Chairman of the Selection Committee has also been explained by the reply stating that he had recused himself at the relevant time. It may not seem like sufficient consolation for the non-selected candidates, but to the benefit of the selected candidates, it must be stated that it is not folly of the candidates that their own parent was the Chairman of the Selection Committee. Such like instances are bound to happen and the candidates have to cope with certain uneven field now and then.

(8) In *Sadananda Halo and others v. Momtaz Ali Sheikh and others(1)*, the Supreme Court was considering the challenge to public appointment where thousands of candidates were involved in the selection process. Interfering with an observation of the High Court that on any one day not more than 225 candidates shall not be interviewed, the Supreme Court held that such benchmark could not be fixed generally and a roving enquiry on factual aspects where thousand of candidates were involved cannot be made. The Supreme Court was interfering with the sample survey made by the High Court on some unqualified participation of the selected candidates in the proceedings and held that microscopic investigation was not permissible. The court's reliance on its own investigative process was disapproved by the Supreme Court.

(1) (2008) 3 SCC 619

Even a plea that the selection of candidates was not done objectively and they were not tested appropriately, the Supreme Court held, it shall not be brought as objections through writ petitions.

(9) There was also no objection made that the Chairman of the Selection Committee had died before the selection results were announced. I do not find any specific contention raised in the petitions though the point was argued before me. I assume that it cannot vitiate the selection process itself and if at all, it could have been only an issue of some irregularity that will not go to the core of the validity of the selection process itself.

(10) The most potent objection, however, ought to be that the posts were of the district cadre and the selection must have been restricted for each district to correspond to the number of vacancies. The issue of whether the selection to each district could be made making the domicile in the particular district as a relevant criterion, the Full Bench of this Court considered the same in the context of Punjab Panchayati Raj Primary Teachers Recruitment of Conditions of Service Rules of 2006 in *Abhishek Rishi v. State of Punjab and others*(2). The Full Bench was considering whether the condition in the rules or in advertisement that the applicants should be domiciled of State of Punjab or Union Territory of Chandigarh was legal and valid and whether reservation to the extent of 70% of the posts amongst those candidates who have passed from JBT teachers training course or elementary teachers training course from Punjab was sustainable. The Full Bench ruled that the qualification laid down in the notifications restricting the eligibility on the basis of domicile and residence was unconstitutional and fell foul of Article 16(3). The Bench cautioned that it was the State which was constitutionally and statutorily bound to provide education cannot make public appointment *de hors* the constitutional mandates of Articles 14 and 16. Taking up the issue of whether appointment to the post of ETT teachers through district-wise recruitment was justified, the court held that the district-wise recruitment would be legally bad and not supported by the

(2) 2013(3) SCT 1

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rules. Even an advertisement calling applications district-wise was constitutionally impermissible and there was no place for inter-district discrimination. This judgment has considered all the decisions of the Supreme Court commencing from *A. Periakaruppan v. State of Tamil Nadu and others*(3) and I do not feel constrained to reproduce all of them in view of the emphatic pronouncement of this court that application for a district cadre appointment, the selection cannot be on district-wise merit. The constitution of district-wise Selection Committee or receipt of district-wise application forms may be permissible but a restriction of applications only for candidates belonging to that particular district will bring in a preference on the basis of residence and allow for a lopsided selection of varying merit criterion for each district which will be arbitrary. The merit list has to be at the State level and at best, the allocation of seats to various districts for filling up the district cadre posts, the selection authority may take preferences of candidates belonging to the particular district or nearby places as relevant for their postings. Beyond this level, there can be no constitutionally permissible district preference in the manner of selection.

(11) Under the circumstances, I will not find any reason to uphold the contention of the petitioners on any of the grounds urged in the writ petitions. All the writ petitions would, therefore, require to be dismissed and, accordingly, dismissed.

A. Jain