

**SUPREME COURT OF INDIA**

Madan Mohan Sharma

Vs.

State of Rajasthan

C.A.No.1506 of 2008

(A.K.Mathur and Altamas Kabir JJ.)

22.02.2008

**JUDGMENT**

**A.K. Mathur, J.**

1. Leave granted.

2. This appeal is directed against the order dated 19.12.2005 passed by the Division Bench of the Rajasthan High Court whereby the Division Bench of the Rajasthan High Court has disposed of the appeal with the following direction.

“(i) We direct the State Government to forthwith constitute a Committee headed by the Chief Secretary to examine as to whether vacancies of Teacher Grade III pursuant to advertisement No, 1/96 still exist and whether after the judgment dated February 12, 2001 of learned Single Judge any appointment on the post of Teacher Grade III was given by giving relaxation under Rule 296 of 1996 Rules.

(ii) Any appointment so given under Rule 296, which was struck down, shall be subject to enquiry.

(iii) The meritorious persons included in the select list drawn in pursuance of advertisement No.1/96 shall be considered for appointment on the basis of their merit against the vacant posts of Teacher Grade III.

(iv) The appellants MMS and DKS (Appeal No.76/2001) who have served nearly six years as Teacher Grade III and have become overage by now, shall be reconsidered on the basis of their merit in secondary examination and till final decision is arrived at, they shall be allowed to work on the post of Teacher Grade II and their services shall not be terminated.”

3. Brief facts which are necessary for disposal of this appeal are that the vacancies in the posts of Teacher Grade III were advertised by the Zilla Parishad Sawai Madhopur on 25.5.1996 on the basis of the circular dated 24.7.1995 issued by the State Government in exercise of powers under Rule 17(2) of the Rajasthan Panchayat Samitis and Zila Parishad (Service) Rules, 1959 (hereinafter to be referred to as the Rules of 1959). The last date for submission of application and documents in support of eligibility and merit was fixed as 17.6.1996. The selection circular dated 24.7.1995 lay down that the selection shall be made on the basis of the marks secured by the candidates in Secondary Examination and B.Ed./ Basic School Training Course (BSTC) for preparation of the merit list for appointment of Teacher Grade III. Thereafter, on 20.7.1996 another circular was issued by the State Government whereby the earlier criteria for determination of merit for appointment of Teacher Grade III was superseded and revised criteria was prescribed and the basis for assessment of merit was the marks obtained in the Higher Secondary Examination and B.Ed./ BSTC course and the last date for submission of application and other relevant documents in support of eligibility and merit for selection of appointment as Teacher Grade III was extended up to 30.10.1996. Thereafter, it was further extended up to 20.12.1996. On 30.12.1996 Rajasthan Panchayati Raj Rules, 1996 (hereinafter to be referred to as the Rules of 1996) were notified. Rule 266 of the Rules of 1996 provided that Senior Secondary with BSTC course shall be the minimum qualification for appointment of Primary Teachers. A writ petition being S.B.C.W. No.147 of 1997, *Radhey Shyam Sharma & Anr. V. State of Rajasthan* was filed which was allowed by learned Single Judge of the High Court of Rajasthan on 6.11.1996. Learned Single Judge held that the criteria on the date of issuance of advertisement was to be followed and the State Government was directed to consider the merit of the candidates in view of the circular dated 24.7.1995 i.e. Secondary Examination with B.Ed./ BSTC was considered the basis for selection. Thereafter, four special appeals were filed against the order of the learned Single Judge. Out of the four special appeals, one was filed by the State of Rajasthan i.e. State of Rajasthan v. Radhey Shyam Sharma and another appeal as filed by Dharmendra Kumar Sharma and Madan Mohan Sharma, the appellants before us. Thereafter, a request was made that the special appeals be allowed to be withdrawn. Learned Division Bench of the High Court permitted the writ petitions to be withdrawn and as a result of the withdrawal of the writ petitions, order dated 6.11.1997 was declared as "no longer stands". Thereafter, the selection process commenced on the basis of the circular dated 24.7.1995 and the merit list was prepared on the basis of the Secondary Education qualification. Aggrieved against this, Madan Mohan Sharma and Dharmendra Kumar Sharma (appellants) filed another writ petition being S.B.C.W.P.No.1771 of 1999 challenging the lowering down the eligibility criteria of Higher Secondary Education to the Secondary Education. During the pendency of the writ petition, the State of Rajasthan issued another circular on 12.3.1999 whereby a decision was taken invoking Rule 296 of the Rules of 1996 to appoint Shri Madan Mohan Sharma and Shri Dharmendra Kumar Sharma relaxing the educational qualification. Meanwhile, selection process had been completed and merit list was prepared in terms of the circular dated 24.7.1995 and in the month of September, 1999 appointment of 232 candidates was made out of the merit list prepared in terms of Rules 274 of the Rules of 1996. According to the State, after making the selection of 233 candidates only 93 posts were available which were to be filled up in terms of the circular dated

20.7.1996. Meanwhile, on 6.12.1999 the State Government in exercise of their discretionary power for relaxation of educational qualification under Rule 296 of the Rules of 1996 issued directions to appoint both Madan Mohan Sharma and Dharmendra Kumar Sharma in Panchayat Samiti Todabhim District Karauli vide order dated 6.1.2000 and 11.1.2006 on the post of Teacher Grade III. After appointment of these two persons namely, Madan Mohan Sharma and Dharmendra Kumar Sharma a spate of writ petitions followed before the learned Single Judge. The said writ petitions came to be disposed of by the learned Single Judge of the High Court on 12.2.2001. Learned Single Judge struck down Rule 296 of the Rules of 1996 being ultra virus and unconstitutional conferring unbridled powers upon the executive and the appointment of both the candidates i.e. Madan Mohan Sharma and Dharmendra Kumar Sharma was set aside. Learned Single Judge in his order dated 12.2.2001 observed as follows:

“More so, as fresh advertisement has been issued in 1998 and appointments have been made in pursuance thereof, question of filling up the vacancies in pursuance of Advertisement 1/96 does not arise.”

4. Aggrieved against this order appeal was filed by both the present appellants challenging the order of the learned Single Judge. Learned Division Bench after considering the arguments from various angles found that Rule 296 of the Rules of 1996 which gives power to the State Government for relaxation and which has been struck down by learned Single Judge as correct and if it was allowed to continue this would give unfettered power to the executive to make appointment in picking and choosing candidates from the bottom of the merit list ignoring a large number of candidates over and above them. It was further observed that the said rule was rightly declared unconstitutional and invalid by learned Single Judge. The Division Bench concluded by making the following observations:

“21. We ourselves have scanned Rule 296 of 1996 Rules and we find that it gives unfettered powers to the Executive to relax the eligibility criteria including the qualification, age and experience. It enables the Executive to make appointment by pick and choose of the candidates from the bottom of merit list ignoring the claim of large number of candidates over and above them. In our opinion, the said rule was rightly declared ultra vires and unconstitutional by the learned Single Judge. Since the appointment of MMS and DKS was made under the discretionary power provided by Rule 296 in our opinion, it was rightly set aside by the learned Single Judge. ”

5. Thereafter, looking to the period of six years of service of Madan Mohan Sharma and Dharmendra Kumar Sharma and having found them to be suitable on the basis of Higher Secondary Grade on account of which they were selected earlier, the Division Bench issued

directions as aforesaid. Aggrieved against this order the present appeal has been filed by the appellants.

6. We have heard learned counsel for the parties and perused the records. Mr.M.R. Calla, learned senior counsel appearing for the appellants has strenuously urged that during the pendency of the selection process, the eligibility criteria was changed and the date for submission of the application in pursuance to the advertisement was extended and Rule 266 of the Rules of 1996 came into being on 30.12.1996 whereby it was provided that Higher Secondary Examination shall be the criteria for preparing the merit list. As such, as per the service rules, the selection should have been made on the basis of Higher Secondary Examination marks and not on the basis of Secondary Examination marks. We regret this cannot be accepted. Once the advertisement had been issued on the basis of the circular obtaining at that particular time, the effect would be that the selection process should continue on the basis of the criteria which were laid down and it cannot be on the basis of the criteria which have been made subsequently. As per the circular which was obtaining at the time when the advertisement was issued was dt. 4.7.1995, the criteria for selection to the post of Teacher Grade III was Secondary Examination though this was changed during the pendency of the advertisement. Subsequent amendment of the Rules which was prospective cannot be made retrospective so as to make the selection on the basis of the Rules which were subsequently amended. If this was to be done, then the only course open was to recall the advertisement No.1/1996 and to issue fresh advertisement according to the Rules which had come into force. Secondly, this was not done and erroneously the authorities made the amended Rules applicable and proceeded with the selection which resulted into litigation and ultimately Radhey Shyam Sharma succeeded in that litigation and it was held that the selection should be made as per Secondary Examination marks, the criteria which were prevalent at the time when the advertisement was issued. Thereafter looking to the hardship the Government invoked the power of relaxation under Rule 296 of the Rules of 1996 and order of appointment was issued in favor of both the appellants. These again resulted into litigation and ultimately, in that litigation, Rule 296 of the Rules of 1996 was struck down being ultra vires and consequently, the appointment of both the appellants were set aside. The Division Bench of the High Court looking to the hardship of the candidates issued the direction as aforesaid. The question is once Rule 296 of the Rules of 1996 conferring the power to the State to relax the qualification is struck down then the appointment of both these candidates cannot survive and this has been down by the Division Bench of the High Court and rightly so. We fail to understand that where was the need for a Committee headed by the Chief Secretary of the State to examine the matter. Once the power of relaxation of eligibility criteria conferred on the State under Rule 296 has been struck down by the learned Single Judge and the same having been upheld by the Division Bench of the High Court cannot be sustained as the said Rule 296 has already been struck down. Once the rule has been struck down the effect would be that it stood in the statute book. The posts were again advertised in 1998 and the selection has already been undertaken, therefore, the earlier selection pursuant to Advertisement No.1/1996 is over and whatever the posts which have been left over and could not be filled up after fresh selection is undertaken. Whatever posts were left over will automatically be included in 1998 selection. It will be futile exercise to

constitute a committee headed by the Chief Secretary to examine as to whether vacancies of teacher Grade III pursuant to advertisement No.1/1996 still exists and whether after the judgment of learned Single Judge any appointment on the post of Teacher Grade III was given by relaxing the educational qualification under Rule 296. We think that direction issued by the Division Bench of the High Court was totally unwarranted. Once the Division Bench has found that the earlier selection pursuant to Advertisement No.1/1996 is valid. The Division Bench should have stopped there. Therefore, under these circumstances, we are of opinion that the direction given by the Division Bench of the High Court in paragraph 26 of the judgment is totally unwarranted and the selection which had taken place on the basis of the advertisement No.1 of 1996 on the basis of the circular dated 24.7.1995 was correct. The eligibility criteria for appointment of Teacher Grade III as Secondary Examination were correctly taken into consideration for selection. The relaxation granted to these two appellants cannot be availed of by them as Rule 296 of the Rules of 1996 has already been held ultra virus by learned Single Judge which has been upheld by the Division Bench of the High Court.

7. As a result of above discussions, we do not find any merit in this appeal and the same dismissed with no order as to costs. However, these two appellants who are already serving under orders of this Court, by this time they have become over-aged. In case in future any selection for the post of Teacher Grade III is undertaken, these appellants are allowed to apply for the same despite the fact that they have become over-aged. They are granted one more chance and the age bar will not come in their way to apply for future vacancy.