

SUPREME COURT OF INDIA

State of Jharkhand & Ors.

Vs.

Ashok Kumar Dangi & Ors.

C.A.No.8118-21 of 2010

(G.S.Singhvi and Chandramauli Kr.Prasad,JJ.,)

04.07.2011

JUDGMENT

Chandramauli Kr.Prasad,J.,

1. Appellants, the State of Jharkhand and its functionaries, aggrieved by the judgment and order dated 23rd December, 2005 of the Jharkhand High Court, passed in LPA No. 161 of 2004 and analogous appeals have preferred these appeals by leave of the Court.

2. Shorn of unnecessary details, facts giving rise to the present appeals are that the Governor of Jharkhand in exercise of the powers conferred by Article 309 of the Constitution of India framed Jharkhand Primary Teachers' Appointment Rules, 2002 (hereinafter referred to as the Rules) providing for appointment of teachers in Primary Schools. Rule 2(b) of the Rules defined 'Trained' which reads as follows:

"2. Definitions : -

x x x x x x

(b). 'Trained' means those persons who have received the following training from the recognized institution and has passed-

(i) Two years Teachers training, or

(ii) B.Ed/Dip. In Ed./Dip. In Teaching; and

(iii) C.P.Ed/Dip.P.Ed.

x x x x x x"

3. Rule 3 of the Rules conferred power to the Jharkhand Public Service Commission (hereinafter referred to as the 'Commission') to publish advertisement inviting applications

from citizens of India, who had passed Matriculation or its equivalent examination and trained as defined in Rule 2(b) of the Rules to fill up the posts of Primary School Teachers. In exercise of the power under Rule 3 of Rules, the Commission made advertisement on 24th August, 2002 inviting applications for filling up the vacancies of the teachers in the Government Primary Schools. The eligibility criteria prescribed in the advertisement reads as follows:

"The applicant must-

(a) be a Citizen of India;

(b) have passed Matric or equivalent examination; and

(c) possess two years teachers training or B.Ed./Dip. in Ed./Dip. in Teaching or C.P.Ed. or Dip.P.Ed." Rule 2(b) of the Rules was amended by Jharkhand Primary Schools Appointment Amendments Rules, 2003 published on 6th March, 2003, whereby the words `only for the physical trained teachers' were inserted after Rule 2(b)(iii) of the Rules. Rule 2(b) of the Rules after its amendment reads as follows:

2. Definitions:

x x x x x x

(b) "Trained" means those persons who have received the following training from the recognized institution and has passed: "(i) Two years Teachers training, or

(ii) B.Ed/Dip. In Ed./Dip. In Teaching; and

(iii)C.P.Ed/Dip.P.Ed. only for the Physical Trained Teachers. In the light of the aforesaid amendment in the Rules, the Commission published corrigendum dated 22nd April, 2003 and provided that the candidates having C.P.Ed./D.P.Ed. will be deemed eligible for appointment against vacancies for the post of Physical Trained Teachers only.

4. The Commission conducted the examination of the eligible candidates in which the writ petitioners appeared. Their results were not published and their candidature confined only to the posts of Physical Trained Teachers. Aggrieved by that, they filed writ petition before the Jharkhand High Court, inter alia, praying for issuance of a writ in the nature of mandamus commanding the State Government and its functionaries to consider their cases for appointment against the entire vacancies of Primary School Teachers and further for a direction not to restrict their candidature only to the vacant posts of Physical Trained Teachers.

5. The learned Single Judge by its judgment dated 2nd December, 2003 dismissed the writ petition, inter alia observing that the writ petitioners do not possess requisite qualifications

and hence; not entitled to be considered for appointments to the post of Primary School Teachers. While doing so, the learned Single Judge observed as follows:

"In the instant case, admittedly, Petitioners obtained physical training course which is required for the post of physical trained teacher. For being appointed as a primary teacher a candidate must possess qualification of a trained teacher i.e. B.Ed./Dip-in-Ed/Dip-in-Teach. In my considered opinion, therefore, petitioners do not possess requisite qualification for appointment on the post of Primary teacher"

6. Aggrieved by the same, writ petitioners preferred appeals and the Division Bench of the High Court by the impugned order dated 23rd December, 2005 disposed of the appeals with the following direction :

"(I) For the present the respondents shall make appointment of physical trained teachers at least on the 5% posts of the total vacancies of the primary teachers and the JPSC shall publish the pending results of such candidates whose results have not been published as yet without any further delay to the extent of the said number of vacancies within a period of one month from the date of receipt/production of a copy of this order/judgment.

(II) The State-respondents may come with a clear policy decision regarding the appointment against future vacancies and the cadre of physical trained teachers in the schools and their promotional avenue or any such allied matter.

(III) Since there is no separate cadre for the present and admittedly the physical trained teachers come within the cadre of primary school teachers, it is held that the appellants, and others, who possessed the eligibility, as required for appointments of physical trained teachers, are entitled for appointments as primary physical trained teachers and they are entitled to be considered for appointments to the extent of 5% of the total existing vacancies and to the extent of the reserved posts.

(IV) The physical trained candidates, who do not possess B.Ed./Dip-in-Ed/Dip-in-Teach or other equivalent primary teachers' training course certificate, have no right to put their claim for appointment against the posts which are meant for general subjects primary teachers and their right will be confined to the percentage of the ratio of the posts meant for them. However, after a fresh appointment as physical trained teachers, they may be treated as any other primary school teachers for the purpose of assignment of classes or for disciplinary conduct."

7. The High Court had given the direction to make appointment of Physical Trained candidates on 5% of the total vacancies of the Primary School Teachers taking into account the policy of the State of Bihar. It observed that Physical Trained Teachers and Primary School Teachers do not belong to different cadre and further the Government of Jharkhand has not framed any definite scheme or policy regarding number or ratio of the post of Physical Trained Teachers in the State. It also

observed that the State of Bihar had taken a policy decision for appointment of Physical Trained Teachers to the extent of 5% of the vacancies of the Primary School Teachers and said policy existing prior to the date of re-organisation of the States has not been modified nor any other policy decision has been taken by the State of Jharkhand.

8. Mr. Gopal Prasad, learned Counsel for the appellants submits that percentage of posts to be filled by the Physical Trained candidates is a matter of policy and the High Court erred in directing the appellants to fill-up 5% vacancies of Primary School Teachers by Physical Trained Candidates. He points out that Rule 16 of the Rules has repealed Bihar Primary School Teacher Appointment Rules, 1991 and Bihar Primary School Teachers Amendment Appointment Rules, 1993 or any other Act or Rules framed by the Government of Bihar in its application to the State of Jharkhand. Accordingly, he submits that reliance on so-called policy decision of the State of Bihar is absolutely misplaced and the High Court erred in relying on the said policy decision.

9. Mr. Ajay Kumar, learned Counsel appearing on behalf of the respondents, however, submits that every school needs a Physical Trained Teacher and the State of Jharkhand having no policy in regard thereto, the High Court did not err in giving direction to fill-up 5% vacancies of the Primary School Teachers by Physical Trained Candidates. According to him, nothing prevents this Court to issue mandamus directing framing of policy. He relied on the judgment of this Court in *Comptroller and Auditor-General of India, Gian Prakash, New Delhi and Anr. Vs. K.S. Jagannathan & Anr¹*, to support his contention. In this case, it has been held as follows:

"20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case, a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

10. Mr. Kumar further points out that the Policy of the State of Bihar so far as it relates to appointment of Physical Trained Teachers, would not eclipse by Rule 16 of the Rules. In support of the submission, reliance has been placed on a decision of this Court in *State of Punjab & Ors. Vs. Balbir Singh & Ors²*, which reads as follows:

"...In our judgment, when there is no change of sovereignty of a particular State and it is merely an adjustment of territories by the re-organisation of a particular State, the administrative orders made by the Government of the erstwhile State continue to be in force and effective and binding on the successor State unless and until they are modified, changed or repudiated by the governments of the successor States."

11. We have bestowed our consideration to the rival submissions and find substance in the submission of the learned Counsel for the appellants. The High Court has found that the Government of Jharkhand, till date, had not framed any policy regarding the number of posts to be filled by Physical Trained Candidates. How many posts of Primary School Teachers be filled up by Physical Trained candidates, in our opinion, is essentially a question of policy for the State to decide. In framing of the policy, various inputs are required and it is neither desirable nor advisable for a Court of law to direct or summarise the Government to adopt a particular policy which it deems fit or proper. It is well settled that the State Government must have liberty and freedom in framing policy. Further, it also cannot be denied that the courts are ill-equipped to deal with competing claims and conflicting interests. Often, the Courts do not have satisfactory and effective means to decide which alternative, out of the many competing ones, is the best in the circumstances of the case. One may contend that providing primary education to the children is essential for the development of the country. Whereas others argue that physical training of the children in the Primary School is must as that would make the nation healthy. As in the present case, the candidates trained in teaching claim that the posts of Primary School Teachers be filled by them and Physical Trained Candidates be considered for Physical Trained Teachers only as they in absence of any training in education not equipped to teach in Primary Schools, whereas Physical Trained Teachers contend that they should be considered for appointment against both the posts. These, competing claims, in our opinion, need to be addressed by the policy makers. Further, we do not have the statistics as regards to the number of Primary Schools, the resources which the Government can spend for providing Physical Trained Teachers and their need. In such a situation, any direction in matters of policy is uncalled for.

12. As observed earlier, the High Court itself has found that there is no policy in regard to the number of posts of teachers to be filled by the Physical Trained Candidates in the State of Jharkhand. The Act and the Rules governing appointment in the State of Bihar do not govern appointment in the State of Jharkhand and those have specifically been repealed by Rule 16 of the Rules. Further, the need of the two States may not be identical and it was therefore necessary for the State of Jharkhand to frame a policy in this regard. In the face of it, we are of the opinion that the High Court erred in relying on the policy of the State of Bihar and directing for filling up 5% posts of the Primary School Teachers by Physical Trained Candidates.

13. Now we revert to the decision of this Court in the case of Comptroller and Auditor-General (supra) relied on by the respondents. In the said case while considering the power under Article 226 of the Constitution this Court has held that a mandamus can be issued

where the Government or a public authority has failed to exercise or wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision. It has further been observed that in order to compel the performance of a public duty the court may itself pass an order/direction. Here, in the present case, neither any statute or rule or the policy of the State of Jharkhand provide for filling up certain percentage of the posts of Primary School Teachers by candidates trained in physical education. Any direction to the State Government to make appointment of Physical Trained Candidates as Primary School Teachers do not flow from any of the rules or the policy of the State and as such the direction to make reservation in their favour would tantamount to framing a policy and cannot be said to be failure to exercise the discretion vested in the State Government. In the case of Balbir Singh (supra) relied on by the respondents this Court has observed that after the reorganization of the State the administrative orders made by the Government of the erstwhile State continue to be in force and binding on the successor State but while observing so this Court has made it clear that the same shall be binding "until they are modified, changed or repudiated by the Government of the successor State". As stated earlier rule 16 of the Rules had specifically repealed the Act and the Rules governing appointment of Primary School Teachers in the State of Bihar and it has been observed that those shall not govern appointments in the State of Jharkhand. In the face of it the decision relied on in the case of Balibir Singh (supra) is clearly distinguishable.

14. Respondents contend that amendment of Rule 2 (b) (iii) of the Rules by notification dated 6th of March, 2003 shall not apply to the appointment in question as the process of appointment commenced, by inviting application prior to that date, on 24th of August, 2002. It has been pointed out that the rights and benefits already acquired under the Rules prior to amendment cannot be taken away by amendment of the Rules. It is emphasized that the respondents acquired vested right of being considered and their rights crystallized on the date of publication of the advertisement. It has further been submitted that since process of the appointment commenced with advertisement which being an integral part of appointment same would come to an end on declaration of result and the consequential appointment, hence the candidates are required to be considered on the basis of the eligibility criteria initially provided in the Rules and the advertisement. In support of the submission, reliance has been placed on a large number of decisions of this Court; viz., *A.A. Calton v. Director of Education*³ *N.T. Devin Katti v. Karnataka PSC*⁵ *Gopal Krushna Rath v. M.A.A. Baig*⁴ and *Maharaja Chintamani Saran Nath Sahdeo v. State of Bihar*⁶

15. We do not find any substance in the submission of the Counsel of the respondents. It is relevant here to state that at no point of time the writ petitioners had challenged the amendment of Rules which provided that the Physical Trained Candidates shall be eligible only for the appointment to the Physical Trained Teachers as also corrigendum issued by the Commission confining their eligibility for the Physical Trained Teachers only. Their prayers in the writ petition were as follows:

"It is, therefore, respectfully prayed that your Lordships may graciously be pleased to admit this case, issue notices to the Respondents and direct for the following reliefs :

[I] For issuance of an appropriate Writ in the nature of mandamus commanding upon the respondents to immediately and forthwith publish the result of these petitioners in view of the fact that in terms of Annexure-I, i.e. Advertisement dated 24.8.2002 all the Petitioners had applied for being appointed as a Primary School Teacher out of 9223 seats and 528 were shown vacant in the district of Jamtara but now simply because of the fact that they possess the qualification of physical trained teachers they have been kept on the ground that their appointment shall only be made for the vacant post of physical trained teachers in the district of Giridih and Lohardaga in non-existence;

[II] For an appropriate writ in the nature of mandamus commanding upon the respondents particularly, respondent No. 2, to consider the case of these Petitioners for being appointed as Primary Teachers as against the total vacancies of 9233 for which advertisement issued and for which the Petitioners had applied not to consider by restricting their candidature only in the four districts in the State of Jharkhand;

[III] For a further direction upon the respondents to immediately and forthwith appoint the Petitioners to the post of teachers of primary schools in view of the fact that the examinations had already been conducted on 27.5.2003 and both the Petitioners had prepared very well in the said examination; and [IV] For any other appropriate writ(s)/order(s)/direction(s) that Your Lordships may deem fit and proper for doing conscionable justice to the Petitioner in the facts and circumstance of the present case."

16. It is in the present appeals the writ petitioners, for the first time, have attempted to contend that amendment to Rule 2(b)(iii) made on 6th March, 2003, which inter alia provided that candidates having C.P.Ed or Dip.P.Ed shall be eligible for Physical Trained Teachers only cannot be applied retrospectively and their cases shall be governed by the un-amended Rules. It has been pointed out that the amendment has not been made with retrospective effect. We are not inclined to go into this question in the present appeal for the reason that in the light of the amendment in the Rules, Commission issued corrigendum and confined the candidature of persons holding qualification of C.P.Ed. or Dip. P.Ed., like the writ petitioners, to the posts of Physical Trained Teachers only. It conducted the examination on that basis and the writ petitioners without making any challenge to the same, participated in the selection process and appeared in the examination without any murmur. It is only after the result was published and their candidature not considered against the entire vacancy of the Primary School Teachers that they have chosen to file the writ petition with the relief aforesaid. Any direction to consider the candidature of the writ petitioners against the entire vacancy of Primary School Teachers would unsettle settled matter and shall result into chain reaction, affecting the appointment of a large number of persons.

17. Further in the case of *Rajasthan Public Service Commission vs. Chanan Ram*⁷ this Court held that Government has the right to make selection in accordance with the changed rules and make final recruitment. In the said case, it has been observed as follows:

"17.....The candidates who had appeared for the examination and passed the written examination had only legitimate expectation to be considered according to the rules then in vogue. The amended Rules had only prospective operation. The Government was entitled to conduct selection in accordance with the changed rules and make final recruitment. Obviously no candidate acquired any vested right against the State. Therefore, the State was entitled to withdraw the notification by which it had previously notified recruitment and to issue fresh notification in that regard on the basis of the amended Rules....."

In view of the aforesaid, it is inexpedient to consider the authorities relied on by the respondents in any detail. We are of the opinion that the High Court erred in directing the appellants to fill-up 5% vacancies of Primary School Teachers from Physical Trained Candidates. However, we deem it expedient that in case the appellants have not framed any policy, it should frame a policy before it initiates its next process of appointment.

18. In the result, we allow these appeals, set aside the impugned judgment and dismiss the writ petition without any order as to costs.

Judgment Referred.

¹(1986) 2 SCC 0679

²(1976) 3 SCC 0242

³(1983) 3 SCC 0033

⁴(1999) 1 SCC 0544

⁵(1990) 3 SCC 0157

⁶(1999) 8 SCC 0016

⁷(1998) 4 SCC 0202