

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 12061 of 2012 (O&M)

Date of decision : 23.2.2015

Dinesh Kumar

.. Petitioner

versus

The State of Haryana and others

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Jagbir Malik and Mr. Anand Bhardwaj, Advocates,
for the petitioner (s).

Mr. Gagandeep S. Wasu, Addl. Advocate General, Haryana.

Rajesh Bindal, J.

1. This order will dispose of bunch of writ petitions bearing CWP Nos. 12061 to 12072, 12364, 12503, 13067, 13144, 13881, 15127 and 15129 of 2012.
2. The issue involved in all the petitions is common, namely, the rejection of candidature of the petitioners for the post of JBT Teacher (Urdu) for District Mewat, being not eligible as per the advertisement.
3. The facts have been taken from CWP No. 12061 of 2012.
4. Learned counsel for the petitioner submitted that vide advertisement published in the newspapers on 3.3.2012 (Annexure P-1), applications were invited for filling up 544 posts of JBT Teachers (Urdu) for District Mewat in the Education Department, Haryana. The essential qualifications prescribed in the advertisement were Teacher Eligibility Test; passed 10+2 examination; JBT (D.Ed. Urdu) from Haryana Education Department or its equivalent from any State, Board or University and Two Years Junior Basic Training Course or Diploma in Education Training Course from Haryana Education Department with special training in child psychology and behaviour of child upto the age of 12 years. Knowledge of Urdu upto Matric Standard, was required.

5. It was further submitted by learned counsel for the petitioner that the petitioner being fully eligible having passed his Matriculation Examination with Urdu as additional subject from Board of School Education, Haryana (for short, 'the Board'), 10+2 Examination from the Board, Graduation from Maharshi Dayanand University, Rohtak, Diploma in Education from the Board and the Haryana Teacher Eligibility Test, applied for the post. Interview letter was issued to the petitioner on 11.4.2012, but the interviews were postponed. However on 13.6.2012, the petitioner was surprised on receiving a communication from the Commissioner, Gurgaon Division, Gurgaon, that on examination, it was found that the petitioner having not passed his Two Years D.Ed. (Urdu) Examination, was not eligible for the post, hence his application was rejected. Challenge has been made to the aforesaid communication.

6. Impugning the aforesaid communication, learned counsel for the petitioner submitted that as per the Haryana Primary Education (Group-C) District Cadre Service Rules, 1994 (for short, 'the 1994 Rules'), the qualifications prescribed for the post are Matriculation from the Board or its equivalent as recognised by the Board, two years Junior Basic Training Course or Diploma in Education Training Course from the Haryana Education Department or its equivalent recognised by the Haryana Government and knowledge of Hindi upto Matric Standard. The note appended to the 1994 Rules further prescribed that preference is to be given to the candidates who possess knowledge of Urdu upto Middle Standard for the posts of Junior Basic Trained Teachers for Mewat Area. The submission is that the petitioner fulfills the qualifications as prescribed in the 1994 Rules. On the basis of those qualifications as prescribed in the 1994 Rules, the petitioner could not be made ineligible.

7. It was further submitted that at the time when the petitioner had passed his Diploma in Education from the Board, no education was being imparted by the Board with the nomenclature as D.Ed (Urdu). While referring to the certificate of D.Ed of the petitioner (Annexure P-6) and the certificates (Annexures P-10 and P-11), pertaining to the selected candidates and the certificates of D.Ed. (Annexures P-12 and P-13), pertaining to the candidates, who had not been selected and Annexure R-III, certificate

produced by the State along with the reply pertaining to a selected candidate, learned counsel for the petitioner submitted that there is no difference either in the subjects or the nomenclature of the Diploma in any of the certificates. Nothing could be made out as to on what basis a candidate possessing the same certificate can be said to be eligible whereas the other candidate having similar certificate can be said to be not eligible.

8. Learned counsel for the petitioner further argued that the question papers required to be attempted by the candidates appearing in the examination of D.Ed. conducted by Maharshi Dayanand University, were same. There was no difference at all. While referring to the question papers (Annexures P-14 and P-15), placed on record it was submitted that there was no condition in any of the aforesaid question papers that any part thereof is to be attempted in Urdu. Vide interim order dated 6.10.2012 noticing the aforesaid contention raised by learned counsel for the petitioner, learned counsel for the State sought time for filing affidavit specifying the question paper for the students, who had passed D.Ed. Urdu Examination. In response thereof, affidavit was filed by Anurag Dhalia, Joint Director, Elementary Education, Haryana, Panchkula, dated 2.1.2013 stating therein that the basic qualification for admission to D.Ed course was 10+2. However, in the year 2009-10, the same was changed from 10+2 to Graduation and the conduct of examination of the D.Ed course was transferred from the Board to State Universities, which continued for the sessions 2009-10 and 2010-11. From the Session 2011-12 onwards the basic qualification required for D.Ed. course was again changed from Graduation to 10+2 and the conduct of examination was handed over to the Board. The question papers of 1st year and 2nd year D.Ed. course conducted in the years 2009 and 2010 by the Board are annexed as Annexure R-V and R-VI. It is sought to be explained that in the aforesaid question papers, the instructions were there that the students of Urdu shall attempt Part-A in Hindi and Part-B in Urdu.

9. Learned counsel for the petitioner further, while referring to a communication of Maharshi Dayanand University, Rohtak, dated 15.11.2012 (Annexure R-IV) with reference to the present petition, submitted that even the University clarified that question papers for D.Ed.

and D.Ed. (Urdu) students were common. In the syllabus, there was a note that Urdu knowing candidates will attempt Part-B of Paper-IV in 1st and 2nd year in Urdu language and Part-A in Hindi. But these instructions were not mentioned on the question papers. The candidates were required to go through the syllabus and scheme of the examination while attempting to questions. The answer sheets have been disposed of.

10. Further while referring to the stand taken by the respondents in the written statement, it was submitted that from the Session 2011-13, the syllabus for D.Ed. General Course and D.Ed. (Urdu) Course was changed. Thereafter, full-fledged paper of 'Pedagogy of Urdu Teaching' in 3rd Semester was introduced. From Sessions 2012-14 in D.Ed. (Urdu), a new paper of 'Proficiency in Urdu' (DE205) was introduced in 2nd Semester. Meaning thereby that there are different syllabi for D.Ed. Course and D.Ed. General Course from 2011 onwards. Prior to that the course for studies was same. The petitioner had passed his D.Ed. in the year 2010, hence, he was fully eligible.

11. It was further submitted that in the 1994 Rules, there is no post of JBT Teacher (Urdu), which was advertised. Hence, even the advertisement was contrary to the service Rules. Further it was argued that all the advertised posts were not filled.

12. On the other hand, learned counsel for the State did not dispute the fact that the 1994 Rules were applicable when the advertisement in question was issued. However, subsequently, vide notification dated 6.6.2012, the Mewat District School Education (Group-C) Service Rules, 2012 (for short, 'the 2012 Rules'), were framed. It was admitted that there was no post of JBT Teacher (Urdu) in the year 1994 Rules. He further did not dispute the fact that the qualifications prescribed in the advertisement were not in conformity with the 1994 Rules. However, he sought to explain the same while stating that it was a special drive to fill up the posts for Mewat Area where medium of instructions was Urdu.

13. Learned counsel for the State produced in Court certain certificates of D.Ed. showing nomenclature as Diploma in Education. However, he did not dispute the fact that there is no explanation available in the reply or otherwise as to how the candidates having same qualification,

as is evident from the certificates, Annexure P-6, P-10 to P-13 and R-III, were either made eligible or ineligible when the nomenclature of the Diploma and the subjects taught were identical. It is further not disputed that there was change in subjects for the course of D.Ed. (Urdu) from 2011 onwards as compared to D.Ed. General.

14. Learned counsel for the State further argued that the petitioners applied for the post seeing the qualifications laid down in the advertisement and sought to raise the issue only after their candidature was rejected being not eligible as per the advertisement. They are estopped. He did not dispute the fact that all the 544 posts advertised were not filled as only 75 candidates were selected.

15. Heard learned counsel for the parties and perused the paper book.

16. The Elementary Education Department Haryana invited applications for 544 posts of JBT Teachers (Urdu) for District Mewat. The last date for receipt of applications was 30.3.2012. The essential qualifications prescribed in the advertisement are as under:-

EDUCATIONAL QUALIFICATIONS:
JUNIOR BASIC TRAINING TEACHER

- (i) The candidate should have passed the Teacher Eligibility Test. The persons who have passed 10+2 Examination and have passed their JBT (D.Ed. Urdu) from Haryana Education Department or its equivalent from any State, Board or University and only the Certificate or Diploma given by above will be accepted.
- (ii) Passed Two Years Junior Basic Training Course or Diploma in Education Training Course from Haryana Education Department or its equivalent recognised by the Haryana Government with special training in child psychology and behaviour of child upto the age of 12 years.
- (iii) Knowledge of Urdu upto Matric Standard.
Professional Diploma or Certificate awarded by the

State Board or University other than Haryana Education Department will be recognised only if the Degree or Diploma or certificate has been recognised by the Haryana Government.”

17. As per the 1994 Rules, the qualifications prescribed for JBT Teacher are as under:-

Serial No.	Designation of posts	Academic qualification and experience, if any, for direct recruitment	Academic qualification and experience, if any, for appointment other than by direct recruitment
1.	2.	3.	4.
1.	Junior Basic Trained Teachers	(i) Matriculation from the Board of School Education, Haryana or its equivalent as recognised by the Board of School Education, Haryana and (ii) Passed two years Junior Basic Training Course or Diploma in Education Training Course from Haryana Education Department or its equivalent recognised by the Haryana Government. (iii) Knowledge of Urdu upto Matric Standard. Note – (i) Preference will be given to candidates who possess knowledge of Urdu upto Middle standard for such posts of Junior Basic Trained Teachers who may be required to teach Urdu or in Urdu (ii) In case of non-availability of Junior Basic Trained Teachers the candidates having higher qualifications such as B.A. or B.Sc B.Ed. may be considered for the posts of Junior Basic Trained Teachers but on selection such persons shall have no right to claim the benefit of any higher pay scales or salary other than the pay scales of Junior Basic Trained Teachers as the Government may fix from time to time simply on the basis of higher qualifications. In case any basic Trained Teacher requires higher qualification including B.A. or B.Sc., B.Ed. after selection or joining the service he or she shall not be allowed any higher pay scales or salary simply on the basis of acquisition of such qualification. The letter No. 5056-FR-II/57/5600, dated 23rd July, 1957, issued by the Finance Department of composites State of Punjab shall have no affect whatsoever. Note : Professional Training Diploma certificate awarded by any State Board or University other than Haryana Education Department will be recognised only if these Diploma or Certificate have been recognised by the Haryana Government.	xx xx

18. It is evident from the perusal of 1994 Rules that there is no post of JBT Teacher (Urdu) in the Rules. The qualification prescribed in the advertisement shows that the same are different than what has been prescribed in the 1994 Rules.

19. A candidate possessing the qualifications as prescribed in the 1994 Rules cannot be made ineligible for consideration in the process of selection. It is a different matter that on the basis of a criteria laid down, he

may or may not be selected.

20. As is claimed, the petitioners in the aforesaid writ petitions are possessing the qualification of 10+2. They have knowledge of Hindi upto Matric Standard and had passed Two Years Junior Basic Training Course. They have passed Matriculation Examination with Urdu as one of the subjects/ additional subject, hence, in terms of the provisions contained in the service rules applicable for the post, the petitioners are fully eligible. The service rules further provided that a candidate having knowledge of Urdu upto Middle standard shall be given preference for the post of JBT Teacher for Gurgaon and Faridabad cadres. It has been provided therein that such a candidate, if selected, shall serve in Mewat area only. The candidature of the petitioners in the present set of cases has been rejected only on the ground that they do not possess two years D.Ed (Urdu) qualification as prescribed in the advertisement. Once the aforesaid qualification has not been prescribed in the Rules as one of the essential qualification, the rejection of candidature of the petitioners on that ground cannot be sustained and they are entitled to be considered for appointment against the post of JBT Teachers.

21. Though aforesaid findings are sufficient for granting relief to the petitioners, however, still the other issues raised by them are also being touched.

22. The petitioner in the present case had raised an issue that he possess Diploma in Education passed from the Board. The nomenclature as mentioned on the certificate dated 7.9.2010 is Diploma in Education. Learned counsel for the petitioner has further referred to certificates, Annexures P-10 and P-11 issued by the Maharshi Dayanand University on 7.10.2010 and 2.3.2012, showing the nomenclature as Diploma in Education for 1st and 2nd year, respectively. The candidate, who possessed these certificates was declared eligible. The candidate, who possess similar certificates issued by Maharshi Dayanand University for the 1st and 2nd year examination of Diploma in Education held in 2010 and 2011, respectively was declared ineligible. A certificate has been produced on record by the respondents with the written statement as Annexure R-III issued by the Board where the candidate passed Two Years Course Diploma in Education

in June, 2010. He was declared eligible. The certificate produced by the petitioner for his qualification of D.Ed. (Diploma in Education) passed from the Board is identical as both had passed during the same year. Still the petitioner was declared ineligible but the candidate possessing certificate, Annexure R-III, was declared eligible. There was no explanation offered by the State for the same except that the candidates, who were studying in Government Elementary Teacher's Training Institute Ferozepur Namak (Mewat) was declared eligible.

23. A perusal of the aforesaid certificates clearly established that no certificate of Diploma in Education (Urdu) was being issued by the Board or the University. The subjects being taught were same. A clarification was received from the Maharshi Dayanand University vide letter 15.11.2012 (Annexure R-IV), with reference to the issue raised in the present petitions. Though it is claimed that as per the syllabus/ scheme of examination of D.Ed. Course, the students knowing Urdu had to attempt Part-B of Paper-IV in 1st and 2nd year in Urdu language and Part-A in Hindi. It was admitted in the aforesaid clarification that these instructions are not mentioned on the question papers. The students had to be aware of themselves. Further as is admitted by the respondents in the written statement filed on behalf of respondent nos. 1 to 3 by R. P. Yadav, Joint Director, office of Elementary Education Haryana, Panchkula, dated 24.9.2012 that for the Session 2011-13, the syllabus for D.Ed. General and D.Ed. Urdu had been changed. A full-fledged paper of 'Pedagogy of Urdu Teaching' in 3rd Semester was introduced. The aforesaid paper was compulsory for the students pursuing D.Ed. From Sessions 2012-14 onwards, a new paper of 'Proficiency in Urdu' (DE205) was introduced in 2nd Semester in D.Ed. (Urdu). Hence, the change in syllabi for the course of D.Ed. Urdu was made from 2011 onwards. It is so evident even from the certificates produced by learned counsel for the State in Court where for the examination held in 2012-13, the certificate being issued as Diploma in Education (Urdu) and simple Diploma in Education, respectively. Meaning thereby a clear distinction was made thereafter. In the certificates issued prior thereto for qualification of Diploma in Education, there was no mention of D.Ed. General or D.Ed. (Urdu).

24. For the reasons mentioned above, in my opinion, the outright rejection of applications of the candidates, who possessed qualifications as prescribed in the 1994 Rules is illegal. The same cannot be sustained in the Court of law. Though some of the candidates have filed the petitions in this Court challenging rejection of their candidature on the ground that they did not possess the qualification of D.Ed. (Urdu). They are possessing qualification as prescribed in the Rules. There may be other similarly situated persons. In my opinion, considering the fact that as per the stand of learned counsel for the State, only 75 out of 544 posts advertised for District Mewat were filled, all the candidates, who possessed the qualification as prescribed in the 1994 Rules, deserve to be considered. The authorities are directed to do the necessary exercise and in case the candidates, who possess qualifications as prescribed in the 1994 Rules are found to be meritorious in terms of criteria laid down for selection, they may be offered appointment. Needful shall be done within a period of four months. It is made clear that the candidates so appointed in terms of the process to be carried out now, shall not be entitled to any benefit for the period prior to their appointment.

25. The writ petitions are disposed of.

23.2.2015
vs

(Rajesh Bindal)
Judge

(Refer to Reporter)