

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.9887 of 2013

Date of Decision: March 11, 2015

Dr.Rakesh

...Petitioner

Versus

State of Haryana & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Vivek Khatri, Advocate,
for the petitioner.

Mr.Ravi Pratap Singh, AAG, Haryana,
for the State.

AMIT RAWAL, J. (Oral)

The petitioner has approached this Court by invoking the extraordinary provisions of Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing respondent No.2 to consider his candidature for the post of Principal in pursuance to the advertisement dated 2.2.2013 (Annexure P-8) issued by the Department of School Education, Haryana, whereby the applications for filling up various posts, including 17 posts of Principal were invited. The essential qualifications prescribed for the post of Principal were in the following terms:-

- “(i) At least 55% marks in Post Graduation as well as in Graduation from a recognized university; and
- (ii) B.Ed. or M.Phil from a recognized University with 55% marks; and
- (iii) Matriculation with Hindi/Sanskrit or 10+2/B.A./M.A. with Hindi as one of the subject; and
- (iv) Teaching Experience of 8 years from Government/ Recognized/Progressive Public School not below the rank of TGT/Master, including 2 years in administrative capacity as Principal/Vice-Principal of Senior Secondary School/ Headmaster of Secondary School; and Teaching experience is an essential qualification only.
- (v) Proficiency in English and Hindi; and
- (vi) Experience in conducting Seminars, Workshops, Conference etc.; and
- (vii) Consistent good academic record; and
- (viii) Conversant in IT skills and effective use of new technologies as tools for learning.”

It has been stated that the petitioner applied for the post of Principal being Scheduled Caste candidate and was issued roll number to appear in the written examination, which was fixed for 29.4.2013. However, the petitioner was not permitted to participate in the written examination on the ground that he did not possess the qualification of B.Ed. or M.Phil.

Mr.Vivek Khatri, learned counsel appearing for the petitioner contends that the petitioner possessed higher qualification, i.e., Ph.D. degree than the minimum prescribed qualification and, therefore, cannot be denied consideration for appointment to the post in question. He, in support of his aforementioned contentions, relied upon the following judgments:-

1. Jyoti K.K.& Ors. v. Kerala Public Service Commission & Ors., 2010(15) SCC 596;
2. Manjit Singh v. State of Punjab & others, 2010 LIC 2725
3. Arvind Kumar v. Central Administrative Tribunal, Chandigarh and others, 2010(1) PLR 278; and
4. Multan and others v. State of Haryana & another, 2004 (4) S.C.T. 45.

This Court, vide order dated 23.5.2013, after issuance of notice of motion, directed respondent No.1 that one post of Principal (SC Category) shall not be filled up in pursuance to the selection process initiated in the light of advertisement dated 2.2.2013 (Annexure P-8). The order dated 23.5.2013 is extracted herein below:-

“In the meanwhile, it is directed that one post of Principal (SC Category) shall not be filled up in pursuance to the selection process initiated in the light of advertisement dated 02.02.2013 (Annexure P-8).”

Mr.Ravi Pratap Singh, Assistant Advocate General, Haryana appearing for the State, in support of his stand taken in the written statement, argued that the petitioner did not have the essential qualification of B.Ed. or M.Phil and also did not fill up the column as to whether he was having B.Ed. or M.Phil degree with him and, therefore, the acquisition of higher qualification would not be a ground for consideration to the post of Principal.

I have heard the learned counsel for the parties and appraised the paper book and as well as the respective submissions.

The Full Bench of this Court had an occasion to ponder upon the question as to whether a candidate possessing higher qualification than

the prescribed and advertised qualification would be eligible for consideration, much less, for appointment and after posing the question, the Full Bench of this Court held that:

(i) the candidate possessing higher qualification in the same line cannot be excluded from selection.

(ii) Candidate having higher qualification may not be entitled be entitled to any additional weightage but cannot be denied consideration at par with a candidate possessing minimum prescribed qualification.

(iii) Denying consideration to a candidate having better and higher qualification in the same line and discipline would result in breach of Articles 14 and 16 of the Constitution of India.

The ratio decidendi was also culled out by the Hon'ble Supreme Court in Mohd. Riazul Usman Gani v. District & Sessions Judge, Nagpur, 2000(2) S.C.T. 10.

Since the matter in controversy is squarely covered with the findings of the Full Bench of this Court, the action of the respondent authorities is, thus, vitiated in law by not permitting the petitioner to sit in the examination in respect of the applications invited for filling up the posts of Principal.

Since this Court has already directed that one post under the SC Category be kept reserved, the respondents are directed to allow the petitioner to take the examination in respect of the advertised posts of Principal. The respondents are also directed to take further steps in view of

what has been observed above and make arrangement for conducting the examination of the petitioner, so that he would be able to take the same.

It is expected that the respondents authorities would conduct the examination as early as possible preferably within a period of two months from the date of receipt of certified copy of this order.

With the above observations, the writ petition stands disposed of.

March 11, 2015
ramesh

(AMIT RAWAL)
JUDGE