

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 424 of 2020

*(Arising out of order dated 07.10.2020 passed by the learned Single Judge in
W.P.(S) No. 3784 of 2020)*

- Miss Sajida Khan, aged about 31 years, D/o Mr. Jilani Khan, R/o Diamond Tailor, Shitlapara, Kanker, Post and Tahsil Kanker, District Uttar Bastar Kanker (C.G.)

---- Appellant

Versus

1. State of Chhattisgarh, through Secretary, Department of School Education, Mantralay Atal Nagar, Naya Raipur District Raipur (C.G.)
2. The Collector / President, Utkrustha Angreji Madhyam Sanchalan Samiti, Shaskiya Narhardev Uccatare Madhyamic Vidyalaya, Kanker, Distt. U.B. Kanker (C.G.)

---- Respondents

For Appellant : Shri Parag Kotecha, Advocate.
For Respondents/State : Shri Sudeep Agrawal, Deputy Advocate General.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per, P. R. Ramachandra Menon, Chief Justice

19.11.2020

1. Interference declined by the learned Single Judge as to the challenge raised by the Appellant on prescription of a minimum of 50% marks for Graduation (alongwith such other qualifications) as the basic requirement for selection and appointment to the post of 'Librarian', on contract basis, as notified in Annexure-P/1 Advertisement dated 06.07.2020, issued by the 2nd Respondent, is put to challenge in this appeal.
2. The factual matrix reveals that a post of Librarian was sanctioned for a newly established English Medium School "Utkrustha Angreji Madhyam, Shaskiya Narhardev Uccatare Madhyamic Vidyalaya, Kanker", which was sought to be filled up on contract basis and it was notified along with such

other posts in Annexure-P/1 Advertisement dated 06.07.2020. The Appellant, who is a Graduate in Library Science and a Post Graduate in Commerce, besides having the qualification of Post Graduate Diploma in Computer Applications, as reflected from Annexure-P/2 collectively, responded to the Advertisement and participated in the process of selection. It is stated that, as per Annexure-P/4 Merit List for the post of Librarian, the Petitioner has been declared as 'not eligible' for the post on the ground that she has secured only less marks in the Graduation which made her to file Annexure-P/5 objection before the 2nd Respondent on 05.08.2020, referring to Annexure-P/7 Rules for recruitment in the Chhattisgarh School Education Department which is known as Chhattisgarh School Education Services (Educational and Administrative Cadre) Recruitment and Promotion Rules, 2019 and asserting that no minimum percentage of marks for Graduation is stipulated in the said Rules for appointment to the post of Librarian. It is pointed out that an amended Merit List was issued by the 2nd Respondent by cancelling Annexure-P/4 Merit List, vide Annexure-P/6 dated 20.08.2020. Since the grievance was not redressed, the Petitioner approached this Court by filing the writ petition contending that, since Annexure-P/7 Rules do not stipulate any minimum marks for Graduation even for regular appointment, it cannot be insisted for appointment to the post on contract basis. The prayers in the writ petition are in the following terms :

“10.1. The Hon'ble court may be pleased to quash/ set aside the condition of minimum qualification of 50%

marks in Graduation for the post of Librarian of the advertisement dated 06/07/2020 which bars/ disqualify, the petitioner from appointment to the post of Librarian.

10.2. The Hon'ble Court may kindly be direct the respondents to issue fresh merit list for the post of Librarian after declaring petitioner as eligible candidate.

10.3. Any other relief which the Hon'ble Court deems just and proper in the interest of justice.”

3. The course of action was sought to be sustained from the part of the Respondents contending that the merit was never sought to be compromised or diluted and it is very much within the purview of the power and prerogative of the Respondents to stipulate minimum 50% marks for Graduation, which was never against the Rules; as the Rules only prescribed the 'minimum' qualification. Reliance was sought to be placed on the law declared by the Apex Court in ***Maharashtra Public Service Commission Through its Secretary Vs. Sandeep Shriram Warade & Ors***; reported in **(2019) 6 SCC 362** to the effect that stipulation of the qualification is within the purview of the Employer. It was also contended that the writ petitioner having participated in the process of selection cannot take a 'u-turn' and challenge the process after coming to know that she has not been selected. Reliance is sought to be placed on the verdict passed by the Apex Court in ***Madras Institute of Development Studies & Anr. Vs. K. Sivasubramaniyan & Ors.*** reported in **(2016) 1 SCC 454** in this regard. After hearing both the sides and after analysing the dictum laid down by the Apex Court in the decisions cited (supra), it was held by the learned Single Judge that by virtue of the principles laid down by

the Apex Court as above and the fact that the writ petitioner had already participated in the selection process and further that the minimum mark stipulated has not diluted the prescribed qualification, but for serving to achieve the object in obtaining higher standard, there was no reason to interfere with the advertisement. This led to dismissal of the writ petition as devoid of any merit.

4. The learned counsel for the Appellant submits that there is no dispute with regard to Annexure-P/7 Rules which governs the appointment to the post in question. But the stipulation of qualification in Annexure-P/1 Advertisement is stated as not in conformity with the said Rules. The contents of the Advertisement and qualification requirement as per the Rules have been extracted by the learned Single Judge in paragraph 5 of the judgment. The declaration made by the 2nd Respondent that the Appellant is not qualified, having not obtained minimum 50% marks for Graduation is contended as not liable to be sustained in the said circumstance.
5. At the very outset it is to be noted that the recruitment sought to be pursued as per Annexure-P/1 is not a regular recruitment, but an exercise to fill up the post on contract basis (for academic session 2020-21 on a fixed remuneration). However, going by the stipulation of qualifications in Annexure-P/7 Rules, it cannot *prima facie* be said that the Appellant is not qualified to be appointed to the post of Librarian, as only much lesser qualification has been mentioned therein. But the question is whether the Respondents are justified in limiting the number

of persons to be considered (from the persons who satisfied the requirement as per the Rules) based on the limited number of post available and in view of the nature of recruitment.

6. Admittedly, the Appellant, though having a bachelor degree of Library Science, is having only less than 50% of marks. If the version of the Appellant is to be accepted, all the candidates having the minimum requirement as given in the Annexure P/7 Rules have to be invited and tested in the process of selection. Rule 6 of Annexure P/7 Rules dealing with 'method of recruitment' reads as follow:

“6. Method of recruitment.- (1) Recruitment to the service, after the commencement of these rules, shall be made by the following methods, namely:-

- (a) By direct recruitment through selection (competitive examination / interview) and Limited Departmental Examination;
- (b) By promotion of members of the service;
- (c) By transfer / deputation of persons who hold in a substantive capacity such posts in such services as may be specified in this behalf;
- (d) By absorption of person / persons who hold in such services an serve on any equivalent salary / post in any Government service.”

By virtue of the above Rules, the appointment could be made by Direct Recruitment through selection (Competitive examination / Interview) and when such selection is made to the limited number of post notified as per Annexure P/1 (one post), it may not be necessary or possible to call all persons who are having the minimum qualifications stipulated in the Rules, that too, for appointment on

'contract basis' (we are not mentioning anything as to whether the Respondents are authorized or justified in making the appointment on 'contract basis' as it is not an issue raised herein). Even in the case of a selection process having both the written test and interview, it is settled law that all the persons who get qualified in the written test need not be called for the interview and that the number can be limited to appropriate extent, based on the number of vacancies available. It is not clear from the materials on the record as to whether any competitive examination was held or selection was only by way of interview. Be that as it may, the Appellant can not be heard to say that she is actually aggrieved because of considering persons having better merits (who have secured more than 50% of marks for Graduation) for the post notified as per Annexure-P/1, as appointment has to be made by identifying the most meritorious candidate.

7. The Appellant admittedly was aware of the contents of the Annexure-P/1 Notification right from the beginning and it was in her open eyes that she participated in the selection process. If at all she was having any grievance to the effect that Annexure-P/1 Advertisement was not in conformity with Annexure-P/7 Rules (having prescribed higher qualification requirement) she should have approached this Court challenging the said Advertisement then and there. It was only on coming to know from Annexure-P/4 Merit List that she had not been included in the said Merit List, did she choose to move this Court by filing the writ petition. Interference declined by the learned Single Judge

is also for this reason, in view of the law declared by the Apex Court as per the relevant decisions referred to in paragraph 8 of the judgment.

8. Yet another aspect to be noted is that, insofar as the Appellant has raised the prayer in the writ petition seeking to direct the Respondents to issue 'fresh Merit List' for the post of Librarian, after declaring the Petitioner as eligible candidate, it virtually amounts to setting aside the Merit List already issued. However, the writ petitioner / Appellant has not chosen to implead anybody, who is included in the existing Merit List, even in a representative capacity, before seeking the same to be re-cast by issuing a fresh Merit List. As it stands so, it is not a fit case to call for interference.
9. In the above circumstance, we do not find any tenable ground to interdict the verdict passed by the learned Single Judge in the particular facts and circumstances of this case. Interference is declined and the appeal stands dismissed.
10. It is made clear that the legal position as to requirements / qualification to decide the eligibility for participating in the process of selection for filling up the post of Librarian 'on regular basis', based on Annexure-P/7 Rules, is left open.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge