

HONOURABLE SRI JUSTICE P. NAVEEN RAO

**WRIT PETITION NOs.19040, 19228, 19248, 19325, 19369,
19653, 19754, 19801, 19802, 19873, 20058 & 20078 of 2019**

Date: 07.04.2021

WP No.19040 of 2019:

Between:

Hari Naveena, D/o Venkateswarlu,
Aged about 39 years, Occ: CRT (Hindi),
TSWRS/Girls/Navipet, Nizamabad,
R/o. H.No.9-7-92, Gajulpet,
Nizamabad District

....Petitioner

And

The State of Telangana, rep. by its Chairman,
Telangana State Public Service Commission,
Nampally, Hyderabad and another.

.... Respondents

The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs. 19040, 19228, 19248, 19325, 19369, 19653, 19754, 19801, 19802, 19873, 20058 & 20078 of 2019

COMMON ORDER:

Heard learned counsel for petitioners and the learned Additional Advocate General for Telangana State Public Service Commission, for Social Welfare Department, and respondent-Residential Societies.

2. The Telangana State Public Service Commission issued notification No.29 of 2017 on 2.6.2017 calling for applications for recruitment to the post of Principal (School) in the schools run by the Residential Educational Institutions Societies, Social Welfare, Backward Classes Welfare, Minorities Welfare and Tribal Welfare. Petitioners responded to this notification and participated in the recruitment process. Petitioners are not subjected to further selection process on the ground that they do not have administrative experience prescribed in paragraph 4 of the recruitment notification.

3. According to learned counsel, administrative experience gained by them as Vice Principal/Administrative Principal/In-charge Principal cannot be ignored. What is relevant is gaining administrative experience and petitioners have gained sufficient administrative experience. Merely because post in which they worked is not called as Head Master or Principal is not a ground to reject their eligibility. It is further contended rejecting the candidature on the ground that candidate has acquired

administrative experience prior to acquiring B.Ed/Post Graduation is illegal. Notification does not envisage such requirement.

4. Learned Additional Advocate General asserted that the recruitment notification is very clear. It requires only administrative experience as Head Master of High School or Principal of a Junior College. It does not recognize any other experience as administrative experience, whatever may be the post held by a candidate. He further submitted that the very issue was considered in W.P.No.19223 of 2019, and this Court upheld the stand of the Public Service Commission.

5. As stated in the affidavit filed in support of the writ petitions, following are the qualifications, experience and reasons for rejection of the applications of petitioners:

Sl. No.	W.P.No.	Name of the petitioner	Educational Qualifications	Experience	Reasons for rejection
1	19040/19	H. Naveena	M.A., HPT	As Vice Principal: 2008-2009; 2016-19 earlier it was called as Assistant to Principal	Only 4 years teaching experience after PG and experience as Jr. Vice Principal and Vice-Principal cannot be considered.
2	19228/19	D.Srinivasa Raju	M.A. Lit., B.Ed	Teaching Experience 10 years 5 months; administrative Principal from 01.07.2013.	Adm. Principal is not considered as Admn. experience.
3	19248/19	1. Saraswathi Reddy 2.Chimmani Nagajyothi	M.Sc., B.Ed., M.A., B.Ed.,	Worked as PGT from 1.6.05 to 20.4.2010 & from 1.6.11 to 20.4.12 and as Principal from 1.6.12 to 30.4.16 Teaching experience from 2011 to 17 as CRT and Admn. Experience as Administrative Principal from 2006 to 2010	Teaching/Administrative Experience before acquiring B.Ed. cannot be considered -do-
4	19325/19	Ganta Prabhanandam	M.Sc., B.Ed.,	PGT; possessing Adm. Exp., as Vice-Principal from 2014-2017.	Administrative Experience as Vice Principal not valid.
5	19369/19	1.A.Mahatma Reddy 2.Md. Jabbar	M.Sc., B.Ed., M.A., B.Ed.,	PGT from 2006 to 2012, Adm.Exp., as Vice-Principal from 2013 to 2017. 1993-96 as Junior Lecturer; 1997-99 as	Administrative Experience as Vice Principal not valid. Administrative experience as

				Teacher; Administrative Incharge from 2000- 2003 in the school and from 2008 in the college.	administrative incharge is not valid.
6	19653/19	G.Maheshwar	M.Sc.(Marine Biology); M.Sc. (Biology); B.Ed.,	H.M from 2001-05 in School, as Contract Lecturer from 2008 to till date	Administrative Experience prior to acquiring B.Ed, and contract service cannot be considered.
7	19754/19	Smt. Rajeshwari Boyamma	M.A, B.Ed	Teacher from 2007- 13, after completing P.G. from 2014-18 worked as Vice- Principal.	Teaching experience prior to acquiring P.G, and administrative experience as Vice Principal cannot be considered.
8	19801/19	G. Manohar Rao	M.Com., B.Ed.,	Jr. Lecturer ; as administrator Principal from 2009-12.	Administrator principal experience not considered
9	19802/19	Narla Sunitha	P.G., B.Ed.,	Vice Principal from 2008-12, and from 2016 to till filing of W.P.	Experience as Vice Principal is not considered
10	19873/19	G.Joseph	M.A., B.Ed.,	Principal from 24.5.2007 to 23.4.2009, Teacher from 24.4.2009 to 22.4.2010, Lecturer from 24.4.2010 to 11.6.2012, Vice Principal from 12.6.2012 to 30.11.2016	Teaching experience as Degree lecturer is not considered. Teaching experience with P.G. only be considered. i.e., as Vice-Principal and Principal of Primary school not considered.
11	20058/19	G.Santosh	M.Sc., B.Ed.,	Teacher from 2009- 2012; 2016-17 admn. Exp. as District Educational Coordinator.	Only two years of Admn. Exp. is counted. Experience of working as District Educational Coordinator is treated as teaching experience only.
12	20078/19	P. Nabbenna	M.A., B.Ed.,	Teacher particularly discharging duties as Jr.Lecturer possess- ing administrative exp., as Incharge Principal/ Administrator from 2004-07.	Incharge Principal/ Vice- principal period is not considered as administrative experience.

6. The recruitment notification and the qualifications prescribed in the recruitment notification are not challenged by the petitioners. Therefore, eligibility of the petitioners has to be seen with reference to the specification stipulated in the recruitment notification. From the particulars shown in the above table, admittedly, petitioners do not have administrative experience either as Head Master of a High school or Principal of a Junior College as stipulated in the recruitment notification.

7. Paragraph-4 of the recruitment notification specifies Educational Qualifications and Experience required to secure eligibility. The table appended to paragraph 4 reads as under:

“4) Educational Qualifications:

Applicants must possess the qualifications from a recognized University as detailed below or equivalent thereto and experience as specified in the relevant Bye Laws/ Service Regulations indented by the Residential Educational Institutions Societies as on the Date of Notification.

Post code	Name of the Post	Educational Qualifications & Experience
1	Principal (School) in Telangana Residential Educational Institutions Society	A. Academic Qualifications: i) A second class Master’s Degree (M.A./M.Sc/M.Com) or its euuivalent from an institution recognized by the UGC, in the relevant (Annexure-A) school subjects for which the Post Graduate Teachers (PGT) are eligible with not less than 50% of marks in aggregate or its equivalent. ii) In case of SC/ST/BC/ Differently abled candidates, the minimum marks shall be 45%. iii) A B.Ed or equivalent degree from an institution recognized by the NCTE with the Teaching Methodology in the concerned subject. B. Experience: iv) A total teaching experience of not less than (8) years including not less than (5) years as PGT/JL in any Government/ Aided/Government recognized High School/ Junior College and (3) years of administrative experience as Head Master/ principal of Government/Aided/ Government recognized High School/ Junior college C. Desirable Knowledge of Computer Applications.
2	Principal (School) in Telangana Social Welfare Residential Educational Institutions Society.	
3	Principal (School) in Mahatama Jothiba Phule Telangana Backward Classes Welfare Residential Educational Institutions Society.	
4	Principal (School) in Telangana Minorities Welfare Residential Educational Institutions Society	
5	Principal (School) in Telangana Tribal Welfare Residential Educational Institutions Society.	

8. The eligibility criteria is two fold. Academic qualifications and experience. Again experience is two fold. Teaching and Administrative experience. Issue in these writ petitions is on administrative experience. Notification requires minimum of 8 years teaching experience. Out of this, three years has to be

administrative experience. It means while involving in teaching, person must also gain administrative experience. Two important aspects are, teaching experience has to be as Post Graduate Teacher in a High School or as a Lecturer in a Junior college. Further, administrative experience has to be as a Head Master of a High School or as Principal of a Junior College. The notification does not recognize acquiring administrative experience in any other manner, be it as administrative Principal/In-charge Principal /Vice-Principal/Administrative In-charge/District Educational Coordinator etc. It has not made a provision to accept experience gained in any other manner. There is no ambiguity in the experience prescribed in the notification. That being the intendment of the employer, Court cannot assume the experience gained by petitioners in various capacities, mentioned above, same as experience stipulated in the recruitment notification. A candidate may have acquired greater skill in administering the affairs of an educational institution by working as Vice-Principal/Administrative Principal etc., but when it comes to recruitment, the candidate has to fit into the eligibility criteria specified by the employer. It is the prerogative of the employer to stipulate conditions of eligibility. Scope of judicial review is very limited on prescribing eligibility criteria. The Court cannot step into the shoes of employer and review what eligibility criteria is intended or best suited to a post. Court cannot sit as Appellate Authority to make an assessment of what ought to have been stipulated by employer. In the absence of a challenge to recruitment notification and/ or the clause, Court has to go by the intendment of the employer.

9. Scope of judicial review in matters touching recruitment to public employment is considered by the Full Bench of this Court in W.P.No.40157 of 2017 and batch in the judgment rendered on 18.09.2020. The opinion of Full Bench to the extent relevant reads as under:

“61. Judicial review of administrative action is core of our constitutional scheme and rule of law. It is all pervading and encompasses all aspects of Executive actions where rights of individuals are affected. However, scope of judicial review in matters touching recruitment to public employment is in a narrow compass. Judicial review on such aspects is confined to, whether any mala fide/arbitrary decision was taken to prescribe particular qualification only to favour a particular person(s), and/or such qualifications, though not at all required to hold the concerned post, but is prescribed in order to eliminate a person(s). And if there are illegalities in the selection process vitiating the selection. As long as the eligibility criteria and procedure of selection meets the mandate of Articles 14, 16 and 309 of the Constitution of India, and no illegalities are pointed out in the selection process, the scope of judicial review on the qualifications prescribed to a post, and the procedure of selection is limited one.

62. From precedent decisions of the Hon’ble Supreme Court on the scope of judicial review in matters of prescribing eligibility criteria, selection procedure and right of a candidate seeking public employment, the following principles can be culled out:

1. Article 14 or Article 16 of the Constitution of India neither exclude the laying down of selective tests, nor preclude the Government from laying down qualifications for the post in question. Such qualifications need not be only technical, but they can also be general qualifications relating to the suitability of the candidate for public service as such. [**State of Mysore v. P. Narasinga Rao**¹-paragraph 4].

2. The Courts should not usurp the function of determining the appropriate method of selection, and the relative weight to be attached to the various tests even in cases of proven or obvious oblique motive. That would be amounting to re-writing

¹ AIR 1968 SC 349

the rules; the courts should not undertake such an exercise. [**Lila Dhar Vs State of Rajasthan**²:Paragraph-9]

3. Matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, prescribing additional or desirable qualifications, including any grant of preference, criteria of selection fall within the exclusive domain of the employer. The Court has no role either in determining the methodology of recruitment, or in laying down the criteria of selection. It is the employer who is best suited to decide the requirements that a candidate must possess, according to the needs of the employer, and the nature of work. In the garb of judicial review, a Court cannot sit in the chair of the appointing authority, and decide what is best for the employer. Moreover, the Court cannot sit in appeal over the judgment of the employer, and ordain that a particular post be filled in a particular manner. The Court cannot lay down the conditions of eligibility. If the language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. In such matters, the power of judicial review can be exercised only if it is shown that the action of the employer is contrary to any constitutional or statutory provision, or is patently arbitrary, or is vitiated due to mala fide. It is also not open to the Court to make comparative evaluation of the merit of the candidates. The Court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving the efficiency of administration. [**Union of India v. Pushpa Rani**³: Paragraph-37]. [**Maharashtra Public Service Commission** (supra) : Paragraph-9].

4. Since the administrative authorities have experience in administration, the Court must respect this. Thus, the Court should not interfere readily with administrative decisions. The Court should not ordinarily interfere in policy decisions, unless there is clear violation of some constitutional or statutory provision (or the statute.). [**Dilip Kumar Garg v. State of U.P.**,⁴: Paragraph- 15]. There should be judicial restraint in administrative decisions. [**Tata Cellular v. Union of India** [(1994) 6 SCC 651].

5. An enabling provision postulates a discretion which may or may not be exercised. The Court cannot find fault in exercising an enabling power in a particular manner. [**Zahoor**

² (1981)4 SCC 159

³ (2008) 9 SCC 242

⁴ (2009) 4 SCC 753

Ahmad Rather and others Vs Sheikh Imtiyaz Ahmad and others⁵: Paragraph-29]

6. Where an Executive action of the State is challenged, the Court must tread with caution, and not overstep its limits. The interference by the Court is warranted only when there are oblique motives, or there is miscarriage of justice. [**Pradeep Kumar Rai v. Dinesh Kumar Pandey**⁶: Paragraph- 21]

7. The recruitment notification merely amounts to an invitation to the qualified candidates to apply for recruitment. On their selection, they do not acquire indefeasible right to the post, even if all the vacancies notified are not filled up. [**Shankarsan Dash Vs Union of India**⁷: Paragraph- 7; **Mohd. Rashid v. Director, Local Bodies, New Secretariat and others**⁸: Paragraph- 13].

8. In service jurisprudence, constitutional Courts should balance the equality principle with the principle of classification, dependent on the nexus for making the classification; this aspect is best left to the wisdom of the administrative authorities [**State of Uttarakhand Vs S.K.Singh**⁹: Paragraph-27].

9. If mode of selection is not prescribed by the rules, and there is no other impediment in law, it is permissible for the competent authority to lay down the norms for selection, such as holding tests, minimum benchmarks for written test as well as for viva voce. [**Ramesh Kumar v. High Court of Delhi**¹⁰: Paragraph- 15]. Depending on the nature of the post, it is permissible to make selection based on performance in the interview. [**Kiran Gupta v. State of U.P.**,¹¹: Paragraph-26].

10. If classification is otherwise legal, valid and reasonable, it is not prohibited by Article 14 of the Constitution of India. [**State of Bihar Vs. Bihar State Plus-2 Lecturer Association and others**¹²: paragraph-14].

63. From the above presidential case law on all the four aspects it is, thus, safe to conclude that:

(a) & (b) xxx

⁵ (2019) 2 SCC 404

⁶ (2015) 11 SCC 493

⁷ (1991) 3 SCC 47

⁸ (2020) 2 SCC 582

⁹ (2019) 10 SCC 49

¹⁰ (2010) 3 SCC 104

¹¹ (2000) 7 SCC 719

¹² (2008) 7 SCC 231)

(c) It is for the employer to prescribe procedure of selection for direct recruitment to public employment;

(d) xxx

e) The scope of judicial review in matters of prescribing qualifications, procedure of selection, and method of selection is very limited. The Writ Court cannot act as Court of appeal, and cannot determine what qualifications can be prescribed to hold a post; it cannot prescribe the procedure of selection to make regular recruitment. Only when there is patent illegality in the selection procedure/process would the writ Court interfere.”

10. In paragraph-92, the Full Bench held:

“92. it is for the employer to prescribe the qualifications required to hold a post. It is equally for the employer to prescribe the procedure for selection and to recruit the eligible and suitable persons for a post. Depending on the job description, the employer may stipulate educational qualifications, age, and experience. Posts in the higher echelons, specialized posts, posts in special establishments may require specialized qualifications, experience and only by a particular category of persons. **Thus, depending on the requirements of a job, appropriate qualifications/eligibility criteria may be prescribed. It is the prerogative of the employer. Judicial review cannot be stretched to oversee what qualifications, eligibility criteria, and mode of selection should be prescribed by the employer.**”
(emphasis supplied)

11. The issue raised in these writ petitions was considered in W.P.Nos.19223 and 19493 of 2019. In both the writ petitions, petitioners claimed to have worked as Vice Principals and gained administrative experience. Having regard to the terms of recruitment notification and the administrative experience claimed by the petitioners therein while working as Vice Principals, this Court held that claim of petitioners to have administrative experience gained in the capacity as Vice Principal cannot be treated as administrative experience as prescribed in the

recruitment notification to make them eligible. This court held as under:

“5.....The recruitment notification is very clear and specific and as petitioner does not have administrative experience as headmaster of High School or Principal of Junior College, rejection of her candidature for further selection process cannot be faulted. There is no merit in the writ petition and the same is liable to be dismissed.”

12. In the writ petitions on hand, admittedly none of the petitioners have gained administrative experience as Head Master of a High School or as Principal of a Junior College. Thus, when they do not have the requisite eligibility criteria as prescribed in the recruitment notification, not subjecting them for further selection process by the State Public Service Commission cannot be faulted.

13. In W.P.No.19248 of 2019, there are two petitioners. The claim of first petitioner was rejected on the ground that petitioner gained teaching experience prior to acquiring B.Ed., and same is not considered as valid teaching experience. The claim of second petitioner was rejected on the ground that administrative experience as Administrative Principal and more so, prior to acquiring B.Ed., cannot be considered. The various aspects of teaching experience is considered in W.P.No.19395 of 2019 and batch, and by separate order the claims of petitioners therein were rejected. Following the same, the claim of first petitioner is liable to be rejected.

14. Thus, there is no illegality in the decision of the Public Service Commission rejecting the candidature of petitioners for recruitment as Principals in the residential societies on the ground

that they do not have administrative experience as Head Master of a High School or as a Principal of a Junior College.

15. Writ Petitions fail. They are accordingly dismissed. Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 07.04.2021
tvk/kkm

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