

HONOURABLE SRI JUSTICE P. NAVEEN RAO

**WRIT PETITION Nos.18794, 18895, 18966, 19074, 19085,
19089, 19784, & 20032 OF 2019.**

Date: 07.04.2021

WP No.18794 of 2019:

Between:

Erra Saritha D/o Erra Narayana Reddy,
Age 40 years, Occ: PGT Teacher,
R/o H.No.2-6-1523, Near Sumanjali Function Hall,
Srinivasa Nagar Colony, Hanamkonda, Warangal.

.....Petitioner

And

State of Telangana
Rep. through Principal Secretary,
Social Welfare Department, Secretariat,
Hyderabad & others.

.....Respondents

The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION Nos.18794, 18895, 18966, 19074, 19085, 19089, 19784, & 20032 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, for Education Department, and the residential societies.

2. The Telangana State Public Service Commission (for short PSC) issued recruitment notification No.29 of 2017 dated 02.06.2017 calling for applications for recruitment for appointment as Principal (School) in the residential schools run by the residential educational societies established by the State. Petitioners claim to have responded to the said recruitment notification, participated in the selections, qualified in the written examination and were short listed for subjecting them to oral interview in the ratio of 1:3. At the stage of verification of certificates produced by them regarding eligibility, they were disqualified on the ground that they do not have teaching experience in regular service and the service gained by them is only as Part-time Lecturer / Contract Lecturer / Guest Lecturer.

3. Learned counsel for petitioners submit that the decision of the PSC disqualifying the petitioners is *ex facie* illegal. According to learned counsel, acquiring teaching experience as Junior Lecturer is sufficient and it can be in any form, description/ designation/status. What is relevant is securing teaching experience. Therefore, insistence on teaching experience only as a

regular Lecturer, ignoring the part-time service/contract service/service as Guest Lecturer, is *ex facie* illegal. It amounts to arbitrary exercise of power. It also amounts to denying right to compete in a public examination even though petitioners are qualified.

4. Learned Additional Advocate General justifies the decision of the PSC on disqualifying the petitioners. He would submit that rejection is based on the conditions of eligibility stipulated in the recruitment notification. As the notification does not recognize any other experience, the experience gained by working as Contract/ Part Time/Guest Lecturer cannot be treated as valid experience. He therefore, submitted that there is no illegality in disqualifying the petitioners.

5. The educational qualifications and experience of petitioners is as under:

Sl.No.	W.P.No.	Name of the petitioner	Educational Qualifications	Experience	Reasons for rejection
1	18794/19	Erra Saritha	B.Sc., P.G., B.Ed.,	Worked as Lecturer for 5 years in Degree College; as Principal from 6/2009 to 6/2012, as PGT from 2012 to 17 as Part-time Lecturer 2014-15; thereafter as Guest lecturer	Teaching experience as PGT was only for 2 years; part time service and service as guest lecturer not considered.
2	18895/19	J.Chandrashekar	M.Sc., B.Ed.,	As principal from 6/2008 to 2012; part-time Junior Lecturer from 2008 to 2012; Lecturer in B.Ed. college from 2015 – 2017	Experience as Part time lecturer and experience as Lecturer in B.Ed., college not considered.
3	18966/19	K.Bhaskara Swamy	M.Sc., B.Ed.,	Worked as Jr.Lecturer from 2001 to 2006 (part time/full time)	Less teaching exp., part time exp., for three years is not considered.
4	19074/19	Ramula Umadevi	M.A., B.Ed	Jr.Lecturer from 2011-17; HM/Principal : 2008-2011	Part time Teaching experience not considered.
5	19085/19	J. Begum	M.Sc., B.Ed	Teacher from 2010 to 2016; as lecturer from 2016-2018, having 3 years Adm. Exp..	Leaving 2 years teaching experience from 2011-2013 after PG part-time lecturer experience not considered.
6	19089/19	T.Tiruna Hari Babu	M.Sc., B.Ed,	Lecturer from 2008 to 2009; 2012 till date; 3 years 1 month admn. Exp.	Excluding one year as Lecturer rest of the service was on part time basis thus not eligible.
7	19784/19	A.Renuka Devi	M.A., B.Ed	Admn. Exp. : 11/2009 to June 2013; teaching exp. Part-time Jr. Lecturer from 7/2013 to 4/2017	Part time Teaching experience not considered.
8	20032/19	G.Muralidhar Goud	M.Sc., B.Ed.,	Part Jr. Lecturer admn. Exp., as Advisory Principal from 2011-16	Adm., Exp. As Advisory Principal not considered and teaching experience; service as part-time lecturer is not considered.

6. Sub-paragraph-4 of Para-I specifies educational qualifications and experience. The table appended to sub-paragraph-4 is 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 equivalent 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.
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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.	
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4	Principal (School) in Telangana Minorities Welfare Residential Educational Institutions Society	
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5	Principal (School) in Telangana Tribal Welfare Residential Educational Institutions Society.	

7. The academic qualifications prescribed are Post Graduation and B.Ed. It also requires that in B.Ed., the candidate must have methodology in the same subject in which he studied in the Post Graduation. Further, it requires the candidate to be eligible to secure post of Post Graduate Teacher.

8. From the table in sub paragraph-4, it is seen that the notification mandates possessing educational qualifications (A) and experience (B). It makes amply clear that a candidate must have

Post Graduation, B.Ed., in concerned methodology. The experience clause requires experience as Post Graduate Teacher/ Junior Lecturer for at least five years after securing Post Graduation and B.Ed. with same methodology. This clause does not make any distinction on possessing the educational qualifications prescribed in clause "A" for a Junior Lecturer. It is emphatic in insisting that the candidate must be eligible to become a Post Graduate Teacher. Thus, mere becoming a Junior Lecturer is not sufficient. Perforce, a Junior Lecturer also should have Post Graduation and B.Ed (with same methodology) degrees.

9. Recruitment notification does not provide acceptance of teaching experience gained in equivalent post or with any other designation such as Part-time Lecturer/Guest Lecturer/as Contract Lecturer as valid teaching experience. The respondents assert that teaching experience has to be while working on a regular basis and not as a part-time/guest/contract lecturer. Learned Additional Advocate General further asserted that a part-time/guest/contract lecturer cannot be treated on par with regular Lecturer. When the recruitment notification uses, the term 'Lecturer', perforce it implies a regular Lecturer, but not a part-time/ guest/contract Lecturer. Thus, claim of petitioners that they were undertaking same teaching work similar to Junior Lecturer has no relevance.

10. From the table appended to paragraph-5 above, it is apparent that petitioners do not have the teaching experience as Post Graduate Teacher in a High School and/or as Junior Lecturer

in a Junior College. These are the only categories of posts in which the candidate should secure teaching experience.

11. What eligibility criteria is required to hold a post is for the employer to decide. In exercise of power of judicial review writ Court cannot mandate the employer to prescribe a particular qualification/ eligibility criteria or hold particular eligibility of a candidate same as prescribed in the recruitment notification. When the notification and the intendment of the employer are clear, Court cannot resort to process of inference to hold otherwise.

12. In W.P.No.19289 of 2019, petitioner claimed to have gained experience by working as Guest Lecturer for two years in a Degree College in addition to being a Teacher in High School. Having noticed that the eligibility criteria only recognized gaining experience as Post Graduate Teacher in High School and Junior Lecturer in a Junior College, the said plea was rejected.

13. In W.P.No.21185 of 2019, petitioner claimed that she has earned teaching experience while doing Part-time job as Junior Lecturer in addition to working as Secondary Grade Teacher. The Court rejected the said plea by holding that notification does not recognize part-time service.

14. 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 is 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 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

¹ AIR 1968 SC 349

² (1981)4 SCC 159

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 Ahmad Rather and others Vs Sheikh Imtiyaz Ahmad and others**⁵: 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]

³ (2008) 9 SCC 242

⁴ (2009) 4 SCC 753

⁵ (2019) 2 SCC 404

⁶ (2015) 11 SCC 493

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

(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

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)

recruitment. Only when there is patent illegality in the selection procedure/process would the writ Court interfere.”

15. 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)

16. In these writ petitions, petitioners are not challenging the recruitment notification. Admittedly, petitioners do not possess the required teaching experience specified in the recruitment notification. Having regard to the eligibility criteria required, there is no error in the decision of the Public Service Commission rejecting the candidature of petitioners for recruitment as Principals in the schools run by the residential societies.

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

JUSTICE P.NAVEEN RAO

Date: 07.04.2021
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