

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 27777 of 2021

Taranisen Bhoi and Others* *Petitioners

Mr. P.K Joshi, Adv.

-versus-

State of Odisha and others* *Opposite parties

Mr. Sonak Mishra, SC

(for S & ME Deptt.)

CORAM:

MR. JUSTICE S.K. PANIGRAHI

Order

No.

Order

08.03.2022

8. 1. This matter is taken up through hybrid mode.
2. Heard Mr. P.K Joshi, learned counsel for the petitioner and Mr. Sonak Mishra, learned Addl. Standing Counsel for the opposite parties.
3. This writ petition arises out of the prayer of the petitioners for their inclusion in the Computer Based Test (CBT) for the post of Hindi Teachers in the State of Odisha. The Director of Secondary Education, Odisha announced for the vacancy of 2055 posts of Hindi Teacher, vide advertisement No.21212 dated 13.08.2021. The said notification underlined the need of a number of essential qualifications in order to be eligible for application. One amongst them was the need for a Parangat Certificate, which was to be furnished to be eligible to sit for the Computer Based Test. However, candidates who appeared for the OSSTET examination 2021, vide the notification

were allowed to furnish their certificates prior to short listing and not before the CBT. The petitioners had undergone 2 years of training, and had their examinations scheduled on 14.09.2021. Thus, they prayed for the leave of this Court to let them produce their Parangat Certificate from Kendriya Hindi Sansthan, Agra, before short-listing and after CBT. This Court, vide order dated 13.09.2021 passed in IA No.12817 of 2021, permitted the petitioners to appear in the interview process. However, the said order directed for non-publication of their results without leave of the Court. Subsequently, they filed IA. No.15366 of 2021. The said application was filed to facilitate the petitioners' appearance for verification of documents after short listing.

4. Learned counsel for the petitioners further submits that Parangat Certificate from Kendriya Hindi Sansthan, Agra is an equivalent degree to B.Ed in Hindi. The examination for the Parangat Certificate was scheduled to be in July,2021. Owing to the pandemic it got rescheduled to 14.09.2021. Due to the said rescheduling, the petitioners were unable to furnish their certificates at the application filling stage. Further, vide advertisement No.21212 dated 13.08.2021, some of the candidates who appeared for the OSSTET, 2021, were allowed to submit their certificates after the filing of the application but prior to short listing. Thus, the petitioners are entitled to the extension of the same provision to them as well. Thereafter, the petitioners were granted relief to appear in the interview process vide order dated 13.09.2021 passed in I.A. No.12817 of 2021. After publication of results of the CBT, the petitioners were

short-listed. However, they were not allowed to appear for the document verification during the process of short-listing. It is submitted that the process of short-listing falls under the ambit of the interview process, and they were locked in the interview stage contrary to the order dated 13.09.2021 passed by this Court in I.A. No.12817 of 2021. Meanwhile, the petitioners have appeared in the final examination for Paranghat Certificate and have successfully procured the same. This renders them eligible for the notified employment after fulfilling all essential conditions. It is pertinent to mention that the opposite party No.2 announced vacancies against teaching jobs after a gap of 6 years. If the petitioners are not allowed to appear for the document verification, then they will be pushed to an uncertain waiting period.

5. Learned counsel for the opposite party No.2 invited Court's attention to the urgency in recruitment caused by the persistence of acute shortage of teachers due to the non filling up of vacancies for 5 years. He further submitted that an air of uncertainty hovered around the final examination for the Paranghat Certificate from Kendriya Hindi Sansthan, Agra. If they are allowed to take part in the process, necessity will arise to delay the documentation proceeding resulting in the delay of the entire recruitment process. Furthermore, as per the procedure, the candidates qualifying in the CBT were to be called for document verification. Accordingly, documents of candidates qualifying in CBT were verified between 30.10.2021 and 03.11.2021, and drafts of the merit and rejection list have

been published. Moreover, the prayer of the petitioners cannot be entertained since they are not eligible as per the conditions laid down in the advertisement.

6. In light of the submissions made hereinabove, it is clear that the notification for employment indicates the essential eligibility of a Parangat Certificate or any other equivalent degree, to qualify for the CBT. Nevertheless, the petitioners were not having the same, at the time of filing of application, but sought leave of the court to furnish the said certificate before the process of short-listing.

7. To begin with, it is a well settled principle of law that the essential conditions of an employment are for the employer to decide. Transgressing this discretion of the employer is outside the ambit of the power of the courts. In the case of ***The Maharashtra Public Service Commission Through Its Secretary Vs. Sandeep Shriram Warade And Others***¹, the Hon'ble Supreme Court has observed that:

“The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being at par with the essential eligibility by an interpretive rewriting of the advertisement. Questions of

¹ AIR 2019 SC 2154

equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the Court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the Court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.”

8. In the case of ***Pramod Kumar V. U.P Secondary Education Services Commission and others***², while discussing an instance of the non-possession of essential qualification the Hon’ble Apex Court has succinctly held that:

“18. If the essential educational qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned. Such an act cannot be ratified. An appointment which is contrary to the statute/statutory rules would be void in law. An illegality cannot be regularized, particularly, when the statute in no unmistakable term says so.”

9. In the case of ***Rajasthan Public Service Commission vs. Kaila Kumar Paliwal and Ors.***³, the Hon’ble court observed that:

“Recruitment to a post must be made strictly in terms of the Rules operating in the field. Essential qualification must be possessed by a person as on the date of issuance of the

²(2008) 7 SCC 153

³ 2007 10 SCC 260

notification or as specified in the rules and only in absence thereof, the qualification acquired till the last date of filing of the application would be the relevant date.”

10. However, the courts have been time and again cognizant about the quandaries arising out of the Pandemic. The ordinary parlance has transformed into an extraordinary ballgame. In these situations, realizing the intent behind administrative actions and keeping them in the equilibrium of justice is pertinent. In the case of ***Rachna and Ors. vs. Union of India (UOI) and Ors***⁴, the Hon’ble Supreme Court observed that:

“Despite that Covid-19 pandemic has affected the livelihood of the common man at all levels, be it a level of education system, from pre-school to tertiary education. Different countries introduced various policies in meeting out the widespread socio-economic implications but the Covid-19 pandemic has left its footprints for us to learn from the unprecedented situation, which everyone has come across and suddenly changed the lifestyle of every individual in the society, his way of working, from social security to individual human rights, from macro economy to household income and has made us more stronger to face, if any difficult situation arises in future and this is what by experience we learn. There is an old saying "there is good in every evil". Still life has to move on in all situations, and this is what this country has faced, but resiliently fought back this unprecedented situation and the economy and life of the common man is on the path towards normalcy in a short period of time than expected.”

⁴(2021) 5 SCC 638

11. The final certification exam of the petitioners got postponed to September, 2021 from July, 2021. The action of postponing was in the wake of the Pandemic. Subjecting the petitioners to the wrath of this measure would defeat the principles of law purporting to serve justice. Furthermore, vide order dated 13.09.2021 passed in I.A. No.12817 of 2021, the petitioners were granted the relief of appearing for the computer based test pursuant to the advertisement No.21212 dated 13.08.2021. But, the declaration of the result was contingent to the leave of the court.

12. The petitioners have secured positions in the merit list after qualifying the CBT. Thereby, on the strength of the order dated 13.09.2021 passed by this Court in I.A. No.12817 of 2021, the opposite party numbers 1 and 2 are directed to verify the documents of the petitioners and subsequently allow them in the process of the selection for the Hindi teacher post.

13. The writ petition is, accordingly, disposed of.

14. Urgent certified copy of this order be granted as per rules.

(S.K.Panigrahi)
Judge