

ORISSA HIGH COURT: CUTTACK

WPC (OAC) No.1203 of 2016

(An application under Article 226 and 227 of the Constitution of India)

AFR Sk. Hidayetulla Mahamad Petitioner

-Versus-

State of Odisha & others Opp. Parties

Advocate(s) appeared in this case:-

For Petitioner : M/s. Biraja Prasanna Das,
Mr. J.S. Maharana
& D.K. Panda, Advocates

For Opp. Parties : Mr. R.N. Acharya,
Standing Counsel for School
and Mass Education Dept.

CORAM

JUSTICE SASHIKANTA MISHRA

JUDGMENT

9th May, 2022

SASHIKANTA MISHRA, J. In the present application, the petitioner prays for quashment of the Reject List under Annexure-5 on the ground that the same is contrary to the

guidelines of National Council for Teacher Education (NCTE) dated 12.11.2014 and whereby, his candidature for the post of Hindi Teacher (Contractual) was rejected.

2. The facts of the case lie in a narrow compass.

Pursuant to an advertisement published by the Director Secondary Education, Odisha (opposite party no.2) on 23.10.2014 and 13.01.2015 inviting applications for the posts of Teachers in several disciplines as per district-wise vacancies, the petitioner submitted his candidature in respect of Cuttack district enclosing all the required documents. It is stated that 29 posts meant for Hindi Teachers were to be filled up for Cuttack district. As per the draft list of applicants for engagement of Contract Teacher in Government High Schools published by the opposite party no.2 (Annexure-4), the petitioner's name was placed at serial no. 37. He was asked to appear in between 06.02.2016 and 10.02.2016 for verification of his testimonials. Accordingly, the petitioner appeared, whereby his documents pertaining to educational qualification were verified. However, his candidature was

rejected subsequently as per Reject List published under Annexure-5 on the ground that he had not secured 50% marks in +3 examination. It is the petitioner's case that he had submitted an objection indicating that since he has 57% marks in M.A. (Hindi) and 37% marks in graduation, his M.A. marks may be considered instead of graduation marks as per NCTE Rules and Regulations. According to the petitioner, as per the guidelines fixed by the NCTE in its notification dated 12.11.2014, the minimum qualification of a person is either graduate or post-graduate from a recognized university with at least 50% marks in either graduation or post-graduation. The said resolution is enclosed as Annexure-7. According to the petitioner, the guidelines fixed by the State Government in its resolution dated 27.10.2014 (Annexure-8) being contrary to the guidelines fixed by the NCTE, is not sustainable in the eye of law. Since the petitioner has secured more than 50% of marks in the post-graduation level, rejection of his candidature by considering his marks at graduation level is contrary to the guidelines of

NCTE.

3. A counter affidavit has been filed by the District Education Officer, Cuttack (opposite party no.4) mainly referring to the resolution dated 27.10.2014 as per which, the qualification for the post of Hindi Teacher is Bachelor's degree with Hindi as one of the elective subjects with minimum 50 % marks in aggregate. It is stated that the petitioner did not possess the requisite percentage of marks and hence, his candidature was rightly not accepted. Referring to the guidelines issued by the NCTE, it is stated that even as per the same, the minimum qualification is 50% marks in graduate/post-graduate and Bachelor of Education. It is also submitted that the advertisement being for the year 2014-15, the eligible candidates have been selected and have also been engaged and as such, there is no vacancy available at present.

4. The petitioner has filed a rejoinder to the counter again harping upon the guidelines of the NCTE to state that the requirement of 50% marks applies either to graduate or post graduate level. Moreover, the petitioner

also has Sastri qualification securing 54% marks from Orissa Rastrabhasa Parishad, which is equivalent to graduation (+3) as per order dated 31.07.2012 of Utkal University (Annexure-11). The petitioner has also relied upon a decision of a Coordinate Bench of this Court in the case of ***Nihar Ranjan Sarangi vs. State of Odisha (WPC(OAC) No. 922 of 2016)*** to contend that the ratio of the same squarely applies to him.

5. The opposite party no.4 again filed a reply to the rejoinder stating that as per the qualification prescribed in the advertisement vide Clause-3(f), it is specifically provided that a candidate must have secured Bachelor's degree with Hindi as one of the optional/honours subject with minimum 50% of marks in aggregate **and** M.A. in Hindi with minimum 50% marks in aggregate. But in the instant case though the petitioner secured more than 50% mark in Hindi in M.A. but had secured only 37% marks at the Graduation Level and therefore, he does not have the requisite qualification as prescribed, for which his candidature has been rightly

rejected. As regards the guidelines of the NCTE dated 12.11.2014 it is stated that it does not apply to the instant case because the advertisement was issued prior to issuance of the said guidelines. Since the petitioner had never challenged the advertisement at any point of time, he cannot now be permitted to question his rejection on the basis of norms laid down in the said advertisement only because he was unsuccessful.

6. Heard Mr. B.P. Das, learned counsel for the petitioner and Mr. R.N. Acharya, learned Standing Counsel for School and Mass Education Department.

7. Mr. Das has made a two-fold argument: firstly, since the petitioner is a graduate with Sastri qualification and further with post-graduate qualification securing more than 50 % marks in each of them, he is eligible as per the advertisement. Since the Utkal University has issued an order treating Sastri qualification from Odisha Rastrabhasa Parishad as being equivalent to +3 pass, it must be held that the petitioner is duly qualified for the post. Secondly, it is contended by Mr. Das that even

otherwise, the advertisement being contrary to the NCTE guidelines, the latter must take precedence over the former. Mr. Das has also relied upon the judgment of this Court in ***Nihar Ranjan Sarangi*** (supra) in support of his case.

8. Mr. R.N. Acharya, on the other hand, has based his arguments entirely on Clause-3(f) of the advertisement, which according to him clearly lays down that the candidates must have a Bachelor's degree with Hindi as one of the elective subjects with minimum 50 % marks in aggregate with either Rastrabhasa Ratna or Sastri or Snataka qualification or an equivalent decree with at least 50% marks and Hindi Sikhyan Parangat. Mr. Acharya argues that the advertisement also provides that a candidate must possess the aforementioned qualifications or a Bachelor's degree with Hindi as one of the optional/ honours subjects with minimum 50% in aggregate and M.A. in Hindi with minimum 50% marks in aggregate. Either way, the petitioner is not qualified since he did not secure 50% marks in his B.A. examination but

only 37%. As regards the NCTE guidelines, it is submitted that the advertisement being issued prior to issuance of the said guidelines, cannot be governed by the same.

9. As it appears, the petitioner had passed B.A. examination with Hindi as one of the subjects securing 37% marks. The petitioner also passed the M.A. (Hindi) examination from the Indira Gandhi National Open University securing 50% marks as per provisional certificate and mark sheet annexed as Annexure-1 series. It also appears that the petitioner passed the Sastri Examination from Odisha Rastrabhasa Parishad securing 54% of marks, as per the copies of the certificate and mark sheet enclosed as Annexure-10.

It is now required to be seen whether the petitioner with the above qualification is eligible for being considered for appointment as Hindi Teacher (Contractual) as per the norms laid down in the Resolution dated 27.10.2014 (Annexure-8). Clause-3 relates to Educational Qualification. Sub-Clause (f) relates to Hindi Teacher, the qualification for which is as extracted hereinbelow:

(f) **Hindi Teacher:** Bachelor's degree from a recognized University with Hindi as one of the elective subject with minimum 50% marks in aggregate (45% for SC/ST/PH/OBC/SEBC candidates)

or

with Rastrabhasa Ratna from Rastrabhasa Prachar Samiti, Wardha

or

with Sastri from Orissa Rastrabhasa Parisada, Puri

or

with Snataka (Acquired by June-2005, the date up to which the temporary recognition has been granted) from Hindi Sikshaya Samiti, Orissa, Cuttack or an equivalent degree from a recognized Institution with at least 50% marks in aggregate (45% for SC/ST/PH/OBC/SEBC candidates)

and

Hindi Sikshyan Parangat from Kendriya Hindi Sansthan, Agra/B.H.Ed. (a course prescribed by NCTE) from a Institution recognized by NCTE and affiliated to a recognized University /B.Ed. in Hindi (a course prescribed by NCTE) from Dakhin Bharat Hindi Prachar Sabha, Madras, a institution recognized by NCTE and affiliated to a recognized University.

OR

Bachelor's degree with Hindi as one of the optional / Hons subject with minimum 50% of marks in aggregate (45% for SC / ST / PH / OBC / SEBC candidates) and M.A. in Hindi with minimum 50% marks in aggregate from a recognized University.

(The untrained candidates shall have to undergo required training within the timeline as prescribed by Govt.)"

A reading of the prescribed qualification would make it abundantly clear that there are two sets of qualifications prescribed as alternatives, which a candidate must

possess in order to be eligible. The first part speaks of Bachelor's degree from a recognized University with Hindi as one of the elective subjects with minimum 50% marks in aggregate **or with** Rastrabhasa Ratna from Rastrabhasa Prachar Samiti Wardha **or with** Sastri from Odisha Rastrabhasa Parishad, Puri **or with** Snataka from Hindi Sikshaya Samiti, Orissa, Cuttack or an equivalent degree from a recognized Institution with at least 50% marks in aggregate **and** Hindi Sikshyan Parangat from Kendriya Hindi Sansthan, Agra/B.H.Ed. from a Institution recognized by NCTE and affiliated to a recognized University /B.Ed. in Hindi from Dakhin Bharat Hindi Prachar Sabha, Madras. This is one part. Alternatively, it is prescribed that the candidate must possess a Bachelor's degree with Hindi as one of the optional /Hons. subject with minimum 50% of marks in aggregate **and** M.A. in Hindi with minimum 50% marks in aggregate.

10. As it appears, both conjunctive and disjunctive words, i.e., '**or**', '**with**' and '**and**' have been used in the above referred qualifications. It is needless to

mention that the use of a disjunctive word, such as '**or**' between two parts of a sentence ordinarily refers to separation of the two sentences and therefore, both are to be treated as alternatives. On the other hand, conjunctive words, such as '**with**' and '**and**' are ordinarily used to join two parts of sentences so as to make both applicable. Peculiarly, in the advertisement in question, clause-3(f) employs both disjunctive and conjunctive words together in the form of '**or with**'. It would appear that the use of the disjunctive '**or**' at the first instance appears to be somewhat confusing and even misleading but then if the entire clause is to be read as a whole, it would be clear that the requirement is of Bachelor's degree from a recognized university with Hindi as one of the elective subjects with minimum 50% marks in aggregate with either Rastrabhasa Ratna or Sastri or Snataka or an equivalent degree (equivalent to the aforesaid three qualifications) and Hindi Sikshyan Parangat/ B.H.Ed/B.Ed. A reading of the whole of Clause-3 would strongly suggest that the requirement of a Bachelor's

degree with 50% marks in aggregate is the basic requirement and along with it, further qualifications are also necessary. The fact that the words 'Rastrabhasa Ratna' 'Sastri' and 'Snataka' as employed in different sentences have been prefixed with 'with' means they are additional qualifications which a candidate must possess apart from the basic requirement of securing 50% marks in graduation. Similarly, the use of 'or' prefixing 'with' in these sentences obviously indicates that the said three qualifications are alternatives. Therefore, while the requirement of having 50% marks in graduation level cannot in any manner be done away with in order to be eligible one must also possess either of the three additional qualifications.

11. The petitioner claims that having possessed the Sastri qualification securing 54% of marks he must be treated as having fulfilled the requirement of Bachelor's degree, cannot be accepted because as already discussed, in so far as the advertisement is concerned, the requirement of possessing Sastri or Rastrabhasa Ratna or

Snataka etc. is in addition to the requirement of Bachelor's degree with Hindi as one of the elective subjects with minimum 50% marks in aggregate and not as an alternative qualification. Admittedly, the petitioner secured only 37% marks in the B.A. Examination and therefore, notwithstanding the fact that he had secured 54% marks in Sastri, by no stretch of imagination can he be treated as qualified as per the advertisement.

12. As regards the argument that the advertisement dated 27.10.2014 runs contrary to the NCTE guidelines issued on 12.11.2014, this Court is unable to accept the same for two reasons, firstly, law is well settled that a person who has submitted his candidature on the basis of an advertisement cannot subsequently turn around and raise objection to the same only after being unsuccessful. It is needless to mention that the petitioner had never challenged the advertisement at any point of time but has questioned the qualification prescribed therein only after being declared unsuccessful. In this regard, reference may be had to the ratio of the

following decisions of the Apex Court, viz, ***Om Prakash Sukla vs. Akhilesh Kumar Sukla***, reported in AIR 1986 SC 1043 and ***Madan Lal and others vs. State of Jammu and Kashmir and others***, reported in AIR 1995 SC 1088.

Secondly, the NCTE guidelines were admittedly issued after issuance of the advertisement issued by the State Government and there is no material to show that there was any order passed to the effect that the said guidelines shall supersede the norms laid down in the advertisement of the State Government either by issuing a corrigendum or by a specific order. Therefore, the said guidelines can only be treated as prospective and not retrospective in operation.

13. As already stated, Mr. Das has relied upon the decision of a coordinate Bench of this Court in the case of Nihar Ranjan Sarangi (*supra*). A reading of the same reveals that in the said case the candidature of the petitioner was not accepted on the ground that he did not have the Hindi training qualification such as Hindi

Sikshyan Parangat or B.H.Ed. or B.Ed in Hindi. As such, this Court held that “xxxxxxx on entire reading of clause-3(f) this Court nowhere finds the requirement of Hindi Training qualification for Hindi Teacher.”. Obviously, the facts of the said case are entirely different from the facts of the case at hand, inasmuch as the petitioner’s candidature was not rejected for want of Hindi Teacher’s Training qualification but for not possessing the minimum eligibility requirement of securing 50% marks at the graduation level.

14. In course of argument Mr. Das also referred to another decision of a coordinate Bench of this Court rendered on 15.09.2021 in the case of **Satyabrata Nayak and others vs. State of Odisha and others and batch**. A reading of the judgment reveals that in the said case also the candidature of the petitioners was rejected on the ground that they had acquired training qualification after the advertisement was issued. Again, the facts of the said cases cannot be compared to the case at hand.

15. For the forgoing reasons, therefore, this Court holds that the petitioner did not possess the required qualification as laid in Clause- 3(f) of the Regulation dated 27.10.2014 for being considered for appointment to the post of Hindi Teacher (Contractual) and therefore, his candidature must be held to have been rightly rejected.

16. Resultantly, this Court finds no merit in the writ petition for which the same is dismissed.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
The 9th May, 2022/ A.K. Rana