

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) Nos.38329 and 38405 of 2021

(In the matters of applications under Articles 226 and 227 of the Constitution of India, 1950).

In W.P.(C) No.38329 of 2021

Jyotiranjana Jena and Ors. *Petitioners*

-versus-

Govt. of Odisha and Ors. *Opp. Parties*

Advocates appeared in the case through Hybrid Mode:

For Petitioners : *Mr. Satyabrata Mohanty,*
Adv.

-versus-

For Opp. Parties : *Mr. Biswajit Mohanty, SC*
(for S & ME Deptt.)

In W.P.(C) No.38405 of 2021

Bijayaketan Bidyadhar Sahoo *Petitioner*

-versus-

Govt. of Odisha and Ors. *Opp. Parties*

Advocates appeared in the case through Hybrid Mode:

For Petitioner : *Mr. Satyabrata Mohanty,*
Adv.

-versus-

For Opp. Parties : *Mr. Biswajit Mohanty, SC*
(for S & ME Deptt.)

CORAM:
MR.JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-18.04.2022
DATE OF JUDGMENT:-06.05.2022

S.K. Panigrahi, J.

1. In both the above writ petitions, the petitioners have assailed the arbitrary action of the authority by not considering their candidature in the draft merit list. The petitioners have been allegedly excluded from the merit list merely on the ground that they have completed their graduation degree in Commerce (B.Com) and the B. Com degree course does not have any school subjects.

2. The case, in a nutshell, is that, the School and Mass Education Department, Government of Odisha has decided to fill up the vacancies of different posts of Contractual Trained Graduate Teachers and Telugu Teachers in Government Secondary Schools of the State of Odisha in 2021. Accordingly, the Director of Secondary Education, Odisha Bhubaneswar-opposite party No.2 issued Advertisement/ Notice on 28.08.2021. This notification carried the details of the conditions and norms which are applicable for the intending eligible candidates for recruitment against

the existing vacancies of contractual Trained Graduate Teachers in Government Secondary Schools of Odisha.

3. As per the advertisement, online registration would commence from 04.09.2021 and would continue till 30.09.2021 up to 6.00 P.M. The minimum academic and professional qualification as prescribed under clause-5B of the said Advertisement for the post of Trained Graduate Teachers Arts reads as follows:

"1. Bachelor Degree in Arts / Commerce or a Shastri (Sanskrit) Degree from a recognized university with two school subjects (school subjects as defined in the proviso here under) from a recognized university having 50% marks in aggregate (45% for SC/ST/PWD/ SEBC candidates) and Bachelor in Education (B. Ed)/ 3 years integrated B.Ed-M.Ed from a NCTE recognized institution.

Or

2. Four-year integrated B.A. B. Ed from a NCTE recognized institution with two school subjects (school subjects as defined in the proviso here under) having 50% marks in aggregate (45% for SC/ST/PWD/SEBC candidates).

Provided that:

In any case the candidate must have passed the Bachelor Degree with any two school subjects offered as Pass/ Hons/Elective/ Optional/Compulsory subject out of the following:

English, Odia, Sanskrit, History, Geography, Economics, Political Science,

Indian Economy, Landmarks in Indian History, Indian Geography, Indian Polity.”

4. Accordingly, the petitioners applied for the post by the due date and the examination was held on the scheduled date. As the petitioners fulfilled all the criteria i.e. educational qualifications as prescribed in the Advertisement, after completion of the examination, the petitioners participated in the process of verification of documents. Subsequently, the opposite parties issued notice on 26.11.2021 to intimate the candidates regarding the post-wise draft merit list and post-wise draft rejection list for candidates who had appeared in the online test of C.B.T held from 25.10.2021 to 28.10.2021 and had gotten their documents verified from 18.11.2021 to 23.11.2021.

5. On verification of the said draft list, the present petitioners found themselves featuring on the post-wise draft rejection list and the ground of rejection as assigned to them, is noted to be “*not having two school subjects in Bachelor Degree as prescribed*” and “*lack of two school subjects in B.com*”.

6. Learned counsel for the petitioners submitted that after coming to know of their rejection, the petitioners raised their objections stating therein that the ground for rejection is arbitrary, illegal and unsustainable. The

learned counsel for the petitioners further submitted that the petitioners held a Bachelors degree in Commerce i.e. a B.Com Degree, wherein in the syllabus of the Bachelors Course there is a subject called Business Economics which has the same syllabus of Economics, which is a compulsory subject in the course and this is common in all B.Com degrees throughout the State of Odisha. Thus, they studied Economics as one of the compulsory subjects in their Bachelors Course, however, the same has not been considered. They also submitted that in the year 2019, the Director Secondary Education, State of Odisha, issued a notification for recruitment in the post of Contractual Trained Graduate Teachers in Government Secondary School, wherein in the TGT Arts Category, the prescribed minimum academic qualification was Bachelor Degree in Arts/ Commerce or Sastri (Sanskrit) Degree from a recognized university with two school subjects, knowing very well that in commerce stream, Economics is known as Business Economics in the Syllabus of the B.Com Course. It was further clarified that, there are 2 compulsory papers and 2 elective subjects (pass paper) and 2 honour papers in the first two semesters of the 1st Year. Then in the two semesters of the 2nd Year, there are two elective subjects (pass paper) and 4 honour papers and finally there are 2 compulsory papers and 4 honour papers in

2 semesters of the 3rd Year. It is also ardently submitted that the Economics paper is known as Business Economics in the Commerce stream throughout the State in all the Universities and the Autonomous Colleges.

7. The learned counsel for the petitioners further submitted that as per the Advertisement, the candidates should have two compulsory school subjects from amongst English, Odia, Hindi, Sanskrit, History, Geography, Economics etc. and the petitioners fulfilled the said requirement by having English which is known as Communicative English in the B.Com stream across the State of Odisha and Economics which is known as Business Economics in the B.Com stream across the State of Odisha. It was further pointed out that, even though the compulsory subject English and Economics are nomenclatured as Communicative English and Business Economics, rejection of the petitioners otherwise successful application on this hyper technical ground is incorrect and unjust. It is submitted that this reflects a complete non-application of mind. It was further brought to this Court's notice that, in the year 2016-2017 the Syllabus introduced by the Utkal University and the State Model Syllabus for Under Graduate Course in Commerce under the Choice Based Credit System (CBCS), has clearly spelt out that in the 1st

year in semester Nos.1 and 2 the Economics subject will be known as Micro Economics and Macro Economics in the Arts Stream and whereas the same was available under the name of Business Economics in the Commerce Stream, also the courses, despite their names being different, deal with the same topics unit wise.

8. Learned counsel for the petitioners submitted that all the petitioners present before this Court are B. Com graduate students having the necessary B.Ed qualification and have completed their post-graduation in the commerce stream. More particularly, petitioner No.1 in W.P.(C) No.38329 of 2021 has the qualification of M. Com. with M.Ed. and a disability Certificate from the Competent Authority. Despite the petitioners possessing such a high level of qualifications, the candidatures of the petitioners has been rejected on hyper technical grounds which shows the non-application of mind and apathetic attitude of the Authority which leads to prejudicially affecting the career of the petitioners.

9. *Per contra*, Learned counsel for the opposite parties- Department of School and Mass Education submitted that the petitioners do not have any of the school subject in Bachelor Degree as exactly listed in the resolution or the particular paragraph of the advertisement i.e. English, Odia, Hindi, Sanskrit,

History, Geography, Economics, Political Science, Indian Economy, Landmarks in Indian History, Indian Geography, Indian Polity. Therefore their candidatures were rejected at the time of verification of documents. It was further submitted that in the school subject column of the online application, the petitioners have filled in two of the aforesaid schools subjects (English and Economics as prescribed in the advertisement) but at the time of verification of documents it was found that in Bachelor Degree they had not studied the subjects which they had mentioned in the online application (they had studied Communicative English and Business Economics). According to the learned counsel for the opposite parties, this clearly indicates that the petitioners had given false information in the application forms and on the basis of this false information, their applications were inadvertently accepted by the computer system and they have been allowed to appear in the Computer Based Recruitment Examination. Their candidatures were liable to be rejected as per the condition prescribed in Para 15(vii) of the Advertisement which talks about providing false information in the application forms. That apart, it is the contention of the learned counsel that the petitioners never challenged the eligibility conditions made in the Advertisement dated 28.08.2021. They have accepted the eligibility conditions prescribed in

the said Advertisement with eyes wide open and applied online for the post of contractual TGT. However, the learned counsel conceded that Business Economics is similar to Economics and stated that the similarity of the two subjects albeit bearing different nomenclature can be examined and ascertained by academicians/subject experts but this exercise of taking opinion from subject experts/academicians may be required before taking a decision on the subjects to be prescribed in the advertisement for the recruitment.

10. The learned counsel for the opposite parties further contended that, this argument of two subjects being similar is vague and irrelevant after the selection process. Insofar as the condition in the advertisement is concerned, the question of accepting any subject similar/identical/equivalent etc. does not arise. It was also submitted that the State being the employer has every right to fix eligibility conditions for selection and recruitment of its employees. It is essential for the employer to fix some eligibility conditions as per the requirement of a job. It is not possible for the State authorities to study all possible subject combinations available at Degree level in all branches and all institutions/ universities across the country and accordingly include all such subjects in the advertisement so as to satisfy all candidates. So, some common standard subjects have been prescribed

keeping in view the teaching requirement in schools. The petitioners may have many other subjects at Graduation level apparently similar to the prescribed subjects, but which do not fulfill the exact specification and requirement for the post as set by the State as employer.

11. Heard learned counsel for the parties.

12.In ***Special Courts Bill, 1978, In re***¹ Chandrachud, C.J. as he then was, speaking for majority of the Court, adverted to large number of judicial precedents involving interpretation of Article 14 and culled out several propositions including the following:

“72. (2) The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity

¹(1979) 1 SCC 380

of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

(5) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well-defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of

evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others; and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.”

13. The Hon’ble High Court of Kerala in **B. Shamasundar v. University of Mysore**², observed that:

“6. Equality before law and equal protection of laws is the heart and soul of the Constitutional system adopted by this country. The right to equality and equal protection of laws under Article 14 are genus and the right to non-discrimination are the species. Equality as contemplated under the Constitutional scheme means equality among equals. The doctrine of equality is considered to be a corollary to the concept of Rule of Law which postulates that every executive action, if it is to operate to the prejudice of any person must be fair and referable to legal authority. What Article 14 prohibits is the class legislation and not reasonable classification. If classification is based upon

²1996 SCC OnLine Kar 430

reasonable criteria and the persons belonging to well-defined class are treated equally, the vice of discrimination would not be attracted. In order to pass the test of reasonable classification the impugned Statute, order or notification is required to pass the twin tests of permissible classification viz.,

(i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and;

(ii) that, that differentia must have a rational relation to the object sought to be achieved by the impugned statute or order.

7. It is not conceived that the classification should be scientifically perfect or logically complete. The Court would not interfere unless it is shown that the classification resulted in inequality amongst the persons similarly situated. The reasonable classification expected to stand the test of the Constitutional guarantees requires that such classification was real and substantial which contemplated some just reasonable relation to the job of the legislation. The Courts have not to determine as to whether the impugned action has resulted in inequality but have to decide whether there was some differentia which had an object to be achieved by the impugned action. Mere differentiation per se does not amount to discrimination attracting the operation of the guarantee of equality. The purpose and object of the impugned action has to be ascertained from the attending circumstances in each case."

14. It therefore flows, that Article 14 forbids class legislation but permits reasonable classification

provided that it is founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and the differentia has a rational nexus to the object sought to be achieved by the action in question.

15. In *LIC of India v. Consumer Education & Research Centre*³, the Hon'ble Supreme Court reiterated the above noted principle in the following words:

“30. ... The doctrine of classification is only a subsidiary rule evolved by the courts to give practical content to the doctrine of equality, overemphasis on the doctrine of classification or anxious or sustained attempt to discover some basis for classification may gradually and imperceptibly erode the profound potency of the glorious content of equality enshrined in Article 14 of the Constitution. The overemphasis on classification would inevitably result in substitution of the doctrine of classification to the doctrine of equality and the Preamble of the Constitution which is an integral part and scheme of the Constitution. Maneka Gandhi v. Union of India [(1978) 1 SCC 248] ratio extricated it from this moribund and put its elasticity for egalitarian pathfinder lest the classification would deny equality to the larger segments of the society. The classification based on employment in government, semi-government and reputed commercial firms has the insidious and

³(1995) 5 SCC 482

inevitable effect of excluding lives in vast rural and urban areas engaged in unorganised or self-employed sectors to have life insurance offending Article 14 of the Constitution and socio-economic justice.”

16. The petitioners, who are otherwise eligible, are now excluded on the basis of an artificial classification introduced in the impugned advertisement. There is no nexus sought to be achieved with the intent or object of the State Government, as the excluded candidates also fulfill the requirement of a trained graduate teacher and have studied two of the required subjects albeit named differently. When all across the State, the course of English is called Communicative English in the B.Com Degree and Economics is called Business Economics in the B.Com Degree, then denying all B.Com graduates the opportunity to be successful in being appointed as a trained graduate teacher using this hyper-technical approach is wholly arbitrary and amounts to an artificial discrimination which cannot hold in law. If *prima facie*, unit wise the contents of the subject are similar, no matter what it is called, then the position of all such candidates are substantially the same with respect to the object sought to be achieved by the State is prescribing prior education in these subjects as the minimum qualification. The idea behind the State introducing a requirement as such is just to ensure that the candidate has adequate

knowledge in the subject. If in fact the said qualification was for any other purpose and meant to be so narrow then the State would not have allowed education in the school subjects in any of the “Pass/ Hons/ Elective/ Optional/Compulsory” manner. If the present Petitioners are otherwise eligible and they have studied the subject during their graduation course, then the object of the said qualifying criteria is satisfied.

17. Recently in **Priyanka Menaria v. State of Rajasthan**⁴, the Hon’ble High Court of Rajasthan was pleased to hold under similar circumstances that:

“20. The syllabus (Annex.13) produced by the petitioner fortifies the contention of having studied Economics as such during course of her graduation and, therefore, the action of the respondents in rejecting the candidature of the petitioner by mere reference to the fact that the mark-sheets produced by the petitioner indicated Banking and Business Economics instead of Economics, cannot be sustained.

21. The above aspect also finds support from the fact that for subject Science the candidates having studied Bio-Technology and Bio-Chemistry have been held eligible, which are also specialized subjects within broader subject Science and, therefore, as the petitioner has studied Banking & Business Economics, the same can very well be treated as part of Economics.

⁴2019 SCC OnLine Raj 3443

22. Consequently, the writ petition filed by the petitioner is allowed. It is held that the petitioner, who has studied Banking and Business Economics in her graduation (B.Com) would be eligible for appointment on the post of Teacher Gr.III (Level-II) in subject Social Science.

23. The respondents would take steps for according appointment to the petitioner, in case, the petitioner is found otherwise eligible. The petitioner would be entitled to all consequential benefits regarding her seniority etc. However, monetary benefits would be paid to the petitioner from the date of her appointment.”

18. The Hon’ble Supreme Court in **State of J&K v. Triloki Nath Khosa**⁵, held that:

“30. Since the constitutional code of equality and equal opportunity is a charter for equals, equality of opportunity in matters of promotion means an equal promotional opportunity for persons who fall, substantially, within the same class. A classification of employees can therefore be made for first identifying and then distinguishing members of one class from those of another.

31. Classification, however, is fraught with the danger that it may produce artificial inequalities and therefore, the right to classify is hedged in with salient restraints; or else, the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well marked classes characterized by different and distinct attainments. Classification, therefore, must be truly founded on substantial differences

⁵(1974) 1 SCC 19

which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.

32. Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an inquiry permissible it would be open to the Courts to substitute their own judgment for that of the legislature or the Rule-making authority on the need to classify or the desirability of achieving a particular object.”

19. It is apparently evident to any reasonable man from the averments placed and the submissions advanced that the subject Communicative English and English implicate the same subject. Additionally, the Subject Economics takes under its purview, the subjects of Macro Economics and Micro Economics and thus Business Economics is the same as the subject of Economics. Therefore, the action of the opposite parties in not allowing the petitioners, despite possessing all requisite and essential qualifications and after qualifying the computer-based Test (CBT), to be appointed as a trained graduate teacher is erroneous and arbitrary.

20. Accordingly, while allowing both the aforesaid writ petitions, this Court sets aside the rejection of the candidatures of the petitioners in the selection process and directs the opposite parties to consider the candidatures of the petitioners in the light of the fact that they possess all requisite qualifications and have qualified in the CBT.

21. Both the writ petitions are disposed of being allowed.



Orissa High Court, Cuttack,

Dated the 6th May, 2022/B. Jhankar