

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(216)

CWP-16540-2016

Date of Decision : December 06, 2022

Mohammad Usman

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Johan Kumar, Advocate, for the petitioner.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present petition, the grievance of the petitioner is that his candidature for the post of JBT Teacher (Urdu) has been rejected by the respondent on the ground that the petitioner is not able to read or write Urdu, which is one of the essential qualification.

Learned counsel for the petitioner argues that the ground which has been taken by the respondents to deny the petitioner the benefit of selection is totally arbitrary, illegal and factually incorrect keeping in view the fact that the petitioner has the knowledge of reading and writing of the Urdu and the petitioner has also passed required examination in the subject of Urdu which depicts that petitioner is capable of reading and writing Urdu.

After notice of motion, the respondents have filed the reply in which, the respondents have mentioned that the petitioner had passed the additional subject of Urdu at the secondary level in the year 2009 from the Board of School Education, Haryana but, at the time when the selection took place, the Experts were of the view that the petitioner is not able to read and write Urdu.

During the pendency of the writ petition, as per the instructions received from the Directory Elementary Education, a Committee, which interviewed the petitioner, found that the petitioner is incompetent to read and write Urdu and therefore, the petitioner was rightly rejected for appointment to the post in question. The said claim was being countered by the learned counsel for the petitioner on the ground that not only the petitioner has educational certificate in the subject of Urdu proving that the petitioner is competent to read and write Urdu but the petitioner is still ready to undergo the test so as to examine whether the petitioner is eligible under the rules with regard to the processing of knowledge of Urdu upto matric level.

Keeping in view the said factual position on joint request of the parties, the petitioner was directed to appear before the Expert Committee of Haryana Urdu Academy so as to inform this Court, the capability of the petitioner with regard to the knowledge of subject of Urdu.

A sealed report has been received from Haryana Urdu Academy, a copy of which has been placed on record as Annexure A and the petitioner has been assessed by the Head of the Urdu Department Punjab University and a retired Professor of Urdu Department Punjab University

with regard to the knowledge of the petitioner in Urdu.

As per the said report, the petitioner is capable of reading and writing Urdu and the said knowledge is upto the matric level.

Learned counsel for the petitioner argues that keeping in view the academic qualification of the petitioner which already depicts that the petitioner has passed the subject of Urdu upto the matric level as far back as the year 2009 i.e. prior to the issuance of the advertisement but now even as per the opinion of the Expert Committee, the petitioner has been certified that he has a knowledge of subject of Urdu upto matric level, hence, the claim of the petitioner needs to be considered in light of the recommendation of the Expert Committee.

Learned counsel for the respondents submits that the selection for the post of JBT Teacher (Urdu) was made in the year 2012 and the present writ petition was filed in the year 2016 and the petitioner has been assessed by the Expert Committee in the year 2022 and it can be a possibility that the petitioner has improved his skill in the language of Urdu in the meantime, hence, there is no valid justification to overrule recommendation of the Committee which had interviewed the petitioner during the selection process.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The qualification required for appointment to the post of JBT Teacher is governed by the Haryana Primary Education (Group C) District Cadre Service Rules 1994. Keeping in view the qualification under the said Rule, as amended from time to time, in order to be appointed as a JBT Teacher, a candidate was required to have passed 10+2 examination from the Board of School Education Haryana or its equivalent recognized by the

Board of School Education Haryana. Apart from the said qualification, a candidate is required to have passed two years Junior Basic Training Course or diploma in Education Training Course, from the Haryana Education Department or its equivalent recognized by the Haryana Government with the Special Training in Child Psychology and Behavior of Child upto the age of 12 years. The knowledge of Hindi upto Matric standard is also must.

As per the note appended to the said Rule, the preference is to be given to the candidates, who possesses knowledge of Urdu upto the Matric standard for the post of Junior Basic Teacher for the Mewat area. The Rule governing the service is as under:-

“ i) Passed 10+2 Examination from the Board of School Education, Haryana or its equivalent as recognized by the Board of School Education, Haryana.

ii) Passed Two years Junior Basic Training Course or Diploma in Education Training Course from Haryana Education Department or its equivalent recognized by the Haryana Government with special training in child psychology and behavior of child upto the age of 12 years.

iii) Knowledge of Hindi upto Matric Standard.

NOTE:

i) Preference will be given to candidates who possess knowledge of Urdu upto Matric standard for posts of Junior Basis Trained Teachers for Mewat area.

ii) Professional Diploma or Certificate awarded by the State Board or University other than Haryana Education Department will be recognized only if the Degree or Diploma or Certificate has been recognized by the Haryana Govt.”

It is not disputed that the petitioner has been assessed under the above mentioned rule.

A bare perusal of the Rule would show that there is no requirement of passing of Urdu upto Matric level as an essential qualification but the same is only to be treated as the preferential qualification when being considered for appointed as a JBT Teacher in Mewat area. That being so, the preference qualification cannot be made as an essential qualification for assessing a candidate. Preference qualification can be brought into operation if two candidates are similarly situated so as to break the tie. Once, the petitioner fulfills the basic qualification, he was required to be assessed on the basis of the said essential qualification, hence, declining of the relief to the petitioner for further consideration on the basis of a qualification which is only preferential and not essential, is totally arbitrary and illegal.

Even otherwise, along with an application, the petitioner has attached his academic achievement according to which, the petitioner had already passed Urdu upto Matric level in the year 2009 much before the advertisement for the appointment was issued. The said qualification has been attained by the petitioner from the Haryana School Education Board only. Once, the qualification has been obtained by the petitioner from an Institute, which is operated by the Government of Haryana, doubting of the capability of the petitioner qua the said subject and that too only on the observation of the interviewing Committee is not fair.

Not only this, in order to verify the capability of the petitioner, so that a person who is having the academic qualification, is not caused any prejudice only on the basis of the observation of the Selection Committee, the petitioner was asked to appear before the Experts and that too before a retired professor who have remained as the Head of the Urdu Department in

Punjab University, the petitioner has been found capable of reading and writing Urdu upto Matric level.

That being so, it cannot be said that the petitioner did not had even the preferential qualification which was made the basis for ousting him from the zone of consideration.

The last argument, which has been raised by the learned counsel for the respondents is that from the date of recommendation of the Committee, which found the petitioner not conversant with Urdu, a decade has already passed and it could be a possibility that the petitioner has enhanced his capability in the integrum. The said argument cannot be accepted for the reason that the petitioner was certified having knowledge of Urdu language upto Matric level by the respondents-State itself by awarding him a certificate to the said effect in the year 2009. The Committee has only reiterated the said fact now in the year 2022. Therefore, the argument of the respondents that the petitioner could have enhance his capability in the subject of Urdu in the intergrum, cannot be accepted.

Keeping in view the above, the claim of the petitioner is allowed and the rejection of the claim of the petitioner for being considered for appointment as a JBT Teacher only by placing reliance upon the Note to the Rule governing the service, according to which, a preference was to be given to a candidate, who has proficiency in the subject of Urdu while being appointed in Mewat cadre, is set aside. The respondents are directed to re-assess the candidature of the petitioner in accordance with law keeping in view the selection process which the petitioner has already undergone and in case, any candidate having lesser merit than the petitioner has been

appointed, the claim of the petitioner for appointment be considered.

Learned counsel for the respondents submits that as the petitioner is interested in getting the appointment, the petitioner waives his right to seek arrears in case the petitioner be given appointment from the date when a candidate lower in merit was given, the same with all other consequential benefits such as seniority and fixation of pay.

Ordered accordingly.

Let the respondents consider the claim of the petitioner in accordance with law within a period of two months and find out whether the petitioner is entitled to be appointed as a JBT Teacher or not.

The present writ petition is allowed in above terms.

December 06, 2022

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes