

Quashing of
the Select Panel

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CAT/3/12

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 279/87

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XXXXXX

DATE OF DECISION 12-09-1991

Mrs. Meenakshi S. Shrivastava Petitioner

Mr. K.K. Shah Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. N.S. Shevde Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M.M. Singh : Administrative Member

The Hon'ble Mr. R.C. Bhatt : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? NO
3. Whether their Lordships wish to see the fair copy of the Judgement? Y
4. Whether it needs to be circulated to other Benches of the Tribunal? NO

Mrs. Meenakshi S Shrivastava,
Assistant Teacher,
Dohad (Panchmahal District)
(Advocate Mr. K.K.Shah)
Versus

(8) : Applicant

1. The Union of India
Through:
the General Manager,
Western Railway,
Churchgate, Bombay.
2. Senior Divisional Personal
Officer, Western Railway
Divisional Office,
Pratapnagar, Baroda.
(Advocate: Mr. N.S.Shevde)

: Respondents.

JUDGMENT

O.A. 279/87

Date: 12-09-1991

Per: Hon'ble Mr. R.C. Bhatt

: Judicial Member

1. This application under Section 19 of the Administrative Tribunals Act, 1985 is filed by the Primary Teacher serving in the Primary Railway School (Gujarati medium) Dohad, to quash and set aside the panel Annexure 'C' dated 1.5.1987 and to direct the respondents, their agents and servants to allow the applicant to continue to work as a permanent primary teacher with continuity of service and all other benefits.
2. The case of the applicant is that she is a qualified teacher possessing the qualification of SSC, P.D.A. (Pre Diploma in Education) as well as T.C.W.C.G. (Tailoring Course in Women and Children Garments) that she had applied for the post of Primary Teacher in the Primary Railway School (Gujarati Medium) Dohad that after scrutiny and careful examination of her certificates of SSC, P.D.A. and others, she was appointed as an Assistant Teacher (Gujarati medium) in the scale of Rs.330-560 (R) and by an order dated 27.10.80 on completion of ninety days continuous service, she was afforded temporary status. According to the applicant thereafter, she was directed to proceed for the screening test



at Bombay by order dated 29.10.1980 and that she appeared in the screening test and she was allowed to continue to work in the same post and she was given her regular increments and all other benefits which a permanent railway teacher is entitled to get. The applicant continued to work as a primary teacher without any break at any time till June, 1987 and even at the date of this application she continued on the muster roll of the primary railway school at Dohad. It is alleged by the applicant that she received a memorandum Annexure 'C' from the Education Department of the respondent railway administration dated 1.5.1987 wherein it was mentioned that a panel for the recruitment of Assistant Teachers in the scale of Rs-330-560 (R)/Rs.1200-Rs.2040 (RP) is drawn which included the names of 23 teachers but did not include the name of the applicant. It is alleged by the applicant that the names of juniors to her were included in the list and name of one A.S.Umrwala is also mentioned at Sr.No.16 in this panel though she had resigned before 18 months. It is alleged by the applicant that there are some juniors shown in this panel and they are Mr.Patel, M.V.Acharya, L.N.Patel and P.S.Christian. According to the applicant, all the names in Annexure 'C' on and from serial number 4 are juniors to her and therefore, the said panel is illegal, arbitrary and violative of article 14 and 16 of the Constitution of India. It is alleged by the applicant that the respondent authority has failed to appreciate the fact that the applicant has already put in 7 years of continuous service and she has been treated at least de-facto, as a permanent teacher by the respondents. It is alleged that there are 13 vacancies in the primary railway school at Dohad, as per the panel Annexure 'C', only 12 names have been declared as successful out of which the teacher at Sr.No. 16 has already resigned and hence even if this panel is kept intact the applicant and one more teacher can be accommodated in the

school at Dohad. The applicant sent a telegram on 5.6.87 produced at Annexure 'D' followed by the representation and ^{and} the applicant personally went to Bombay/represented her case against the panel prepared by the respondent to the Chief Personnel Officer but he did not pay any heed to the representation of the applicant. The applicant has also produced the copy of one representation dated 3.6.1987 at Annexure 'E'.

3. The respondents have filed reply contending that the applicant was engaged as a substitute Assistant Teacher on adhoc basis as a stop gap arrangement on 11.6.1980, that the recruitment selection was conducted to select suitable candidates for the post of Assistant Teachers on regular basis and such vacancies were to be filled in from the selection of 23 and notification to that effect was issued on 26.5.1983, the copy of which is produced at page 20, according to which the educational qualification required was S.S.C. passed or its equivalent examination and primary teacher's certificate of Gujarat Government and the candidates should have studied in Gujarati medium from Standard V to XI and previous teaching experience in Gujarati medium was preferred. It is contended by respondents that the applicant was not possessing the requisite educational qualification prescribed for the post of Assistant Teacher as laid down in the Notification. It is contended that P.D.Ed qualification of the applicant was not equivalent to PTC of Gujarat State but it is equivalent to Pre-P.T.C. of Gujarat State as per resolution dated 10.12.1986 produced at page 22. Thus, according to respondents, the applicant is not possessing the requisite educational qualification prescribed for the post of Assistant Teacher for which the selection was conducted and therefore she was not empanelled for the post of Assistant Teacher. It is not disputed by respondents that the applicant possessed the qualification of S.S.C. and P.D.Ed. of Maharashtra

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not State. It is in dispute that the applicant was granted temporary status from 11.9.1980. It is contended that the applicant applied for screening along with others though she was not eligible for the same and she went to Bombay of her own for screening. It is contended that the minimum period to be for regularisation was three years for substitute Assistant Teachers as per HQ letter dated 26.5.1980 and as the applicant was engaged as substitute Assistant Teacher on 11.6.1980, the question of considering her for screening in 1980 therefore, did not arise. It is contended that the applicant had mentioned in her application for the post of Assistant Teacher, her qualification as D.Ed. but the certificate produced by her was for "Purva Prathamik" i.e. pre D.Ed. which is not equivalent to P.T.C. The applicant was called for selection based on qualification shown in the application and as such the applicant has mislead the Railway Administration by furnishing wrong information about her educational qualification. It is contended that tailoring examination passed by the applicant is only an additional qualification and not essential for the post of Assistant Teacher. It is contended that juniors to the applicant were considered for empanelment because they possess the requisite educational qualification prescribed for the post as laid down in the notification and seniority, therefore, has no relevance in the case of the applicant for the said selection.

4. The applicant filed rejoinder contending that she was not continued as a stop gap arrangement as contended and also not on purely an adhoc basis as stop gap arrangement. She contended that the impugned action of not selecting her is also violative of principle of estoppel. She has contended that she appeared for selection in the year 1983 and the result was delivered by respondents as late as in the year 1987.



It is contended by her that if she was informed at the time of appearance for selection in 1983 that the results would be declared in 1987 and not in 1983, she would not have waited expectently for this post. She contended that she could have applied for some alternative job earlier if the result was declared in 1983 but today she is deprived of that alternative job by merely crossing the age bar. She has contended that the State of Maharashtra has made a provision since 1978 which provide her qualification of P.D.Ed. of Maharashtra State as equivalent to PTC of Gujarat State.

5. It is not in dispute that the applicant was engaged as Substitute Assistant Teacher at Dohad in scale Rs. 330-560 R on adhoc basis on 11.6.1980. A recruitment selection was conducted to select suitable candidates for the post of Assistant Teacher on regular basis. The vacancies assessed for the said selection was 23. Necessary notification for the selection was issued on 26.5.1983, which is produced by the respondent at page 20. The educational/prescribed for the said selection was as under:

"Passed the SSC examination or its equivalent examination and should possess primary teachers certificate of Gujarat Government and the candidated should have studied in the Gujarati Medium from Standard V to XI. Previous teaching experience in Gujarati Medium is preferred. Candidate possessing the qualification of STC/TD/BT/LT/Bed etc, need not apply".

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The applicant was possessing the educational qualification of SSC, PD.Ed (Pre Diploma in Education of Maharashtra State.) The case of the applicant is that the State of Gujarat has provision since 1978 which provided that her qualification of P.D.Ed. of Maharashtra is equivalent to P.T.C. of Gujarat State. The applicant has produced at page 28 the notification dated 22.6.1978 which refers to two years course of D.Ed. recognised by Maharashtra State. It is mentioned in this notification that this course of two years of D.Ed. was under consideration for treating it equivalent to PTC and the Govt. of Gujarat ultimately decided that course of two



years D.Ed. equivalent to PTC for the recruitment of the Primary Teachers in Gujarat State. The learned advocate for the respondents submitted that P.D.Ed. is not equivalent to PTC of Gujarat State but it is equivalent to Pre-P.T.C. of Gujarat State as per Resolution dated 10.12.1986 which is produced at page 22. It is mentioned in this Resolution that the course of Pre-D.Ed. is for two years and the course of Pre-D.Ed. has been considered equivalent to Pre-P.T.C.. It is submitted by learned advocate for the respondents that Pre-P.T.C. is meant for Bal Mandir and is not adequate for Primary Schools. The applicant's case is that she is possessing the qualification of S.S.C. P.D.A. i.e. Pre Diploma in education) However, as per the Resolution produced by the respondents at page 22 dated 10.12.1986, the qualification of P.D.A. is not equivalent to P.T.C. but it is equivalent to Pre-P.T.C. The case of the applicant is that her^u qualification of P.D.A. should be considered equivalent to P.T.C. but as observed above in view of the resolution dated 10.12.1986 produced by the respondents, the applicant cannot be considered as possessing the requisite educational qualification prescribed for the post of Assistant Teacher for which the selection was conducted, on 26.5.1983 because though the applicant had passed the S.S.C. examination, she did not possess P.T.C. or D.Ed. qualification which was required. The case of the applicant is that she was granted temporary status from 11.9.1980 which she has produced and that she along with other substitute teacher were directed for considering their eligibility for screening as per order dated 29.10.1980. The applicant appeared for the selection in the year 1983 and according to her there was ^a delay on the part of the respondent authorities and the result was declared in the year 1987 which according to her is neither legal nor valid. The respondents have

(PW)

contended that the applicant had mentioned in her application for the post of Assistant Teacher, her qualification as D.Ed. but the certificate produced by her as for "Purva Prathamik" i.e. Pre D.Ed. which is not equivalent to P.T.C. Learned advocate for the respondents submitted that the applicant was called for selection based on qualification shown in the application and the applicant had mislead the railway administration by furnishing wrong information about her educational qualification. He submitted that P.E.Ed. of Maharashtra State is not equivalent to P.T.C. of Gujarat State. He submitted that therefore, even though the applicant had acquired a temporary status, she on that strength could not be considered for empanelment if she had no requisite educational qualification for regular appointment as per notification for the post of Assistant Teacher. He submitted that the applicant was not eligible for the same but she applied for screening and she went to Bombay of her own for screening. He submitted that the minimum period to be for regularisation was three years for substitute Assistant Teachers as per HQ letter dated 26.5.1980 and as the applicant was engaged as substitute Assistant Teacher on 11.6.1980, the question of considering her for screening in 1980 did not arise. He submitted that the applicant applied for the recruitment selection initiated in 1983 but she was not considered for empanelment as she has no requisite educational qualification prescribed for the post of Assistant Teacher as laid down in the notification. He submitted that the tailoring examination passed by the applicant is only an additional qualification and is not essential for the post of Assistant Teacher.

6. In the instant case, as the applicant had no requisite educational qualification prescribed for the post of Assistant Teacher as per the notification and as she had furnished wrong educational qualification and thereby gained candidature, she could not make any grievance about the delay in the result of the selection and there is no question of / breach of Article 14



and 16 of the Constitution of India because juniors to her if considered for empanelment possessed requisite educational qualification prescribed for the post as laid down in the notification, the mere fact that she was senior can have no relevance for the said selection as the applicant did not qualify for the said selection. The applicant was not selected as she did not possess her requisite educational qualification as laid down in the notification.

7. The learned advocate for the applicant during the course of his arguments has not challenged the panel and submitted that the panel dated 1st May, 1987 Annexure 'C' need not be quashed. Therefore, it is not necessary to decide that point. The applicant's learned advocate has later on produced the copy of the panel dated 6th November, 1987 by which the office memorandum dated 1.5.1987 was superseded. He submitted that in this new panel the name of one Smt. Chandrikaben Mafatlal Shah whose name did not figure in the old panel is added and names of two persons from the previous panel is deleted and two new names are added which is a colourable exercise of powers by respondents and such modification cannot be made without informing the applicant. Learned advocate for the respondents submitted that as the applicant did not pass the test before the regularisation and she did not possess the requisite qualification and therefore, she cannot make any grievance against selection of a candidate who possess the requisite qualification. It is true that merely because the applicant is serving since 1980 on adhoc basis that itself would not entitle her for regularisation when she does not possess the requisite qualification for the post of Assistant Teacher as per the notification produced at page 20 dated 26.5.1983 and therefore, the applicant can not make grievance about the new panel also.

8. Learned advocate for the applicant submitted that the appointment by the respondents on adhoc basis for a long period results in ~~breach~~ of Article 14 and 16 of the Constitution of

and relied on decision in Ratan Lal Vs. State of Haryana 1985 SCC (L & S) 938. The question involved in the said matter was as to whether it was open to the State Govt. to appoint teachers on ad hoc basis at the commencement of academic year and ~~terminate~~ their service before the commencement of the next summer vacation, or earlier, to appoint them again on adhoc basis at the commencement of the next academic year and to terminate their services before the commencement of the succeeding summer vacation, or earlier, and to continue to do so year after year.

The Hon'ble Supreme Court held that such a policy of the State Govt. under which adhoc teachers are denied the salary and allowances for the period of summer vacation by resorting to the fictional breaks of the type referred in that case should be deprecated and such adhoc teachers shall be paid salary and allowances for the period of summer vacation as long as they ~~hold~~ the office under the said orders of the Hon'ble Supreme Court. In the instant case after the applicant joined as Primary teacher in the Primary/ School ~~at~~ Dahod in 1980, the respondents conducted recruitment selection in 1983 to form ^{Railway} the panel for selection for the vacancies of Assistant Teachers. Therefore, the above decision does not help the applicant.

11. The learned advocate for the applicant submitted that there was a promissory estoppel on the part of the respondents in as much as the applicant after appointment on adhoc basis since 1980 was continued and at no point of time she was told that she did not satisfy the requisite qualification for such a post and the respondents had promised to continue her. We find no substance in this submission of the applicant because there was no such promise given by the respondents to the applicant and there is no evidence about the same.

(Signature)

12. The learned advocate for the applicant submitted that as per para 178 at page 35 of the Railway Establishment Manual Revised Edition, 1989 the qualifications applicable to the Primary School Teachers are given. He submitted that the categories, scale of pay and the qualifications generally applicable are given regarding the Railway School Staff in para 178 and after 12 years of service in senior grade, the Primary School Teacher is entitled to get the senior scale. The category and qualification of Primary School Teacher, Craft Teacher for Works experience are given at item No. xiv. So far the Primary School Teachers are concerned the learned advocate for the applicant submitted that the trained matric qualification is required and on the basis of this modification in the Railway Establishment Manual, the applicant should be allowed to continue to work as a regular primary teacher. We would have decided this new point urged at the time of arguments but this is the point which requires to be considered in the context of the rule in para 178 in the Revised Edition 1989 of Railway Establishment Manual and there is no complete data furnished by applicant as to whether this rule is applicable to the applicant. The respondents also had no sufficient opportunity to meet with this new point about the recruitment of Primary Teachers in the Railway Schools and hence it not would be possible for us to come to the conclusion whether in view of this para 178 the applicant would be entitled to continue as a primary teacher. Under these circumstances, it would be appropriate for us to direct the respondents to examine the case of the applicant in the light of para 178 of Railway Establishment Manual Revised Edition 1989, and then to pass appropriate order.

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13. The result is that the application is allowed only in part with the direction to the respondents to examine the case of the applicant in the light of the Railway Establishment Manual Revised Edition 1989 para 178 and then to pass an appropriate order in her case, whether she is entitled to continue as Primary Teacher or not. The application is disposed of accordingly with no orders as to costs.

R.C. Bhatt
(R.C. Bhatt)
Judicial Member

M. M. Singh
12/9/91
(M.M. Singh)
Administrative Member