

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

O R D E R

Miss Shashi Prabha v. The Raj.Civil Services Appellate Tribunal, Circuit Bench, Jodhpur and Ors.

S.B.CIVIL WRIT PETITION NO.3966/2000
under Article 226 of the
Constitution of India.

Date of order : November, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.S.Singhvi, for the petitioner.

Mr. B.L.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

This petition for writ is directed against the judgment dated 29.5.2000 passed by Rajasthan Civil Services Appellate Tribunal in Appeal No.201/99, Kumari Shashi Prabha v. Department of Education.

The factual matrix giving rise to present writ petition is that the petitioner entered in the

services of the respondents being appointed as Teacher Gr.III in the year 1978 and was promoted as Teacher Gr.II in Commerce by an order dated 18.6.1986. A promotion was accorded to the petitioner in temporary capacity as Lecturer School Education in the subject of Commerce under an order dated 15.3.1990. The petitioner was ordered to be reverted from the post of Lecturer by an order dated 12.5.1999. Being aggrieved by the same the petitioner preferred a writ petition before this Court which came to be disposed of by judgment dated 28.5.1997 with a direction to the respondents to determine year wise vacancies and hold meeting of Departmental Promotion Committee within a period of three months if not already conducted in pursuant to an order dated 9.10.1991 passed earlier by the Court. After disposal of the writ petition the petitioner came to know that in fact the respondents by holding meeting of Departmental Promotion Committee made promotions to the post of Lecturer School Education in the subject of Commerce for the years 1982-83 to 1993-94 by an order dated 30.5.1994. By the order aforesaid promotions were accorded to number of persons including the respondents No.5 to 16. The petitioner on knowing about the promotions made under the order dated 30.5.1994 preferred an appeal before the Rajasthan Civil Services Appellate Tribunal, Circuit Bench, Jodhpur which came to be rejected by judgment impugned dated 29.5.2000.

The petitioner before learned Tribunal contended that the respondents No.5 to 16 does not possess requisite qualification to be promoted as Lecturer School Education in the subject of Commerce, therefore, promotions given to them are erroneous and the same effected the right of the petitioner to be considered for promotion. The petitioner also contended before the Tribunal that the respondents did not convene meeting of the Departmental Promotion Committee to consider candidature of eligible persons for the purpose of promotion to the post of Lecturer School Education against the vacancies arising from the year 1994-95.

The respondent State did not choose to file any reply to the appeal, however, contended during the arguments that promotions of the respondents No.5 to 16 were made in accordance with the Rajasthan Educational Service Rules, 1970 (hereinafter referred to as "the Rules of 1970") and they possess requisite qualification for appointment by way of promotion as Lecturer School Education in the subject of Commerce. It was also contended on behalf of the State that due to less number of students in the subject of commerce the appointing authority considered it appropriate not to fill in the vacancies pertaining to the post of Lecturer School Education in commerce subsequent to the year 1993-94.

Learned Tribunal accepted both the contentions of the respondents and rejected the appeal. The Tribunal while rejecting the appeal held that the note (2) mentioned below entry No.5 in Group "F" of Schedule "A" appended with the Rules of 1970 is applicable for direct recruits only. Hence the present writ petition is preferred by the petitioner.

It is strenuously contended by counsel for the petitioner that the judgment impugned dated 29.5.2000 is perverse and erroneous as the finding recorded by the Tribunal with regard to note No.2 appended to entry No.5 of Group "F" of Schedule "A" annexed with the Rules of 1970 is running contrary to the provision itself.

The entry No.5 in Group "F" of Schedule appended with the Rules of 1970 prescribes method of recruitment, minimum qualification and experience for direct recruitment, post or posts from which promotion can be made, minimum qualification and experience required for promotion and maximum age limit for direct recruitment to the post of Lecturer in humanities and commerce group (School Education). The entry No.5 referred above reads as under:-

S.No.	Name of post	Method of recruitment with percentage	Minimum qualification and experience for direct recruitment	Post or posts from which promotion in to be made	Minimum qualifications and experience required for promotion	Maximum age limit for direct recruitment
5.	(a)Lecturer in Humanities and Commerce Group (School Education)	50% by promotion & 50% by direct recruitment	Second Class Postgraduate in relevant subject with Degree or Diploma in Education recognised by Govt.or Post Graduate in the relevant subject with Degree or Diploma in Education recognised institution of or above the Rules, 1971 Standard of Secondary Schools.	1. Enforcement Officer 2. Instructor BSTC School (Junior Grade) with Testing Asstt. in Bureau of Edu.& Vocational guidance (of Sec.F of the Schedule appended with the Rajasthan Education Subordinate Service	Master's Degree in relevant subject (Junior Grade) with 3. Teacher Gr.II Degree or 4. Technical Diploma in education from a university established by law in India or from a recognised institution with 5 years' experience of teaching as II Gr.Teacher.	31 years

Note:1.

The restriction of Division in Post graduate examination will not be essential if required number of candidates are not available. In case Post graduate in Home Scheme are not available then Graduate with Degree or Diploma in Education with 5 years' experience of teaching Home Science of the standard of Secondary or Higher Secondary class shall be eligible for the post of Lecturer in Home Science (preferable B.Sc. with Home Science). Graduates with Home Science will also be eligible if they are Post graduate in any other subject but with Degree or Diploma in Education.

Note:2.

For the post of Lecturer in Commerce, Second Class post Graduate in Commerce with B.Com. and with Degree or Diploma in Education or Second Class Post Graduate in Commerce, having atleast two teaching subjects for higher secondary classes as prescribed by the Board of Secondary Education, Rajasthan Ajmer for Commerce Group and with Degree or Diploma in Education shall be eligible.

From reading of entry No.5 it is clear that the recruitment to the post of Lecturer in the subject of Commerce is required to be made by way of promotion and by way of direct recruitment in equal quota. The eligibility prescribed for appointment by way of

promotion to the post of Lecturer School Education in Commerce Group is that the incumbent must possess Masters Degree in relevant subject with degree or diploma in Education from University established by law in India or from a recognised institution with five years experience of teaching as Teacher Gr.II.

The important knot required to open in present writ petition is that as to whether note No.2 appended to entry No.5 is applicable while making appointments by way of promotion also. Learned Tribunal held that note No.2 is applicable only while making appointments under direct recruitment quota as the term "post-graduate" is used in column No.4 only. The Tribunal also held that requirement of having atleast two teaching subjects also cannot be made applicable while making promotions as the Teachers become eligible to be promoted as Lecturer in Commerce Group only after acquiring five years experience of teaching as Teacher Gr.II.

The contention of counsel for the petitioner is that the distinction made by the Tribunal for applying the note No.2 for appointment under direct recruitment quota is absolutely erroneous and the same was not permissible as the rule itself is quite clear and it does not make such distinction.

Per contra, it is contended by counsel for the respondents that 50% of the total vacancies pertaining to the post of Lecturer School Education in the subject of Commerce are required to be filled in by way of direct recruitment and 50% by way of promotion wherein the minimum qualification and experience required is Masters Degree in relating subject with degrees or diploma in education with five years teaching experience as Sr.Teacher. The respondents No.5 to 16 possess qualification of Masters Degree in Commerce with degree in diploma in education with five years experience, as such they possess the qualification prescribed under the Rules of 1970. Nothing more than this is said by the respondents in reply while defending the judgment of Learned Tribunal, holding that note No.2 to entry No.5 is applicable for promotion to direct recruitment quota only.

I have considered the contentions raised by counsel for the parties.

The reason given by the Tribunal for applying note No.2 only for direct recruitment is the use of term "post-graduate" in column 4. It is true that the term "post-graduate" is used in column 4 of the Schedule as well as in note No.2 but at the same time the term "masters degree in Commerce" is used in

column 6 also. A degree in post graduation and masters degree bear same meaning. Merely by use of term "post-graduate" in column 4 the application of note No.2 cannot be denied for column 6 of the entry No.5 in Group "F" in Schedule appended with the Rules of 1970. The intention of the legislature is quite clear as the post graduation in commerce relates to economic administration and financial management only whereas a lecturer in commerce is required to teach higher secondary and Sr. Secondary classes where various papers of accounts, business organisation or business management, economic and financial management, banking are required to be taught. The aforesaid subjects are part of graduation. The intention of having the qualification of graduation is that a person teaching to higher secondary and senior secondary classes must be efficient enough to teach all the subjects required to be taught to those classes. The legislature by note No.2 to entry No.5 of Group "F" to Schedule appended with the Rules of 1970 prescribed two essentials for making appointment irrespective of the method of it which are : (1)incumbent must be having B.Com with post graduation in commerce and with degree or diploma in education; and (2)post graduation in commerce having atleast two teaching subjects for higher secondary classes as prescribed by Board of Secondary Education, Rajasthan, Ajmer for Commerce group with degree or diploma in education. If the note appended to entry No.5 is clipped with column No.4 only then it

shall amount not only misreading of the statute but also acceptance of statute against the interest of the students of commerce who are the ultimate beneficiaries of the appointment of Lecturer. A person who is not graduate in commerce or not acquired qualification of post graduation with two teaching subjects shall in no case be able to teach students all the subjects/papers in Sr.Secondary and Higher Secondary classes.

The aspirant to the appointment to the post of Lecturer School Education in the Commerce Group under the Rules of 1970 must fulfil one of the requirements mentioned above beside the qualification prescribed in column 4 in the case of direct recruitment and the qualification prescribed in column 6 in the case of promotions.

The finding given by the Tribunal that the requirement of two teaching subjects stands fulfilled on having five years experience as Senior Teacher or Teacher Gr.II is also erroneous. The teaching subjects are required to be possessed while acquiring qualification, it is nothing to do with experience. I am of the considered opinion that the distinction made by learned Tribunal with regard to application of note NO.2 for direct recruitment quota is erroneous and the judgment impugned, therefore, is perverse. The same, therefore, deserves to be quashed.

The respondents No.5 to 16 were promoted much back in the year 1994. The petitioner challenged their promotions only in the year 1999, as such I do not consider it appropriate to quash their promotions at this belated stage. However, the petitioner who is eligible under the Rules of 1970 to be considered for appointment by way of promotion was erroneously not considered for promotion by the respondents by making wrong interpretation of law, as such her reversion too was bad.

In view of whatever discussed above this petition for writ is allowed. The judgment impugned dated 29.5.2000 passed by learned Rajasthan Civil Services Appellate Tribunal is quashed. Henceforth the respondents shall make promotion to the post of Lecturer School Education in Commerce Group by satisfying the eligibility as provided under the Rules of 1970 read with note No.2 appended to entry No.5 in Group "F" to Schedule appended with the Rules of 1970. The petitioner being promoted on temporary capacity in the year 1990 is declared entitled to be considered for promotion to the post of Lecturer School Education in the subject of commerce from the year 1993-94 when the respondents made promotions of the respondents No.5 to 16 . The respondents are further directed to create a super-anumary post of Lecturer School Education in Commerce group to consider candidature of

the petitioner for the purpose of promotion on the post aforesaid. The order dated 12.5.1999 reverting petitioner is also quashed.

No order as to costs.

(GOVIND MATHUR), J.

kkm/ps.