

WP(C) 3926/2005  
BEFORE  
THE HON'BLE MR. JUSTICE B.K.SHARMA  
JUDGMENT AND ORDER (CAV)

Mr. A.M. Mazumdar, learned senior counsel assisted by Mr. M. Nath, learned counsel for the petitioners as well as Mr. M. Dutta, learned Standing Counsel, Education Department appearing for the respondents have argued their respective case as projected in the writ petition and the counter affidavit. In fact, the learned counsel for the petitioner has advanced further arguments, strictly speaking, not in accordance with the case projected in the writ petition.

2. The petitioners are the 3 (three) associations of members with B.Ed. qualification. The challenge made in the writ petition is in respect of the particular clause in Annexure-3 advertisement dated 13.5.2005 by which applications have been invited for filling up the posts of teachers, as indicated in the advertisement. The required educational qualification has been indicated as follows :-

Educational qualification : The minimum Educational qualification for 1 and 2, candidates must be Graduate in Arts/Commerce and Science from any recognized University. A candidate must secure atleast 2nd Division either in HSLC or in HS or equivalent Examinations with 40% aggregate of marks in BA, B.Com & B.Sc. Exam. for reserved category of candidates belonging to SC , ST and for Tea Garden communities, relaxation is given for securing 2nd Division either in HSLC or HS Exam & 40% marks in Degree Exam. I.e. 3rd Division holder. In HSLC as well as in HS Examinations and simple Graduate in any stream from these three categories of candidates can also apply for these posts. Preference will be given to BT/B. Ed. Degree holders in respect of Sanskrit Teachers (Graduate Post) the minimum qualification must be Shastri Title holder in Sanskrit or Degree in/with Sanskrit .

In case of Hindi Teachers minimum qualification should be HSLC Passed & proven or a Degree in/with Hindi.

In respect of Classical Teachers such as Arabic, Urdu & Persian etc. the minimum qualification must be passed in Assam Madrassa Final Examination (F.M.) with Degree in/with Arabic/Urdu/Persian.

Age :- A candidate should not be below 21 years and above 36 years of age on the 1st of May, 2005. Upper age limit is relaxable by 5 years in case of SC & ST candidates.

3. According to the petitioners, the insistence of requisite percentage of marks in HSLC/HSSLC Examinations and B.A/B.Com/B.Sc Examinations is contrary to the rules and that the members of the petitioners, who are B.Ed. degree holders are automatically entitled to apply for the post of Graduate Teacher irrespective of percentage of marks obtained by him in the aforesaid examinations. In this connection, they have referred to Annexure-4 office memorandum dated 8.8.2003 by which the need to appoint teachers in Government/provincialized High/Higher Secondary schools possessing B.Ed. degree in addition to being graduate in the concerned discipline was emphasized. In the office memorandum, it was also stated that the candidates having B.Ed. qualification would be given preference.

4. The respondents have filed their counter affidavit stating, inter alia, that the advertisement in question has been modified/clarified by subsequent corrigendum issued in the newspapers. Upon a reference to the relevant rules namely, the Assam Secondary Education (Provincialized) Service Rules, 2003, it has been stated that noticing the deviation made from the rules in the advertisement , necessary corrigendum has been issued. As per the said corrigendum, the requisite qualification is as follows :-

CORRIGENDUM

Advertisement for posts of Asstt. Teachers etc. in Provincialized Secondary Schools

The last dates for submission of applications for the posts of Asstt. teachers in Science & Arts, Sanskrit, Hindi and classical teachers fixed on 30th May, 2005 and that of LDA, Grade IV and Assamese Language Teacher (ALT) fixed on 6th June, 2005 have been extended both up-to 15th June, 2005 with the following corrigendum in pay scale and qualification for some posts advertised earlier.

A. PAY SCALE :

For the posts of all categories of Asstt. Teachers, Assamese Language Teacher, Hindi teacher, Classical Teacher etc. the prescribed scale of pay will be Rs.3580-90-4480-120-4220-EB-120-5200-175-6600-250-8100-325-8750/-p.m. instead of Fixed Pay of Rs.2500/- mentioned in the earlier advertisement.

B. QUALIFICATION ;

(a) The candidates must be graduate in appropriate discipline with at least 40% marks and secure at least 2nd division either in HSLC or HS Examination. B. Ed. degree shall be an added qualification. However, all the Graduates with Honours/Major or with B.Ed. degree will automatically be eligible to apply. In case of candidates belonging to reserved categories, the 40% marks in graduation and 2nd division either in HSLC or HS examination will not be applicable.

(b) Qualification to apply for Assamese Language Teacher : A candidate must be Graduate in Arts having Assamese as one of the subjects in Degree Level and functional knowledge in the concerned medium language (Bengali, Hindi, Manipuri, Bodo as the case may be) as the posts are meant for the schools other than Assamese medium.

The applicant may apply accordingly along with self-attested copies of testimonials directly to the concerned Inspector of Schools. The applicants who have already submitted applications against the original advertisement need not apply.

Director of Secondary Education, Assam,  
Kahilipara, Guwahati-19.

5. From the above, it will be seen that the graduates with Honours/Major or with B.Ed. degree will automatically be eligible to apply. Before issuance of the corrigendum, the graduates with Honours/Major or with B.Ed. degree were not automatically eligible unless they have the requisite percentage of marks in the aforementioned examinations. The corrigendum has been issued in terms of the aforesaid rules of 2003.

6. Really speaking, upon issuance of the corrigendum, the main grievance of the petitioners, as has been raised in the writ petition, stood redressed. In fact, noticing disparity between the rules and the advertisement, this Court, while entertaining the writ petition on 27.5.2005, passed an interim order directing the respondents to accept the candidatures of the members of the petitioners' association pursuant to the advertisement dated 13.5.2005.

7. After more than two years of the filing of the writ petition and the affidavit-in-opposition, the petitioners have filed an additional affidavit on 31.7.2007 projecting altogether a different case than the one projected in the writ petition. In the additional affidavit, it has been contended that the B.Ed. degree holders should be preferred in the matter of appointment over other graduates not having B.Ed. qualification. According to the petitioners, B.Ed. training is the pre-requisite for recruitment in various States. The petitioners have referred to the educational qualification prescribed for appointment in institutions like - Navodaya Vidyalaya, Sainik Schools, SCERT etc. According to the petitioners, since in the said institutions, the B.Ed. degree is an essential qualification, the State of Assam in the Education Department should also adopt the same.

8. Above is altogether a new case sought to be projected by the petitioners. As stated above, their only grievance, at the time of filing of the writ petition, was in respect of the deviation made in the advertisement contrary to the educational qualification prescribed in the relevant rules. Once the rules have been followed by way of issuance of the corrigendum, the petitioners now want to project altogether a new case by filing the additional affidavit after two years of filing of the writ petition without, however, any amendment to the writ petition.

9. The prayer made in the writ petition is to follow the rules of 2003 and now, by filing the additional affidavit, they have put a virtual challenge to the educational qualification prescribed in the said rules without, however, any formal challenge to the same. The educational qualification, which has been prescribed in the Rules of 2003 has been strictly adhered to. Although while issuing the advertisement, at the first instance, there was some deviation, however, by issuing the corrigendum, the qualification prescribed in the rules has been insisted upon. By the corrigendum, the graduates with Honours/Major and B.Ed. degree holders have been made automatically eligible to apply for the post in question irrespective of percentage of marks they obtained in the HSLC/HSSLC examinations and B.A/B.Sc./B.Com. examinations.

10. At the time of filing of the writ petition, the petitioners had a genuine grievance which was also taken note of by this Court while entertaining the writ petition on 27.5.2005. In terms of the interim order, the members of the petitioners' associations were allowed to offer candidatures pursuant to the advertisement dated 13.5.2005. Thereafter, with the issuance of the corrigendum annexed to the affidavit-in-opposition, the grievance raised in the writ petition stood redressed. The petitioners cannot now project altogether a different case by filing an additional affidavit than the one raised and projected in the writ petition. If the petitioners are really aggrieved by the Rules of 2003, prescribing the requisite qualification, it will be open for them to make an independent challenge to the same, but certainly not in the manner and method in which the petitioners have sought to do in this proceeding.

11. In view of the above, since the grievance of the petitioners stood redressed with the issuance of the corrigendum in conformity with the Rules of 2003, the petitioners have got the desired relief. The case as has been sought to be made out by filing the additional affidavit without any formal challenge to the rules, does not come within the purview of the writ petition as it originally stood and consequently, no decision is called for on the basis of the additional affidavit filed by the petitioners.

12. Writ petition stands disposed of without, however, any order as to costs .