

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU
SWP No. 101/01
Hon'ble Mr Justice Nirmal Singh

Bishan Dass
Versus
State and others
Decided On :09.02.07.

Mr Ajay Kotwal, Advocate for the Petitioner.
Mrs N.Goswami, Dy.AG for the Respondents.

JUDGEMENT

1. The facts are as under:-

Vide Government Order No.396/Edu of 2000 dt. 28th of April'2000, sanction was accorded to launch the Scheme of Rehbar-e-Taleem (here-in-after called the Scheme) with the following objectives:-

"1. Promoting the decentralized management of elementary education with the community participation and involvement.

2. To ensure accountability and responsiveness through a strong back-up and supervision through the community and

3. To operationalize effectively the schooling system at the gross root level.

2. The said Scheme was to effectuate the provision of services of Teaching Guides in the Primary and Middle Schools to make up the deficiency of the staff as per the existing norms. The said teaching guides were to be designated as "Rehbar-e-Taleem" teachers and were to ensure the overall development of the personality of children. These teaching guides were to be drawn from the local community for interface and interaction with the community to secure universal management and to check the incidence of dropouts. For the purpose of selection of Rehbar-e-Taleem, there was a composition of Village Level Committee (here-in-after referred to as VLC) with the Zonal Education Officer (In short ZEO) as its Convenor. The said composition of VLC for the purpose of implementation of the Scheme is as under:-

"a/ Two parents of the children studying in the institutions within the village provided they are literate.

b/ Two persons to be nominated from the village, who have social standing.

c/ A representative of Women/Scheduled Caste/Scheduled Tribe.

d/ Zonal Education Officer.”

3. The VLC is to assess the requirement of the teachers in the Primary/Middle Schools within the area of their operation in due regard to approved norms of staffing and the Roll. On the basis of the said assessment, the VLC is to draw up a panel of eligible and qualified persons of the village.

4. The eligibility for engaging Rehbar-e-Taleem under the Scheme is as under:-

“i/ Rehbar-e-Taleem should be the permanent resident of the State.

Ii/ He or she should belong to the village where there is assessed deficiency of staff. On certification of VLC that no local candidate from the village is available, VLC can draw up the panel from the adjoining village.

Iii/ He or she should possess the minimum qualification of 10+2.

Iv/ The candidate shall as far as possible fulfill the age qualification as prescribed by the State Government.

v/ Due consideration shall be given by the VLCs to the Scheduled Castes and Scheduled Tribes.”

5. In pursuance to Government order No.396-Edu of 2000 dt. 28th of April'2000, regarding implementation of Scheme for ensuring functioning of closed schools, the State Government invited applications for appointment as Rehbar-e-Taleem under the said Scheme in Government Middle School, Katwatt, Government Girls Primary School, Katwatt and Government Primary School, Duller. Applications in this regard were received by the Deputy Commissioner, Udhampur, through Zonal Education Officer, Kulwanta, after recommendations made by the Village Level Committee of the said village. Petitioner along with private respondents also applied for the post of Rehbar-e-Taleem in Government Primary School, Kutwalat. The Zonal Education Officer, Kulwanta, prepared a panel of the candidates in order of their merit as per the qualification. The name of respondent No.5 figured at Sl.No. 6 of the panel and that of petitioner figured at Sl.No.10. In the said panel, the names figuring at Sl. No. 3 to 7 i.e. Manmohan Singh, S/o Sunil Singh, Gopal Krishan, S/o Chatter Singh, Surinder Singh, S/o Sandhur Singh, Vikas Gupta, S/o Brij Mohan Gupta(respondent No.5 herein) and Dev Raj, S/o Sh Anant Ram, all residents of village Kutwalat, were selected and appointed as Rehbar-e-Taleem teaching guides in Government Middle School, Kutwalat, Government Primary School, Kutwalat and Government Primary School, Dullar, against the available posts initially for a period of two years.

6. Petitioner has challenged the appointment of respondent No.5 as Rehbar-e-Taleem in Primary School Kutwalat, on the ground that the said respondent is not the resident of village Kutwalat, which is a mandatory requirement under the Scheme. It is further stated that the petitioner though a member of Scheduled Caste category has not been given the benefit of SRO 126 of 1994 while making the selection by the official

respondents. Reliance in this regard is placed on clause (v) of the Eligibility clause of the Scheme, reproduced above.

7. Learned counsel for the petitioner has contended that it is mandatory for the respondent-State that while making selection for engagement/appointment of Rehbar-e-Taleem Teaching Guides under the Scheme, due consideration has to be given to the candidates belonging to the Scheduled Caste and Scheduled Tribes category by the VLC. It is submitted that the petitioner being a candidate belonging to the Scheduled Caste category has every right to be considered for engagement/appointment as RET teaching guide under the Scheme as a roster has to be maintained by the Zonal Education Officer in this regard.

8. It is thus stated that the petitioner being a candidate belonging to the Scheduled Caste category has not been given due consideration and has been wrongly ignored.

9. Respondents have filed counter in which it is stated that after the applications were received for appointment as Teaching Guides under the aforesaid Scheme in Government Middle School, Kutwalat, Government Primary School, Kutwalat and Government Primary School, Duller, a panel of the candidates after taking into the recommendations of the Village Level Committee was prepared. It is stated that respondent No.5-Vikas Gupta has been engaged as Rehbar-e-Taleem teaching guide in Government Girls Primary School, Kutwalat, on the basis of his having secured higher percentage of marks qua the petitioner. It is thus stated that while appointing the respondent No.5, no provision of the policy in question has been violated. She contended that SRO 126/94 is not applicable under the Scheme and the petitioner, if has any grievance should challenge the Scheme and seek a direction to the State to make applicable the said SRO in the case of engagement/appointment of RET Teaching Guides.

10. The question which requires to be considered in this petition is whether SRO 126/94 will be applicable to the Scheme while making selection of Teaching Guide and what is the meaning of word 'due consideration'.

11. The object of SRO 126 of 1994 is to provide adequate representation to a candidate belonging to Scheduled Castes, Scheduled Tribes, socially and educationally backward classes which include the persons residing in the backward areas and in the areas adjoining to Actual Line of control. The above said SRO was issued keeping in view the preamble of Constitution securing social, economical and political justice to all the citizens of the country.

12. Under Article 46 of the Constitution of India, the State has to promote the educational and economic interests of the weaker sections of the people and in particular of that category of the people belonging to Scheduled Castes and Scheduled Tribes.

13. In terms of Article 335 of the Constitution of India, the State has to take into consideration the claim of the section of the people belonging to the category of

Scheduled Castes and Scheduled Tribes so far as making of appointments is concerned. This Article reads as under:-

“335. The claim of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.”

14. In *Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India*, AIR 1981, SC 298, it has been held as under:-

“The Directive Principles of State Policy, fundamental in the governance of the country, enjoin on the State the promotion with special care the educational and economic interests of the weaker sections of the people and, in particular of the Scheduled Castes and the Scheduled Tribes.....and protect them from social injustice. To neglect this obligation is to play truant with Article 46. Undoubtedly, economic interests of a group-as also social justice to it are tied up with its place in the services under the State. Our history, unlike that of some other countries has found a zealous pursuit of Government jobs as a mark of share in State power and economic position. Moreover, the biggest and expanding, with considerable State Undertakings, employer is Government, Central and State, so much so appointments in public services matter increasingly in the prosperity of backwards segments. The Scheduled Castes and Scheduled Tribes have earned special mention in Article 46 and other ‘weaker section’ in this context means not every ‘backward class’ but those dismally depressed categories comparable economically and educationally to Scheduled Castes and Scheduled Tribes.”

15. In AIR 1987 SC 537, *The Comptroller and Auditor General of India, Gian Prakash, New Delhi and another v. K.I.S. Jagannathan and another*, their Lordships of the Supreme Court held as under:-

*“.....From the provisions of the Constitution referred to above it is transparently clear that it is a discretion to be exercised in the discharge of the Constitutional duty imposed by Article 335 to take into consideration the claims of the members of the Scheduled Castes and the Scheduled Tribes, consistently with the maintenance of efficiency of administration in the making of appointments to services and posts in connection with the affairs of the Union or of a State. This duty is to be exercised in keeping with the Directive Principle laid down in Article 46 to promote with special care the educational and economic interests of the weaker sections of the people, and, in particular of the Scheduled Castes and the Scheduled Tribes, and to protect them from social injustice and all forms of exploitation. Article 37 of the Constitution provides that the Directive Principles of State Policy contained in Part IV of the Constitution, in which Article 46 occurs, are fundamental to the governance of the country and that it is the duty of the State to apply these principles in making laws. As said by Murtaza Fazal Ali. J., in *State of Kerala v. N.M. Thomas* (1976) 1 SCR 906 (at page 996): (AIR 1976 SC 490 at p.548) ‘the directive principles form the fundamental feature and the social conscience*

of the Constitution and the Constitution enjoins upon the State to implement these directive principles.”

16. A perusal of the Scheme shows that Rehbar-e-Taleem teaching guide is to be engaged initially for a period of two years which period is extended for further three years subject to the satisfactory performance of the said teaching guide to be evaluated and assessed by the VLC and ZEO. The teaching guide is paid the monthly honorarium at the rate of Rs. 1500 for first two years which is increased upto Rs. 2000 from third year onwards. On the satisfactory completion of five years as Rehbar-e-Taleem, the concerned teaching guide becomes eligible for appointment as General Line Teacher in the Education Department. For this purpose, the VLC has to furnish a certificate about the satisfactory performance of the teaching guide and his/her overall conduct at the time of formal appointment in the Government service. If a teaching guide is found not to fulfill the age qualification, then his/her employment is kept on contractual basis for future. Therefore, as per the Scheme, in order to seek appointment as General Line Teacher in the Education Department of the State, it is necessary for the teaching guide to work initially as Rehbar-e-Taleem for five years on honorarium basis. The Scheme, thus, gives a substantive right to a candidate who is selected as Rehbar-e-Taleem, to be appointed as General Line Teacher in the State Government after five years of his/her satisfactory performance against an available vacancy. The word ‘available vacancies’ has been defined in Section 2(i)(b) as under:-

“2(i)(b): Available vacancies’ means the vacancies permanent or temporary, in any service, class, category or grade in the services and posts under the State;”

17. As per Section 2(ii) of SRO 126/94, the words ‘service, class, category and grade’ have the same meaning assigned to them in service rules in force in the State. The words ‘service, class and category’ as defined in Section 2 of the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956, read as under:-

“Service’ means a group of posts declared by Government to be a service;”

“Class’ means the posts borne on the cadre of a service between which and the other posts borne on the cadre of the same service, promotions and transfers are not ordinarily admissible;”

“Category’ means the posts borne on the cadre of a service or class.”

18. In view of the Constitutional provisions and the law laid down in Comptroller and Auditor General of India’s case (supra), the claim of the members of the SC and ST category is to be taken into consideration while making the appointment. The State Government has issued SRO 126 under Article 15(4) and 16(4) and other relevant provisions of the Constitution of India with the aim and object that the members of SC and ST be adequately represented in the service of the State.

19. Now it is to be seen whether the engagement/appointment as Teaching Guide under the Scheme of Rehbar-e-Taleem is an engagement/appointment to a post in connection with the affairs of the State.

20. The Scheme of Rehbar-e-Taleem under which Teaching Guides are engaged for promoting the decentralized management of elementary education with the community participation and involvement, to ensure accountability and responsiveness through a strong backup and supervision through the community and to operationalize effectively the schooling system at the grass root level would thus fall under the head 'service' as defined in the Rules of 1956, noticed above. The said Teaching Guides are engaged firstly for a period of two years. This period is extended for a further period of three years and on the completion of said period of five years, as stated above and on fulfilling the age qualification, the Teaching Guides become entitled to be appointed as General Line Teacher in the State Government. In case, the said Teaching Guide is not found to fulfill the age qualification, then his/her employment is said to be on contractual basis for future. This shows that the appointment of Teaching Guide under the Scheme is not on contractual basis as a contractual engagement/appointment comes to an end at the end of the contract period but this engagement/appointment gives a substantive right to a Teaching Guide under the Scheme to be appointed as a General Line Teacher. Therefore, as indicated above, the engagement/appointment of a Teaching Guide is not contractual rather it is just like a probation period for the appointment as a General Line Teacher. Thus, the engagement/appointment of a Teaching Guide under the Scheme would be deemed to be an engagement against the post in connection with the affairs of the State.

21. In the Scheme, it has specifically been mentioned that due consideration is to be given to the members of SC and ST category at the time of engagement of Teaching Guide.

22. Mrs Goswami, learned Dy.AG appearing for respondent State submitted that no doubt, in the Scheme word 'due consideration' has been mentioned but the SRO 126/94 has not been made applicable to the said Scheme and the purpose of due consideration is just to give preference to a candidate belonging to SC/ST category while making selection of Teaching Guide under the Scheme. It is thus submitted that for implementation of the said SRO so far as the engagement of Teaching Guide under the Scheme is concerned, the petitioner should challenge the Scheme and seek mandamus directing respondent State to make applicable the SRO 126/94 to the Scheme.

23. The said contention of Mrs Goswami, learned Dy.AG is not sustainable. In the Scheme, it has not been mentioned that while making the selection of Teaching Guide, preference is to be given to SC/ST candidates rather, as indicated above, word 'due consideration' has been mentioned under the Eligibility Clause (v) of the Scheme.

24. The meaning of word 'consideration' in the Oxford dictionary has been given as under:-

“Consideration:- *The action of viewing with the eyes or mind; beholding. The keeping of a subject before the mind; attentive thought; reflection; meditation....The action of taking into account; the fact of being taken into account. The taking into account of anything as a reason or motive; a fact or circumstance taken, or to be taken, into account. Regard for the circumstances, feeling, comfort, etc. of another; considerateness. Something given, done or forborne in return for the promise or act of another party. Something given in payment; a reward; a remuneration; a compensation. Estimation; esteem; importance; consequence... ”*

25. In Black’s Law Dictionary, Seventh Edition, the word ‘due consideration’ is said to be having the same meaning as the word ‘sufficient consideration’ which has been described as under:-

“Enough consideration-as a matter of law to support a contract-Also termed due consideration; legally sufficient consideration. Adequate consideration.”

The word ‘due consideration’ as described in Corpus Juris Secundum Vo;.15-A reads as under:-

“ To give ‘due consideration’ to a particular factor means to give such weight or significance to it as under the circumstances it seems to merit, and it has been said that this involves discretion.”

26. Due consideration thus means due under the Constitution, due under the law and due under the rules. I am thus of the opinion that due consideration has to be given to Scheduled Castes and Scheduled Tribes category candidates while making selection of Teaching Guides under the Scheme as per SRO 126/94, which as indicated above has been issued by the State Government in exercise of conferred by Section 124 and other relevant provisions of the Constitution of Jammu and Kashmir read with Article 15(4) and 16(4) and other relevant provisions of the Constitution of India as applicable to the State. Therefore, under the Scheme, SRO 126/94 has to be taken into consideration while engaging Teaching Guides under the Rehbar-e-Taleem. In case, the said SRO is not made applicable at the initial stage of engagement of Teaching Guides under the Scheme to the Scheduled Castes and Scheduled Tribes category, then no candidate from the said categories would be able to get the benefit of SRO 126/94 so far as engagement under the Scheme is concerned and under these circumstances, the very purpose for which the SRO has been issued, would be defeated.

27. For the reasons mentioned above, this petition is allowed in the following terms:-

1/ That SRO 126/94 is fully applicable to the Scheme of Rehbar-e-Taleem and the candidates belonging to the Scheduled Castes and Scheduled Tribes category are to be given their quota as per the said SRO so far as engagement/appointment as Teaching Guides under the Scheme is concerned;

2/ The engagement of private respondent N.5 as Teaching Guide shall stand quashed;

3/ The respondent-State shall consider the case of the petitioner for engagement/appointment as Teaching Guide under the Scheme taking into consideration SRO 126/94 and this exercise shall be completed within a period of two months from the date a copy of this order is made available to the official respondents by the petitioner;

4/ A copy of this order be sent to the Chief Secretary of the State as also to the Commissioner/Secretary to the Government, Education Department for necessary compliance.