

Writ Petition No.19404/2013**31.10.2013**

Shri Gaurav Tiwari, learned counsel for the petitioner.

Shri Devashish Sakalkar, learned Panel Lawyer for respondent/State on advance notice.

Heard.

Rejection of candidature for appointment of Area Education Officer on the ground that the petitioner does not possess requisite year of teaching experience is cause for present writ petition.

That the cadre of Area Education Officer came to be created by causing amendment in the Madhya Pradesh Education Service (School Branch) Recruitment and Promotion Rules, 1982. The posts are to be filled up through a limited Departmental Examination from amongst Teachers (Upper Division Teachers) Head Masters of Middle School/Adhyapak of Local Bodies.

The minimum educational qualifications and other requisit as per amendments in Rule 1982 published in Madhya Pradesh Gazette (Extraordinary) dated 22.08.2013 are "Graduate Degree from recognized University and B.Ed. which should be recognized by the National Council for Teachers Education and Teachers (Upper Division Teachers) Head Masters of Middle

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Schools/Adhyapak of Local Bodies cadre who has five years minimum teaching experience.”

The petitioner initially appointed as Samvida Shala Shikshak Grade II and was later on designated as Adhyapak in pursuance to provisions contained in Madhya Pradesh Adhyapak Samvarg (Employment & Conditions of service) Rules 2008. He since does not have minimum teaching experience of five years as Adhyapak is not considered for appointment as Area Education Officer.

Petitioner blames the issuance of letter dated 16.09.2013 being the cause for rejection. The letter is in the following terms:

मध्य प्रदेश शासन
स्कूल शिक्षा विभाग
मंत्रालय, वल्लभ भवन
क्रमांक एफ13-24/2013/20-1/1012 भोपाल, दिनांक 16/09/2013

प्रति,

1. समस्त संभागीय संयुक्त संचालक,
लोक शिक्षण मध्यप्रदेश
2. समस्त जिला शिक्षा अधिकारी,
मध्यप्रदेश
3. समस्त सहायक आयुक्त,
आदिवासी विकास विभाग,
मध्यप्रदेश

विषय:-ए.ई.ओ. के पद के लिए सूचीबद्ध आवेदकों के अभिलेखों का परीक्षण करने के संबंध में।

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सन्दर्भ:—इस विभाग का समसंख्यक पत्र दिनांक 12.09.2013.
कृपया सन्दर्भित पत्र का अवलोकन करें। ए.ई.ओ. पद के लिए सूचीबद्ध आवेदकों के कार्य अनुभव के संबंध में अभिलेखों के परीक्षण करने के संबंध में निम्नानुसार कार्यवाही की जाए :-

1. अध्यापक संवर्ग में कार्य अनुभव के वर्षों की गणना अभ्यर्थी के अध्यापक संवर्ग में वास्तविक नियोजन की तिथि से की जाए। चूंकि अध्यापक संवर्ग का गठन दिनांक 01.04.2007 से हुआ है। ऐसी स्थिति में इस तिथि के पूर्व के कार्य अनुभव की गणना न की जाए।
- 2/ ऐसे अध्यापक जो जनशिक्षक/बीआरसी/बीएसी के पदों पर कार्य कर रहे हैं, उनकी सेवा अवधि कार्य अनुभव की गणना के लिए मान्य की जाएगी।
- 3/ शिक्षक/प्रधान अध्यापक के पद पर कार्य अनुभव शिक्षक के पद पर वास्तविक रूप से नियुक्त होने के दिनांक से मान्य किया जाए।

(आर.के. चौकसे)

उप सचिव

म.प्र. शासन, स्कूल शिक्षा विभाग

It is urged that it is because of the issuance of above letter which has led the respondents not to take into consideration the experience gained by him as Adhyapak. It is contended that the stipulation in the letter dated 16.09.2013 laying down that Upper Division Teacher and Head Master must possess experience of five years to be eligible for appointment as Area

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Education Officer, is contrary to the Rules, therefore, deserves to be quashed and the petitioner be declared eligible for appointment as Area Education Officer.

Considered the submissions.

The eligibility criteria for appointment to the post of Area Education Officer as brought in vogue by way of amendment at the cost of repetition is :

"4	Area Education Officer (AEO)	-	-	Graduate Degree from recognized University and B.Ed. which should be recognised by National Council for Teachers Education and Teachers (Upper Division Teachers) Head Masters of Middle School/Adhyapak of local bodies cadre who has 5 years minimum teaching experience.	Selection by limited Examination from the post of Head Masters, Middle School, and Teachers (Upper Division Teachers) and Adhyapak of Local Bodies Cadre."
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Thus the feeder cadre, educational qualification and the teaching experience has been clubbed. Thus unless the incumbent fulfills all the three elements, he is not entitled to be appointed as Area Education Officer. The suggestion that the experience gained by the petitioner prior to their promotion to the post of Upper Division Teacher should be taken into

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consideration cannot be accepted because minimum qualification being Upper Division Teacher/Head Master/ Adhyapak in Local Bodies, the experience gained after the appointment on the feeder cadre can only be taken into consideration. In this context, reference can be had of the decision in Nilangshu Bhusan Basu v. Deb K. Sinha and others (2001) 8 SCC 119 wherein it has been held:

“Learned counsel for the petitioner failed to substantiate the submission that experience on a "responsible post" would mean experience on the just below post. He referred to a Circular dated 1-4-1992 issued by the Municipal Corporation (Personnel Department) . It relates to recruitment to 'A' Category post like that of Medical Officer, Assistant Engineer and Deputy Assessor Collector, Deputy Treasurer etc. It has been provided that experience on supervisory post would mean the post immediately below the post to which promotion is to be made, for example experience on the post of Assistant Assessor/ Assistant Collector/ Assistant Treasurer etc. would be experience on a supervisory post for promotion to the post of Deputy Assessor, Deputy Collector, Deputy

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Treasurer etc. We hardly find that this Circular would be applicable in the case in hand. It is specific about 'A' category posts and not for all categories and ranks. Another Circular dated 21.6.1988 has been referred to which relates to recruitment on the post of Deputy Chief Engineer (Civil) , Deputy Chief Engineer (Mechanical) etc. By means of the said circular experience on the post of Executive Engineer or on any similar post was required. It firstly relates to the recruitment to the post of Deputy Chief Engineer. It cannot be applied for recruitment to the post of Chief Municipal Engineer (Civil). Such a condition is not contained in terms of required qualification for the post of Chief Municipal Engineer (Civil). Wherever experience on a post just below is needed, such a provision is specifically contained. On this basis it cannot be generally held that for every post in any rank or category the "responsible post" must necessarily mean the post next below the post for which recruitment is to be made."

That the letter dated 16.09.2013 when adjudged on above analysis does not support the contention of the petitioner that it supplants the statutory Rules, rather it only clarifies. And supplementing of a Rule by

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executive fiat is permissible under law [for an authority see : Union of India & others v. Raj Kumar Gupta and others (1995) Supp (2) SCC 607 and Union of India & others v. Rakesh Kumar (2001) 4 SCC 309]. Careful reading of the letter in question would reveal that it neither restrict the scope of the statutory provision, nor does it widens it.

In view whereof, there being no substance in the petition, it fails and is dismissed. No costs.

(SANJAY YADAV)
JUDGE