

Before Jawahar Lal Gupta, J.

DHARAM WATI CHAUHAN,—*Petitioner*

versus

THE STATE OF HARYANA and ANOTHER,—*Respondents*

CWP No. 149 of 88

10th April, 1997

Constitution of India, 1950-Art.226—Punjab Educational Service Class III School Cadre Rules, 1955-Appendix 'B'—Qualification for appointment—Prescribed qualification for Sanskrit teacher is Shastri—STC or with O.T. certificate—Petitioner seeking appointment with qualifications of Prabhakar, Shastri and O.T. certificate with Hindi as teaching subject—Rule prescribes that O.T. Certificate has to be in particular subject—That being so when rule requires person should have qualification of Shashtri with O.T. certificate for appointment to post of Sanskrit teacher it relates to training certificate in subject of Sanskrit.

Held, that on an examination of the rules, it appears that the O.T. certificate has to be in the particular subject. Similarly, even the qualification of S.T.C. which is Special Teaching Certificate must relate to the same subject. To illustrate, it may be pointed out that for the post of Physical Training Instructor, the qualification of S.T.C. with training in Physical Education has been prescribed. An alternative qualification of a Certificate in Physical education with two years' training in S.T.C. Course has been laid down. Supposing a person has obtained a Special Teaching Certificate for Sanskrit, he cannot be said to be qualified for being a Physical Training Instructor. Similar would be the position in respect of other posts. Mr. B.K. Malik admits that when the petitioner got oriental training, she had opted for Hindi as the teaching subject. This is indicative of the fact that while imparting oriental training, one has to indicate a specific subject. That being so, when the rule requires that a person should have the qualification of Shastri with O.T. Certificate for appointment to the post of Sanskrit teacher, it apparently relates to the Training Certificate in the subject of Sanskrit.

(Parà 5)

Constitution of India, 1950—Arts. 226/227—Instructions—Challenge to circular issued by Director Public Instructions as being without jurisdiction and supplementary to rules—Instructions issued only to point out that persons not possessing minimum qualifications should not be appointed in those subjects—Instructions issued are by way of clarifications—No amendment or variation made in rule—Contention that instructions were without jurisdiction cannot be sustained.

Held, that the Director had only issued instructions to point out that persons who do not possess the minimum qualification for different posts should not be appointed as teachers in those subjects. Alongwith this circular, a performa was issued. For the post of Sanskrit teacher, the following qualifications were indicated:-

- “(i) Shastri (Hons. in Sanskrit) from a University recognised by the Haryana Government.
- (ii) Pass in L.T.C. (O.T.) in Sanskrit conducted by Haryana Education Department or an equivalent qualification recognised by the Haryana Education Department.”

These qualifications are virtually identical to those mentioned in the statutory rules. It was only by way of clarification that it has been mentioned that O.T. should be in Sanskrit. This is a possible view on the interpretation of the rules. Under the rules, the Director is competent to make recruitment to the service. He is the head of the Department. He can issue instructions which are by way of clarification. While doing so, there was no amendment of the rule. There was not even a variation of the rule. It was only a clarification. Consequently, the contention that the instructions were wholly without jurisdiction, cannot be sustained.

(Para 7)

R.K. Malik, Advocate, *for the Petitioner*.

Ritu Bahri, *for A.A.G. Haryana*.

JUDGMENT

Jawahar Lal Gupta, J.

(1) The petitioner was appointed as a Sanskrit teacher on *ad hoc* basis at different intervals of time in different schools from March 9, 1981 to July 6, 1983. On November 3, 1983, the Director of Public Instructions issued a circular pointing out that in future, no one who does not possess the minimum prescribed qualification,

be appointed on any post of a teacher. For the post of Sanskrit teacher, the prescribed qualifications were—Shastri (Honours in Sanskrit) from a University recognised by the Haryana Government and Pass in L.T.C. (O.T.) in Sanskrit conducted by Haryana Education Department or an equivalent qualification. On coming to know that her services were about to be terminated, the petitioner filed the present writ petition. Factually, the orders of termination had been passed on December 27, 1983. The petitioner claimed that she possessed the qualifications of Prabhakar, Shastri and O.T. and as such, she was eligible for the post. Consequently, she prayed that the respondents be directed not to terminate her services.

(2) In the written statement filed on behalf of the respondents, it has been pointed out that the petitioner having been appointed on *ad hoc* basis had no right to the post. It has been further stated that the qualifications of Prabhakar and O.T. in Hindi were not sufficient for appointment to the post of Sanskrit teacher. The petitioner was ineligible. Consequently, she was not entitled to continue in service.

(3) Counsel for the parties have been heard.

(4) Mr. R.K. Malik, counsel for the petitioner has made a two-fold submission. Firstly, the counsel submits that the petitioner is qualified for the post of teacher in Sanskrit and was thus entitled to continue in service. He has placed reliance on the order dated May 20, 1993 passed by the Division Bench in CWP No. 15397 of 1992. Secondly, the counsel has submitted that the Director of Public Instructions has no jurisdiction to issue any instructions supplemental to the statutory rules. As such, the circular issued by the Director,—*vide* letter dated November 3, 1983 a copy of which has been produced as Annexure P.1 with the writ petition, deserves to be quashed. The claim made on behalf of the petitioner has been controverted by the counsel for the respondents.

(5) Admittedly, the recruitment to the post of a teacher is governed by the provisions of the Punjab Educational Service Class II School Cadre Rules, 1955. In Appendix 'B' to these rules, the qualifications for appointment to various posts have been specified. For the post of Sanskrit teacher, the prescribed qualifications are—Shastri, S.T.C. or with O.T. Certificate. The qualifications for various other posts of teaching have also been prescribed. Thus, the statutory rule requires that the candidate for appointment to the post of Sanskrit teacher must have the qualification of Shastri with a S.T.C. or O.T. Certificate. A perusal of the Appendix further

shows that the requirement of O.T. Certificate has been prescribed for various other categories of teachers like oriental teacher (Persian). The qualifications for this post are Munshi Fazil, S.T.C. or with O.T. Certificate. For the post of Hindi teacher, the qualifications are Shastri/Prabhakar, S.T.C. or with O.T. Certificate. Even for the post of Punjabi teacher, the qualifications are—Honours in Punjabi with training (S.T.C. or O.T. Certificate). Ms. Bahri, counsel for the respondents points out that the rules prescribe a two-fold qualification. Firstly, an academic degree in the particular subject has been prescribed. In the case of Sanskrit teacher, the academic degree is of Shastri. Alongwith that, a candidate is required to have a Certificate or Oriental Training. This training has to be in the particular subject. A person who is appointed to teach Persian, should be trained in teaching that subject. He should be able to present the correct pronunciation of each work. After training, he should be able to go to school and impart education to his pupils. A person who has to teach Punjabi, should have training in the teaching of that subject. It cannot be that a person who is trained to teach Punjabi would be qualified for the post of Sanskrit teacher by merely passing the Shastri examination. Thus, on an examination of the rules, it appears that the O.T. Certificate has to be in the particular subject. Similarly, even the qualification of S.T.C. which is Special Teaching Certificate must relate to the same subject. To illustrate, it may be pointed out that for the post of Physical Training Instructor, the qualification of S.T.C. with training in Physical Education has been prescribed. An alternative qualification of a Certificate in Physical education with two years' training in S.T.C. Course has been laid down. Supposing a person has obtained a Special Teaching Certificate for Sanskrit, he cannot be said to be qualified for being a Physical Training Instructor. Similar would be the position in respect of other posts. Mr. R.K. Malik admits that when the petitioner got oriental training, she had opted for Hindi as the teaching subject. This is indicative of the fact that while imparting oriental training, one has to indicate a specific subject. That being so, when the rule requires that a person should have the qualification of Shastri with O.T. Certificate for appointment to the post of Sanskrit teacher, it apparently relates to the Training Certificate in the subject of Sanskrit.

(6) Mr. Malik submits that the circular issued by the Director,— *vide* letter dated November 3, 1983 is wholly without jurisdiction. According to the learned counsel, the Director cannot issue instructions supplemental to the rules.

(7) The contention is misconceived. Factually, the Director had only issued instructions to point out that persons who do not possess the minimum qualification for different posts should not be appointed as teachers in those subjects. Alongwith this circular, a performa was issued. For the post of Sanskrit teacher, the following qualifications were indicated:—

- “(i) Shastri (Hons. in Sanskrit) from a University recognised by the Haryana Government.
- (ii) Pass in L.T.C. (O.T.) in Sanskrit conducted by Haryana Education Department or an equivalent qualification recognised by the Haryana Education Department.”

These qualifications are virtually identical to those mentioned in the statutory rules. It was only by way of clarification that it has been mentioned that O.T. should be in Sanskrit. This is a possible view on the interpretation of the rules. Under the rules, the Director is competent to make recruitment to the service. He is the head of the Department. He can issue instructions which are by way of clarification. While doing so, there was no amendment of the rule. There was not even a variation of the rule. It was only a clarification. Consequently, the contention that the instructions were wholly without jurisdiction, cannot be sustained.

(8) Mr. R.K. Malik, has pointed out that in the case of *Kitab Singh v. State of Haryana* (1), it had been held that the instructions by the Department,—*vide* circular letter dated November 3, 1993 were prospective in nature. The contention is that the petitioner having already been appointed to the service in the year 1981, her services were not liable to termination in pursuance of the aforementioned circular.

(9) Even this contention is misconceived. Admittedly, the petitioner had been appointed on purely *ad hoc* basis. In the year 1981, the petitioner had worked for virtually two months from March 9, 1981 to May 12, 1981. Thereafter, she was appointed on March 2, 1982 and her services were terminated on May 18, 1982. Then, the petitioner served from July 17, 1982 to January 15, 1983 and so on. In this situation, it is apparent that the appointments were for fixed terms. The petitioner had no right to continue indefinitely her services were being terminated at the expiry of the term. She had, as such, no right to the post. The appointment

was purely *ad hoc*. That being so, it cannot be said that the department had committed any illegality in terminating her services.

(10) Mr. Malik has contended that in view of the decision of the Division Bench of this Court in CWP No. 15397 of 1992 decided on May 20, 1993, it is not necessary for a Hindi teacher to have O.T. in Hindi. The decision undoubtedly says so. However, so far as the present case is concerned, it is the admitted position that the petitioner has only qualified the examinations of Shastri, Prabhakar and Language Teacher course. Strictly speaking, she does not have the qualification of O.T. or a Special Training Certificate as required under the rules. Consequently, this question really does not fall for consideration in this case. Irrespective of that, learned counsel for the petitioner has also produced a photo copy of the certificate issued to the petitioner on August 17, 1973. It is taken on record as Mark 'A'. A perusal of this certificate shows that Part II of the examination relates to the proficiency in teaching. Three different subjects of Hindi, Sanskrit and Punjabi have been mentioned. In case of the petitioner, Sanskrit and Punjabi have been scored off. Resultantly, she had obtained proficiency in teaching Hindi. Still further, in Part III (Theory), Paper VI relates to the method of teaching. Even for this, three different subjects of Hindi, Sanskrit and Punjabi have been indicated. The subjects of Sanskrit and Punjabi have been deleted so far as the petitioner is concerned. It is, thus, clear that a candidate who undergoes the Language Teacher Examination is actually trained in a particular subject viz. Hindi or Sanskrit or Punjabi. He acquires proficiency in teaching that subject. In this context, it would be reasonable to assume that when the rule prescribes the qualification of Shastri with O.T. for a Sanskrit teacher, it is necessary that the candidate learns the method of teaching that subject and acquires proficiency therein.

(11) In view of the above, the action of the respondents in terminating the services of the petitioner was absolutely legal and valid. Still further, the impugned circular did not suffer from any infirmity. Consequently, there is no merit in this writ petition. It is, accordingly, dismissed. However, in the circumstances of the case, there will be no order as to costs.