

Amarihanad Vs. State of Rajasthan and anr.

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Court : Rajasthan

Decided On : Jul-29-1974

Reported in : 1974WLN743

Judge : Kan Singh, J.

Appeal No. : S.B Civil Writ Petition No. 991 of 1970

Appellant : Amarihanad

Respondent : State of Rajasthan and anr.

Judgement :

Kan Singh, J.

1. This is a writ petition under Article 226 of the Constitution by one Shri Amarchand, a Senior Teacher in the Education Department of Rajasthan, for an appropriate writ, direction or order. The petitioner questions the vires of a portion of the Schedule appended to the Rajasthan Educational Service Rules, 1970, hereinafter to be referred as 'the Rules,' occurring in Group F thereof whereby the Teachers in Grade II have been placed at par with Senior Teachers for purposes of promotion to Rajasthan Educational Service The petitioner prays that this rule be struck down and the Government directed to comply with the provisions of Rule 24 of the Rules before making promotions to the Rajasthan Educational Service from the Rajasthan Educational Subordinate Service on the basis of seniority-cum-merit.

2. The petitioner obtained his Master's Degree in Commerce in the year 1952 and his Bachelor's Degree in Education in the year 1959 He entered Government service as a Teacher in the Untrained Graduate Grade after being selected by the Rajasthan Public Service Commission on 15-7-53. This appointment was on probation. The petitioner came to be confirmed on completion of the period of one year's probation. At that time the Untrained Graduate Grade was Rs. 90 6 120. With the creation of Multipurpose Higher Secondary Schools a new cadre of Senior Teachers was created. Second Class Post-graduates were eligible for appointment as Senior Teachers. The pay scale of the Senior Teachers at that time was Rs. 200.10.280 EB-350. The petitioner was appointed as a Senior Teacher on 28-5-55. The petitioner's appointment, to start with, was in officiating capacity. Thereafter certain posts of Senior Teachers were advertised by the Rajasthan Public Service Commission and the petitioner was appointed a Senior Teacher in the substantive capacity on being selected by the Commission by order dated 15-9-58. At that time the grade of Senior Teachers was Rs. 200-350, which was later on revised to Rs. 200 400. The Trained Graduate Grade of Teachers was having a pay scale of Rs. 110 225 and the Untrained Graduate Grade was of Rs. 90-5 140. There was revision of pay grades in 1961. The

Teachers were put in three categories; the first one was of Senior Teachers in Grade I It carried the pay scale of Rs. 225 485 which was again revised in 1969 to Rs. 225 525. The Second Grade consisted of Trained and Untrained Graduate Grade Teachers. This grade carried pay scale of Rs. 115 300 which was later on revised to Rs. 160-360. The Third Grade of Teachers carried the pay scale of Rs. 75-200 in 1961 which was later on raised to Rs. 110-230 The posts in Grades II and III were outside the purview of the Commission. The channel of promotion for Grade II Teachers was from Grade III Teachers. Then in 1970 the rules were framed In 1971 the Governor made the rules known as the Rajasthan Educational Subordinate Service Rules, 1971, hereinafter to be referred as 'the Subordinate Service Rules'. The Rajasthan Educational Service consisted of posts arranged in the various Groups as specified in the Schedule thereto. The post of Headmasters were in Group F and were thus included in the Rajasthan Educational Service. I may read the relevant portion whose vires is challenged:

SCHEDULE

1 2 3 4

S. No. Name of the Post Method of recruit- Minimum qualifications
ment with percentage and experience for direct
recruitment

1. Headmaster/Heads 50% by direct recruit- 1. (a) Bachelor's degree
mistress, Secondary ment 50% by promotion with degree or diploma
Schools in Education

(i) Headmaster/ (b) Experience of tea-

Headmistress, Junior ching High/Junior

Higher Secondary/High H;gher Secondary

School School/Higher Secondary

(ii) Headmistress, classes for 5 year's or

Children School experience of adminis-

(iii) Asst. Director, State trative charge of Middle

Institute of Education Schools for 4 years and

(iv) Asst. Director of teaching High/Junior
(Correspondence) Higher Secondary
GROUP (F) Schools/Higher Secun-
Course State Institute dary classes for 3 years
of Education Note : (1) Degree or diploma
referred to above should
be of a University
established by law in
India or of a foreign
university recognised as
equivalent hereto by the
Govt

Dy. Inspector Note : (2) Teaching in
of Schools, Dy Inspectrres B S.T.C. or R.T C. Schools
of GIRIS Schools will be deemed as equivalent
to teaching in High/Jr.

Higher Secondary/Higher
Secondary dary Classes

Note : (3) Experience of
working on the post of
Social Educational
Organiser or posts
mentioned at items No 1 to
5 of Section 'F' of the
Schedule to the Rajasthan
Educational Subordinate

Service Rules, 1971, will be deemed as equivalent to the experience of administrative charge of Middle Schools and experience on the posts of Research Assistant or Co-ordinator in the State Institute of Education will be deemed as equivalent to the experience of teaching Secondary classes

2. Counsellor, State Bureau 59% by direct

of Educations' & recruitment 50% by

Vocational guidance promotion

(i) Occupational Information

Officer

(ii) Psychologist

3. Lecturer, State 100% by direct

Institute Language recruitment

Studies(English Division)

4. Editor for Departmental 100% by direct

Publications recruitment

5. Headmaster, 100% by direct

Blind School and Deaf recruitment

& Dumb School

6. Audio-Visual Education 100% by direct

Officer recruitment

SCHEDULE Contd....)

Post or posts from which Minimum qualifications & Maximum age limit for promotion is to be made experience required for direct recruitment promotion

5 6 7

Teachers Grade II & (a) Bachelor's degree with a 30 above from the General years degree or diploma in cadre of Educational education

Subornate Service

(b) Experience of teaching

High/Jr. Higher Secondary/

Higher Secondary elapses

for 5 years experience of

Administrative charge of

Middle Schools for 4 years

and of teaching High/Jr.

Higher Secondary Classes

for 3 years

OR

Qualifications prescribed

in (1)(a) of column 4 and

should have been exempted

by the Board of Secondary

Education, Raj. from

possessing of Qualification
prescribed in Sub-rule (1)(b)
in regard to the number of
years

(2) No teacher grade II
shall be promoted to the
service unless he has either
worked for a period of 2
years as Headmaster of
Middle Schools or has been
exempted in this behalf by
the Addl. Director, Primary &
Secondary Education

Note : 1: The degree or
diploma referred to above should
be of a University established
by law in India or of a foreign
University recognised as
equivalent thereto by the
Government

Note 2 : Teaching in a
B.S.T.C. ORR.T.G. Schools will
be deemed as equivalent to
teaching High Secondary/Higher
Secondary classes

Note 3: Experience of working

on the post of Social Education
 Organiser or posts mentioned
 at items No. 1 to 5 of Section
 'F' of the Schedule to the
 Rajasthan Educational Subordinate
 Service Rules, 1971, will be
 deemed as equivalent to the
 experience of of administrative
 charge of Middle Schools and ex
 perience on the posts of
 Research Assistant or Co-ordinator
 in the State Institute of
 Education will be deemed to the
 experience of teaching Secondary
 classes'

The Rajasthan Subordinate Service consisted of posts as arranged in the 5 sections as specified in Schedule appended thereto. The posts of Senior Teachers and Teachers Grade II occur in Section 5 headed 'General-Teachers':

Serial Name of the post Sources of recruitment Minimum qualification
 No. with percentage and experience for
 direct recruitment

1 2 3 4

1(a) Senior Teachers 50% by Promotion and II Class Master's degree
 in Humanities and 50% by direct in relevant subject or an

Commerce Group recruitment equivalent Diploma or

Graduation in Science with

(b) Senior Teachers 60% by Promotion and one year's Diploma Course

in Science 60% by direct in subjects concerned

recruitment recognised by Board of Section

Education Rajasthan

NOTE-1

(c) School Counsellors

2. Enforcement Officer

3. Instructors in B.S T.C.

Schools other than Phy.

Training Instructors

Craft Drawing and Ag-

riculture Instructors.

4. Technical Testing Asstts.

in Bureau of Edu. and

vocational Guidance

5. Supervisor in Audio

Visual Education unit

5(a) Teachers Grade 11/ 50% by direct recr- Graduate or equivalent

Education Extension unit & 50% by examination with atleast

Officers/Sub-Deputy promotion two subject taught in

Inspectors & Enforcement schools with degree or

Assistants equivalent diploma in

Education or Montessori

(b) Attendance Officer NOTE-2

(c) Technical Assistant in

Evaluation unit

1NOTE-Degree or Diploma in Education or restriction of Division in Master's degree will not be necessary where candidate fulfilling these conditions are not available, the alternative qualification shall be furnished for 5 years only.

2NOTE-For teachers in Science, Degree/Diploma in Education or Montessdry Training will not be essential if persons with degree diploma m Education or Montessory Training are not available. This exception shall be permissible for five years only.

(d) Instructors in B S.T.C.

Schools (Senior Grade)

excluding Craft and Physical

Training Instructors

Teachers Grade III

7. Laboratory Assistant

8. Teachers in Deaf, Dumb

& Blind Schools

9. Head of Agriculture De-

partment in Higher Section

Schools

10. Junior Agriculture

Teachers

Post or the posts from Qualification and Committee for Seniority Remarks

which promotion is to be experience required direct
made for promotion recruitment to
the post not
within the purview
iority of Raj Public
Service Commission
& for promotion

5 6 7 8 9

- (a) 1. Enforcement Trained Post-Graduate
Officer or equivalent with 1. Director of Statewise
examination with 5 Education
2. Instructor with years experience of 2. One Deputy
B.ST.C. Schools teaching High/Higher Director of
(Jr. Grade) Section Schools/B.S.T.C. Education to be
classes nominated by
3. Teachers Grade II Director
4. Technical Testiag/ 3. One expert to
Asstt. in Bureau of Edu. be nominated by
and Vocational Guidance Director of
- (b) 1. Enforcement Trained Post-gtaaduate Education
Officer or equivalent
examination pass with 1. Director State Statewise
2. Instructor B.S. 3 years of teaching of Education
T.C. Schools experience of High/

(Jr. Grade) Higher Section School 2. One Deputy

B.S.T C. clansess or Director of

3. Teachers Grade II Graduation in Science Education to be

with one year Diploma nominated by

Director

3. One expert to

be nominated by

4. Technical Tes- Course in subject Director

tinp/Asstt. in concerned recognised

Bureau of Education by the Board of

ffi Vocational Section Education

guidance Rajasthan

(c)

(2)

3.

4.

5.

5(a)l. Grade III Graduate or 1. Deputy Director Range

Teachers equivalent of Education of wise

examination the Range concerned

with atleast two

2. Laboratory subjects taught in

Assistants schools with 2. One Inspector

degree or equivalent of Schools to be

diploma in Education nominated by

or Motessory Training Director of

3. Teachers in Deaf, Education

Dumb and Blind

Schools

3. One expert to

be nominated by

Director

(b)

(c)

(d)

7.

8.

9.

10.

3. The petitioner's contention against the vires of the rule is that unequals in the Rajasthan Subordinate Service namely, Second Grade Teachers, have been made equals with Senior Teachers in the Rajasthan Subordinate Service for purposes of promotion to the Rajasthan Educational Service and this is violative of Article 14 of the Constitution.

4. The writ petition has been opposed by the State. It is denied that the rule is ultra vires or that the Senior Teachers are to be treated otherwise than at par with the Secondary Teachers for appointment as Headmasters.

5. Now, there is no doubt that Senior Teachers are higher in rank than Second Grade Teachers. It is remarkable that promotion to the posts of Senior Teachers is made from : (1) Enforcement Officers, (2) Instructors in B.S.T.C. Schools (Junior Grade), (3) Teachers Grade II, and (4) Technical Testing Assistants in Bureau of Education and Vocational Guidance. A post to which promotion is made from another post is undoubtedly higher to the post from which a promotion is made. The attack against the vires of the rule is, however, not sustainable. It is open to the rule making authority to make Senior Teachers as well as Teachers Grade II both eligible for promotion as Headmasters who are members of the Rajasthan Educational Service. I need not go far but may draw attention to Article 217 of the Constitution by way of analogy. Munsiff, Civil Judges or a District Judges who fulfil the qualifications for appointment as a Judge of the High Court can be appointed as such if they have put in 10 years Judicial Service but no one has ever pretended that this makes unequals as equals Likewise, in many service rules persons holding lower posts are also made eligible along with those who are holding higher posts when promotion to the still higher posts are to be made. Therefore, there is no substance in the contention that

the rule is ultra vires.

6. The next point viz., how the Departmental Promotion Committee has to proceed while making recommendations for promotion to the Rajasthan Educational Service presents difficulties. Rule 24 of the Rules which lays down the procedure for promotion may be read:

'Rule 24. Procedure for selection on the basis of seniority-cum-merit.-(1) As soon as it is decided that a certain number of posts shall be filled by promotion, the Director shall prepare a correct and complete list containing names not exceeding five times the number of vacancies, out of the senior most persons as mentioned in column 5 of the Schedule, who are qualified under the rules for promotion to the posts concerned. He shall forward this list along with their confidential rolls and personal files to the Secretary to the Government in the Education Department.

(2)(a) For the posts appointments whereto are to be made by Government, a Committee consisting of the Chairman of the Commission or his nominee being a member thereof nominated by him, the Secretary to Government in the Appointments Department or his representative not below the rank of Deputy Secretary as member and for the posts, appointments whereto are to be made by the Director a Committee consisting of a Member of the Commission nominated by the Chairman of the Commission, Deputy Secretary to Government in the Appointments Department as members and the Director as Member-Secretary shall consider the cases of all persons included in the list, interviewing such of them as it may deem necessary and shall prepare a list containing names of suitable candidates up to twice the number of such posts as are indicated in Sub-rule (1).

(b) The Chairman or the member of the Commission preside at all meetings of the Committee at which he is present,

(3) The Committee shall prepare a separate list containing names of persons who may be considered/suitable to fill temporary or permanent vacancies already existing or are likely to occur till the next meeting of the Committee on a temporary or officiating basis and the list so prepared shall be reviewed and revised every year and shall remain in force until it is so reviewed or revised.

(4) The Committee may co-opt an expert from outside to assist the Committee for selection of candidates for such posts as are to be filled by promotion.

(5) The names of the candidates selected as suitable shall be arranged in the order of seniority.

(6) The lists prepared by the Committee shall be sent to the appointing authority together with the confidential rolls and personal files of the candidates included in them as also of those superseded, if any.

(7) Where consultation with the Commission is necessary the lists prepared in accordance with Sub rules (2) and (3) shall be forwarded to the Commission by the appointing authority along with (a) confidential rolls and personal files of persons whose names are included in the lists; (b) confidential rolls and personal files of all persons who are proposed to be superseded by the recommendations made by the Committee. The Commission shall consider the lists prepared by the Committee along

with the other documents received from the appointing authority at d unless it considers any change to be necessary to be made shall approve the lists but if the Commission considers such change as aforesaid to be necessary it shall inform the appointing authority of the changes proposed by it and after taking into account the comments, if any, of the Commission the appointing authority may approve the list finally with such modifications, as may in its opinion, be just and proper.

The rule contemplates that as a certain number of posts are to be filled up by promotion the Director shall prepare a correct and complete list containing the names not exceeding five times the number of vacancies out of the senior-most persons as mentioned in column No. 5 of the Schedule who are qualified under the rules for promotion to the post concerned. Now, column No 5 of Group-F of the Schedule, which I have already extracted above, provides that Teachers Grade II and above from the General cadre of Educational Subordinate Service are eligible for promotion as Headmasters, Secondary Schools and for other posts included in the Schedule under serial No. 1 of Group F. How the seniority list is to be prepared in respect of persons mentioned in column No 5 is not an easy matter. Rule 24 does not lay down how a list of seniormost persons in column No 5 shall be prepared It is remarkable that the seniority list of Senior Teachers is to be prepared State-wise whereas the seniority list of teachers of gr. II is to be prepared range-wise as is mentioned in column No. 8 of the Schedule. Rule 29 of the Subordinate Service Rules, 1971 lays down that seniority in each section of the service shall be determined as mentioned in column No. 8 of the Schedule by the year of substantive appointment to post in particular section. This clearly implies that whereas seniority list in respect of Senior Teachers is prepared State-wise such a seniority list of Second grade Teachers is prepared range-wise. How they will form the ground work for preparation of a list of seniority as contemplated by Rule 24 of the Rules has not been indicated. In the absence of anything in the statutory rules the normal thing to be taken is that a person who is holding a post to which promotions are made from other posts will be senior to the holders of posts which promotions are made For example, if promotions to the cadre of a Civil Judge are made from that of the Munsiffs, a Civil Judge will undoubtedly be senior to a Munsiff, on being substantively appointed. Likewise, a Senior Teacher who is substantive is certainly senior to a Second Grade Teacher from which post promotions are to be made to the post of Senior Teachers. The State Government could have provided a suitable criterion for preparing a common seniority list of Senior Teachers and Teachers Grade II for purposes of Rule 24 or the Rules. It could have been done by treating the service in higher grade as equivalent to a certain multiple of the period of service in the lower grade. That could be one way. Another way could be by fixing a proportion for filling up the post in the Rajasthan Educational Service. Certain percentage could be given to Senior Teachers and others & certain specified percentage, to the Second Grade Teachers and others. However, the Government are the best Judge how they should arrive at such a seniority list for purposes of Rule 24 of the Rules as would be just and fair to all concerned. I have only indicated a line of approach. However, one thing that stares me is that persons who are having their seniority only range-wise and are on lower posts cannot be tagged mechanically with those who are having their seniority State-wise and are on higher posts.

7. In the circumstances I allow the writ petition in part. While I uphold the validity of Group-F of the Schedule II, of the Rajasthan Educational Service Rules, 1970 (Group 5), I direct the respondents to prepare a common seniority list of Senior Teachers and Second Grade Teachers and others on a just and fair basis before proceeding to make

promotions to the Rajasthan Educational Service from the members of the Rajasthan Educational Subordinate Service. The parties are left to bear their own costs.

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