

Before M.M. Kumar & Sabina, JJ.

JAGJIT SINGH,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. NO. 19603 OF 2006

16th December, 2008

Constitution of India, 1950—Art. 226—Appointment to post of PTI—Essential basic professional qualification—Course of C.P. Ed acquired after passing examination of senior secondary—Petitioner possessing qualification of B.P. Ed after graduation—Whether petitioners with qualification of B.P. Ed could be equated for appointment as PTI for which qualification prescribed is C.P. Ed—Held, no—Different qualifications, pay scales & professional qualifications of teachers, Masters/Mistress and Lecturers at level of elementary teaching, secondary level teaching and higher secondary level teaching—Rights of candidates possessing qualification C.P. Ed prejudiced if candidates possessing qualification of B.P. Ed are appointed—No interference by High Court to undertake an exercise of equating one qualification with other—Petitions dismissed.

Held, that there is a fundamental difference between the teachers who are trained to impart education at the elementary level/primary level and at the secondary & higher secondary level. The qualifications, pay scales and on course professional qualifications are different at different levels, therefore, one cannot be compared with the other. The syllabus and curriculum at each level has been given along with their nomenclature pay scales of the teachers, Masters/Mistress and Lecturers at the level of elementary teaching, secondary level teaching and the higher secondary level teaching. Even otherwise it is not for the Courts to undertake an exercise of equating one qualification with the other.

(Paras 16, 18 & 19)

Kapil Kakkar, Advocate.

M. L. Sachdeva, Advocate.

Ms. Alka Chatrath, Advocate, *for the petitioner(s)*.

P.C. Goyal, Sr. DAG, Punjab.

Amar Vivek, Advocate.

N.S. Sidhu, Advocate.

Arun Goswami, Advocate, *for the respondent(s)*.

M. M. KUMAR, J.

(1) This judgment shall dispose of instant petition bearing C.W.P. No. 19603 of 2006 and other 43 connected writ petitions filed under Article 226 of the Constitution as common question of law and facts have been raised.

(2) For understanding the contour of controversy, the facts are being referred from C.W.P. No. 19603 of 2006. In that petition selection and appointment of Shri Parveen-respondent No. 3 as PTI teacher has been challenged on the ground that he is less meritorious than the petitioner, especially in view of the fact that as per criterion formulated by the official respondents the merit position of the petitioner comes at 65.37 whereas the merit of the last candidate selected i.e. respondent No. 3 is 58.91. Therefore, it is claimed that the petitioner has a preferential right for appointment to the post of PTI teacher.

(3) In the year 2000, the petitioner passed his Senior Secondary School Examination from the Punjab School Education Board and thereafter he passed the examination of Bachelor of Physical Education (B.P. Ed.) from Nagpur University, Nagpur in the year 2005 (P-1 & P-2). On 21st October, 2006, Department of School Education, Government of Punjab, issued advertisement bearing No. 1/October, 2006 in leading newspapers for recruitment of 175 posts of Physical Training Instructors (PTI) in the scale of Rs. 4,550—7,220 (P-3), prescribing the following basic and professional qualifications :—

“(1) Senior Secondary School Certificate or Intermediate or its equivalent ; and

- (2) Certificate in Physical Education (C.P. Ed.) of a duration of not less than two years or its equivalent.”

(4) The applications were to be submitted on-line by the candidates. On 25th October, 2006, a corrigendum was issued making addition in the basic and professional qualification for the post of PTI (P-4). The professional qualification was changed from C.P. Ed. Course of two years to C.P. Ed. Course of one year after passing the Senior Secondary School Certificate. The relevant extract of the corrigendum reads thus :—

“.....In terms of Gazette of India, Notification No. 238 of 4th September, 2001 NCTE (Determination of minimum qualifications for recruitment of teachers in schools) Regulations, 2001. National Council for Teacher Education, New Delhi F. No. 9-2/2001/NCTE, dated 3rd September, 2002.

Or

- (3) Certificate in Physical Education Course of one year duration after Senior Secondary School Certificate or Intermediate or its equivalent.

However, this exception shall not be available in any recruitment after the year 2007 because the Education Institutions are duly bound as per NCTE Regulation to commence the two years course from 2005.”

(5) On 8th November, 2006, another corrigendum was issued increasing the number of posts from 175 to 849. The last date for receipt of applications was also extended from 8th November, 2006 to 11th November, 2006. It was further mentioned that scrutiny of original documents of the candidates as per merit list would take place on 14th November, 2006 at 9.30 a.m. instead of 13th November, 2006 at the same place and venue already notified (P-5). The petitioner submitted his application online on 5th November, 2006 in the category of Male (General), which was registered at Sr. No. 42634 (P-6). On

14th November, 2006, the petitioner appeared for scrutiny of documents and the percentage of his marks and merit position was calculated as 65.37 (P-7). On 19th November, 2006, the respondents issued the final merit list of eligible candidates for appointment to the post of PTI in the category of Male (General), wherein the name of respondent No. 3 was shown as the last selected candidate for appointment to the post of PTI, who have secured 58.91 marks. However, the name of the petitioner did not figure in the said list despite the fact that his merit position was higher than respondent No. 3 (P-8). Feeling aggrieved, the petitioner submitted a representation dated 28th November, 2006 (P-9). It has been claimed that the petitioner has unofficially come to know that his candidature has not been considered because he has passed B.P. Ed. Course and not C.P. Ed.

(6) The factual position has not been denied in the reply filed on behalf of respondent Nos. 1 and 2. However, the stand taken is that the petitioner is not eligible for appointment to the post of PTI because he did not possess the essential basic professional qualification. He possessed the academic qualification of B.A. and professional qualification of B.P. Ed. one year course instead of C.P. Ed. It has further been asserted that no equivalence can be possible between the courses of C.P. Ed. and B.P. Ed. on the basis of duration of course alone.

(7) When the matter came up for consideration on 15th October, 2007, the Division Bench invited the attention of Dr. Jagtar Singh, Director Public Instructions (Secondary Education), Punjab, to the averments made in paragraph 11 of the writ petition and the reply filed thereto on behalf of the respondents, which were found to be vague and unclear. The respondent sought and granted time to furnish a fresh reply by way of affidavit. Accordingly, supplementary reply by way of additional affidavit was filed on 19th October, 2007. In para 2 of the additional affidavit it has been asserted that the course of C.P. Ed. has been designed to enable the candidates to equip themselves to teach the elementary level of students whereas the course of B.P. Ed. is meant for training the candidates so as to enable them to impart Physical Education to the students of Secondary level, who have higher and different level of learning than the students of elementary level. The detail of the course of instructions being followed by the Punjabi

University, Patiala for the course of C.P. Ed. and B.P. Ed. has also been given in the additional affidavit to show difference between the aforementioned two courses.

(8) Respondent Nos. 1 and 2 have filed a written statement on 8th February, 2007. wherein the stand taken is that the petitioner applied for the post of PTI although he did not possess the essential basic professional qualification required for the post. It has been asserted that he possessed the academic qualification of B.A. and professional qualification of B.P. Ed., which is a one year course, instead of C.P. Ed. It has further been asserted that without essential basic qualification as per the terms and conditions of the advertisement, the petitioner cannot be considered eligible merely because of the higher qualifications possessed by him. The qualification of C.P. Ed. is acquired after +2 whereas the qualification of B.P. Ed. is acquired after graduation.

(9) Then a specific affidavit was also filed on 19th October, 2007 on the direction of this Court. In that affidavit some fundamental issues have been raised. It has been asserted that the course of C.P. Ed. is designed in such a way so as to enable the candidates pursuing the said course to equip themselves to teach students of elementary level whereas the course of B.P. Ed. is planned for training the candidates so as to impart physical education to the students of secondary level, who have already acquired higher level of learning, which is quite different from the level of the students of elementary level. The respondents have made a detailed reference to the curriculum covered by both the courses emphasising that the paper like 'Recreation' is studied by students of C.P. Ed. which is not included in the course of studies of B.P. Ed. The affidavit further highlights that the aforementioned paper of 'Recreation' reveals that it is the training and studies pertaining to the contents which enables and equips a candidate with specialised kind training to impart physical education to the students of elementary level. The detailed contents forming the part of curriculum of Paper-I 'Recreation' have also been reproduced. The course is designed in such a way so as to train such candidates to impart physical education to the students of elementary level by adopting play way methods.

(10) It has then been highlighted that the course of B.P. Ed. cannot be considered as a higher qualification in the same line of the course of C.P. Ed. because any candidate possessing the qualification of C.P. Ed. after passing the examination of senior secondary is not granted any kind of exemption from appearing in one or more parts/papers at the stage of B.P. Ed. Therefore, by no stretch of imagination the qualification of B.P. Ed. is regarded as higher qualification. Another aspect highlighted in the affidavit is that there are three categories of teachers being employed by the State Government to impart physical education to the students at each of the three different levels with their respective qualification and pay, namely, Elementary (up to 8th Class) ; Secondary (up to 9th and 10th Class) ; and Senior Secondary (up to 10+1 & 10+2 Class). They all have different nature of duties, service rules and the educational qualifications which have been laid down by keeping in view the students at different levels. In that regard, Mr. P.C. Goel, learned State counsel has made a detailed reference to the rules known as 'Punjab State Education (Class III Service) Rules, 1955, which deals with the educational qualifications of teachers at elementary level. In order to illustrate, the respondents has pointed out that for imparting physical education to the students of elementary level, the PTIs with professional qualification of C.P. Ed. are given the pay scale of Rs. 5,000—8,100 ; for secondary Level students the Physical Training Masters/Mistress with professional qualification of Graduate and advance training in physical education like B.P. Ed. with higher pay scale of Rs. 5,480—8,925 and for Senior Secondary level Lecturers in Physical Education with professional qualification of M.P. Ed. with further higher pay scale of Rs. 6,400—10,640 are being employed by the respondent State. Therefore, it has been concluded that the candidates possessing qualification of B.P. Ed., if are appointed to the post of PTIs, the rights of those candidates would also be prejudiced who have the qualification of C.P. Ed. and are well equipped to impart physical education to the students of elementary level.

(11) We have heard learned counsel for the parties at a considerable length and have perused the paper books and record with their able assistance. The pleading of the parties, rival contentions

raised by the learned counsel and the record concerning these cases lead us to following question of law :—

“Whether the petitioners who have obtained the qualification of B.P. Ed. could be equated for the purpose of appointment as Physical Training Instructors for which qualification prescribed is C.P. Ed. ?”

(12) In order to answer the aforementioned question, it would be apposite to *juxtapose* the curriculum of both the courses at Punjabi University, Patiala which are as under :—

Course of instructions being followed by the Punjabi University, Patiala for the courses of C.P. Ed. and B.P. Ed. :—

“C.P. Ed.			“B.P. Ed.(One year course)		
Part-I	Theory (First year)	500 Marks	Part-I	Theory	650 Marks
Paper-I	Principles and History of Physical Education in India	100 Marks	Paper-I	Anatomy Physiology and Health Education	100 Marks
Paper II	Psychology in Physical Education	100 Marks	Paper-II	Psychology with Special reference to Physical Education	100 Marks
Paper III	Methods of Physical Education	100 Marks	Paper III	History and Principles of Physical Education	100 Marks
Paper-IV	Anatomy and Physiology	100 Marks	Paper IV	Methods and Administration of Physical Education	100 Marks
Paper-V	Management of Physical Education	100 Marks	Paper-V	Officiating and Coaching	100 Marks

"C.P. Ed.			"B.P. Ed.(One year course)		
	Theory (Second Year)	500 Marks	Paper VI	Yoga	50 Marks
Paper-I	Recreation	100 Marks	Paper-VII	Kinesiology and Bio- mechanics	50 Marks
Paper-II	Health Education and Sports Injuries	100 Marks	Paper VIII	Punjabi or Punjab History & Culture	50 Marks
Paper-III	Organization Admini- stration Supervision in Physical Education	100 Marks	Part II	Practice of teaching and Officiating	300 Marks
Paper-IV	Officiating and Coach- ing	100 Marks	Part-III	Skill and Prowess	300 Marks
Paper-V	Yoga Health and Fitness	100 Marks		Total Marks	1250 Marks
	Part-II Skill and Prowess (First Year)	300 Marks			
	Part-II Skill and Prowess (Second Years)	300 300 Marks			
	Part-II (First Year) Educational Cultural and Social Project	50 Marks			
	Part-III (Second Year)				

“C.P. Ed.	“B.P. Ed.(One year course)
Practice of 200 teaching and Marks Officiating	
Part-IV (First Year) Practical 150 and teaching Marks Officiating	
Total 2000 Marks”	

The curriculum of C.P. Ed. clearly shows that Paper of ‘Recreation’ is one of the paper which has further been highlighted in the affidavit of the DPI, dated 19th October, 2007. The contents forming part of curriculum as per the affidavit are as under :—

“UNIT—1

1. Recreation : Definition, its importance Characteristics and Mis-conceptions.
2. Importance of Recreation.
3. Leadership in Recreation : Meaning and Objectives of Recreation Leadership.

—Types and Functions of Recreation Leaders.

—Qualifications, Qualities and Professional Training.

UNIT—II

1. Agencies Providing Recreation
 - (a) Municipal Agencies
 - (b) Public Agencies
 - (c) Private Agencies
 - (d) Youth Serving Agencies

- (e) Employee Recreation
 - (f) Commercial Recreation
 - (g) Recreation for Handicapped
2. Facilities for Recreation—
- (a) Planning Criteria and Objectives of Recreation facilities
 - (b) Different type of In-door and Outdoor recreation facilities for urban and rural population.
 - (c) Selection, use and care of equipment

UNIT—III

1. Programmes in Recreation—
- (a) Criteria and Principles for Community Recreation Programmes.
 - (b) Classification of Recreational Activities
 - (i) Arts and Crafts
 - (ii) Dancing
 - (iii) Dramatics
 - (iv) Literary Activities
 - (v) Music
 - (vi) Nature and Outing
 - (vii) Social Events
 - (viii) Indoor and Outdoor Sports and Games
 - (ix) Photography
 - (x) Gardening
 - (c) Hobbies—Meaning and Types of Hobbies

UNIT—IV

1. Camping—
 - (a) Importance of Camping
 - (b) Aim and Objectives of Camping.
 - (c) Organization of different types of Campes.
 - (i) Selection and layout of camp site.
 - (ii) Camping leadership.
 - (iii) Camp facilities and programme.”

The courses available at Kurukshetra University has also been furnished. We do not wish to go in further details.

- (14) The pleading of the parties show three basic elements :
 - (a) The curriculum of C.P. Ed. is designed to impart physical training to the elementary level of students and the PTIs are teachers with the aforementioned qualification who are engaged to each elementary level of students. They are taught the subjects of Recreation and Child Psychology by adopting play way methods. On the other hand the qualification of B.P. Ed. is aimed at teaching the secondary students of 9th and 10th classes. The nomenclature of both the posts is different. The first is known as Physcial Training Instructors (PTIs) and the second are known as Physical Training Masters/ Mistresses. Even their pay scales are different. The PTIs with C.P. Ed. qualification are paid the pay scale of Rs. 5,000—8,000 and they are to impart education to the elementary level, which is up to 8th class, whereas the pay scale of Physical Training Masters/Mistress with B.P. Ed. qualification is Rs. 5,480—8,925.
 - (b) The second fundamental principle highlighted in the pleadings is that B.P. Ed. In any case is not higher

qualification in the same line of course of C.P. Ed. because no exemption on account of C.P. Ed. qualification is given to a candidate who studied B.P. Ed. it is also not necessary that a candidate must have qualified C.P. Ed. to take admission in B.P. Ed.

- (c) The State Government has been following the policy of imparting education at three levels of students and have been employing persons to impart physical education to students of each of the three different levels. At every one of the level the nomenclature of the post, qualification and pay scales are different as has already been noticed above.
- (d) There are different statutory rules framed under proviso to Article 309 of the Constitution which are applicable to different cadres for whom different notifications have been prescribed. For example under Rule 5 read with Appendix B of the Punjab State Education Class III (School Cadre) Service Rules, 1978 the post of lecturer physical education is shown at Serial No. 2 (iii). The educational qualification prescribed is Master of Physical Education. The post of Physical Training Master figures in the appendix at 3(j) According to the educational qualifications such a person is required to be a graduate from a recognised University with training in advance physical training course degree or diploma.

(15) Once the aforementioned factual position is clear then the question of law posed becomes easy to answer. Infact a similar controversy had arisen before Hon'ble the Supreme Court in the case of **Dilip Kumar Ghosh versus Chairman, (1)**. The claim made by some of the candidates with the higher qualification of B.Ed. was that they are entitled to extra weightage of marks for appointment to the post of

(1) (2005) 7 S.C.C. 567

JBT/PTTC. Hon'ble the Supreme Court after examining the pleadings and the rules came to the conclusion that there was no scope for according any weightage to those who have qualifications like B.A. B.Ed. A similar conclusion as has been reached by us in the preceding paras on the basis of pleadings and arguments which was recorded by Hon'ble the Supreme Court in paras 13 and the same reads thus :—

“13. What emerges from the above interpretation of rules, curriculum, syllabus for appointment of teachers in primary schools are these :

- “(i) In the case of the Junior Basic Training and Primary Teachers Training Certificate the emphasis is on the development of child. The Primary Education is up to IV standard. Thereafter there is middle education and then the secondary and higher secondary education. But in the primary school one has to study the psychology and development of child at tender age. The person who is trained in B.Ed. Degree may not necessarily be equipped to teach a student of primary class because he is not equipped to understand psychology of a child at that early stage.
- (ii) This is only peculiar to the curriculum of the Junior Basic Training Course and Primary Teachers Training Certificate Course. Therefore, looking to the curriculum one can appreciate the distinction between the two courses and same policy is reflected in Rules framed by the State in exercise of its statutory power.
- (iii) To accept a proposition that a candidate who holds a B.Ed. Degree, that is, higher degree cannot be deprived appointment to the post of primary school teacher would negate the aims and objects of the rules for the purpose for which it is framed.
- (iv) & (v) XXX XXX XXX XXX”

(16) A perusal of the aforementioned para clearly brings out a fundamental difference between the teachers who are trained to impart education at the elementary level/primary level and at the secondary and higher secondary level. The qualifications, pay scales and on course professional qualifications are different at different levels, therefore, one cannot be compared with the other.

(17) Similar principles were laid down by Hon'ble the Supreme Court in the cases of **P.M. Latha versus State of Kerala (2)**, and **Yogesh Kumar versus Government of NCT, (3)**. Rejecting an argument that B.Ed. is a higher qualification than the qualification of Teachers Training Course meant for primary school teachers, Hon'ble the Supreme Court has observed as under :—

“10. We find absolutely no force in the argument advanced by the respondents that B.Ed. qualification is a higher qualification than TTC and therefore, the B.Ed. candidates should be held to be eligible to compete for the post. On behalf of the applicants, it is pointed out before us that Trained Teacher's Certificate is given to teachers specially trained to teach small children in primary classes whereas for B.Ed. degree, the training imparted is to teach students of classes above primary. B.Ed. Degree Holders, therefore, cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools. Whether for a particular post, the source of recruitment should be from the candidates with TTC qualification or B.Ed. qualification, is a matter of recruitment policy. We find sufficient logic and justification in the State prescribing qualification for the post of primary teachers as only TTC and not B.Ed. Whether B.Ed. qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot

(2) (2003) 3 S.C.C. 541

(3) (2003) 3 S.C.C. 548

consider B.Ed. candidates, for the present vacancies advertised as eligible.”

(18) Even otherwise, we are of the considered view that it is not for the courts to undertake an exercise of equating one qualification with the other. The issue does not call for detailed consideration because it was settled more than three decades ago by the Constitution Bench of Hon’ble the Supreme Court in the case of **Mohammad Shujat Ali versus Union of India**, (4). On the issue of equation of qualification it has been laid down in para 13 of the judgment that the subject of equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards. It involves practical attainments of such qualifications and the experts are required to aid in deciding the issue. The state also keep an eye on the number of students allowed to acquire a particular qualification which may have co-relationship with the number of post available for that qualification. If courts start interfering the whole arrangement is turned topsy-turvey. The Court being not an expert and armed with relevant data and un-aided by technical insights necessary for the purpose of determining equivalence, would not undertake such a task unless it emanates from *mala fide*, extraneous considerations or so irrational or perverse that a reasonable person would not accept the same. Similar view has been expressed in a recent judgment by Hon’ble the Supreme Court in the case of **State of Rajasthan versus Lata Arun**, (5), wherein it has been held that prescribing minimum educational qualification for admission to a course and recognising certain educational qualification as equivalent to or higher than the prescribed one, involves a policy decision to be taken by the State Government or the authority vested with the power under any statute. Discussing the scope of interference by the courts, it has been further laid down in para 10 that there is a limited scope to interfere by the courts which could examine whether the policy decision or the administrative order dealing with the matter is based on a fair,

(4) (1975) 3 S.C.C. 76

(5) (2002) 6 S.C.C. 252

rationale and reasonable ground or such a decision is arbitrary and is not informed by extraneous consideration or *mala fide* intention. Mere fact that the petitioners in these petitions had applied and were interviewed would not arm them with any right in view of the aforementioned legal principles.

(19) The reliance of the petitioners on a Division Bench judgment of this Court in the case of **Indraj Siag versus State of Punjab and others** (C.W.P. No. 7649 of 1997, decided on 12th March, 1998, Annexure P-11) would not ensure to their benefit because the Division Bench has specifically noticed that the respondents were not able to show any tangible difference in the syllabus or curricula of the degree course *vis-a-vis* the diploma course. The State counsel in that case conceded that the syllabus of course. The State counsel in that case conceded that the syllabus of degree course was more elaborate as compared to the diploma course. The aforementioned concession made by the learned counsel constituted the basis for the Division Bench to accept the claim of the petitioner in that case. However, in the present case the syllabus and curriculum at each level has been given alongwith their nomenclature pay scales of the teachers, Master/Mistress and Lecturers at the level of elementary teaching, secondary level teaching and the higher secondary level teaching. Therefore, the aforementioned judgment of the Division Bench in Indraj Siag's case (*supra*) would not apply to the controversy in hand. We are further of the view that in 1998, judgments rendered in the case of Dilip Kumar Ghosh (*supra*), P.M. Latha (*supra*) and Yogesh Kumar (*supra*) could not be considered as these judgments have been rendered by Hon'ble the Supreme Court in 2003 and 2005.

(20) As a sequel to the above discussion, the question posed above is answered in the negative and against the petitioners. Accordingly, these petitions fail and the same are dismissed.

R.N.R.