



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 19704/2023

Vikram Singh S/o Sohan Singh Raika, Aged About 26 Years, R/o Plot No. 120 Khasara No. 1, Prabhat Nagar, Banar Road, Jodhpur (Raj.)

-----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary, Department Of Secondary Education, Government Of Rajasthan, Jaipur.
2. The Deputy Secretary-1 (Administration), Department Of Education, Government Of Rajasthan, Jaipur.
3. The Director, Secondary Education, Rajasthan Bikaner.
4. Mukesh Saran S/o L. R. Choudhary, Presently Posted At Govt. Sr. Sec. School, Pipad Road, Jodhpur (Raj)

-----Respondents

For Petitioner(s) : Mr. Bharat Devasi

For Respondent(s) : Mr. N.K. Mehta, DyGC

HON'BLE MR. JUSTICE FARJAND ALI

Order

10/10/2024

1. The petitioner herein has preferred the instant writ petition under Article 226 of the Constitution of India seeking a direction for the respondents to consider his candidature for appointment on the post of Assistant Teacher Level-I in pursuance of the advertisement dated 02.11.2022 issued by the respondent department.

2. Briefly stated, facts of the case are that the respondent Education Department issued an advertisement for filling up the



posts of Assistant Teacher Level-I and II for Mahatma Gandhi (English Medium) Schools under the Rajasthan Contractual Hiring to Civil Posts Rules, 2022 on contract basis. The eligibility criteria prescribed for the post was that an aspirant must have passed Senior Secondary or equivalent examination with English medium with minimum 50% marks and must have Diploma in Elementary Education and he must have passed REET Level-I examination with minimum prescribed marks, of which validity must not have expired. The petitioner is a person belonging to Most Backward Class category. He is having the qualification of B.Com., BSTC and have secured 82 marks out of 150 marks in REET. Considering himself to be eligible for appointment, he applied in pursuance of the aforesaid advertisement. However, when the respondents did not consider his candidature on the ground that he was not eligible for appointment since a candidate belonging to reserved category must have secured minimum 55% marks in the REET and since the petitioner is having only 54.66% marks, therefore, he was not given appointment. Being aggrieved of the same the petitioner preferred a writ petition bearing S.B. Civil Writ Petition No.7490/2023, wherein an interim order was passed in his favour directing the respondents to provisionally allow him to appear in counselling/document verification process. Later on the respondent authorities, in accordance with the guidelines of the NCTE, issued the certificate declaring the petitioner "Eligible for Level-I" in REET-2022, hence, in view of the subsequent events, the petitioner withdrew the aforesaid writ petition. Be that as it may, the petitioner participated in the selection process and according to the criteria fixed, he secured 61.09775 marks,





whereas the cut off marks for the category of MBC General and Female candidates is 51.7395. The respondent authorities issued a letter dated 19.05.2023 directing the selected candidates to submit their registration for verification of documents, but the name of the petitioner was not included in the said list. On approaching the respondents, he was informed that on account of condition No.3(1) of the advertisement prescribing minimum 55% in the REET Examination, which the petitioner is not fulfilling, his candidature cannot be considered for appointment on the post of Assistant Teacher Level-I. Being aggrieved of the same, he preferred the instant writ petition.

3. Learned counsel for the petitioner submits that the action of the respondents in not considering the candidature of the petitioner despite being fully eligible is illegal, unjust and arbitrary. He submits that on the one hand the nodal agency appointed by the State Government has issued the eligibility certificate to the petitioner for the REET Examination, 2022, but on the other hand the Education Department of the State Government is not accepting the same. He submits that the issue raised by the petitioner in the instant writ petition is squarely covered by the decision rendered by a co-ordinate Bench of this court at Jaipur in a batch of writ petitions led by **Rajesh Kumar Yadav & Ors. Vs. State of Rajasthan & Ors. [S.B. Civil Writ Petition No.15541/2022]**, wherein the respondents have been directed to consider the candidature of similarly situated persons for appointment on the post of Teacher Grade II Level I and Level II.



With these submissions, learned counsel for the petitioner prays for acceptance of the writ petition.

4. Per contra, learned DyGC submits that the recruitment advertisement clearly mentions the eligibility criteria required for the post of Assistant Teacher (Level-I), as per which a candidate belonging to reserved category must have passed the REET Examination with minimum 55% marks. Admittedly, the petitioner has secured only 54.67% marks in the said examination and as such, he is not eligible for appointment and thus, there is no fault in the action of the respondents in not considering the candidature of the petitioner. He further submits that if at this stage of recruitment process, any relaxation is given in the eligibility criteria, the same would amount to discrimination with the aspirants who did not apply because of not attaining the requisite marks in the REET Examination. He, thus, prayed for dismissal of the writ petition.

5. I have heard learned counsel for the parties and perused the material placed on the record.

6. The backdrop of the case is that the National Council for Teachers Education (NCTE) vide notification dated 23.08.2010 laid down the minimum qualification for a person to be eligible for appointment as Teacher of Class I to VIII. It had been, inter alia, provided that one of the essential qualifications for a person to be eligible for appointment as a Teacher in any of the school referred to in Clause (n) of Section 2 of RTE Act is that, he should pass the



Teacher Eligibility Test with minimum 60% marks. It was further provided that the school managements (Government, Local Bodies, Government Aided and Unaided) may consider giving concession to persons belonging to SC/ST, OBC, differently abled person etc. in accordance with law. The Government of Rajasthan extended 5% relaxation to reserved category candidates, thus, for REET-2022, candidate from reserved category are required to score 55% marks out of 150 marks for issuance of REET pass certificate. It is relevant to note here that 55% of 150 marks comes out to be 82.5 marks but since for each correct answer 1 mark is awarded and no negative marks are to be awarded for the wrong answers. Thus, it is not possible for a candidate to score 82.5 marks, i.e. 55%. In order to eliminate this anomaly of impossibility to score exact 55% marks, the CBSE Board and the other State Boards have adopted the rule of rounding off and with such rationality, in order to give benefit of reservation, candidates belonging to reserved categories have been declared TET pass on scoring 82 marks out of 150 marks, which would amount to 54.67%. The nodal agency of the Government of Rajasthan, i.e. the Board of Secondary Education Rajasthan, Ajmer, has also issued eligibility certificate to the candidates who have scored 82 marks out of 150 marks. It is not disputed that the petitioner belongs to reserved category and is entitled for the benefit of concession in minimum marks required for being declared eligible in REET Examination and accordingly, he was declared eligible by the Board. Once one agency of the State Government has declared the petitioner eligible for Level-I in REET Examination, it is not open for the another agency of the



Government to come out and say that he is ineligible on account of not attaining exactly 55% marks in REET. It is worthwhile to note here that REET is merely a qualifying test and a candidate must fulfill the eligibility criteria prescribed by the State Government for appointment on a particular post of teacher. If a candidate is fulfilling the eligibility criteria prescribed by the State and his name finds place in the merit list, then there is no reason for the State Government to deny consideration of his candidature citing a reason that he has not attained the minimum required marks in REET, more particularly when a certificate has been issued declaring him eligible for Level-I.

7. The controversy involved in the instant writ petition is squarely covered by the a decision rendered by a co-ordinate Bench of this court at Jaipur in the case of **Rajesh Kumar Yadav (supra)**, wherein the issue has been dealt with in extenso and while allowing the writ petitions, the following directions have been issued :-

"(a) Writ petitioners who allegedly belongs to reserve category i.e. of SC/ST, OBC, MBC and EWS and who have scored 82 marks out of 150 marks in REET-2022 are entitled to be declared pass and for issuance of REET pass certificate in favour of each petitioner.

(b) Writ petitioners who have participated in the recruitment process for appointment on the post of Teacher Grade III Level. I and Level II pursuant to advertisement 2022 issued by the Rajasthan Staff Selection Board and have qualified the written examination of their respective level (Level I or Level



II) will be considered for appointment on merits treating them as REET- 2022 pass.

(c) The Government of Rajasthan, Education Department is directed to take up the issue in respect of candidates belonging to reserved categories to declare them pass on securing 82 marks, qua minimum requirement of 82.5 marks out of 150 marks in REET-2022 by applying the rule of rounding off of marks and by taking into consideration observations made by this Court in the above paras the judgment as well as taking into consideration view of NCTE in the letter dated 10.01.2014 of the NCTE extracted hereinabove and the decision be taken forthwith preferably within a period of 30 days in the beneficial interest of candidates belonging to reserve category."

7. In view of the discussion made hereinabove and in light of the judgment referred to supra, this writ petition deserves to be and is hereby allowed. The respondents are directed to consider candidature of the petitioner for appointment on the post of Assistant Teacher Level-I in pursuance of the advertisement dated 02.11.2022 (Annex.2) treating him REET Examination pass and if he is fulfilling all the other requisite eligibility criteria and his name found place in the merit list, he shall be given appointment.

8. No order as to costs.

(FARJAND ALI),J

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