

**HON'BLE MR. JUSTICE ARUN BHANSALI****Order****20/10/2023**

1. These writ petitions have been filed by the petitioners, aggrieved of Clause (11) inserted in their orders of appointment in Mahatma Gandhi Government School.

2. The respondents issued advertisement(s) dated 17.06.2023 inviting applications from the incumbents of the Department/employees for various posts at Mahatma Gandhi Government (English Medium) School and Swami Vivekanand Government Model School ('SVGMS') and all other Government English medium schools. The advertisements, inter-alia, indicated that the incumbents, teachers and employees of the Department would be eligible for making the application and that the selection would be done by the Interview Committee based on the determined procedure, for which the guidelines would be issued separately.

3. The petitioners, who are already working at Mahatma Gandhi Government (English Medium) Schools at various places, applied and based on the procedure adopted by the respondents, admit cards were issued to them for written examination. After holding of the written examination, result was declared, wherein the petitioners stood in the merit and were issued orders of appointment indicating the school(s), where they were to join. However, Clause-11 was indicated in the order of appointment that if any of the incumbent was already selected through interview and was working at English medium school (including SVGMS), he/she would not be relieved. As the petitioners were



working at Mahatma Gandhi Government (English Medium) Schools, they were not relieved and as such the present petitions have been filed before this Court questioning the validity of Clause (11).

4. Learned counsel for the petitioners made submissions that nowhere in the advertisement any restriction was placed on the incumbents working at Mahatma Gandhi Government (English Medium) Schools from applying pursuant to the advertisements. On applications made by the petitioners, they were issued admit cards for written examination, where they appeared and stood in the merit list; even the orders of appointment were issued, however, the impugned condition was inserted rendering them ineligible for joining, which is de hors the advertisement and the Rajasthan Civil Service (Special Selection and Special Condition of Services for Appointment of Personnel in English Medium Schools) Rules, 2023 ('Rules of 2023'), which do not envisage any such restriction. Further submissions were made that placing of said restriction on being relief from the school amounts to changing the rules of the game after the same is over. Reliance has been placed on *Sureshkumar Lalitkumar Patel & Ors. vs. State of Gujarat & Ors.* : (2023) 2 SCR 543.

5. Learned counsel for the respondents made submissions that the advertisement had clearly indicated that the selection would be made based on the procedure, to be adopted and guidelines, which would be separately issued. The Department, after due consideration issued directions on 17.06.2023 (Annex.R/3) providing that incumbents of the Department (Secondary and Primary Education Department) alone would be eligible and also



indicated the interview and selection Committees at divisional level and district level.

6. On 24.10.2023, directions were issued by the Director to the Joint Directors that those who have been selected through interview for English medium schools, including SVGMS, be not selected again. Based on which, as the selections had already taken place, the impugned condition was indicated in the orders of appointment. Further submissions have been made that under Rule 10 of the Rules of 2023, the Director has been empowered to formulate, amend and issue further detailed instructions as per exigency and, therefore, the issuance of directions are well within the power of the Director.

7. Learned counsel emphasized that as the petitioners were already working in English medium schools, in case they were to be selected for other English medium schools, the schools for which they were earlier selected and working, would be left without teachers and, therefore, the said restriction has been placed, which is justified. Based on the above submissions, it was prayed that the petitions be dismissed.

8. By order dated 18.10.2023, a specific query was put to the respondents, as to whether on appointment in SVGMS or Mahatma Gandhi Government (English Medium) Schools, the candidates cease to be employees of the Department, to which an additional affidavit has been filed making reference to the provisions of Rules 13 and 14 (3) of the Rules of 2023 seeking to justify the restriction imposed.

9. I have considered the submissions made by the counsel for the parties and have perused the material available on record.



10. The Rules of 2023, inter-alia, provide under Rule 8 the eligibility for selection as under:

“8. Eligibility for selection.- Only such persons shall be eligible for consideration for appointment to the posts specified in Schedule-I, who are incumbents of the department, preferably of the district in which vacancies are to be filled, and eligible for posting/appointment in the English Medium Schools on the posts specified in Schedule-I.”

11. The Rule specifies that an incumbent of the Department, preferably of the district in which vacancies are to be filled, are eligible for posting/appointment in English medium schools. Admittedly, the advertisement(s) issued by the respondents only indicated the said eligibility. As the English medium schools are under the School Education Department, Rajasthan as is evident from the Rules of 2023, the petitioners working at Mahatma Gandhi Government (English Medium) Schools, were all incumbents of the Department and as such in terms of the advertisement(s) were clearly eligible. On their filling up the application forms indicating their present place of posting, they were issued the admit cards for the purpose of written examination, a prima facie indication regarding their eligibility. Whereafter, when the result was declared and their names appeared in the merit list, the orders were issued according appointment to them at Mahatma Gandhi Government (English Medium) Schools, for which the petitioners had applied.

12. It appears that, in the meanwhile, it dawned on the respondents that those who were already working in English medium schools, their appointments pursuant to fresh advertisement would result in the posts at schools where they



were working getting vacant, vide 24.09.2023 (Annex.R/4 filed in CWP No.16275/2023), it was inter-alia stipulated as under:

“अंग्रेजी माध्यम विद्यालय (S.V.M.S. सहित) में साक्षात्कार प्रक्रिया द्वारा पूर्व में चयनित शिक्षक का पुनः चयन नहीं किया जाए। चयन हेतु साक्षात्कार की पृथक से प्रक्रिया किये जाने की आवश्यकता नहीं रहेगी, चयन संबंधी शेष दिशा-निर्देश पूर्वानुसार यथावत रहेंगे।”

13. On account of above stipulation, Clause (11), which is under challenge, was inserted in the orders of appointment, as under:

“11. उपरोक्त कार्मिक में से यदि कोई कार्मिक पूर्व से अंग्रेजी माध्यम विद्यालय (S.V.M.S. सहित) में साक्षात्कार के माध्यम से चयनित होकर कार्यरत है तो ऐसी स्थिति में उन्हें कार्यमुक्त नहीं किया जावे।”

14. Rule 10 of the Rules of 2023 relating to criteria for selection though empower the Director to formulate, amend and issue further detailed instructions as per exigency, besides the other requirements indicated in the Rule reads as under:

“10. Criteria for selection.- Selection shall be made by the Selection Committee, concerned after an interview having regard to the personality, character, previous record of service and previous experience in respective services or any other criteria of selection e.g. proficiency in English language communication skill and teaching his/her subject well through English medium or whatever the committee considers to be appropriate. The Director shall be empowered to formulate, amend and issue the further detailed instruction as per the exigency.”

However, the issue which arises is whether the instruction can be issued even after the selection is over so as to disqualify the eligible candidates?

15. The Hon'ble Supreme Court in Sureshkumar Lalitkumar Patel (*supra*) referred to various decisions dealing with the aspect of changing the qualifying norms and held as under:

“..... An advertisement, made pursuant to a notification, binds the parties. It has got all the trappings of a statutory prescription, unless it becomes contrary to either a rule or an Act. A change, if any, can only be brought forth by way of an



amendment and nothing else. Such an amendment even if it is permissible can be tested on the touchstone of Article 14 of the Constitution of India.”

16. In the present case, even if it is accepted that the intention to provide for restriction to some extent, may be justified, for the reasons indicated by the counsel for the respondents and noticed hereinbefore, it was necessary for the respondents to have first formulate the instructions in terms of Rule 10 and thereafter issue an advertisement. Once, no such restriction was imposed in the advertisement and the petitioners applied pursuant to the advertisement(s), were subjected to written test, stood in the merit and were issued orders of appointment, but placing restriction of not relieving them, the same clearly amounts to changing the rules of game after the game is over.

17. It would be noticed that the advertisement was issued on 17.06.2023 and the directions issued on the said date i.e. 17.06.2023 (Annex.R/3) only provided that the incumbents of the Department would be eligible and no ineligibility worth the name was indicated qua those already working in Mahatma Gandhi Government (English Medium) Schools. The written test was held in the month of August, 2023 and whereafter the result was declared and it is only after the declaration of the result, just prior to issuance of the orders of appointment that further directions dated 24.09.2023 (Annex.R/4) placing the restriction, noticed hereinbefore, was introduced, which was already too late and as such the restriction imposed in the orders of appointment, based on the said instructions, cannot be sustained.

18. In case the respondents wanted to enforce the said restriction, they were required to clearly indicate the said



restriction in the advertisement itself so that those who were already working at English medium schools, did not apply pursuant to the advertisement and subject themselves to the recruitment process and at the end of the recruitment process, were not faced with the situation as the present petitioners have been made to face.

19. Consequently, the writ petitions filed by the petitioners are allowed. Clause (11) indicated in the orders of appointment restricting the relieving the petitioners, is quashed and set aside. The respondents are directed to relieve the petitioners from their present positions and permit them to join at the place(s) where they have been provided appointment by the said orders.

(ARUN BHANSALI),J

993 to 1003 (Ex. 1001), 163, 166,
988, 990 ,1022 & 1023 DJ/-