
(2010) 07 MP CK 0059

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 10166 of 2007

Anand Shankar Dixit and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:

Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1990 — Rule 15

Citation : (2010) 5 MPHT 188

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajendra Menon, J.—Petitioners herein are presently holding the post of Asstt. Professor in various Government Colleges. Petitioner No. 1 is an Asstt. Professor (Hindi) in the selection grade and when this writ petition was filed in year 2007, he was working in Government College Prithwipur, District Tikamgarh. Similarly Petitioner No. 2 was an Asstt. Professor (English) in the selection grade and was working in Government Girls College, Beena. Petitioner No. 3 was Asstt. Professor (Mathematics) in selection grade and was also working in Government Post Graduate College, Beena. Petitioner No. 4 was Asstt. Professor (Chemistry) in selection grade and was working in the Government College, Beena and Petitioner No. 5 was an Asstt. Professor (Zoology) in selection grade and was working in Government College, Beena.

2. Grievances of the Petitioners were that even though they are senior to Respondent Nos. 3 to 7 in the cadre of Asstt. Professor, these Respondents have been promoted on the post of Professor ignoring the claim of Petitioners. Bringing on record the relevant recruitment rules applicable for promotion in question, namely the M.P. Educational Service (Collegiate Branch) Recruitment Rules, 1990 (hereinafter referred to as "the Rules of 1990"), it is argued by Shri K.K. Trivedi, learned Counsel for the Petitioner that in Schedule IV of the

Recruitment Rules, procedure for promotion from the post of Asstt. Professor to the Professor/Dy. Director Higher Education is laid down and it contemplates that all such candidates, who hold the post of Asstt. Professor and who have completed 8 years of service in the senior scale are entitled to be promoted, subject to certain criterias laid down in columns (1), (2), (3) and (4) thereof. Referring to the provisions of statutory rules and Clause (b) thereof, Shri K.K. Trivedi, learned Counsel for the Petitioner argued that this Clause contemplates obtaining of Ph.D. Degree or an equivalent published work to be eligible for promotion to the post of Professor/Dy. Director, Higher Education. It is argued by Shri K.K. Trivedi that even though Petitioner do not hold a Ph.D. Degree, but as they have equivalent published work available to their credit, which was filed along with rejoinder and documents thereof Shri K.K. Trivedi submits that rejection of Petitioners' claim for promotion on the ground that they do not have Ph.D. Degree is unsustainable and contrary to the rules. It is argued by Shri Trivedi that if the rules contemplate a provision alternate in nature providing for availability of degree of Ph.D. and in the alternate an equivalent published work, Petitioners case cannot be rejected outrightly without consideration on the ground that they did not have the Ph.D Degree. It is argued by him that the published work of Petitioners is to be evaluated and thereafter a decision taken and it is not necessary that in case of each of the Petitioners they should have obtained Ph.D. Degree. Accordingly, contending that claim of the Petitioners are not considered properly and on the basis of improper interpretation of the Rules their claim is rejected, Shri Trivedi prays for interference into matter.

3. It was argued by Shri Trivedi that after the UGC Recommendation were implemented and after the Career Advancement Scheme was also enforced, Petitioners received senior scale and selection grade and are now entitled to promotion to the post of Professor and action of Respondents in refusing to consider the case of Petitioners on the ground that they do not possess Ph.D. according to Shri Trivedi is unsustainable.

4. On being noticed, Respondents have filed the return and the factual assertions made by Shri Trivedi are not disputed. There is no dispute with regard to the fact that each of the Petitioners are Asstt. Professor in the subject as indicated hereinabove and they are in selection grade and are eligible to be considered for promotion to the post of Professor. It is also not in dispute that private Respondent Nos. 3 to 7 are junior to the Petitioners and have been promoted to the post of Professor.

5. From the return filed by the Respondents it is seen that the only objection of the Respondents is with regard to the fact that the Petitioners do not possess the Ph.D. or M. Phil. Degree and, therefore, it is alleged that they are not entitle to be considered for promotion. In Para 4 of the return filed by Respondents it is so stated:-

4. It is submitted that the recruitment on the post of Asstt. Professor and Principal is governed under the rules namely M.P. Educational Service Collegiate

Branch Recruitment Rules, 1990 which is Annexure P-1, which relates to the promotion from the post of Asstt. Professor to Professor or Dy. Director, Higher Education. The same provides for (a) 8 years of service in the Senior Scale of Asstt. Professor and the same shall be relaxed if the total service of Asstt. Professor is not less than 16 years for Ph.D. and M. Phil, holders 13-15 years respectively, (b) obtained Ph.D. or equivalent published work (c) made some mark in the arrears of scholarship or research (d) participated in two refresher courses/summer institutes each of approximately four weeks.

6. According to the Respondents as the Petitioners have not obtained the Ph.D. Degree or M. Phil. Degree, it is stated that their case cannot be considered, accordingly, Respondents resist the claim of Petitioners only on this ground. Respondents have also made an averment that University Grant Commission has not recommended the cases of Petitioners for promotion.

7. After the return was filed Petitioners have filed a rejoinder and have brought on record various documents, they are the certificates and testimonial, from Pages 38 to 42, to demonstrate before this Court that each of the Petitioner has a published work, which is equivalent to obtaining Ph.D. Degree and, therefore, they are eligible to be considered for promotion.

8. I have heard learned Counsel for the parties and perused the record. On consideration of the rival contention it is clear that the only question warranting consideration is as to whether Petitioners fulfill the requisite criteria laid down in the rules of recruitment making them eligible to be considered for promotion.

9. Even though Respondents have reproduced the requirement of the relevant rules in Para 4 as indicated hereinabove, the relevant rules filed by Petitioners is Annexure P-1 and it is seen that under Schedule IV of Rule 15 to the Rules of 1990 the criteria for promotion from the post of Asstt. Professor to Professor/Dy. Director Higher Education is contained in column 4 and the same for the sake of convenience is reproduced hereunder :-

Column 4:

(a) Completed 8 years of service in the senior scale, provided that the requirement of 8 years will be relaxed if the total service of the Asstt. Professor is not less than 16 years for Ph.D. and M. Phil. Holders 13 and 15 years respectively ;

(b) Obtained a Ph.D. Degree or an equivalent published work ;

(c) Made some mark in the areas of scholarship and research as evidence by self assessment, reports of references quality of publications, contribution to educational renovation, design of new courses and curricular, etc.;

(d) Participated in two refresher courses/summer institutes each of approximately 4 weeks duration or engaged in other appropriate continuing education programmes of comparable quality as may be specified by the UGC,

after placement in the Senior Scale; and

(e) Consistently good performance appraisal reports.

10. From the aforesaid criteria laid down it would be seen that the rules warrants fulfillment of 5 conditions which are categorized as (a) to (e). The State Government admits the position with regard to fulfillment of condition No. (a) so far as the Petitioners are concerned. It is also not disputed that the condition contemplated under Clause (d) is also fulfilled; the impugned objection of the State Government is that the condition contemplated under Clause (b) with regard to obtaining Ph.D. Degree is not fulfilled. So far as condition Nos. (c) and (e) are concerned they are matters to be evaluated by the proper Selection Committee at the time of consideration.

11. That being so, the only question required to adjudicate by this Court is, as to whether the statutory requirement in Clause (b) are fulfilled by Petitioner or not. Admittedly none of the Petitioners have a Ph.D. or M. Phil. Degree in their favour, but it is asserted on behalf of each of the Petitioners that they had a published work equivalent to Ph.D., which is filed by them along with rejoinder. The question therefore, would be, whether this makes them eligible for promotion.

12. The requirement of Clause (b) is alternate in nature, even though it contemplates obtaining the Ph.D. Degree the word "or" before the word "equivalent published work" clearly indicates that it is not mandatory to obtain Ph.D. Degree in all cases, even a candidate without Ph.D. Degree is eligible to be considered, but such candidate should have a equivalent published work. Apart from the aforesaid rule nothing is brought to the notice of this Court on the basis of which it is asserted that case of Petitioners cannot be considered or they are not eligible. If the rule as indicated hereinabove and requirement of Clause (b) are taken note of, I am of the considered view that contention advance by Shri Trivedi has to be accepted. The rule is alternate in nature and a candidate having Ph.D. or M. Phil Degree, even though eligible, a candidate without the aforesaid qualification is still eligible to be considered for promotion, if he or she has a equivalent published work, which can be compared to and would have effect of having a Ph.D. Degree, it is, therefore, a case where even if the Petitioners did not have the Ph.D. Degree they can be considered for promotion if they have equivalent published work to their credit. In that view of the matter rejection of Petitioners claim out-rightly without evaluating their published work is not proper. The requirement of Clause (b) being alternate in nature, the State Government is not justified in insisting on a Ph.D. or M. Phil Degree for consideration.

13. That being so, I am of the considered view that the interpretation of the rule by the State Government and the insistence upon having Ph.D. Degree is unsustainable and cannot be accepted. The rules warranting consideration of such cases where candidates have a equivalent published work and it is for the Selection Committee or the Committee appointed for considering case of the candidates to evaluate the published work of candidates and take a decision.

14. Accordingly, in the facts and circumstances of the case this petition is allowed. Respondents are directed to convene a Promotion/Selection Committee in accordance to requirement of the rule and place the case of each of the Petitioner for consideration before the said Committee and the Committee after evaluating the eligibility and the suitability of the Petitioners in accordance to requirement of rules, as indicated hereinabove shall decide the claim of the Petitioners for grant of promotion to the post of Professor. On the basis of recommendation of the Committee, State Government shall issue necessary order for promotion of Petitioners or otherwise.

15. Accordingly, it is directed that on Petitioners' filing a certified copy of this order Respondents shall place the entire matter before the Appropriate Committee as directed hereinabove and a final decision with regard to grant of promotion of Petitioner shall be taken within three months thereof. Needless to emphasize that if found eligible for promotion and recommended for the same, promotion shall be granted to Petitioners retrospectively with effect from the date the promotion to the post of Professor was granted to immediate junior to the Petitioners and Petitioners shall also be entitled to all consequential benefit of pay fixation, arrears of pay and other monetary benefit.

16. As Petitioner Nos. 1 to 3, who have retired, if they are found eligible for promotion, consequent action for refixation of pension and other post retiral benefits be also undertaken within the aforesaid period.

17. Petition stands allowed and dispose of with the aforesaid.