

(2022) 11 CHH CK 0008

In the Chhattisgarh High Court

Case No : Writ Petition (S) No. 5719 Of 2016, 2183, 3691 Of 2017

Anita Nirala

APPELLANT

Vs

South Eastern Coalfields Limited

RESPONDENT

Date of Decision : 01-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 16(2)
Hindu Marriage Act, 1955 — Section 5, 5(i)

Citation : (2022) 11 CHH CK 0008

Hon'ble Judges : Narendra Kumar Vyas, J

Bench : Single Bench

Advocate : Anita Nirala, Punit Ruparel, V.R.Tiwari, Atul Kesharwani, R.K. Gupta, Raj Kumar Gupta

Final Decision : Dismissed

Judgement

1. The petitioner has filed this petition assailing the order dated 14.07.2011 (Annexure P/1) issued by respondent No. 4/Guru Ghasidas University (for short "the University") by which the petitioner who was working as Lecturer (Management) has been terminated on the count that the petitioner has not fulfilled essential qualification and as per affidavit dated 24.05.2004 submitted by the petitioner that if any question with regard to eligibility of the petitioner arises, the decision of the University will be binding upon the petitioner. It has been further mentioned in the order that the University has enquired about education qualification of the petitioner from Association of Indian University (for short "the AIU") & Andhra University from where the petitioner has cleared Master of Human Resource Management (MHRM) course and it has been informed that the MHRM is not minimum qualification for Lecturer (Management). As such, the University has sent show cause notice on 23.05.2011 and the reply to the said notice was found unsatisfactory, therefore, services of the petitioner have been terminated.

2. Learned counsel for the petitioner would submit that as per advertisement

dated 26.06.2000 (Annexure P/2), the educational qualification and experience required for appointment on the post of Lecturer (Management) are as prescribed by the University Grant Commission (UGC)/ All Indian Council for Technical Education (AICTE)/State for teaching posts in Humanities & Science disciplines i.e. good academic record with atleast 55% marks at the Master's degree level in the relevant subject from an Indian University or an equivalent degree from a foreign University. Desirable- Besides fulfilling the above qualifications, candidate should have cleared the National Eligibility Test for Lectures conducted by the UGC, CSIR or similar tests accredited by the UGC.

3. The petitioner who is having degree of MHRM and NET cleared in Labour Welfare and Industrial Relations/ Labour and Social Welfare/ Human Resource Management and belongs to SC/ST category applied for appointment on the post of Lecturer (Management) and after due selection process initiated by the University, he was appointed as Lecturer (Management). Learned counsel for the petitioner would submit that during selection process, respondents No. 5 & 6 made a complaint on 23.04.2004 (Annexure P/4) to the Vice Chancellor of the University i.e. His Excellency the Governor of State of Chhattisgarh with regard to educational qualification of the petitioner and the Executive Council has sought opinion from the expert of the concerned subject (Dean) and after verifying the educational qualification of the petitioner gave an opinion and has recommended for appointment of the petitioner on the post of Lecturer only thereafter, the petitioner was appointed for probation period of two years and after completion of the probation period, a certificate to that effect was issued in favour of the petitioner on 05.04.2008 (Annexure P/10) and the petitioner has been granted status of regular teaching faculty member of the University.

4. Learned counsel for the petitioner would submit that in pursuance of notice dated 23.05.2011, the petitioner has submitted reply to the University, wherein, he has stated that the other persons who are not having MBA still are taking classes and for them no equivalence has been raised whereas in case of the petitioner, objection has been raised. Learned counsel for the petitioner would submit that in the other University like Puduchery Central University, the persons who are having MHRM degree are taking classes of Management. He would further submit that notice be kindly withdrawn.

5. Learned counsel for the petitioner would submit that the petitioner has completed 7 years services and during probation period, no doubt has been raised and after lapse of 7 years, his services have been regularized, probation has been completed, therefore, show cause notice issued by the petitioner may kindly be withdrawn and also sought supply of vital documents and time to give detailed reply to the shows cause notice issued to the petitioner. Thereafter, the services of the petitioner have been terminated vide order dated 14.07.2011, against that the petitioner has preferred an appeal which has been rejected by the University, therefore, he has filed present petition assailing the order as aforestated.

6. Respondents No. 3 & 4/University have filed return mainly contending that the petitioner has no requisite qualification for appointment on the post of Lecturer (Management) and they have sought clarification from the AIU wherein it has been informed that Master's degree in Human Resource Management obtained by the candidate is a recognized Postgraduate degree in its own area of the specialization and may be accepted as such. It has been further clarified that, if need be, the University may kindly get in touch with the awarding university as considering equivalence of a degree is a matter of academic expertise, which can only be done by the awarding university, therefore, they have sent a letter to Andhra University and in response, the Andhra University has informed to the University that two years Master of Human Resource Management (M.H.R.M.) Degree awarded by Andhra University is not equivalent with that of Master of Business Administration (M.B.A.) Degree. However, the candidates of M.H.R.M. Degree Course are eligible to teach some papers in M.B.A. Degree Course.

7. It has been further contended that respondent No. 3 & 4 issued show cause notice to the petitioner on 23.05.2011 (Annexure P/11) directing the petitioner to submit reply reiterating the fact that the University has sought clarification from Association of Indian Universities regarding equivalence of MHRM with Human Resource Management and MBA and the AIU vide letter dated 17.06.2008 informed that MHRM is not considered equivalent to Master in Business Administration (MBA) degree in view of the difference in course curriculum. The AIU further advised to get in touch with the awarding university as consideration of equivalence of a degree is an academic expertise which can only be done by the awarding University. Thereafter, the University has sent notice to the petitioner on 23.05.2011 directing him to clarify the issue raised in the notice within 7 days failing which his services will be terminated. The petitioner has submitted reply on 26.05.2011 which was not found satisfactory, therefore, by impugned order 14.07.2011 (Annexure P/1), his services have been terminated.

8. During pendency of the writ petition, the petitioner who has preferred an appeal before the University on 14.07.2011, which has been rejected by the University on 10.05.2013 (Annexure P/15), therefore, the petitioner has amended the petition challenging the order dated 10.05.2013 also.

9. Learned counsel for the petitioner would submit that the order passed by the University is without giving opportunity of hearing to the petitioner which is against the law laid down by Hon'ble the Supreme Court. He placed reliance upon judgment rendered by Hon'ble the Supreme Court in Avatar Singh Vs. Union of India & others AIR 2016 SC 3598 wherein it has been held that in case of confirmed employee holding departmental enquiry would be necessary before passing termination order on the ground of suppression or submitting false information in verification form. He would also refer to University of Mysore & another Vs. C.D. Govinda Rao & another AIR 1965 SC 491 wherein it has been held that equivalence is job of expert and in the instant case experts have

appointed the petitioner. He would further refer to State of Rajasthan & others Vs. Lata Arun (2002) 6 SCC 252 wherein it has been held that the prescribed eligibility for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. He would also refer to Canara Bank & others Vs. Debasis Das & others (2003) 4 SCC 557/AIR 2003 SC 2041, wherein it has been held regarding violation of principles of natural justice & also refer to the judgment passed by Coordinate Bench of this Court in Prashant Shukla Vs. State of Chhattisgarh WPS No. 102 of 2016 (Decided on 14.02.2017) wherein it has been held that regular employee cannot be terminated without holding departmental enquiry.

10. Learned counsel for respondents No. 3 & 4/University would submit that the relief sought by the petitioner is not only untenable in the eye of law but is also highly misconceived in nature in as much as the fact that the petitioner was appointed on 25.07.2004, it was clearly mentioned in the appointment order that the service of the petitioner will be subjected to the undertaking submitted in the affidavit and the appointment would stand terminated if the information submitted by him is found incorrect. The reason for the termination was recorded in the termination order itself, therefore, the impugned order is legal, justify and does not warrant any interference by this Court. In support of his contention, he placed reliance upon the judgment rendered by this Court in State of Orissa Vs. Mamta Mohanti (2011) 3 SCC 436, The State of Bihar Vs. Kirti Narayan Prasad (2019) 13 SCC 250, Ganpath Singh Gangaram Singh Vs. Gulbarga University (2014) 3 SCC 767, Bhupendra Nath Hazarika & another Vs. State of Assam & others (2013) 2 SCC 516, Swapan Kumar Pal Vs. Samitabhar Chakraborty (2001) 5 SCC 581 & State of Haryana Vs. Haryana Veterinary & AHTDS Association.

11. I have heard learned counsel for the parties and perused the documents placed on record with utmost satisfaction.

12. The only issue before this Court is to examine whether the MHRM is equivalent to MBA or not, if yes, what is its effect?

13. It is well settled legal position that the equivalence of the subject is no part of role or function of judicial review to expand upon the ambit of prescribed qualification. It is also well settled that equivalence of a qualification is not a matter which can be determined by this Court in exercise of power of judicial review. It is also well settled whether a particular qualification should or should not be regarded as equivalent is a matter for recruiting authority to determine. Hon'ble the Supreme Court in Zahoor Ahmad Rather & others Vs. Sheikh Imtiyaz Ahmad & others (2019) 2 SCC 404 has held at paragraph 26 to 28 as under:-

"26. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti KK in the subsequent decision in Anita (supra). The decision in Jyoti KK turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily pre-supposes the acquisition of another, albeit lower, qualification.

The prescription of qualifications for a post is a matter of recruitment policy. The state as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the state, as the recruiting authority, to determine. The decision in *Jyoti KK* turned on a specific statutory rule under which the holding of a higher qualification could pre-suppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench of the High Court was justified in reversing the judgment of the learned Single Judge and in coming to the conclusion at page 177 that the appellants did not meet the prescribed qualifications. We find no error in the decision of the Division Bench.

27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The state is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision making. The state as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in *Jyoti KK* must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in *Jyoti KK* turned.

28. Ms Wadia sought to draw sustenance from the fact that the holder of an ITI certification can obtain lateral entry to the diploma course. The point of the matter, however, is that none of the appellants fit the description of candidates who had secured an ITI certification before seeking a lateral entry to a diploma course. Plainly, when an ITI with matric is required, a person who does not hold that qualification is not eligible."

14. From the abovestated legal position, it is for the University to determine whether MHRM is equivalent to MBA or not and not for this Court. So far as for determination of legal issue raised in this petition from bare perusal of the documents annexed in this petition, it is quite vivid that the MHRM course is two years master's course which focuses strictly on Human Resource Domain. It will give complete knowledge in human recruitment strategies and evaluations whereas in MBA, it will give to choose from a range of choice as marketing, finance, Human Resources, Business Analytics, Production, etc., therefore, it cannot be said that MHRM is equivalent to MBA.

15. Hon'ble the Supreme Court in North Delhi Municipal Corporation Vs. Kavinder & others (2021) 11 SCC 353, has examined the eligibility conditions/criteria equivalence between qualifications prescribed and those obtained by the candidate in allied subject and also competent authority to determine equivalence scope of judicial interference. Hon'ble the Supreme Court has held at paragraph 8 & 9 as under:-

"8. While assessing merits of the rival contentions, we must at the outset have due regard to the basis which has been adopted by the first respondent in support of his contention that he fulfills the eligibility requirements. The categorical position of the first respondent is that during the course of the MBA degree programme, he had studied the subjects of Human Resource Management and Industrial Relations and Labour Legislation. Having regard to this position, the issue which falls for determination is whether this would lead the Court to the conclusion that the first respondent fulfills the eligibility requirements. The eligibility requirements stipulated in the advertisement are that the candidate must have a post graduate degree or diploma in (i) Social Work; or (ii) Labour Welfare; or (iii) Industrial Relations; or (iv) Personnel Management; or (v) in any other allied subject of a recognized University/institution or equivalent.

9. The first respondent completed the MBA degree programme from Maharshi Dayanand University, Rohtak. The mark sheets which have been relied upon by the first respondent indicate that during the course of the second semester, he studied Human Resource Management as a subject. In the fourth semester, the first respondent had a course in Industrial Relations and Labour Legislation. Studying these two subjects would not lead to the conclusion that the first respondent holds a post graduate degree or diploma in the disciplines which have been specifically spelt out in the advertisement or in any allied subject. The MBA degree cannot be regarded as allied to a post graduate degree or diploma in Social Work, Labour Welfare, Industrial Relations or Personnel Management. The recruitment was being made to the service of the appellant. The advertisement did not specifically provide how equivalence was to be established between a postgraduate degree/diploma in the subjects specified in the advertisement and a postgraduate degree/diploma in an allied subject. The appellant as an employer was best suited to judge whether the degree of the first respondent was in an allied subject. Unless this assessment was perverse or contrary to the requirements prescribed, the Tribunal had no reason to interfere. We are of the view that the Tribunal was manifestly in error in holding that the first respondent was qualified merely because he studied two subjects as a part of his MBA degree programme, namely, Human Resource Management and Industrial Relations and Labour Legislation. The High Court has simply affirmed the view of the Tribunal."

16. Now coming to the facts of the case, the recruitment was being made to the service of respondent No. 3. The advertisement dated 26.06.2000 did not specifically provide how equivalence was to be established between a

postgraduate degree/diploma in the subjects specified in the advertisement with MBA. Respondents No. 3 & 4 being employer were best suited to judge whether the degree of the petitioner was equivalent to MBA or not and they have after collecting material from the University, who has awarded the degree to the petitioner, have held that MHRM is not equivalent to MBA. The petitioner is unable to point out any illegality or perversity in the decision making process of the University, which warrant any interference by this Court, this Court has no reason to interfere in the impugned order dated 14.07.2011 (Annexure P/1) as there is no illegality and perversity in the impugned order.

17. Further submission of the learned counsel for the petitioner that no opportunity of hearing was granted to the petitioner is being now examined by this Court. It is not in dispute that the show cause notice was issued to the petitioner and after obtaining the reply submitted by the petitioner, the impugned order has been passed. From the facts on record, it is quite clear that it is not in dispute that the petitioner is not having MBA degree which was essential qualification and was having only MHRM. Only relevancy of both the degree have to be looked into, as such, no detailed enquiry is required considering the facts and circumstances of the case and also considering that no disputed facts are required to be adjudicated.

18. In the present case, services of the petitioner have not been terminated on the count that the petitioner has submitted false information or any incorrect facts, but services of the petitioner have been terminated on the count that MHRM is not equivalence to MBA. Therefore, no detailed enquiry is required to be conducted by respondent No. 3. Thus, the defence taken by the petitioner that the detail enquiry is necessary before terminating a permanent employee, is not applicable to the present facts and circumstances of the case.

19. In view of the law laid down by Hon'ble the Supreme Court, it cannot be said that the MHRM is equivalent to MBA whereas essential qualification for appointment on the post of Lecturer (Management) is MBA. Since the petitioner is not having requisite qualification, he cannot be allowed to continue in the service, as such, the impugned order dated 14.07.2011 (Annexure P/1) does not suffer from perversity or illegality which warrants any interference by this Court.

20. In view of the above, the present petition is liable to be and is hereby dismissed. No order as to cost.