(2016) 12 MP CK 0030

In the Madhya Pradesh High Court

Case No : W.P. No. 5416 of 2013

Babita Kushwaha APPELLANT

Vs

Commissioner, KVS RESPONDENT

Date of Decision : 08-12-2016

Acts Referred:
Constitution of India, 1950 — Article 227

Citation : (2017) 1 JabLJ 276 : (2017) 2 MPLJ 473

Hon'ble Judges : Rajendra Menon, ACJ. and Smt. Anjuli Palo, J.

Bench : Division Bench

Advocate : Shri Manoj Sharma, Learned counsel, for the Petitioner; Shri S.K. Rao, learned Senior Counsel with Shri V.K. Pandey, Learned counsel, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, A.C.J.—Challenge in this writ petition under Article 227 of the Constitution is made to an order dated 26th of February, 2013 passed by the Central Administrative Tribunal Bench Jabalpur rejecting an application filed by the petitioner under Section 19 of the Administrative Tribunals Act in the matter of her recruitment on the post of Post Graduate Teacher (Commerce) under the Kendriya Vidhyalaya Sangathan.

2. Facts in nutshell goes to show that an advertisement was issued by the Kendriya Vidhyalaya Sangathan in the Employment News published between 12 and 18 January, 2008 and apart from various other posts advertised 16 posts of Post Graduate Teachers (Commerce) were advertised with post code 16 and subject code 06 and the essential qualification prescribed in the advertisement was that a candidate should have a Master Decree from a recognised University with Accounting/Cost Accounting and Finance Accounting as the main subject. It was also indicated that candidate with applied economics (M.Com.) with Commerce Decree would not be eligible.

3. Petitioner who has passed her post graduation, i.e., M.Com. from Rani Durgawati Vishwavidhyalaya applied for appointment to the said post and her candidature has been rejected on account of the fact that she does not possess the requisite qualification of having passed the M.Com. examination with Accounting, Cost Accounting and Finance Accounting as the main subject. It was the case of the petitioner that as per the syllabus for the course of M.Com. prescribed by the Rani Durgawati Vishwa Vidhyalaya in conformity with the syllabus notified by the University Grant Commission, petitioner had appeared in the said examination with Statistical Analysis and Cost Administration & Control as two subjects, even though termed as optional but they were the main subject along with 3 other subjects and therefore, in rejecting her candidature an error has been committed.

4. Shri Manoj Sharma, learned counsel for the petitioner invited our attention to the syllabus prescribed by the Rani Durgawati University filed as Annexure A/13 and argued that in the Rani Durgawati Vishwavidhyalaya, Jabalpur as per the syllabus prescribed for M.Com. Course based on the UGC Modern Curriculum. In Commerce for M.Com. previous a candidate has to appear in 3 subjects namely Managerial Economic, Management Concept and Organisational Behaviour along with two optional subjects which can be from any of the groups, i.e. from Group ''A'' to Group ''I'' stipulated in page 45 of the paper book. Petitioner opted for Group ''A'' optional subject that was Statistical Analysis and Cost Administration & Control and as Cost Administration & Control is equivalent to the qualification prescribed for the post in question. It is said that the petitioner possess the qualification, certificates have been issued by the University and the College where the petitioner prosecuted the study to say that the optional subject of Cost Administration & Control passed by the petitioner in the examination in question is equivalent to the prescribed qualification for recruitment to the post, therefore, a claim is made and by referring to the syllabus the marks obtained in the examination and various other documents produced, particularly the certificate of the Rani Durgawati Vishwa Vidhyalaya and the college to say that the petitioner was eligible for appointment and her candidature has been illegally rejected.

5. Respondents refute the aforesaid and submits that the optional subject of Cost Administration undertaking by the petitioner is totally different from the subject prescribed in the Recruitment Rules and if taking note of these factors after advice from the Headquarters of the Sangathan at New Delhi and Mumbai a decision is taken the Tribunal has not committed any error in rejecting the application.

6. Learned Senior Counsel for the respondent Shri S.K. Rao invited our attention to the findings recorded by the Tribunal in para 7 & 8 to say that a reasonable order passed by the Tribunal does not called for any interference now in these proceedings under Article 227 of the Constitution.

7. We have heard learned counsel for the parties at length and we have perused the record. There is no dispute with regard to the fact that the minimum

qualification or the essential qualification prescribed for appointment to the post in question was that a candidate should have a Master''s Degree from the recognised University with at least 50 marks in aggregate with Accounting, Cost Accounting and the Financial Accounting as the main subjects. In the syllabus Annexure A/13 and the mark sheet issued to the petitioner for the M.Com previous and M.Com final year examination, it is seen that the subjects are classified based on the syllabus for M.Com final as notified by the university and the subjects are a Managerial Economic, Management Concept and Organisational Behaviour, these are the compulsory subjects and thereafter optional subjects are classified from Group ''A'' to ''I'' and a candidate has to take one group of two papers as an optional subject. Petitioner opted for Group ''A'' consisting of Statistical Analysis and Cost Administration & Control in the M.Com previous examination.

8. For the M.Com. final the compulsory subjects are Business Environment, Corporate Tax, Planning and Management and Comprehensive Viva was examination with various options and petitioner opted for Group ''D'' in the final examination which consisted of Marketing Management and International Marketing. Contention of the petitioner is that the optional subject Group ''A'' opted by the petitioner in the M.Com. previous examination, i.e., Cost Administration & Control is a subject equivalent to the minimum qualification prescribed in the Recruitment Rules and as this is certified by the University and College, the respondents should have accepted the contention of the petitioner. On the contrary, respondents say that the subjects prescribed are Accounting, Cost Accounting and Financial Accounting and the optional subject opted by the petitioner only in the M.Com previous year is not sufficient to hold the petitioner eligible for appointment to the post in question.

9. That apart, respondents also refer to the subjects in which the petitioner appeared in the B.Com examination and by referring the petitioner A/8, it is pointed out that the B.Com Examination the subject of Accounting petitioner only opted for Company Account and did not opt for Cost Accounting as a subject in the B.Com examination. Accordingly, we find from the record that now there is serious dispute with regard to equivalency on the subjects as notified in the Recruitment Rules and the qualification acquired by the petitioner.

9A. Prima facie on going through the record, we do find that in the B.Com examination under taken by the petitioner even though Cost Accounting was one of the subject but petitioner has not opted for this subject but opted for the Company Accounts as a subject. Thereafter, on the M.Com previous year, petitioner had appeared in the Cost Administration & Control as an optional subject and the question before us is as to whether this subject namely Cost Administration & Control can be termed as equivalent to the subject notified in the Recruitment Rules.

10. In para 7 of the judgment rendered by the learned Tribunal, it is held that reference of the petitioner''s case was made to the Kendriya Vidhyalaya

Sangathan Headquarters at Delhi & Mumbai and on an experts opinion received vide Annexure/17 dated 05.03.2009, a decision was taken to hold that the subject is not equivalent. The respondent Kendriya Vidhyalaya Sangathan who are making recruitment to the post are experts and once they determining the question of equivalence have taken a decision based on experts opinion furnished by experts authorities on the subject in question a writ Court exercising jurisdiction under Article 226 & 227 of the Constitution will not sit over this decision of the experts and taken a different view until and unless statutory rules provisions or malafides are not established. It is not the duty of this court to enter into an area which is to be exclusively dealt with by experts authorities, who are well equipped to determine questions, which are beyond the jurisdiction of this Court while exercising limited jurisdiction in a petition under Article 226 or 227 of the Constitution.

11. In this case, except for contending that the courses are equivalent and the authorities of Rani Durgawati Vishwavidhyalaya and the College have so certified nothing has brought to our notice to show that the decision taken by the respondents is tainted with malafide or is contrary to any provision of law rule or regulations. Annexure A/13 relied upon in this regard is the communication made by the college where the petitioner prosecuted the Course and in this letter the college authorities only say that the subject of Cost Administration & Control is the same subject which is also known as Cost Accounting. Similarly, the Dean of the University has also given an opinion. On the contrary, the report of the experts submitted by the Kendriya Vidhyalaya Sangathan speaks about the subject ""Cost Administration & Control"" being totally different from the requirement of the subject notified in the Recruitment Rules.

12. That being so, its a case where the experts in the Kendriya Vidhyalaya Sangathan have given a particular opinion and based on the same the authorities have taken action in the matter and the learned Tribunal after considering the same has rejected petitioner application under Section 19. In doing so, we are of the considered view that the Tribunal has not committed any error warranting interference by us in these proceedings under Article 227 of the Constitution.

13. The legal principle in this regard is very well settled and the Supreme Court has consistently held that High Court should not enter into an area to be dealt with by experts and decide a matter contrary to what has been determined by a Committee of experts in the absence of statutory provision being shown to be violated or malafide made out. Reference in this regard be made to observation made in the para 17 of the rendered by the Supreme Court recently in the case of U.V. Mahadkar v. Subhash Anand Chavan & others (2016) Volume 1 SCC Page 536 wherein while considering a question of promotion based on the recommendation of an experts committee the action of the High Court in interfering with the expert opinion was interfered with by the Hon''ble Supreme Court by making the aforesaid observation.

14. In the present case also identical situation exists in as much as the experts

in the Kendriya Vidhyalaya Sangathan having examined the matter have given an opinion to say that the subject and the qualification acquired by the petitioner is not equivalent to the subject notified in the requirement rules and once, that is the opinion of the experts, we see no reason to interfere and to say anything to the contrary until we find the said expert opinion to be tainted with malafide or violating any such rule or regulation indicated here-in-above, accordingly, finding no grounds, the petition stands dismissed.