
(2001) 12 CAL CK 0042
In the Calcutta High Court
Case No : Writ Petition No. 15502 (W) of 2001

Dr. Abdul Mokid

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 13-12-2001

Acts Referred:

Constitution of India, 1950 — Article 226

West Bengal College Service Commission Act, 1978 — Section 17, 17(2), 8, 8(1)

Citation : (2002) 1 CALLT 461

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : A.P. Lahiri, P.R. Mondal and Bandana Das, for the Appellant; Prasun Kr. Dutta, Sovan Lal Hazra and Kanika Gupta, for the Respondent

Judgement

A. Lala, J.—This writ petition is made by a candidate under the Advertisement No. 2 of 2001 made by the West Bengal College Service Commission on 25.9.2001. He is at present. Reader of the department of mathematics of Rampurhat College, Birbhum, West Bengal. He obtained 60% marks in average in all examination up to B.Sc. (Hons.) and passed M.Sc. examination in Mathematics having 62.25% marks from the University of Burdwan in the year, 1971. He also obtained Ph.D. from the University of Jadavpur at Calcutta in the year, 1983. So far the educational qualifications are concerned, there is no adverse remark made by the West Bengal College Service Commission.

2. He applied for the appropriate post of Principal under a prior advertisement being No. I of 2000 dated 4.7.2000. He observed in the advertisement that there are irregularities in giving eligibility criteria particularly in following the guidelines of the University Grants Commission and approached this Court to Interfere with the same. A Bench of this Court was pleased to dispose of the matter on 26.9.2000 with a direction upon the University Grants Commission to consider the matter. Such consideration is yet to be given. Although correspondences were exchanged by or between the petitioner and the University Grants

Commission but it cannot be strictly said that any reasoned order has been passed by such authority till the date of hearing of this writ petition. However, the second advertisement has been published when the order in the erstwhile writ petition was yet to be passed. Challenging the second advertisement the present writ petition is made. Although the contention of both the advertisements are similar in nature but since each and every advertisement has got Independent face-value it cannot strictly be said that the present writ petition is hit by principle of Res Judicata.

3. In the earlier occasion while the hearing was going on, only the College Service Commission appeared and filed their affidavit but neither the State nor the University Grants Commission appeared before this Court, As a result whereof this Court was pleased to direct the parties to inform the State as well as office of the Advocate-on-record of Union of India to communicate the University Grants Commission to appear before this Court. Today, as and when the matter was called on, the learned Advocates both for the Union of India as well as for the State appeared. I have called upon learned Advocate appearing for the State to make the submission. She has taken Clause 5.0 under the circular of the University Grants Commission dated 24.12.98 to establish his case that State is not strictly bound by the conditions Imposed by the University Grants Commission but may make necessary changes taking into account the local conditions in consonance with the guidelines Issued by the University Grants Commission. But I find from Clause 5.0 of the said circular that the University Grants Commission expects that the entire scheme of revision of pay scales, together with all the conditions attached to it, would be implemented by the State Governments as a composite scheme without any modification. It is necessary that the Universities and the management of the Colleges will make necessary changes in their statutes, ordinances, rules, regulations etc. to incorporate the provisions of the scheme.

4. Mr. A.P. Lahiri, learned counsel appearing on behalf of the petitioner contended that under 4.2.1 as well as 4.2.2. of such scheme under the circular dated 24.12.98 Ph.D or equivalent qualification is necessary either in the scale of Principal (Professor's Grade) or Principal (Reader's Grade). So Ph.D or equivalent qualification is a must to fulfil the eligibility criteria. But the State by Issuance of a circular dated 16.6.99 deviated from the stand-point of the University Grants Commission and incorporated academic qualifications under their circular as if mere serving as Reader in any affiliated Degree College or University/Research Institute with Teaching/research experience will be equivalent to Ph.D qualification. According to him, Ph.D or equivalent has been disjuncted from each other by the word "or" give room to the ineligible candidates. This is only made form them who do not possess Ph.D qualification but by virtue of his experience as Render can be eligible for the purpose of selection de hors the scheme as formulated by the University Grants Commission.

5. Mr. P.R. Mondal, learned counsel appearing on behalf of the College Service

Commission contended that West Bengal College Service Commission is a statutory body under the State. It has been formed under West Bengal College Service Commission Act, 1978. Such Act gives power to the Commission to make certain regulation u/s 17 of the same. Section 17(2) (b) prescribed manner of selection of persons for appointment in the post of teachers of a College under sub-section (1) of Section 8 of the Act. Section 8(1) speaks the manner of selection of persons for appointment to the posts of teachers of a College shall be such as may be provided for by regulation. u/s 17 It appears that the commission will take such stand with the previous approval of the State Government. Therefore, if the State Government gives approval, the Commission has nothing to do but to follow the same. It has further stated that as per the regulation 4(2) framed under the Act the qualifications for recruitment to the posts of teachers shall be such as may be determined by the State Government. The petitioner has applied for the post under such notification and by such process he has acted upon. Therefore, how he will be prejudiced by turning down the notification is unknown to him. He further contended that Ph.D. is not the sole eligible qualification for the post but qualification equivalent to Ph.D. is not applicable even by the scheme formulated by the University Grants Commission. Such equivalence can only be made by the concerned University which has now been replaced by the State, even further by such scheme when University or State failed to comply with the guidelines or scheme framed by the University Grants Commission. Such authority, at best, may withhold from grants to such University or the State. The entire process of selection cannot be ruled out.

6. A controversy arose in respect of fundamental principle. i.e., whether education is part of Union List of State List or Concurrent List of the 7th Schedule of the Constitution of India. It appears that general education is placed as item No. 25 of the Concurrent list. The reason behind such submission on the part of Mr. Mondal is that State has power to regulate education when the submission of Mr. Lahiri is power of the State in regulating education is not exclusive. In such circumstances I come across three valuable Judgments of the Supreme Court. First of such judgment is reported in *The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others*, . Mr. Lahiri contended that item No. 66 of the Union list of the 7th Schedule of the constitution speaks for coordination and determination of standards in Institutions for higher education or research and scientific and Technical Institutions. Upon going through the Judgment I find that the Constitution Bench of the Supreme Court held that the expression "Co-ordination" must mean in the context in which it is used merely evaluation: co-ordination in" its normal connotation mean harmonising or bringing into proper relation in which all the things coordinated participate in a common pattern of action. The power to co-ordinate, therefore, is not merely power to evaluate, it is a power to harmonise or secure relationship for concerted action. The power conferred by item 66 of the Union List is not conditioned by the existence of a State of emergency or unequal standards calling for the exercise of the power.

7. In *R. Chitralekha and Another Vs. State of Mysore and Others*, another Constitution Bench of the Supreme Court held that in fact upon the legislative head of co-ordination and determination of standards in the Institutions referred to in item No. 66 of List I is vested in the Union List. Therefore, in each case It will be for the Court to consider whether what is being sought to be done by a State legislature will have a direct impact upon entry 66 of List I where in any law of the State legislature seeks to very academic standard for admission to Institutions of the kind referred to in entry 66 Its action has a direct bearing upon that entry and the power in this regard is excluded from the purview of Entry 11 of List 2. However, Entry 11 has been omitted by the 42nd Amendment of the Constitution. It is crystal clear that even If the education is part of item 25 of the Concurrent List but the same is subject to Item 66 along with others of List 1. Such part was also incorporated by the 42nd Amendment of the Constitution. Therefore, one part is clear that power of the State is not exclusive but subject to consideration by the Union or Its appropriate machinery.

8. In 1987 SC 2034 (*Osmania University Teachers Association v. State of Andhra Pradesh and Anr.*) three Judges' Bench of the Supreme Court followed the ratio of the above two Judgments in coming to conclusion. The U.G.C. Act falls under the entry 66 of List 1. Therefore, It could not be said that the State could pass a parallel enactment under entry 25 of List III unless it encroaches entry 66 of List I. Such an encroachment is patent and obvious.

9. In the Instant case I find from the annexures as well as copy of two communications being dated 23.11.2000 and 11.10.2001 (copy of which kept with the record) that Ph.D is compulsory requirement for appointment of Principal. As per UGC's norms Ph.D or equivalent published work is required even in the earlier notification. Such equivalent published work cannot be equated with only Reader only having experience of serving the affiliated degree Colleges. The other part might have been similar but not free from cloud. My reading says removal of cloud is only in the hands of the University Grants Commission.

10. Under such circumstances, I dispose of the writ petition directing the University Grants Commission to give particulars of the words "equivalent qualification of Ph.D within two months from the date of communication of this order positively so that there should not be any delay in finalising the process of selection by the West Bengal College Service Commission. The notice/ advertisement of the West Bengal College Service Commission will be read with the rider to be given the University Grants Commission. The eligibility criteria of the candidates will be determined on the basis of the particulars as rider. As such those will not have such qualification cannot be held as eligible candidates and/or create any equity only for making application as per notification of the College Service Commission.

Thus, the writ petition stands disposed of. There will be no order as to costs.

Let an urgent xeroxed certified copy of this Judgment, if applied for, be given to the learned Advocates for the parties within 2 weeks from the date of putting the requisites.