
(2013) 02 MAD CK 0230

In the Madras High Court

Case No : W.P. No. 10698 of 2012, M.P. Nos. 1 and 2 of 2012 and 1 of 2013

Dr. E. Kanniappan, Dr. K. Paulraj S. Paramasivam and Dr. K. Thandavamoorthy APPELLANT

Vs

The Government of Tamil Nadu, Director of Collegiate Education and The Secretary, Tamil Nadu Public Service Commission RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Citation : (2013) 3 MLJ 527

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Judgement

K. Chandru, J.—The four petitioners were aspirants for the post of College Librarian, for which applications were called for by the Tamil Nadu Public Service Commission (for short TNPSC), vide Advertisement No. 233 dated 17.02.2010. It is seen from the records that out of 810 candidates applied, 124 candidates were found eligible for the written examination, which was held on 20.06.2010. Out of 124 candidates who were eligible for written examination, only 110 candidates wrote the examination. Though the vacancies originally notified were 56, subsequently, by a communication of the Director of Collegiate Education dated 24.03.2011, it was reduced to 37 vacancies.

2. In the advertisement given by the TNPSC, in paragraph 4.B, it was stipulated that the vacancies which were originally notified need not be actual vacancies. The Qualification that was prescribed in the notification dated 17.02.2013 were as follows:-

iii) Master's degree in Library Science or Information Science or Documentation Science or an equivalent professional degree with not less than fifty five percentage of marks or its equivalent grade, where grading system is practiced and consistently good academic record with knowledge on computerization of Library; and

(iv) Pass in the National Eligibility Net (NET) or other accredited test like State Level Eligibility Test (SLET) in Library Science conducted for the purpose by the University Grants Commission or any other agency approved by the University Grants Commission.

3. Subsequently, candidates who have been admitted provisionally for the oral test for appointment by direct recruitment to the post of College Librarian was published and communicated in the official Website of the TNPSC on 13.03.2012. Alleging that denial of opportunity to them in attending the oral test and consequently the selection was illegal, the petitioners have the present writ petition.

4. The writ petition came to be filed before this Court on 11.04.2012. On 26.04.2012, this Court while ordering notice granted an interim direction to keep four posts of College Librarians vacant, pending further orders. The said order came to be modified on 17.08.2012, thereby, directing all further proceedings in respect of selection process in question to be stayed until further orders. Since in the Notification as well as in the Government Order, the Qualification was mentioned as 55% marks in the qualifying degree and also a Consistently Good Academic Record, it was contended by the learned counsel for the petitioners that such a condition was illegal and inconsistent with the UGC Regulations. Therefore, when the matter came up on 17.08.2012, this Court directed the respondents 1 and 2 to file a counter explaining their stand as to what is meant by the term "Consistently Good Academic Record".

5. Pursuant to the same, a counter affidavit was filed by the first respondent State dated 31.08.2012. The TNPSC has filed a vacate stay application in M.P. No. 2 of 2012 together with supporting counter affidavit dated 14.08.2012. An affidavit was also filed by the TNPSC dated 17.10.2012. In the meanwhile, Dr. I. Sasireka and five others, who were admittedly got selected for being appointed to the post of College Librarians have filed application to implead themselves in M.P. No. 1 of 2013 together with supporting affidavit dated 02.01.2013.

6. Heard the arguments of the Mr. M.V. Venkateshan, learned counsel appearing for the petitioners, Mr. V. Subbiah, learned Special Government Pleader appearing for respondents 1 and 2 and Mr. N.S. Nandakumar, learned Standing Counsel appearing for TNPSC.

7. It is seen from the records that the post of College Librarian came to be upgraded and brought equivalent to the post of Lecturer based on the recommendation made by the Rasthogi Committee and accepted by the University Grants Commission. The State Government pursuant to the said recommendation issued G.O. Ms. No. 113 Higher Education Department, dated 23.03.1999, bringing the scales of pay for the post of Librarian in Colleges and Libraries on par with other teaching faculties. In the said GO itself, the method by which the post can be filled up is set out in the Explanation appended. The paragraph relating to Recruitment and Qualification reads as follows:-

Recruitment And Qualification:

Recruitment to the post of Librarians and Physical Education Personnel, Assistant Documentation Officer, Assistant Director of Physical Education, Deputy Librarian and Librarian as well as Assistant Director, Deputy Director and Director of Physical Education in the Universities/Colleges shall be on the basis of merit through All India Advertisement and selection based on criteria laid down by the University Grants Commission. The details regarding qualification, recruitment methods, selection committee etc are appended in the Annexure II to this order. Persons who fulfill the criteria prescribed under this scheme alone will be eligible for further promotions.

Explanation:-

(i) Recruitment by open advertisement and selection shall be done by the Tamilnadu Public Service Commission, Educational or any Agency to be identified by the Government in respect of Government Colleges, by a Selection Committee in respect of Aided Colleges and by a Selection Committee in respect of Universities. At the time of recruitment, other things being equal, preference shall be given to candidates who possess adequate knowledge in Tamil.

(ii) The minimum qualification required for appointment to the above mentioned posts will be those prescribed by the University Grants Commission from time to time. Generally, the minimum qualifications for appointment to the post of Librarian and Physical Education Personnel in the Lecturer cadre shall be Master's Degree in the relevant subject with atleast 55 per cent marks or its equivalent grade with good academic record. The education qualification for the posts of Librarian and Physical Education Personnel in Colleges/Universities are given in Annexure II.

8. Subsequently, by G.O. Ms. No. 104 Higher Education Department, dated 18.05.2009, the rules relating to recruitment to the post of College Librarian was amended consequent upon the prescription of UGC scales of pay.

9. The learned counsel for the petitioners has raised four contentions:-

i) There is no term called "Consistently Good Academic Record", which can be introduced by the respondents.

ii) The State Government cannot prescribe a qualification which is either inconsistent or not incommensurate with the qualification prescribed by the UGC and such a qualification prescribed was illegal. The petitioners inasmuch they are having the qualification prescribed by the UGC, cannot be denied participation in the interview process.

iii) The State Government itself in two cases had issued G.O. Ms. No. 209 Higher Education Department, dated 02.09.2011 and G.O. Ms. No. 11, Higher Education Department, dated 03.02.2012, wherein unqualified persons were allowed to be posted as College Librarian and therefore, they cannot be denied similar relief.

iv) The Rules of reservation were not strictly followed.

10. In so far as the last contention is concerned, in paragraph 17 of the counter affidavit filed by the TNPSC, this allegation was denied. It was stated that the select list was prepared in accordance with the notification and following the rules of reservation. The reduction in the vacancies was also in tune with the guidelines issued in the prospectus. 36 candidates who were fully qualified appeared for oral test and the rules of reservation for MBC/DC was also followed in the selection.

11. As far as the first contention regarding "Consistently Good Academic Record" is concerned, it is not as if such a terminology is unheard of. The Supreme Court vide its judgment in *State of Orissa and Another Vs. Mamata Mohanty*, had referred to the previous judgment reported in *Dr Prit Singh Vs. S.K. Mangal and Others*, . It is necessary to refer to the following passage found in paragraph 39, which is as follows:-

39. In *Prit Singh (Dr.) v. S.K. Mangal* 20 this Court examined the case of a person who did not possess the requisite percentage of marks as per the statutory requirement and held that he cannot hold the post observing: (SCC pp. 718-19, paras 12-13)

12. It need not be pointed out that the sole object of prescribing qualification that the candidate must have a consistently good academic record with first or high second class Master's degree for appointment to the post of a Principal, is to select a most suitable person in order to maintain excellence and standard of teaching in the institution apart from administration. The appellant had not secured even second class marks in his Master of Arts Examination whereas the requirement was first or high second class (55%). The irresistible conclusion is that on the relevant date the appellant did not possess the requisite qualifications.

13. On the date of the appointment the appellant did not possess the requisite qualifications and as such his appointment had to be quashed.

(emphasis added)

12. Even in G.O. Ms. No. 103 Higher Education Department, dated 18.05.2009, wherein, UGC scales have been introduced by upgrading the post of College Librarian in Government Arts and Science College, this condition was stipulated and therefore, the petitioner cannot say that they are unaware of the condition or such a condition was alien to the said recruitment.

13. The second contention that it is inconsistent with the UGC qualification also does not stand to reason. The petitioners themselves have filed notification issued by UGC, wherein, in the Annexure, minimum qualification for direct recruitment to the post of Librarian is prescribed. Therefore, what is prescribed by the UGC is only minimum qualification. Nothing prevented the employer like the respondent State to prescribe either a higher qualification or a condition

which is consistent with academic standards of candidates who makes application.

14. In this context, it is necessary to refer to the judgment of the Hon'ble Supreme Court reported in *Visveswaraya Technological University and Another Vs. Krishnendu Halder and Others*, wherein, the Supreme Court observed that determination of such standards, being part of the academic policy of the University, are beyond the purview of judicial review, unless it is established that such standards are arbitrary or "adversely affect" the standards, if any, fixed by the central body under a Central enactment and in para 17, it is held as follows:

17. No student or college, in the teeth of the existing and prevalent rules of the State and the University can say that such rules should be ignored, whenever there are unfilled vacancies in colleges. In fact the State/University, may, in spite of vacancies, continue with the higher eligibility criteria to maintain better standards of higher education in the State or in the colleges affiliated to the University. Determination of such standards, being part of the academic policy of the University, are beyond the purview of judicial review, unless it is established that such standards are arbitrary or "adversely affect" the standards, if any, fixed by the central body under a Central enactment. The order of the Division Bench is therefore unsustainable.

15. In so far as two Government Orders on which reliance was placed, the petitioners themselves have stated that though they could have challenged such unqualified selection, they are only interested in their selection and therefore, they have only referred to those two GOs. In this context, it must be noted that persons who were covered by those two Government Orders moved this Court and they were originally employees working in the ministerial service in Government colleges after having possession of a degree in Library Science. They sought for appointment to the post of College Librarian by transfer from other services before the introduction of UGC Sales of pay and upgradation of the post of Librarian as that of Lecturers in Colleges. The relevant service rule provided for two source of recruitment viz., direct recruitment and transfer from other services and the ratio is also prescribed. It is based upon old rules, the petitioners made a claim and this Court directed their cases to be considered. Subsequently, the State Government belatedly filed writ appeals and the writ appeals were also dismissed. The Supreme Court in the SLP also directed the implementation of the order passed by the learned Judge. Faced with the direction given by Courts and having left with no option and threat of contempt, the State Government was forced to implement those orders. Such orders cannot be used as a precedent for claiming similar relief.

16. In this context, it is necessary to refer to the judgment of the Hon'ble Supreme Court reported in *Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others*, wherein the Supreme Court has held that merely because the State has implemented the order in one case pursuant to the compulsion of the Court's order, that by itself will not give any cause of action to other persons to move this Court unless the person set outs his own right to claim similar benefits. It is

therefore necessary to extract para 26 of the judgment, which reads as follows:

A particular judgment of the High Court may not be challenged by the State where the financial repercussions are negligible or where the appeal is barred by limitation. It may also not be challenged due to negligence or oversight of the dealing officers or on account of wrong legal advice, or on account of the non-comprehension of the seriousness or magnitude of the issue involved. However, when similar matters subsequently crop up and the magnitude of the financial implications is realised, the State is not prevented or barred from challenging the subsequent decisions or resisting subsequent writ petitions, even though judgment in a case involving similar issue was allowed to reach finality in the case of others. Of course, the position would be viewed differently, if petitioners plead and prove that the State had adopted a "pick-and-choose" method only to exclude petitioners on account of mala fides or ulterior motives. Be that as it may. On the facts and circumstances, neither the principle of res judicata nor the principle of estoppel is attracted. The administrative law principles of legitimate expectation or fairness in action are also not attracted. Therefore, the fact that in some cases the validity of the circular dated 29-10-1999 (corresponding to the Defence Ministry circular dated 11-9-2001) has been upheld and that decision has attained finality will not come in the way of the State defending or enforcing its circular dated 11-9-2001.

In the light of the above, the petitioners have not made out any case. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.