

(2008) 03 AP CK 0022

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8716 of 2006

G. Ravi Kumar

APPELLANT

Vs

The District and Sessions Judge and Others

RESPONDENT

Date of Decision : 19-03-2008

Acts Referred:

Andhra Pradesh Judicial Ministerial Service Rules, 2003 — Rule 8
Andhra Pradesh Ministerial Service Rules, 1998 — Rule 6(2)
Constitution of India, 1950 — Article 14, 16, 21, 51A

Citation : (2008) 3 ALD 624 : (2008) 3 ALT 662

Hon'ble Judges : V.V.S. Rao, J;C.V. Ramulu, J

Bench : Division Bench

Advocate : M.V. Raja Ram, for the Appellant; M. Bhaskara Lakshmi, SC for APHC, for the Respondent

Judgement

1. An important question having significance in the field of education and public employment falls for consideration in this writ petition. Whether a person, who obtains Bachelor's Degree from an Open University established under an Act of competent Legislature, is eligible for being considered for appointment/promotion to a post even when such person does not possess any Pre Degree qualification like Secondary School Certificate and/or Intermediate?

2. The fact of the matter is not much in dispute. Petitioner is an Attender in Andhra Pradesh Last Grade Service working in the Unit of District Court, Nalgonda. By the date of appointment in 1988, he had passed 10th class. Subsequently he also obtained Bachelor of Arts (B.A.,) Degree in 1992 and taking this into consideration, he was promoted to the post of Copyist in February 1993. Post of Copyist is regulated by Andhra Pradesh Judicial Ministerial Service Rules, 2003 (APJMS Rules). In November 2001, petitioner was promoted to the post of Junior Assistant in a leave vacancy. But he was reverted to the post of Copyist to accommodate another Junior Assistant, who was regularized in the post of Junior Assistant.

3. Government of Andhra Pradesh vide G.O.Ms. No. 568, dated 26.12.2005, amended Rule 6(2) of Andhra Pradesh Ministerial Service Rules, 1998 (Ministerial Service Rules) by adding second proviso. As per newly inserted proviso, in the matter of appointment/promotion to any post for which Intermediate qualification is prescribed, a person with higher qualification such as Bachelor's Degree and/or Post Graduation qualification from any University established or incorporated by or under a Central or State Act without basic educational qualification prescribed for the post shall also be eligible for appointment by transfer/conversion to the post of Junior Assistant or for promotion to the post of Senior Assistant. After advent of the said G.O., petitioner made a representation to District Judge, Nalgonda, on 30.1.2006, requesting to consider his case for the post of Junior Assistant as per the said G.O. By impugned proceedings dated 31.1.2006, District Judge rejected request. That G.O.Ms. No. 568, dated 26.12.2005, is not applicable to petitioner and that as petitioner does not have requisite basic qualification of Intermediate prescribed for the post of Junior Assistant, Degree of B.A., from Dr. B.R. Ambedkar Open University (BRAOU) is of no avail, are reasons for rejection. In this writ petition besides seeking invalidation of proceedings of District Judge, petitioner also seeks direction to promote him as Junior Assistant after setting aside proceedings dated 27/28.1.2006 of District Judge promoting respondents 4 and 5 as Junior Assistants.

4. Registrar General of Andhra Pradesh High Court filed counter affidavit alleging that a pass in Intermediate being minimum basic qualification as per APJMS Rules, amendment issued to Ministerial Service Rules has no application. Counter affidavit is silent with regard to effect of Degree granted by BRAOU.

5. Learned Counsel for petitioner submits that respondents 4 and 5 are juniors to petitioner in the category of Copyists, and therefore, denial of promotion to petitioner is arbitrary and discriminatory. He would urge that merely because respondents 4 and 5 have Intermediate qualification, they cannot be treated as superior to petitioner, who has obtained degree from BRAOU. Ignoring persons with higher qualification and promoting persons with lesser qualification is violative of Articles 14, 16 and 21 of Constitution of India. Learned Standing Counsel for Andhra Pradesh High Court opposed writ petition.

6. Learned District Judge rejected application of petitioner on the ground that G.O.Ms. No. 568, dated 26.12.2005 amending Ministerial Service Rules, has no application to Gazetted/Non-Gazetted posts in judicial administration. These posts are exclusively governed by APJMS Rules. Next question is, whether denial of promotion to petitioner on the ground that he has no requisite basic qualification of Intermediate though he has obtained B.A., degree from BRAOU is valid.

7. Post of Copyists is included in Category VIII of APJMS Rules whereas post of Junior Assistants is in Category IV. Method of appointment to the post of Junior Assistant is either by direct recruitment or by promotion. Rule 8 read with

Annexure-I provides that for appointment or promotion, a candidate must have passed Intermediate examination conducted by Andhra Pradesh State Board of Intermediate Education or any equivalent examination. The rule as such does not bar candidates with Graduation qualification from claiming promotion to the post of Junior Assistants. Minimum qualification is Intermediate, which does not mean that a person with higher qualification is ineligible for the post. Any such reading of the Rule would mete out hostile discrimination to those persons who have degree qualification. In other words, if any public authority or the Government body prefers only less qualified persons to more qualified persons, the same would be violative of Article 14 of Constitution. It would be different thing if in prescribing qualifications the authority totally adopts an arbitrary and capricious policy in which event it might violate doctrine of social justice. For example, for post of Sweeper, the authority prescribes qualifications of Post-Graduation it would certainly violate Article 14 of the Constitution and principles of social justice for, in effect, such prohibition would certainly exclude all the poor and poorer classes for competing for the post of Sweepers. This view is supported by the judgment of the Supreme Court in T.R. Kothandaraman and Others Vs. Tamil Nadu Water Supply and Drainage BD and Others, wherein it was held.

It is apparent that while judging the validity of the classification, the Court shall have to be conscious about the need for maintaining efficiency in service and also whether the required qualification is necessary for the discharge of duties in the higher post.... The aforesaid propositions seems indisputable to us. We, however, propose to project two other determinants, or to put it differently, introduce two more spokes in the wheel. They are call of social justice and importance of education. In view of the interrelationship, which exists in the fundamental rights, which got established by the decision in Rustom Cavasjee Cooper Vs. Union of India (UOI), , we have to see, while examining the provision on the anvil of Articles 14 and 16 of the Constitution, whether Article 21 is offended in any way. This article has expanded its reach almost phenomenally. For the purpose of the cases at hand we may not dwell upon that; it would be enough to note that even education (upto primary stage) was held by a Constitution Bench to be a part of Article 21 in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., .

8. Excluding citizens with higher qualifications on the ground that they possess qualifications higher than the minimum qualifications would violate Article 14. In Y. Srinivasa Rao Vs. J. Veeraiah and Others, , for appointment of fair price shop dealers, the Government of Andhra Pradesh under A.P. Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973, evolved a policy to give preference to less educated persons. The appellant who was a Graduate in Commerce questioned the same. The Supreme Court dealing with the question laid down.

9. The decision to prefer an uneducated person over an educated person amounts to allowing premium on ignorance, incompetence and consequently

inefficiency. The only fault of the appellant is to have pursued his studies beyond 10th Class of his school. If he had discontinued his career as a student even earlier, say after passing 7th or 8th class, he would have been running the shop today. This clearly amounts to gross arbitrariness and therefore, illegal discrimination. Pursuing this line the State will have to be going in search of a more inefficient person and we do not know where this process would end. If we assume that since a better qualified person has got a better chance to succeed in life, an intelligent applicant who can run the shop efficiently should be rejected and a dim witted fellow should be selected. This is an absurd situation.

10. In Mohd. Riazul Usman Gani and Others Vs. District and Sessions Judge, Nagpur and Others, the Supreme Court referred to T.R. Kothandaraman case (supra) and held that when there are large number of candidates, it is permissible to lay down a criteria, but that criteria must be reasonable and not arbitrary having regard to the post for which recruitment is to be made. It was further held:

If an employee does not perform the duties attached to the post disciplinary proceedings can certainly be taken against him. An employer cannot throw up his hands in despair and devise a method denying appointment to a person who otherwise meets the requisite qualifications on the ground that if appointed, he would not perform his duties. Qualification prescribed is minimum. Higher qualification cannot become a disadvantage to the candidate....

...A criterion which has the effect of denying a candidate his right to be considered for the post on the principle that he is having higher qualification, than prescribed cannot be rational. We have not been able to appreciate as to why those candidates who possessed qualifications equivalent to SSC examination could also not be considered.

11. Rule 8 of APJMS Rules does not specifically disqualify Copyists with Degree (B.A./B.Sc./B.Com.,) qualification for being considered to promotion to the post of Junior Assistant. In the impugned order, however, District Judge concluded that petitioner has no requisite qualification of pass in Intermediate though he has completed B.A., from BRAOU. The question whether degree awarded by Open University is equivalent to the degree awarded by any other University, was considered by Division Bench of this Court in Muthyala Ashok v. Shyamsunder 2002 (1) ALD 525. It was observed therein.

12. Secondly the view taken by the learned Tribunal that 1st respondent possess the prescribed qualification by securing B.A. Degree from Dr. B.R. Ambedkar Open University is also well founded. We say this because, admittedly the 1st respondent has secured B.A. Degree from Dr. B.R. Ambedkar Open University. The degrees and diplomas awarded by the said University have been recognised by the Government of Andhra Pradesh and the Government of India for the purpose of recruitment in Public Services (vide Lr. No. 1057/admn./760/2000-2001, dated 09.11.2000 addressed by the Registrar of Dr. B.R. Ambedkar Open

University to the District Collector, Chittoor and Lr. No. 599/Admn./760/2001/2002, dated 16/17.10.2001 addressed by the Registrar of Dr. B.R. Ambedkar Open University.

13. Therefore, there cannot be any doubt that BRAOU is an University established under Andhra Pradesh Open University Act, 1982, and as noticed by Division Bench in Muthyala Ashok (supra), it is recognised by Government of India as well as Government of Andhra Pradesh for the purpose of recruitment in public services. Indeed Division Bench accepted plea that degree awarded by BRAOU is superior to Intermediate qualification prescribed under relevant provision of Ministerial Service Rules. Therefore petitioner herein cannot be said to be disqualified merely because he directly appeared for B.A., examination conducted by BRAOU without basic qualification. Very concept of Open University is to encourage citizens to acquire better qualification ignoring whether or not they were having pre-degree qualification. One should not forget that under Article 51A(j) of Constitution, it shall be duty of every citizen to "strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement". If a citizen acquired higher qualification even though he was denied opportunity to acquire pre-degree qualification by reason of social and economic backwardness, he cannot be turned away on the ground that though he has higher qualification, he lacks basic qualification.

14. In the result, for the above reasons, the impugned order is set aside. Learned District Judge is directed to consider case of petitioner for being promoted as Junior Assistant or any equivalent post. This Court, however, is not inclined to set aside promotion of respondents 4 and 5, as they were promoted in the regular course and they have already put in considerable service. There shall be no order as to costs.