
(2015) 05 KL CK 0106

In the High Court Of Kerala

Case No : W.A. No. 954 of 2015 in W.P.(C). 8571 of 2014

Henry Antony

APPELLANT

Vs

Director of Higher Secondary Education and Others

RESPONDENT

Date of Decision : 21-05-2015

Acts Referred:

Citation : (2015) 05 KL CK 0106

Hon'ble Judges : Antony Dominic, J;S.P. Chaly, J

Bench : Division Bench

Advocate : Shameena Salahudheen, for the Appellant; M.A. Fayaz, Sr. Govt. Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.P. Chaly, J—Appellant is the petitioner in W.P(C).8571/14. He is challenging the judgment of the learned Judge dismissing the writ petition by judgment dated 20.3.2015. The short facts of the case which led to the dismissal of the writ petition are as follows:

2. It is the case of the appellant that overlooking the claim of the appellant, who was the only qualified High School Assistant eligible to be appointed as Higher Secondary School Teacher (hereinafter referred to as "HSST") as on the date of occurrence of the vacancy, the 5th respondent was appointed as HSST by the 4th respondent. It is the further case of the appellant that the 5th respondent did not have the requisite qualification for appointment as HSST as on 1.6.2013 or 3.6.2013, when the vacancy arose and the 4th respondent was appointed respectively, since he has not acquired MA Degree qualification as is prescribed in the Statute for the purpose of appointment as HSST. It is also contended that even though the 5th respondent has appeared for the final year examination of MA Degree conducted by the Madurai Kamaraj University in November, 2012, he failed in two papers and has passed the examination, pursuant to the revaluation conducted by the University subsequently and therefore, he was not qualified as on 1.6.2013 or 3.6.2013. Apart from this, the appellant contends that the

qualification prescribed for appointment is the qualification as on the date of arising of vacancy and in order to substantiate the said contention, he has relied on the judgment reported in *Jenany J.R. Vs. S. Rajeevan and Others*, AIR 2010 SC 1622 : (2010) 125 FLR 1037 : (2010) 4 JT 657 : (2010) 4 SCALE 535 : (2010) 5 SCC 798 .

3. The 5th respondent has filed a counter affidavit contending that even though he has failed in two papers, on revaluation, he passed in those two papers and has acquired the MA Degree evidenced by mark list dated 15.4.2013 and provisional certificate dated 13.9.2013 issued by the University and therefore, he is qualified to be promoted.

4. Heard the counsel for the appellant as well as the learned Government Pleader and the counsel for the 5th respondent.

5. Learned single Judge has found that in view of the acquisition of the MA Degree as per Ext.P4 marklist on 15.4.2013, he was fully qualified as on the date of occurrence of the vacancy, i.e. 1.6.2013 or 3.6.2013 and therefore, the 5th respondent is entitled to be appointed. The appellant has conceded that the 5th respondent is the senior most HSA and he is entitled to be promoted as HSST but for the qualification prescribed for promotion.

6. We find that as per the mark sheet issued by the Madurai Kamaraj University, the 5th respondent is seen qualified on 15.4.2013, that is, prior to arising of the vacancy as on 1.6.2013 or 3.6.2013. On going through the judgment of the Hon'ble Supreme Court cited supra, we find that the question relating to the date of acquiring qualification vis-a-vis the date contained in the marklist after revaluation was not considered and therefore, the appellant, in our view, is not entitled to claim benefit of the said judgment. In order to clarify the issue, para 16 of the judgment is quoted here:

"16. It is not disputed that respondent No. 1 was not qualified to be promoted as H.S.A. on the date when the vacancy arose. It was conceded before learned Single Judge that in July, 2003, when the results of the examination were published, he had failed. However, he had applied for re-evaluation. Only after re-evaluation was done, he was declared pass in September, 2003 as per the communication sent to him by Secretary, Board of Public Examinations. Thus, there was no dispute that on 1.7.2003, when the vacancy arose, admittedly, respondent No. 1 was not duly qualified to be appointed as H.S.A(Hindi) as contemplated under Note 2 appended to R.43 of the Rules. This aspect of the matter has been dealt with by learned Single Judge in detail in para 5 of the judgment."

7. Therefore, we feel that even though the 5th respondent has acquired the qualification on revaluation, the same relates back to the date contained in the mark list, i.e., 15.4.2013. In the facts and circumstances of the case, we do not find any infirmity in the judgment of the learned single Judge which upheld the action of the statutory authorities.

8. It is further contended by the appellant that the appointment of the 5th respondent is bad since the same is not carried out on the recommendations of the selection committee as is contemplated under Chapter XXXII Rule 5 of the Kerala Education Rules. But, from the impugned judgment, we find that such an argument was not advanced before the learned single Judge and hence the same could not be considered by the learned Judge. Therefore, we are of the considered opinion that the appellant cannot be permitted to raise such a contention for the first time in this appeal.

Appeal fails, it is accordingly dismissed.