

(1994) 09 AP CK 0032

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5677 of 1987

Mary Sai Kumari

APPELLANT

Vs

Regional Manager and Disciplinary Authority, Region IV, State
Bank of India, Vijayawada and Another

RESPONDENT

Date of Decision : 15-09-1994

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 162, 21

Citation : (1994) 3 ALT 350 : (1995) 1 LLJ 539

Hon'ble Judges : B. Subhashan Reddy, J

Bench : Single Bench

Judgement

B. Subhashan Reddy, J.—Can a better qualification be a disqualification? It should not be and that is the universal approach. But, in our country, in some cases better qualification is a handicap and the instant case is a glaring example of the same.

2. The petitioner is a scheduled caste woman whose economical condition was very poor and whose parents could not afford to educate her any further beyond 10th Class (SSC). She had failed in 10th Class (SSC) examination held in the year 1975. Poor economic condition forced her to remain in that stage and obviously, she could not seek employment at that age and that too with that qualification of SSC fail. Hoping to get at-least a Sweeper or an Attender's post, she registered her name with employment exchange during the year 1978 bearing Registration No. 928/78. But, even after waiting for four years, she did not get a call. During October 1982, she again appeared SSC examination with a fond hope of getting some employment, if she passes SSC examination. She did pass SSC examination, but only in 3rd class. But, poor girl did not know that she has incurring disqualification to hold the post of an Attender or Sweeper in the establishment of the respondents by passing SSC examination. During the end of 1983, she got a call for appointment to a post of Sweeper-cum-Waterwoman in the Office of the respondents. She was appointed initially in February, 1984 on

temporary basis and was made permanent in that post with effect from 1-9-1984. But, that lasted only just over an year, as on 16-11-1985, she was visited with show cause notice calling her to explain as to why she should not be discharged from service on the ground that she suppressed of having passed the SSC examination. While SSC fail is a qualification for appointment, a pass in SSC is a disqualification for that post. In the said disciplinary action, the enquiry officer submitted adverse reports stating that even though the petitioner had passed SSC as on the date of her interview, she has suppressed that fact and in the form filled up for appointment, she had declared to have failed in SSC, but by that time, she had already passed SSC and as such, this wilful suppression to get employment amounts to misconduct and basing on the said report, the disciplinary authority has held her of having committed misconduct mentioned above and inflicted the punishment of discharge from service and the result is this writ petition and the writ petition having been admitted, stay of operation of the impugned order of discharge was granted by this Court and the same is holding the field even on this day.

3. Mr. C. V. Mohan Reddy, the learned Counsel for the petitioner submits that there was no wilful suppression of any fact so as to warrant the inflictment of the harshest punishment of discharge from the post which results in deprivation of livelihood of herself and family members. He further submits that not only the fundamental right under Article 21 is violated, but also the equality clause enshrined under Articles 14 and 16. He cited the judicial precedents rendered by the Supreme Court in H.D. Singh Vs. Reserve Bank of India and Others, , Y. Srinivasa Rao Vs. J. Veeraiah and Others, , and also on an unreported judgment of the Division Bench of Orissa High Court in OJC No. 1456/84 in support of his arguments.

4. On the other hand, Mr. K. Srinivasa Murthy, the learned Counsel for the respondents stresses on the suppression on the factum of petitioner having passed SSC which is a disqualification under the rules relating to recruitment and the petitioner had wilfully stated to have failed in SSC only to secure job knowing fully well that a disclosure of a pass in SSC would disqualify her for holding the said post and as such, it is a clear case of misconduct and further submitted that in view of the same, there is no violation of either equality clause under Articles 14 or 16 or Article 21 of the Constitution as by following due procedure, the impugned order of discharge has been passed. In support of his argument he has cited the decisions in R.N. Nanjundappa Vs. T. Thimmiah and Another, , State of Andhra Pradesh and Another Vs. V. Sadanandam and Others, and J. Ranga Swamy Vs. Government of Andhra Pradesh and Others, and also the executive instructions issued by the State Bank of India contained in circular No. 72 relating to recruitment to the posts.

5. State Bank of India was constituted under State Bank of India Act, 1955. It is needless to mention that the State Bank of India is a "State" under Article 12 of the Indian Constitution. As such, employment herein is a public employment. The

above statute confers rule making power, but no rules have been framed relating to recruitment to services. The circular mentioned above governs the situation. The said power cannot be placed on the same pedestal like executive power vested in the State under Article 162 of Indian Constitution. Nevertheless in the absence of any statutory rule, the above circular governs the procedure relating to recruitment and other service conditions applicable to the bank staff. But like any other enactment, statutory rule, notification or order, the validity of the above circular hinges on its conforming to the fundamental rights guaranteed in Part-III of the Constitution. The relevant are the equality clause enshrined under Article 14 being the genus and Article 16 being its species and the right to life guaranteed under Article 21.

6. The petitioner had pleaded that she belongs to scheduled caste and that she has married and has got 4 children and husband who is unemployed and she has to feed the entire family out of the income of her employment as Sweeper-cum-Waterwoman in the service of the respondents. The above averments in the writ affidavit are not controverted. In these days of acute unemployment and the struggle for existence due to population explosion, it is difficult for the petitioner, particularly at this juncture, to get any alternative employment. As evident from the writ affidavit, she was aged 28 years at the time of filing of writ petition. Now she would be 35 years old. She is economically poor, downtrodden belonging to scheduled caste. Throwing her out of employment would surely deprive herself and members of her family of their livelihood. The expression "life" under Article 21 of the Constitution is not static and because of the judicial activism of the Supreme Court, its horizon is widened to a large extent. It is now settled that right to life enshrined in Article 21 means something more than survival or animal existence, it includes the right to live with human dignity, a right to have minimum subsistence allowance during suspension pending disciplinary action, includes all those aspects of life which to make a man's life meaningful, complete and worthliving. As right to life includes right to livelihood and as the public employment is the source of living, the same cannot be taken away by any procedure which is not reasonable, fair and just. By extending that, public employment cannot be denied by prescribing the qualification which is arbitrary and unreasonable. May be that the State may not be made liable to provide employment to each and every one. But, once posts are available and are notified, there is a fundamental right to apply for the same and the said fundamental right can be curtailed only by prescription of reasonable conditions. If the condition or requirement is unreasonable or arbitrary, per force, a person's right or livelihood falling within the ambit of right to life is deprived, as the said aspirant is totally excluded even from consideration. To test this again, one has to traverse to Articles 14 in general and 16 in particular and if the conditions or qualifications prescribed are reasonable and not arbitrary, then Article 21 cannot be pressed into service. On the other hand, the unreasonable condition or requirement will not only incur the wrath of Articles 14 and 16, but also the Article 21.

7. In the respondent-bank, the staff is divided as subordinate cadre and clerical cadre. Chapter 23 deals with recruitment to subordinate cadre. The subordinate cadre comprises of Messengers, Sweepers, Waterboy, Cash Coolie, Watchman, Armed Guards, Drivers, Electricians, Lift-cum-Helper, Diesel Mechanic, Lift Mechanic, Operator, Wireman-cum-Watchman etc. Waterboy necessarily includes Waterwoman. Para 23(2) prescribes eligibility criteria and presently we are concerned only with the non-messengeral posts like Sweeper, Waterboy etc. For these posts, there is no minimum qualification prescribed, but a candidate should be able to read and write. The language necessarily differs from State to State. However, there is an embargo stating that no candidate who has passed SSC/SSLC or its equivalent examination is entitled to appointment in the subordinate cadre. If the same is tested on the touchstone of Articles 14 and 16, and if it is found to be valid then as an inevitable corollary, this writ petition should fail or otherwise, it has to succeed. In *R. N. Najundappa v. T. Thimmaiah*, (supra), the Supreme Court held that if the appointment was illegal and in infraction of the rules, the same cannot be ratified at all. In *State of A. P. v. V. Sadanandam* (supra), it was held by the Supreme Court that the mode of recruitment and the category from which recruitment to a service should be made are all matters which are exclusively within the domain of the executive and it is not for the judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are all matters of policy decisions falling exclusively within the purview of the executive. In *J. Rangaswamy v. Government of A. P.* (supra), the Supreme Court was dealing with an appointment to the post of Professor in Radiological Physics for which doctorate in Physics was prescribed as a qualification and repelling the contention of the petitioner therein that diploma in Radiological Physics was more than sufficient, the Supreme Court held that the relevance of the qualifications is the consideration for the authorities concerned and not for the Courts.

8. None of the above decisions are pertinent to the point in question as the question here is as to whether there is infraction of the equality clause enshrined under Articles 14 and 16 of the Constitution of India.

9. In *The General Manager, Southern Railway Vs. Rangachari*, it was held that the expression "matter relating to employment or appointment" in Article 16 would include all matters in relation to employment, both prior and subsequent, such as, initial appointment, conditions of service pertaining to the office to which the appointment is made including the age of superannuation. It was further held that this guarantee under Article 16 is violated where the Government imposes an arbitrary ban upon the appointment or re-appointment of a particular individual in the sense that even though he applies for a post, his application will not be considered on the merits and as such, has no relation to his suitability to the appointment to that post. In *Delhi Transport Corporation v. D.T.P. Mazdoor Congress*, 1991 I CLR 152 it was held by the Supreme Court that service regulations should be reasonable, fair and just and not arbitrary, fanciful

and unjust. It was also held that the right to life includes right to livelihood, that the right to livelihood cannot hang on to the fancies of individuals in authority and that public employment is not a bounty from them nor can its survival be at their mercy and that the income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental. In *H. D. Singh v. Reserve Bank of India*, (supra). considering a similar question where better qualification was treated as a disqualification, the Supreme Court in a strongly worded judgment repelled the said contention stating "It has disturbed us to find that the appellant was denied job because he has become better qualified. Perhaps, the Reserve Bank of India and its officers are not aware of the grave unemployment problem facing the youth of this country and also not aware of the fact that graduates, both boys and girls, sweep out roads and post-graduates in hundred, if not in thousands, apply for the posts of peons". Similar is the decision of the Supreme Court in *Y. Srinivasa Rao v. J. Veeraiah*, (supra) where better qualification was disqualification under the rules relating to the appointment of a fair price shop dealer. In the policy framed by the Government preference was given to less educated persons. Such policy was held to be arbitrary and violative of Article 14 of the Constitution of India and the Supreme Court pounced on the said policy holding.

"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 classes, 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 efficiency should be rejected and a dim witted fellow should be selected. This is an absurd situation".

Toeing the same line is the judgment rendered by a Division Bench of Orissa High Court in OJC No. 1456/84. Dealing with exactly similar contention where the petitioner therein had passed 10th Class which was a disqualification for recruitment to the post of an Attender in the State Bank of India which is the respondent in the instant case and considering the same circular, the Orissa High Court held that such action was arbitrary and the termination of the petitioner was set aside.

10. Under the above circular for recruitment to clerical cadre, a pass in 10th Class (SSC/SSLC) is the basic qualification, but a mere pass will not do. Only a first division pass is the qualification and a pass in second division or 3rd division in SSC/SSLC is a disqualification for applying to the post of a clerical cadre. It is astonishing to note that a pass in second or third division in SSC/SSLC which is a disqualification to apply to the post of clerical cadre can also be a disqualification

for holding the subordinate cadre. Indisputably, the respondents are entitled to lay down qualifications for appointment to a post, but the conditions or requisites so laid down must have reasonable relation to the suitability for a post or for employment in the public service in general, namely, in the interest of discipline. There should be nexus for the object to be achieved. The prescription of qualification should be rational. If the argument of the respondents that not only the minimum qualification, but the maximum qualification can be prescribed to the post of subordinate cadre is accepted for the jobs, particularly, that of Attender, Sweeper, Waterwoman etc., which are menial, it can only be stretched to a point where the qualification of a candidate entitled him to a dignified post like clerical cadre. If such a provision is made, then certainly, equality clause is not violated as the petitioner would not have been deprived to apply to a clerical cadre post. But the petitioner was precluded from applying to a clerical cadre post, as she has passed SSC in 3rd Division. If she was not entitled to be considered to a clerical cadre post, certainly, she was entitled to apply and to be considered for the subordinate cadre. There is no reasonableness in denying her to apply for the posts both in the subordinate cadre and the clerical cadre. The reasonableness can be stretched upto the point where the petitioner was eligible to apply for a clerical cadre post and then disqualifying her because of higher qualification to apply for a lower menial post as the same could be rational. But, in the instant case, if the above circular is upheld, the petitioner would not be entitled either to a subordinate cadre or a clerical cadre. Such an action will be totally arbitrary, unreasonable and unfair and is a clear infraction of Articles 14 in general and 16 in particular and necessarily, Article 21 also comes into play.

11. In view of what is stated supra, I hold that the impugned order is violative of Articles 14, 16 and 21 of the Constitution of India and is accordingly set aside.

12. The writ petition is allowed. No costs.