
(2012) 03 MP CK 0152
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 125 of 2012

M.P. Public Service Commission

APPELLANT

Vs

Dr. Sandeepa Malhotra and Another

RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:

Citation : (2012) 3 JLJ 104

Hon'ble Judges : S.K. Gangele, J;Brij Kishore Dube, J

Bench : Division Bench

Advocate : R.D. Jain with S.K. Jain, for the Appellant; Ankur Modi for Respondent No. 1 and Vivek Khedkar, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

Gangele, J.—The appellant has filed this appeal against the order dated 7.2.2012 passed by the learned Single Judge in Writ Petition No. 6485/11. M.P. Public Service Commission issued an advertisement on 19.1.2009 inviting applications for selection to the post of Professor of various subjects, one of the subject was Economics. The respondent No. 1 applied for appointment to the post of Professor (Economies). That was rejected vide order dated 21st September 2011 on the ground that the respondent No. 1 did not have the requisite qualification for appointment to the post of Professor (Economies) neither she had 10 years" experience of teaching. She challenged the aforesaid order of rejection of her candidature in the writ petition on the ground that in accordance with the advertisement, the qualification to the post of Professor (Economics) was Ph.D. in concerned subject. The appellant had Ph.D. degree in Master in Business Economics and she had 10 years teaching experience, hence her application had wrongly been rejected by the Public Service Commission. The learned Single Judge upheld the contention of the respondent No. 1 after holding that the respondent had essential qualification of Ph.D. in economics and she had 10 years experience of teaching also. Hence, rejection of her candidature was illegal.

2. Learned senior counsel appearing on behalf of the appellant M.P. Public

Service Commission has contended that the respondent No. 1 did not have requisite qualification to the post of Professor (Economics). She also did not have the qualification of 10 years experience, hence, her application was rightly rejected by the Public Service Commission. Learned senior counsel further contended that the case of the appellant was examined by an expert committee in regard to qualification of the appellant and the expert committee in its opinion observed that the appellant did not have the requisite qualification for the post. Hence, the Court had no power and authority to negativate the findings of the expert committee without any cogent reasons. The learned counsel further submitted that the appellant did not have the requisite experience which was required for the post. In support of his contentions, learned senior counsel relied on the following judgments :

1. Bihar Public Service Commission and Others Vs. Kamini and Others,
2. Dalpat v. Dr. B.S. Mahajan [(2006)9 SCC 667];
3. Sushma Suri Vs. Govt. of National Capital Territory of Delhi and Another,
4. Suresh Vs. Yeotmal Dist. Central Co-op. Bank Ltd. and Another,

3. Contrary to this, learned counsel for the respondent No. 1 contended that the respondent No. 1 had qualification of Ph.D. in Economics. It was awarded to her by Jiwaji University. Hence, she had requisite qualification for the post of Professor (Economics). The learned counsel further submitted that the appellant submitted certificates in regard to her teaching experience and that is in accordance with the conditions of the recruitment rules and the UGC regulations. The expert committee did not consider the case of the appellant objectively, hence, order passed by the learned Single Judge is in accordance with law.

4. Rule 8 of the M.P. Higher Service (Collegiate Branch) Recruitment Rules, 1990 prescribes minimum qualification for appointment. Schedule III of rule 8 prescribes qualification for the post of Professor which is as under :

5. UGC has framed regulations in regard to minimum qualifications for appointment of teachers and other academic staff in universities and colleges and measures for the maintenance of standards in higher education, 2010. Relevant regulation is as under :

3.2.0 The minimum qualifications required for the post of Assistant Professors, Associate Professors, Professors, Principles, Assistant Directors of Physical Education and Sports, Deputy Directors of Physical Education and Sports, Directors of Physical Education and Sports, Assistant Librarians, Deputy Librarians, Librarians will be those as prescribed by the UGC in these Regulations.

In the aforesaid regulations, following educational qualification is prescribed for direct recruitment to the post of Professor :

A(i) An eminent scholar with Ph.D. qualification in the concerned/ allied/relevant discipline and published work of high quality, actively engaged in research with

evidence of published work with a minimum of 10 publications as books and/or research/policy papers in indexed/ ISBN/ISSN numbered journals and/or ISBN/ISSN numbered books and the University developed ISBN/ISSN numbered list of journals/ books hosted in the website of the concerned University;

(ii) A minimum of 10 years of teaching experience in research at the University/ National Level Institutions/Industries, including experience of guiding candidates for research at doctoral level;

(iii) Contribution to educational innovation, design of new curricula and courses, and technology mediated teaching learning process;

(iv) A minimum score as stipulated in the Academic Performance Indicator (API) based on Performance Based Appraisal System (PBAS), set out in this Regulation in Appendix III.

OR

An outstanding professional, with established reputation in the relevant field who has made significant contribution to knowledge.

6. From the aforesaid statutory qualification, it is clear that a candidate has to have Ph.D. in the concerned subject and also 10 years teaching experience in university/college.

7. The respondent No. 1 obtained master degree in Business Economics in first class from Jiwaji University in the year 1998. Thereafter, she was awarded Ph.D. in Economic subject by the Jiwaji University. The university while awarding the Ph.D. degree to the appellant has mentioned as under:

This is to certify that Sandeepa Malhotra has been declared eligible for the award of Doctorate of Philosophy in this University in 2003 in this Economics subject is admitted to the Degree of Doctor of Philosophy.

Her thesis is on a study of various quality excepts with reference to Industries of Gwalior and Chambal Regions during 1999.

8. From the certificate filed by respondent No. 1 herself, it is clear that she passed the post-graduate examination and obtained degree of Master in Business Economics. Thereafter, she enrolled herself for Ph.D. and her subject of the thesis in Ph.D. was "A study of various quality excepts with reference to Industries of Gwalior and Chambal Regions during 1999". As per the regulation of the university, a person must have Ph.D. for the purpose of appointment to the post of Professor. The respondent No. 1 applied for appointment to the post of Professor (Economics). Hence, she must have had the qualification of Master Degree in Economics subject. Respondent No. 1 obtained her Master Degree in the subject of Business Economics.

9. Along with the written synopsis, syllabus of M.A. (Economics) of Jiwaji University, Gwalior of First to Fourth Semesters has been filed and in accordance

with the aforesaid syllabus and scheme of examination, the course consist of following papers :

Semester I:

Micro Economic Analysis I

Macro Economics

Public Economics

Quantitive Techniques

Semester II:

Micro Economic Analysis II

Monetary Economics and Banking

Research Methods and Statistical

International Economics

Semester III:

Economics of Growth and Development

Environmental Economics

One Optional paper from Group A

One Optional paper from Group A

(Other than chosen earlier)

Semester IV:

Indian Economy

Indian Foreign Trade and International Institutions

Choose corresponding paper from Group B of the paper chosen from Group A in III Semester

Choose corresponding paper from Group B of the paper chosen from Group A in III Semester."

Similarly, the synopsis of course structure of M.Bs. (Business Economics) had also been filed which is as under :

First Semester :

Management Process

Business Statistics

Business Legislations

Accounting for Managers

Managerial Economics

Economics of Industries

General Viva-Voce

Second Semester :

Marketing Management

Human Resource Management

Financial Management

Organisation Behaviour

Production Management

National Economics

General Viva-Voce

Third Semester :

Business Policy and Strategic Management

Economics of Decision Making

Elective Paper I (any one Group)

Elective Paper II (any one Group)

Elective Paper III (any one Group)

Elective Paper IV (any one Group)

(Two Elective Paper from each of two selected areas of specialisation)

Training Report and Viva-Voce

General Viva-Voce

Fourth Semester :

Computer and Management Information System

Quality Management

Elective Paper I (any one Group)

Elective Paper II (any one Group)

Elective Paper III (any one Group)

Elective Paper IV (any one Group)

(Two Elective Paper from each of two selected areas of specialisation)

Project Report and Viva-Voce

General Viva-Voce.

10. From the perusal of the aforesaid course structures of two postgraduate courses, i.e., M.B.A. (Business Economics) and M.A. in Economics, it is clear that both the courses are quite different. The matter was also referred by the Public Service Commission in regard to the eligibility of the respondent No. 1 for appointment to the post of Professor (Economics) to an expert committee comprising of two experts of the subject namely Dr. Aruna Kusumakar, Professor Economics, Mata Jibabai, Government Post-Graduate Girls College, Moti Tabela, Indore and Dr. Ganesh Kavadiya, Professor Economics, Devi Ahilya Bai Vishwavidyalaya, Indore. Both the experts have given the following opinion, which was filed as Annexure R-2-1 before the writ Court along with the return by the appellant M.P. Public Service Commission:

11. From the opinion of the experts, it is clear that respondent No. 1 was not found having minimum qualification to the post.

12. Hon'ble the Supreme Court, in Bihar Public Service Commission and Others Vs. Kamini and Others, and in Municipal Board, Bareilly Vs. Bharat Oil Company and Others, , in regard to the power of the Court to interfere with the opinion of the experts, has held as under :

Bihar Public Service Commission (supra) :

8. Again, it is well settled that in the field of education, a Court of law cannot act as an expert. Normally, therefore, whether or not a student/candidate possesses requisite qualifications, should better be left to educational institutions (vide University of Mysore v. CD. Govind Rao). This is particularly so when it is supported by an Expert Committee. The Expert Committee considered the matter and observed that a person can be said to be Honours in the subject if at the graduate level, he/she studies such subject as the principal subject having eight papers and not a subsidiary, optional or side subject having two papers. Such a decision, in our judgment, cannot be termed arbitrary or otherwise objectionable. The learned Single Judge, in our opinion, was, therefore, right in dismissing the petition relying upon the report of the Committee and in upholding the objection of the Commission. The Division Bench was in error in ignoring the well-considered report of the Expert Committee and in setting aside the decision of the learned Single Judge. The Division Bench, while allowing the appeal, observed that the "litmus test" was the admission granted to the first respondent by the Central Institute of Fisheries Education, Mumbai. According to the Division Bench, if the first respondent did not possess Bachelor of Science degree with Zoology, the Institute would not have admitted her to the said course. The Division Bench observed that not only the first respondent was admitted to the said course, she had passed it with "flying colours". In our opinion, the Division Bench was not right in applying "litmus test" of admission of the first respondent by the Central Institute of Fisheries Education, Mumbai. The controversy before

the Court was whether the first respondent was eligible for the post of District Fisheries Officer, Class II. The correct test, therefore, was not admission by the Mumbai Institution. If the requirement was of Honours in B.Sc. with Zoology, and if the first respondent had cleared B.Sc. Honours with Chemistry, it could not be said that she was eligible to the post having requisite educational qualifications. By not treating her eligible, therefore, the Commission had not committed any illegality.

Municipal Board, Bareilly (supra) :

12. It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the Court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasize that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the experience on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its jurisdiction.

13. In regard to her teaching experience, the respondent No. 1 submitted a certificate issued by Dr. S.K. Shukla. He certified that respondent has taught to students of M.B.A. (Business Economics/M.A. (Economics) on lecture basis payment between February 2001 to June 2011 in different semesters. In the aforesaid certificate, no details have been mentioned that the appellant had delivered how many lectures and whether she was regular or not. The certificate is general in nature. On the basis of the aforesaid certificate, it cannot be held that the appellant had 10 years' teaching experience. The aforesaid point has also been considered by the experts. In this view of the matter, in our opinion, the decision of the appellant M.P.,. Public Service Commission that respondent No. 1 had no requisite qualification at the relevant time for appointment to the post of Professor (Economics) is in accordance with law. Consequently, the appeal filed by the appellant is hereby allowed. The impugned judgment dated 7.2.2012 passed by the learned Single Judge in Writ Petition No. 6485/11 is hereby set aside. No order as to costs.