
(2007) 08 KL CK 0011

In the High Court Of Kerala

Case No : Writ Appeal No"s. 611, 730 and 956 of 2007 (B)

Mr. Rathish J. Babu and Others

APPELLANT

Vs

The Kerala State Public Service and Others

RESPONDENT

Date of Decision : 18-08-2007

Acts Referred:

Kerala State and Subordinate Services Rules, 1958 — Rule 13

Citation : (2007) 4 ILR (Ker) 139 : (2007) 3 KLJ 529

Hon'ble Judges : K.S. Radhakrishnan, J;Antony Dominic, J

Bench : Division Bench

Advocate : Devan Ramachandran, for the Appellant; K.K. Babu, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—Kerala Public Service Commission, hereinafter called P.S.C, published notification dated 12.10.2004 inviting applications from eligible candidates for appointment to the post of Vocational Teachers in Printing and Technology in the Department of Kerala Vocational Higher Secondary School Education. Method of recruitment is by transfer or by direct recruitment. Qualification prescribed is Degree in Printing Technology with not less than 60% marks from any of the Universities in Kerala or equivalent qualification. In pursuance of the notification, petitioners in W.P.C. No. 32170 of 2005 and petitioners 1 and 2 in W.P.C. No. 14825 of 2006 submitted their applications. Petitioners in W.P.C. No. 32170 of 2005 are holders of Degree of Masters of Applied Sciences in Publishing Science and Printing Technology (M.App.Sc) from Mahatma Gandhi University, Kottayam while petitioners 1 and 2 in W.P.C. No. 14825 of 2006 are holders of B.Tech degree in Printing Technology. P.S.C issued memo dated 15.06.2005 to the petitioners in W.P.C. No. 32170 of 2005 directing them to produce equivalency certificate. Petitioners then produced Ext. P3 certificate dated 21.06.2005 from the Mahatma Gandhi University which offered degree to the petitioners stating as follows:

This is to certify that the Master of Applied Science (Publishing Science and Printing Technology) Degree holders can be considered for selection as Vocational Teacher in Printing Technology as it is a professional PG Course, a unique combination of Publishing and Printing designed to cater to the commercial and technical demands with a syllabus covering all major portions.

Thereafter petitioners did not hear anything from the P.S.C, but on enquiry came to know that their certificates were not accepted and interview was scheduled to be held on 30.11.2005. Petitioners were also not informed of the date of the interview. In such circumstances they have approached this Court by filing the present writ petition seeking a direction to the P.S.C to entertain their application for selection to the post of Vocational Teachers in Printing Technology and also for a declaration that the Post-graduate degree of M. App. Sc of Mahatma Gandhi University is equivalent to the prescribed qualification under the notification issued by the P.S.C and also for other consequential reliefs.

2. P.S.C filed a counter affidavit on 20.11.2005 stating as follows:

In this context it is relevant to note that in terms of the General Rules the qualification for a post should be prescribed in the Special Rules or in the executive orders governing the service and in the instant case the Special Rules prescribe specific qualification. In terms of Rule 13 of the General Rules no personnel shall be eligible for appointment to any service, class, category or grade or any post borne on the cadre thereof unless he possess the qualification prescribed in the Special Rules. The declaration of other qualifications as equivalent to that of the prescribed qualification is to be made by the State Government or by the appointing authority with the approval of the State Government. In the instant case the Commission has not considered the qualification possessed by the petitioners as equivalent to the prescribed qualification or for that matter there is any order issued by the State Government.

It was noticed that P.S.C has not taken any decision as to whether Master of Applied Sciences is equivalent to a degree prescribed in the Special Rules, in turn they directed the petitioners to produce equivalency certificate. Further they have taken up the stand before this Court that declaration of that qualification as equivalent to that prescribed has to be made by the State Government or by the appointing authority with the approval of the State Government. In view of the stand taken by the P.S.C, after hearing the petitioners, P.S.C as well as the State Government, learned judge of this Court passed a detailed interim order on 28.11.2005 stating as follows:

Government will take a decision on the issue as to whether the degree of M.App.Sc (Publishing Science and Printing Technology) offered by the Mahatma Gandhi University is equivalent to the degree in Printing Technology required as per the P.S.C notification in this case within a maximum period of two months from the date of receipt of this order. In the meanwhile, the P.S.C shall allow the

petitioners to take part in the interview to be conducted by the P.S.C from 30th instant for the purpose of selection to the post of Vocational Teachers in Printing Technology in Vocational Higher Secondary Institutions provisionally and subject to the result of this writ petition. All the petitioners will take notice that further relief, if any, to them in this writ petition will depend on the decision to be taken by the Government on the basis of the order above and that mere participation in the interview by itself will not confer any rights or claims over them.

Government after considering all the aspects of the matter as directed by this Court passed an order, G.O.(Ms) No. 07/06/G1.Edn dated 05.01.2006 (Ext P7) stating that Master of Applied Science in Publishing Science and Printing Technology is an alternate qualification to the existing one with effect from 12.03.2004 subject to amendment of Special Rules. Operative portion of the government order reads as follows:

Government have already examined the issue on the request of the holders of Master of Applied Science in Publishing Science and Printing Technology from the Mahatma Gandhi University. The meeting of the Curriculum Committee for the Vocational Higher Secondary Education held on 2.3.2005 recommended to Government, among other things, to modify the qualification prescribed for the post of Vocational Teacher in Printing Technology with not less than 50% marks awarded from any of the Universities in Kerala or equivalent as an alternate qualification to the existing one. The process of amending the Special Rules incorporating the suggestions of the Curriculum Committee and Subject Committee has already started. Government have to follow the procedures stipulated for the formulation or amending the Statutory Rules. Consultation with Public Service Commission and placing before Subject Committee is mandatory as per the procedures. Under these circumstances it may not be possible to finalise the amendment within the time limit prescribed by the Hon'ble High Court of Kerala.

Government have examined the matter in detail. Government have already initiated action to amend the Special Rules modifying the qualification prescribed for appointment to the post of Vocational Teacher in Printing Technology by incorporating Master of Applied Science in Publishing Science and Printing Technology from any of the Universities in Kerala or equivalent as an alternate qualification to the existing one.

In the circumstances considering the direction of the Hon'ble Court and the request of the petitioners Government are pleased to order that the qualifications prescribed for the post of Vocational Teacher in Printing Technology be modified by incorporating Master of Applied Science in Publishing Science and Printing Technology with not less than 50% marks awarded from any of the Universities in Kerala or equivalent as an alternate qualification to the existing one with effect from 12.3.2004 subject to amendment of Special Rules. Formal statutory orders amending the Special Rules in this regard will be issued in due course.

Above mentioned order should have set at rest the controversy since P.S.C as well as the petitioners wanted the Government to examine the question as to whether qualification possessed by them is equivalent to the qualification prescribed especially when the P.S.C by Ext. P2 memo directed the petitioners to produce the equivalency certificate. Further in view of the interim order passed by this Court petitioners were also interviewed and the results of the petitioners were withheld. Petitioners have taken up the stand that going by Ext.P7 order passed by the Government they were fully qualified and there was no difficulty in publishing their results as well. However, P.S.C later published a rank list in which petitioners 1 and 2 in W.P.C. No. 14825 of 2006 were shown as 1 and 2, however the results of the petitioners in W.P.C. No, 32170 of 2005 were withheld. On enquiry petitioners came to know that the same was withheld since the Government had not issued any equivalency certificate. In such circumstances, petitioners had filed I.A.No 3378 of 2006 before this Court seeking a direction to the Government to consider the question of equivalency of the degree of M.App.Sc with B.Sc (Printing Technology) for the purpose of selection and appointment to the post of Vocational Teacher in Printing Technology and to pass appropriate orders. Learned single judge of this Court passed an interim order on 02.03.2006 granting such a direction. In pursuance to that direction Government issued order G.O. (Ms) No. 1832/06/Gl.Edn dated 05.05.2006 stating that M.App.Sc in Publishing Science and Printing Technology degree as an equivalent qualification to the B.Sc Printing Technology Degree for the purpose of selection and appointment to the post of Vocational Teacher in Printing Technology in Vocational Higher Secondary Education Department. Going by Ext. P2 memo issued by the P.S.C this would have satisfied the query raised by them but P.S.C filed a detailed counter affidavit on 25.07.2006 stating as follows:

It is submitted that the petitioners have not amended the writ petition or modified the prayer sought for in the writ petition. The Commission by Ext.P2 memo dated 15.06.2005 directed the petitioners to produce equivalency certificate within 10 days of the receipt of the memo. The petitioners ought to have submitted the reply within the time prescribed by the Commission. The petitioners have failed to produce the equivalency certificate and hence their applications were rejected. Further, based on an equivalency order dated 05.01.2006 the petitioners cannot content that the action of the Commission in rejecting the application is not in order, or it is any way vitiated.

Further it is also stated in the counter affidavit as follows:

It is submitted that recognition of a degree cannot be for a specific post or particular purpose. In terms of the Rules when the selection is entrusted to the Public Service Commission the Government cannot specify the equivalency. It is submitted that the prescription of qualification to a post should be in consultation with the Commission, and it is the prerogative of the Commission to prescribe necessary qualification for selection to the post. In the instant case the Government themselves referring to the earlier orders is holding that subject to

amendment to the rules such an equivalency is declared. It is submitted that to declare equivalency of qualification is a matter which requires due application of mind and after following appropriate procedures and it should not be a hurried action as done in the case at hand.

Commission also referred to Rule 13 (b)(ii) of the K.S. & S.S.R and submitted that it is for the P.S.C to decide as to the equivalency of the qualification. Counsel for the P.S.C placed reliance on the decisions of this Court in *Sobha Menon v. P.S.C.* 1994 (1) KLT 986 *Latha v. P.S.C.* 1997 (2) KLT 624 and *Sunu v. Union of India* 2000 (2) KLT 747.

3. We may point out that there is nothing to show that P.S.C has ever invoked Rule 13 of the Rules so far as this case is concerned nor have they addressed themselves to the question whether Master of Applied Sciences in Publishing Science and Printing Technology is a qualification equivalent to the qualification prescribed in the Special Rules, but left the question to be decided by the Government. Consequently this Court directed the Government to examine question of equivalency. Government therefore passed an order dated 5.1.2006 followed by another order dated 5.5.2006 declaring that M.App.Sc in Publishing and Printing Technology degree as an equivalent qualification to B.Sc Printing Technology degree for selection and appointment to the post of Vocational Teacher in Printing Technology in the Vocational Higher Secondary Education Department. In the facts and circumstances of this case, we fail to see why the stand taken by the Government shall not be accepted by the P.S.C.

4. Government is well aware of the situation prevailing in this State. Though the prescribed qualification is a degree in printing technology from any of the Universities in Kerala, no University other than Calicut University is offering a degree course. The only course offered is by the Mahatma Gandhi University which is a Post-graduate course in Publishing and Printing Technology from where the petitioners have passed out. Calicut University has offered a degree course but none of them could apply since they are below the age of 24. Further there is also a B.Tech course which is just started. Resultantly it is stated that there is not even one candidate with degree in Printing Technology obtained from Kerala who is eligible to apply for the post. These factors might have weighed with the Government while they have decided the question of equivalency of qualification. Further it was pointed out that two persons were included in the rank list and they did not possess the qualification of degree in Printing Technology, but had B. Tech from a University outside the State of Kerala. P.S.C however entertained their applications since they are having B.Tech degree treating the same as equivalent qualification. We have our own doubts as to whether candidates with B. Tech could be considered for the post notified when the qualification prescribed is a degree which is a Bachelor's degree. Reference may be made to the various qualifications prescribed. Vocational Teacher in Printing Technology is governed by the Kerala Vocational Higher Secondary Education Special Rules, 2004. Serial number 7 deals with qualification for Vocational Teacher in Printing

Technology which is extracted hereunder.

(7) Vocational Teacher By transfer or Degree in Printing Technology in Printing By direct with not less than 60% marks Technology recruitment from any of the Universities (Pre-press in Kerala or an equivalent Operation) qualification

xx xx xx xx xx xx xx (12)Vocational Teacher By transfer or B. Tech in Computer Science in Computer Science By direct with not less than 60% marks recruitment awarded by any of the Universities in Kerala or an equivalent qualification. OR Master of Computer Application from any of the Universities in Kerala or a qualification recognised as equivalent thereto with graduation in Engineering/Physics/Mathematics/ Computer Science/Computer application. OR First Class M.Sc (Computer Science) with not less than 50% marks from any of the Universities in Kerala or an equivalent qualification with graduation in Engineering/Physics/ Mathematics/Computer Science/ Computer application.

For Serial number 12 - Vocational Teacher in Computer Science we have extracted the qualification prescribed for the post also for comparison. For the post of Vocational Teacher in Computer Application the qualification prescribed is B.Tech in Computer Science or Master's degree in Computer Application or M.Sc (Computer Science) from any of the Universities in Kerala or a qualification recognised as equivalent thereto with graduation in Engineering Etc. Again for serial number 13 - Vocational Teacher in Computer Application the qualification prescribed are:

B. Tech in Computer Science with not less than 60% marks from any of the Universities in Kerala or a qualification recognised as equivalent thereto.

OR

Master of Computer Application from any of the Universities in Kerala or equivalent qualification with graduation in Engineering/ Physics/Mathematics/ Computer Science/Computer application

OR

M.Sc (Computer Science) with not less than 50% marks from any of the Universities in Kerala or a qualification recognised as equivalent thereto with graduation in Engineering/Physics/ Mathematics/Computer Science/Computer application.

It is evident from the Special Rules itself that wherever the rule making authority wanted B. Tech it has been specifically stated so and wherever degree is the qualification it is specifically stated so, so also the Master's Degree. B.Tech is therefore treated as a separate qualification. Position is reflected in the P.S.C notification dated 12.10.2004 itself. Strictly speaking we have our own doubts whether B.Tech is the qualification prescribed in the Special Rules or in the notification, for the post in question. However, it is unnecessary to labour much on that point since there is no challenge with regard to the application submitted

by petitioners 1 and 2 in W.P.C 14825 of 2006, B.Tech holders. It is in the above circumstances that this Court felt that Government should examine as to whether qualification possessed by the petitioners in W.P.C No. 32170 of 2005 is an equivalent qualification prescribed under the Rules and Government found in favour of the petitioners and in the absence of any decision taken by the P.S.C invoking Rule 13, on the question of equivalency, we are inclined to direct the P.S.C to accept the decision of the Government that the qualification possessed by the petitioners is equivalent to the qualification notified. Further we are also informed that steps are being taken by the Government to amend the Special Rules with retrospective effect from 12.03.2004.

5. In such circumstances, we are inclined to allow W.A. Nos. 611 and 730 of 2007 and set aside the judgment of the learned single judge and direct the P.S.C to treat the petitioners eligible to apply for the post and publish the rank list on the basis of their performance in the interview. In view of the above, W.A. No. 956 of 2007 would also stand allowed. Judgment of the learned single judge quashing Exts. P3 and P4 in W.P.C. No. 14825 of 2006 (Exts. P7 and P9 in W.P.C. 32170 of 2005) would stand set aside.