
(2015) 03 MEG CK 0010
In the Meghalaya High Court
Case No : Writ Petition (C) No. 47/2015

Pooja Agarwal and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 14, 15, 16, 16

Citation : (2015) 3 GLT 342

Hon'ble Judges : T. Nandakumar Singh, J.

Bench : Single Bench

Advocate : R. Deb Nath, CGC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

T. Nandakumar Singh, J.—By this writ petition, the petitioners are assailing the essential qualification for the post of Executive Trainee (Law) mentioned in the advertisement No. CC/01/2015 dated 11.03.2015 on the ground of violation the rights of the petitioners guaranteed under Article 14 of the Constitution of India i.e. Equality before law and equality of opportunity in matters of public employment under Article 16 of the Constitution of India. The relevant portions of the said advertisement indicating the eligibility criteria which are now impugning in the present writ petition are quoted hereunder:-

"(Advt. No. CC/01/2015 dtd. 11.03.2015)

Recruitment of Executive Trainee (Law) - 2015 through CLAT 2015

POWERGRID, the Central Transmission Utility (CTU) of India and a Navratna Public Sector Enterprise under the Ministry of Power, Govt. of India is engaged in power transmission business with the mandate for planning, co-ordination, supervision and control over complete inter-State transmission system and operation of National and Regional Power Grids. POWERGRID operates around 1,13,688 circuit kms of transmission lines along with 189 Sub-stations (as on 31.01.2015) and wheels about 50% of total power generated in the country

through its transmission network. POWERGRID, with its strong in-house expertise in various facets of Transmission, Sub-Transmission, Distribution and Telecom sectors also offers consultancy services at National and International level. POWERGRID has been making profit since inception, having Gross turnover of Rs. 15,230 Crore and Net Profit of Rs. 4497 Crore (FY: 2013-14).

To take the growth curve to further heights, POWERGRID is looking for Bright, Committed and energetic LAW GRADUATES to join its fold as EXECUTIVE TRAINEE (LAW).

VACANCIES

*Includes backlog vacancy

UPPER AGE LIMIT

28 years as on 31.12.2014

ESSENTIAL QUALIFICATION

Three years full time LLB or Five years integrated law course with not less than 60% marks or equivalent CGPA as per the formula provided by the Institute/ University.

Final Year/Semester students of academic session 2014-15, who expect their results by 14.08.2015 are also eligible to apply, provided they have obtained minimum 60% marks or equivalent CGPA in aggregate of all semesters/years up to pre-final examination."

2. Heard the petitioners in person and also Mr. R Deb Nath, learned CGC appearing for the respondents.

3. The factual matrix of the petitioners' case sufficient for deciding the matter in issue in the present writ petition is briefly recapitulated. All the petitioners are the students of North Eastern Hill University pursuing B.A. LL.B. (Hons.) five years integrated course and currently in the final semester. The respondent No. 2 which is the Public Sector Undertaking and Govt. Owned Cooperation issued an advertisement being No. No. CC/01/2015 dated 11.03.2015 that there is a need for bright, committed and energetic law graduates to join its fold as Executive Trainee (Law). As stated above, the eligibility criteria for the said post mentioned in the said advertisement dated 11.03.2015 is that "final year/semester students of academic session 2014-2015, who expect their results by 14.08.2015 are also eligible to apply, provided they have obtained minimum 60% marks or equivalent CGPA in aggregate of all semesters/years up to pre-final examination". Ms. Pooja strenuously contended that there is no justification for prescribing the minimum 60% aggregate marks for the candidates for the post of Executive Trainee (Law) inasmuch as for some other posts like officers in the Indian Army, the eligibility criteria is only 55% aggregate marks in LL.B. Degree (three years). Ms. Pooja has drawn the attention of this Court to the advertisement issued by the Indian Army for the Short Service Commission in the Indian Army for Judge Advocate

General Department wherein the eligibility criteria was only 55% aggregate marks in LL.B. Degree (three years professional after graduation or five years after 10+2 examination).

4. The appointing authority is the one who is to appoint its employee for a certain type of service or for a certain post. Therefore, appointing authority is to decide the requirement of service of a particular employee or a particular post and what type of service would be required by the appointing authority. Therefore, it is the appointing authority who is to decide the eligibility criteria for their employees. Over and above, it is the policy matter of the Appointing Authority. The writ court has no expertise to decide the requirement of service or the eligibility criteria of the type of post required by the appointing authority. The Apex Court in *K. Jagadeesan Vs. Union of India and others*, clearly held that it is for the Govt. to decide what qualification was required for the promotion to the post of Director and unless that requirement was totally irrelevant or unreasonable, it could not be said to be bad in law. It is fairly well settled law that the writ court can interfere with the qualification and essential requirement prescribed by the appointing authority for a particular post only when the qualification and essential requirement prescribed by the authority has no nexus with the object to be achieved. On bare perusal of the said advertisement dated 11.03.2015 and the particular of the job, this Court cannot come to the conclusion that prescribing good academic career for the candidates for the post of Executive Trainee (Law) has no nexus with the object to be achieved. Para 8 of the AIR in *Jagadeesan's* case (Supra) reads as follows:-

"8.It is for the Government to decide what qualification was required for the promotion to the post of Director (M.E.) and unless that requirement was totally irrelevant and unreasonable, it could not be said to be bad in law. In this regard, we agree with the reasoning and conclusions of the Tribunal." 5. The Apex Court in *Chandigarh Administration and another Vs. Manpreet Singh and others*, held that the High Court is not the appellate authority of the orders of the appointing authority prescribing the eligibility criteria for a particular post/or the rules prescribing the eligibility criteria for a particular post. However, the Apex Court further held that the High Court while acting under Article 226 of the Constitution is only exercising jurisdiction supervisory in nature. Paras 20 and 21 of the SCC in *Manpreet Singh's* case (Supra) read as follows:-

"20. Though the article itself does not contain any restrictive words, the Courts have, over the years, evolved certain self-constraints though, we are not bound by the procedural technicalities governing these high prerogative writs in English law. As observed by a Constitution Bench in *T.C. Basappa Vs. T. Nagappa and Another*,

"In view of the express provisions in our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion, expressed in particular cases by English Judges. We can make an order or issue a writ in the

nature of certiorari in all appropriate cases and in appropriate manner, so long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writ in English law." 21. While this is not the place to delve into or detail the self-constraints to be observed by the Courts while exercising the jurisdiction under Article 226, one of them, which is relevant herein, is beyond dispute viz. while acting under Article 226, the High Court does not sit and/or act as an Appellate Authority over the orders/actions of the Subordinate Authorities/Tribunals. Its jurisdiction is supervisory in nature. One of the main objectives of this jurisdiction is to keep the government and several other authorities and Tribunals within the bounds of their respective jurisdiction. The High Court must ensure that while performing this function it does not overstep the well-recognized bounds of its own jurisdiction."

6. The Apex Court also held in V.K. Sood Vs. Secretary, Civil Aviation and others, that it is for the expert body to decide the eligibility criteria for a particular post and the Supreme Court does not have the assistance of experts to prescribe the qualifications. Para 7 of the SCC in V.K. Sood's case (Supra) read as follows:-

"7.It is for the expert body and this Court does not have the assistance of experts. Moreover it is for the rule making authority or for the legislature to regulate the method of recruitment, prescribe qualifications etc....." 7. The State Govt. in the rules laid down a method of recruitment with the prescribed qualification for appointment to various categories of posts in the Govt. department keeping in view the nature of duties and responsibilities attached to those posts and also classification for purposes of promotion on the basis of educational qualification on an intelligible differentia. The Supreme Court and High Court while upholding the validity of those rules held that there was always a presumption in favour of the constitutionality of an enactment and the burden was upon him who attacked it to show that there had been a clear transgression of the constitutional principles ((i) Shri. S. Ananta Kumar Sharma v. State of Manipur and Ors: (1987) 1 GLR 90 (DB) and (ii) Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others,

8. The Apex Court (Constitution Bench) in The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, observed as follows:-

"In this unequal world the proposition that all men are equal has working limitations, since absolute equality leads to procrustean cruelty or sanctions indolent inefficiency. Necessarily, therefore, an imaginative and constructive modus Vivendi between commonness and excellence must be forged to make the equality clauses viable. This pragmatism produced the judicial gloss of "classification? and "differentia?, with the by-products of equality among equals and dissimilar things having to be treated differently. The social meaning of Arts. 14 to 16 is neither dull uniformity nor specious "talentism?. It is a process of producing quality out of larger areas of equality extending better facilities to the latent capabilities of the lowly. It is not a methodology of substitution of

pervasive and slovenly mediocrity for activist and intelligent - but not snobbish and uncommitted - cadres. However, if the State uses classification casuistically for salvaging status and elitism, the point of no return is reached for Arts. 14 to 16 and the Court's jurisdiction awakens to deaden such manoeuvres. The soul of Arts. 16 is the promotion of the common man's capabilities. Overpowering environmental adversities and opening up full opportunities to develop in official life without succumbing to the sophistic argument of the elite that talent is the privilege of the few and they must rule, wriggling out of the democratic imperative of Arts. 14 and 16 by the theory of classified equality which at its worst degenerates into class domination." 9. Again the Apex Court (Constitution Bench) in Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, held that:

"23. Now we proceed to consider the challenge based on infraction of articles 14 and 16 of the Constitution. Article 14 ensures to every person equality before law and equal protection of the laws and article 16 lays down that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Article 16 is only an instance or incident of the guarantee of equality enshrined in article 14: it gives effect to the doctrine of equality in the sphere of public employment. The concept of equal opportunity to be found in article 16 permeates the whole spectrum of an individual's employment from appointment through promotion and termination to the payment of gratuity and pension and gives expression to the ideal of equality of opportunity which is one of the great socioeconomic objectives set out in the Preamble of the Constitution. The constitutional code of equality and equal opportunity, however, does not mean that the same laws must be applicable to all persons. It does not compel the State to run "all its laws in the channels of general legislation". It recognizes that having regard to differences and disparities which exist among men and things, they cannot all be treated alike by the application of the same laws. "To recognize marked differences that exist in fact is living law; to disregard practical differences and concentrate on some abstract identities is lifeless logic." *Morey v. Doud*, 354 US. 457, p.473. The Legislature must necessarily, if it is to be effective at all in solving the manifold problems which continually come before it, enact special legislation directed towards specific ends and limited in its application to special classes of person or things. "Indeed, the greater part of all legislation is special, either in the extent to which it operates, or the objects sought to be attained by it." (1889) 134 US 594." 10. Ms. Pooja strenuously contended that the minimum qualification i.e. 55% aggregate marks in the LL.B. for the post of Army officer for Judge Advocate General Department is quite reasonable inasmuch as, the Executive Trainee (Law) is also the officer of the similar group. But the Court cannot accept this submission for the simple reason that the work chart of the Judge Advocate General Department is different from the work chart of the Executive Trainee (Law).

11. For the foregoing reasons, this Court cannot come to the finding that the

minimum aggregate marks of 60% or equivalent CGPA in the aggregate of all the semesters/years up to pre-final examination prescribed for the candidates for the post of Executive Trainee (Law) has no nexus with the object to be achieved.

12. In the result, this writ petition is devoid of merit and accordingly not entertained.