

(1994) 09 KAR CK 0001
In the Karnataka High Court
Case No : Writ Petition No. 6941 of 1991

Prabhu

APPELLANT

Vs

L.I.C. of India

RESPONDENT

Date of Decision : 28-09-1994

Acts Referred:

Citation : (1995) ILR (Kar) 155 : (1995) 4 KarLJ 546

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : G.S. Rao, for the Appellant; V.C. Brahmarayappa, for the Respondent

Judgement

Saldanha, J

1. An Unusal issue of some importance has fallen for determination in this Petition and can briefly be summarised as follows:-

"Whether in a situation where an applicant is over qualified for the post for which the application is submitted, the employing agency would be justified in rejecting the application on the ground that the qualifications required for that post were lower than what the applicant possessed and that consequently, the applicant stands disqualified."

I need to clarify that no proposition can be decided in a vaccum and that the context in which it has arisen is in relation to the recruitment to a Sub-Staff post of Peon with the Life Insurance Corporation of India. This aspect of the matter assumed some importance because the Recruitment Rules invariably prescribe certain minimum qualifications. Though some times at higher level such as in the management cadre or in the academic field, the desirability of much higher qualifications is indicated. In this case however, the Court is required to consider the unusual position of virtually the reverse obligation on the part of the employer.

2. The facts are within a narrow compass insofar as the petitioner who has

passed his SSLC and PUC examinations applied for the post of Sub-Staff with the Life Insurance Corporation of India pursuant to their advertisement Annexure-A. The required qualification for this post is that the petitioner must have passed the IX standard, but the advertisement stated that candidates who have passed the SSLC with less than 55% of marks in the aggregate would also be considered. The petitioner's application was examined and the Corporation by its letter dated 14th February 1991 informed the petitioner that it has come to the notice of the Corporation that he has passed the PUC examination as on the date of the Notification and that he was therefore disqualified. The petitioner sought to represent against this order and has finally filed the present Petition whereby he has contended that even if he possessed a marginally higher qualification, that this did not justify the action of the respondent-Corporation in law,

3. The petitioner's learned Counsel has sought to place strong reliance on a Full Bench Decision of this Court reported in 1981 LAB.I.C. 386 . The Karnataka Public Service Commission by its Chairman, Bangalore and Ors. v. N.C. Hugar wherein the Court was interalia considering the Karnataka State Library Science (Recruitment) Rules (Direct Recruitment by Selection) Rules (1973). The candidate in that case possessed higher qualifications than the minimum ones prescribed and the Full Bench of this Court upheld the view that a candidate who possesses more than the minimum required qualifications cannot be disqualified on that ground. On an analogy, the petitioner's learned Counsel submits that the order in question is liable to fail on this ground alone. Reliance was also placed on a Decision of Gujarat High Court reported in 1984(2) S.L.R. 737 3. H.D. Singh v. Reserve Bank of India and Ors. 2. Satishchandra, Bhailalbhai Shah and Ors v. State of Gujarat wherein the Gujarat High Court upheld the position that where certain teachers possessed B.Ed qualifications, that they cannot be denied appointment against lower posts of trained primary teachers. Lastly, the learned Counsel relied on the Decision of the Supreme Court reported in H.D. Singh Vs. Reserve Bank of India and Others, wherein the Supreme Court has made a passing reference to a situation whereby the appellant was denied a job because he was better qualified. The petitioner's Counsel submitted that if his client possessed better academic qualifications than the minimum prescribed, then it is outright improper and illogical and totally unreasonable to disqualify him on this ground because such better qualifications were an added asset and that the respondent-Corporation ought to have been only to pleased that the petitioner possessed such higher and better qualifications. On the basis of these submissions, the learned Counsel contended that the order in question be set-aside and the respondents are to be directed to appoint the petitioner to the post in question. Reliance was also placed on some other material for the purpose of supporting the submission that other similarly situated persons have been employed by the Corporation and that the petitioner has been discriminated against. In reply to this, the Corporation has pointed out that if any such errors have been taken place, the proper corrective action will be taken but that this does not justify an order in the present case, I am therefore not concerned

basically with that aspect of the matter.

4. As far as the main contention is concerned, I must say that the learned Counsel appearing on behalf of the Corporation has more than satisfied the Court that what was prescribed by the Corporation was not only reasonable but that it is necessary. In the present case, the Corporation's learned Counsel has pointed out to me that he has no quarrel with the proposition when it comes to the higher stages of employment, that a candidate who possesses superior academic qualifications is certainly a better choice than one who possesses lesser qualifications. Learned Counsel has however demonstrated to the Court that when it comes to the lower and lowest stages of employment that the recruitment channel must necessarily be restricted. It is true as pointed out to me on behalf of the petitioner, that the Corporation did not specify that the qualifications indicated in the Rules and reproduced in the advertisement would alone apply and that better qualified persons would not be considered. What the Corporation's Counsel has pointed out to me is that the advertisement itself did specify that these are the minimum and that these were the only qualifications that were permissible. He has supported this contention by illustrating that at these levels of employment, if for any reason a relaxation is made, having regard to the fact that there is large scale of unemployment around, even highly qualified persons would apply for the post and that there would be undesirable results, the first of them being that the lesser qualified persons who could only compete for these posts would never get into them but more importantly that the more highly qualified persons would definitely qualify in because there is also a written examination prescribed for these posts. Learned Counsel has pointed out to me that it is an unfortunate sociological fact, particularly in this Country, that a large number of persons with even higher qualifications are unable to secure any employment and out of frustration and desperation they would ultimately apply for even Class-IV posts if their age permits. In such a situation, they would undoubtedly insist on consideration though they would be hopelessly ill suited for the job functions of those posts. It would therefore not be either desirable for the candidate or the Corporation to allow such an unsatisfactory situation to arise. Therefore, the Corporation had to strictly enforce the restrictive procedure relating to qualifications and circumscribe the standards for those lower posts where in fact the Rule regarding acquisition of higher and better qualifications would work in the reverse direction. I do agree with the learned Counsel when he submits that the academic qualifications have to be in consonance with the post that has been applied for and to this extent therefore the Corporation was fully justified in having prescribed certain limitations.

5. As far as the present case is concerned, the Corporation's learned Counsel has advanced an additional argument whereby he has submitted that there are certain Circular instructions issued by the Corporation which are issued under Regulation-4 and that these would have to be read along with the Rules. He submits that if these guidelines are to be read along with the Rules, that it would be very clear that the petitioner was not qualified and that the action of the

Corporation was justified. Petitioner's learned Counsel has vehemently disputed this proposition and he submits that the Corporation must be bound by the terms of advertisement alone and by the Recruitment Rules which have been formulated in exercise of the power vested in the Corporation and he submits that in the absence of any formal amendment to these Rules, it would be very unfair and improper on the part of the respondents to issue-Circular guidelines. As far as this last aspect of the matter is concerned, I do need to record that the Corporation undoubtedly possesses the power to vary its recruitment standards" but it would be necessary while exercising this power to ensure that it is within the framework of law and that there are no conflicts as in the present case. The petitioner is justified in pointing out that in the absence of any formal amendment to the Recruitment Rules that the provisions thereof would be applicable and would prevail over anything else, I do not need to record anything more with regard to this limb of argument.

6. Undoubtedly, the defence canvassed by the Corporation is both reasonable and justifiable and within the framework of law and therefore deserves to be upheld. As far as the action on the part of the Officer is concerned, to my mind, the factual position will have to be examined.

7. As far as that aspect of the case is concerned, the next higher post is that of Record Clerk and the qualifications prescribed for this post are SSLC with atleast 55% of marks in the aggregate and a pass in the next higher examination with atleast 45% of marks in the aggregate. Undoubtedly, the petitioner has passed these two examinations but the averments in the Petition indicate that he has not secured the aforesaid aggregates. On facts, therefore, the petitioner would not be eligible for the next higher post of Record Clerk. Had the petitioner possessed the requisite qualifications for the next higher post, I would have had no hesitation in upholding the submission canvassed by the learned Counsel for the Corporation that the respondents would have been justified in disqualifying him from applying for the lower post. On facts, however, it is evident that the petitioner is not qualified for the post of Record Clerk and therefore the Officer of the Corporation who scrutinised his application and rejected the same had obviously made a factual error. Though the principal contention of the Counsel desires to be upheld, the action complained of in the present case will have to quashed on the ground that the facts have not been properly evaluated and that the decision is arbitrary and erroneous.

8. Having regard to this position, the petitioner is entitled to succeed. Rule is accordingly made absolute. The only direction that can be issued in this case is that the respondents will have to appoint the petitioner to the post that he had applied for with effect from 1.12.1994. The additional relief that the petitioner would be entitled to having succeeded in the present Petition is that the interest of Justice would require that the respondents, in the exceptional circumstances of this case, will have to undo the effect of the petitioner not having been appointed along with the other persons similarly situated to him in the year

1991. Though this is a fresh appointment, by a deeming provision the Court would have to consider as to what would have been his salary and emoluments had he been appointed at the time when he had originally applied and he would also be eligible for the revision in salary which those persons may have received. These amounts would therefore be accruable to the petitioner to the extent that he would be entitled to start at the higher salary drawn as on 1.12.1994 by the similarly placed 1991 appointees.

9. The Petition accordingly succeeds and stands disposed of. In the facts of the case, there shall be no order as to costs.