

(1991) 10 MAD CK 0077
In the Madras High Court

R. Ponnusamy

APPELLANT

Vs

The Registrar, Anna University and Another

RESPONDENT

Date of Decision : 24-10-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 226

Citation : (1992) 1 MLJ 540

Hon'ble Judges : Bakthavatsalam, J

Bench : Division Bench

Judgement

Bakthavatsalam, J.—Pursuant to an advertisement issued by the first respondent University in ""The Hindu"" and ""Indian Express"" calling for

applications to fill up two vacancies in the Division of Geology a post of Assistant Professor and Lecturer, the petitioner and the second

respondent applied for the same. The Selection Committee had considered the applications, found the second respondent suitable and selected the

second respondent for the post of Lecturer in Geology. The petitioner, who is one of the candidates who applied for the post, has come to this

Court challenging the selection of the second respondent.

2. The petitioner alleges in the affidavit that the second respondent is not qualified to hold the post and the essential qualification for the post of

Lecturer being a Doctorate Degree or Research Work and in the absence of Doctor's Degree a person possessing M. Phil will have to be

appointed and as such the petitioner, who has got M. Phil has got to be selected. It is further alleged that in so far as the second respondent is

concerned, he possesses only a Degree in M.Sc. Geology and Degree in M. Tech (Remote Sensing), which is neither equivalent to M.Phil nor

pertaining to the subject. It is stated that the very appointment of a person who was not qualified is nothing but an arbitrary exercise of power and

the same is violative of Articles 14 and 16 of the Constitution of India. It is further alleged that the first respondent having prescribed certain

qualifications in the advertisements in the newspapers, cannot give a go-by to the qualifications prescribed and if a go-by is given it will be clearly in

violation of Article 14 of the Constitution. It is further stated that the first respondent ought to have appointed the petitioner by absorbing him as an

internal candidate because the petitioner was already working as a Technical Research Fellow and has already registered himself in Ph.D. course

(part time) under the first respondent. It is further alleged that there were two posts of Lecturers vacant and the first respondent not only selected

the second respondent, but also selected one Dr. S. Ramaswamy, who has applied for the post of Assistant Professor and as such the petitioner

has no chance of getting any appointment in the near future. On these allegations, the petitioner wants this Court to issue a writ of declaration

declaring the selection and appointment of the second respondent to the post of Lecturer in the Geology Division in Anna University as invalid.

3. A counter-affidavit has been filed on behalf of the first respondent University. It is stated in the counter affidavit that the prescribed qualification

for the post of Lecturer in Geology is set out in the advertisement and in the information and instructions to candidates, which is as follows:

B. Qualifications prescribed for the posts:

13. Lecturer in Geology:

13.1. Essential : (a) A Doctorate Degree or research work of an equally high standard in the field of specialisation relating to the post, (b) Good

academic record with atleast second class (C in the seven point scale) Master's Degree in a relevant subject from an Indian University of an

equivalent degree from a foreign University.

If the selection committee is of the view that the research work of a candidate as evident either from his thesis or from his published work is of a

very high standard, it may relax any of the qualifications prescribed in (b) above. If a candidate possessing a Doctor's degree or equivalent

research work is not available or is not considered suitable a person being given to M.Phil or equivalent degree of research work of quality) will be

appointed provided he has done research work for atleast two years or has practical experience in a research laboratory/ organization on condition

that he will have to obtain a Doctor's degree or give evidence of research of high standard within eight years of his appointment, failing which, he

will not be able to earn future increment until he fulfils these requirements.

(C) Relevant Professional/Research/Teaching experience for one year.

13.2. Desirable: (i) Publication in Journals of repute (National/International)

(ii) Participation in Summer/Winter Schools/ Institutions etc.

(iii) Membership of any professional body of repute (National/International) relating to the field of specialisation.

13.3 Age: not less than 2years on the 1st of the academic year during which the recruitment is made.

C. Field of specialisation:

It is stated in the counter affidavit that the petitioner does not possess the prescribed educational qualification and his experience in the field of

research and publication is far below that of the second respondent and the petitioner also does not possess the field of specialisation prescribed

whereas the second respondent's field of specialisation is Photogeology which is one of the specialisations required for the advertised post. It is

stated in the counter affidavit that if a candidate possessing a Doctorate degree or equivalent research work is not available or not considered

suitable, a person possessing a good academic record (weight age being given to M.Phil or equivalent degree or research work of quality) may be

appointed. It is also stated that since the selection committee has considered the M.Tech degree and research work of the second respondents as

a degree above M.Phil, degree and research work of quality respectively, he was selected for the post as there was no other suitable candidate

with a doctorate degree available for appointment. It is further stated that the petitioner does not possess a Doctorate degree nor does he possess

research work of an equally high standard in the field of specialisation relating to the post. It is also stated that the M.Phil degree possessed by the

petitioner is not in the field of specialisation relating to the post. It is further stated that the post of Lecturer is filled only by direct recruitment

through advertisement on selection basis. It is also stated that the contentions of the petitioner that he is an internal candidate while the second

respondent is an outsider and that as such an internal candidate should have been preferred is baseless and untenable. It is stated that the second respondent has been working as Research Assistant in the Institute of Remote Sensing at Anna University from 29.3.1989 and as such he could not be considered as a total outsider and in fact the second respondent was working in the University as a temporary Research Assistant earlier between 9.2.1983 to 28.11.1987 when he joined as scientist Lecturer in Birla Institute of Scientific Research. It is stated that the other vacancies of lecturer in Geology was offered to Dr. S. Ramasamy, Lecturer in Geology in Madras University, but he declined to accept the same as he was already holding the post of Lecturer and hence that vacancy was filled up by Dr. R. Nagendra, who had been selected and put in the waiting list by the selection committee. It is further stated that the contention that there is no change of the petitioner for any appointment in the University in future is untenable and that he has no accrued right to be appointed.

4. The annexure attached to the counter affidavit filed by the first respondent shows that the second respondent has got a field of specialisation in photogeology, which conforms to the specialisation required and has got an experience of working as Hydrogeologist and worked as Research Assistant in the Institute of Remote Sensing, Anna University and as Scientist Lecturer in Birla Institute of Scientific Research, Jailer from 1987 to 1989, totalling about six years experience. He has to his credit publication of journals of repute National/Inter-national, seven in number regarding participation in conferences, the second respondent has participated in two conferences, whereas the qualification of the petitioner is M.Phil (Miscropalametology) which docs not con form to the specialisation required. According to the first respondent, the petitioner has got two years of experience and has got no other experience in any other items shown in the annexure attached to the counter affidavit, especially, items 7 to 9.

5. Considering the qualifications, the Selection Committee thought fit to appoint the second respondent. According to the counter affidavit, it is clear from the notification itself; calling for appointments for the post of Lecturer in Geology, the essential qualification is a Doctorate Degree or research work of a equally high standard in the field of specialisation relating to that post.

6. The second respondent has filed a counter affidavit. The second respondent denied the allegation that he is not qualified for the post of Lecturer

in Geology. It is also stated by him that he has got the relevant specialisation in Photogeology, apart from M.Tech (Remote Sensing). It is also

stated that the averment that the qualification in M.Tech (Remote Sensing) is not equivalent to M.Phil is not correct and in any case it is for the

Professional bodies to decide whether a qualification is equivalent to another or not and the Selection Committee, which consisted of professionals

have considered his qualification of M.Tech is equivalent to that of M.Phil and hence it is not open to the petitioner to question the same. It is

stated that he has been selected by the Selection Committee after being satisfied with his qualification and experience etc.

7. Mr. V. Venkatachalapathy, learned Counsel for the petitioner says that once the University has prescribed qualifications and given an

advertisement, it is not open to them to vary and relax the rules thereafter to suit the second respondent to appoint him to that post. The sum and

substance of the contention of Mr. M. Venkatachalapathy is that any appointment made should be in conformity with the advertisement made in

the newspapers and here is a case where the first respondent has gone off the track and appointed the second respondent. Learned Counsel relies

upon a judgment of the Supreme Court in the District Collector and Chairman Vijayanagaram (S.W.R.S.S.) v. Tripura Sundari Devi (1990) 2 L.L.J.

153, for the proposition that when an advertisement stipulates a qualification and the appointment of a person with inferior qualification is made,

such appointment is invalid and it amounts to playing a fraud on public. Learned Counsel further relies upon the decision reported in Naresh Kumar

v. The State of Punjab (1985) 1 S.L.R 428 of Punjab and Haryana High Court. That was a case where the candidates were selected in spite of the

fact that they were not eligible and did not fulfil the prescribed qualification specified in advertisement. The Punjab and Haryana High Court

quashed the selection on the ground that the Chairman of the Board did not deny the fact alleged by the petitioner therein. Learned Counsel for the

petitioner also relies upon a decision of the Punjab and Haryana High Court reported in Mrs. Daisy Narula v. The Government of Punjab and

Ors. (1984) 3 S.L.R. 690. That was a case where by the last date of the submission of the applications i.e., 22.9.1982, respondent No. 3 had not

acquired a requisite qualification of M.A. in Dance and thus, was not eligible to be considered for the post in question. The explanation offered by

the Punjab Public Service Commission, as well as respondent No. 3, was that the declaration of her result by the University was unduly delayed on

account of some agitation by the University Staff and the Vice Chancellor of the University had written to the Commission that the candidate

whose result had not been declared by 22.9.1982 may be considered by it, subject to their ultimately passing the examination in question. The

Court has held as follow:

In the light of this authoritative pronouncement, it cannot possibly be said that respondent No. 3 had obtained the degree of M.A. in Dance by the

last date for the submission of application dt.22.9.1982. In the absence of the said degree, the Commission could not possibly consider her as

eligible for the selection to the post in question. The decision of the Commission to consider respondent No. 3 as eligible even in the absence of her

degree on the last date Le., 22.9.1982 borders on arbitrariness. Had the Commission made it known that those candidates whose results had not

been declared by 22.9.1982 would also be eligible for the post in question then many more candidates might have applied for this post.

On those reasonings, the Punjab and Haryana High Court set aside the selection of the third respondent therein This decision was cited by the

learned Counsel for the proposition that what is the relevant date on which the qualification has to be considered.

8. Learned Counsel for the petitioner also refers to the decision reported in *Narasimhamurthy v. State of Karnataka* (1979) 1 S.L.R. 53 for the

proposition that when there are two persons, one possessing the prescribed qualification and another not possessing the prescribed qualification

being selected, the selection of the person without possessing the prescribed qualification amounts to infringement of his fundamental rights and

vitiates the selection.

9. Per contra, learned Counsel appearing for the University, contends that the second respondent is a qualified person than the petitioner as shown

in the annexure to the counter affidavit. Consequently when the selection committee has considered the qualifications of the petitioner as well as the

second respondent and thought it fit to appoint the second respondent, it is not

open to the petitioner or to this Court to interfere in such matter.

Learned Counsel contends that what all is required under Article 16 is to be considered for appointment and nobody has got a right of appointment.

10. Learned Counsel further contends that since no person in Doctorate degree or research work of an equally high standard in the field of

specialisation is available, the next best is only the second respondent, according to the qualifications and as per the opinion of the Selection

Committee and as such it is not open to the petitioner to question the selection made by the Committee consisting of Academicians, especially

teaching in the Faculty in the University.

11, Considering the arguments of Mr. M. Venkatachalapathy and the learned Counsel for the first respondent and after going through the annexure

attached to the counter affidavit, I am fully satisfied, on the facts of this case, that the selection of the second respondent cannot be assailed. It is

well settled that the right under Article 16 of the Constitution is only to that a person should be considered for the appointment and he cannot insist

that he should be appointed. The second respondent has been considered by the Selection Committee and the Selection Committee consisted of

Educationists and Academicians, well versed in subjects, and it is not for this Court, to sit in appeal to interfere with the decision of the Selection

Committee with regard to the suitability of the candidate for that particular post. I am of the view that none of the decisions cited by the learned

Counsel for the petitioner can have any relevance to the facts of the case on hand as I have stated above. In this case, it is very clear that for the

post of Lecturer in Geology, a Doctorate Degree or research work of an equally high standard in the field of specialisation relating to that post and

a good academic record with at least second class Master's Degree in a relevant subject from an Indian University or an equivalent degree from a

foreign University are required and if a candidate possessing a Doctorate degree or equivalent research work is not available or is not considered

suitable, a person possessing a good academic record (Weightage being given to M.Phil or equivalent degree or research work of equality) will be

appointed. The second. respondent has got research work to his credit and high standard in the field of specialisation relating to that post i.e.,

Photo geology. As such in my view when a person like the second respondent, who has got better qualifications, which is essential as mentioned in

Clause 13 of the information and instructions to candidates, is appointed, the petitioner can have no grievance. Only if the second respondent has

not got that specialisation, the petitioner can rely upon the M.Phil qualification he has got, as rightly pointed out by the learned Counsel for the

University. M.Phil. qualification of the petitioner is not relevant to the subject for which the appointment is made. As such, there is no need to

interfere with the order of appointment made by the University selecting the second respondent for that post. In educational matters, it is for the

Authorities concerned to decide about the suitability of the candidate and it is not for the court sitting under Article 226 of the Constitution of India

to decide such issue, unless there is infringement of fundamental right and also violation of Articles 15 and 16 of the Constitution. I do not see any

violation of Articles 15 and 16 of the Constitution. On the facts of the case, the appointment made in this case is perfectly legal. There are no

merits in the writ petition. The writ petition fails and is dismissed. No costs.