
(2011) 01 CAL CK 0078
In the Calcutta High Court
Case No : Writ Petition No. 463 of 2010

Rajatendu Banik

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 13-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2012) 3 CALLT 304

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Kamalesh Bhattacharya, Mr. Kazi Safiullah Ahmed and Mr. Manas Kumar Das, for the Appellant; Suchitra Saha and Mr. Debasish Kar, Pulak Ranjan Mondal, for the C.S.C., for the Respondent

Judgement

Debasish Kar Gupta, J.—This writ application is directed against the decision of the respondent No. 3 to reject the candidature of the petitioner for the post of Lecturer in Zoology under the West Bengal State University at Barasat on the ground of his ineligibility in possessing requisite qualifications. The facts of this case, in a nutshell, is this :

An advertisement, being No. 03-2008, dated December 5, 2008 was published by the respondent No. 3 inviting applications from the eligible candidates for preparation of panel for the post of Lecturers/Librarians of non-Government Colleges and Teachers' Training Colleges affiliated to the State Universities of West Bengal. Pursuant thereto, the petitioner submitted his application for the post of Lecturer In Zoology under the reserved category of Scheduled Caste in respect of the vacancies under the West Bengal State University at Barasat. The petitioner appeared in the interview on June 26, 2009. A provisional merit list in the subject of Zoology for the vacancies under the West Bengal State University at Barasat was published by the respondent No. 3 on September 25, 2009. The name of the petitioner appeared in the above merit list. He was allowed to attend the counselling on February 5, 2010. In course of counselling he was informed

that his candidature could not be considered further for recommendation on the ground that he was not possessing requisite qualification so far as his M.Phil degree was concerned. The petitioner possessed M.Phil degree in the Environmental Science. According to the respondent-authority, it was not the concerned subject so far as the post of Lecturer in Zoology was concerned. Hence, this writ application.

2. It is submitted by the learned Counsel appearing for the petitioner that the petitioner obtained M.Phil degree in Environmental Science from the University of Kalyani. M.Phil degree in the same subject was not required to be possessed in terms of the eligibility criteria prescribed in Clause-C(I)(ii) of the Advertisement. According to him, an eligible candidate for the post of Lecturer in Zoology was required to possess degree in Zoology in three years Honours Degree Course as also in Master Degree Course in view of the qualification prescribed in Clause C(I) (i) read with the provisions of Clause-E of the Advertisement. But with regard to M.Phil degree, an eligible candidate was required to possess the same in the concerned subject only. According to him, the University Grants Commission in its communication dated June 14, 2007 (Annexure-"P-2" at page 17 of the affidavit-in-reply) informed the Vice Chancellor, University of Calcutta in similar circumstances that the relevance of subject was to be decided by the concerned University as per its requirements. Relying upon a certificate dated March 29, 2010 (Annexure-"P-5" at page 34 of the writ application) issued by the Head of the Department of Environmental Science, University of Kalyani, it is submitted by him that M.Phil in Environmental Science should be considered relevant to Zoology.

3. Learned Counsel appearing on behalf of the petitioner relied upon an unreported decision of a Division Bench of this Court dated June 22, 2010 in the matter of West Bengal College Service Commission & Ors. v. Manindra Ghose & Anr. in support of the above submissions.

4. On the other hand, the above submissions are vividly opposed by the learned Counsel appearing for the respondent Nos. 3, 4 and 5. According to him, the concerned subject does not mean and include relevant subject. Drawing the attention of this Court towards Clause-E of the Advertisement under reference, it is submitted by him that qualification in certain subjects in respect of which Master Degree and Honour Degree in the same subject were not essential were stated in the above clause. According to him, Zoology was not included in the above clause. So, M.Phil degree in a subject other than Zoology should not be treated as a qualification in the concerned subject. It is further submitted by him that in the event the petitioner is declared as an eligible candidate, then the candidates who did not submit applications for the reason of having M.Phil degree in any subject other than in Zoology would be deprived violating the provisions of Articles 14 and 16 of the Constitution of India. It is further submitted by him that the Court cannot declare a subject equivalent to some other subjects in course of judicial review. It is only within the domain of the

experts. It is also submitted by him that the concerned University was the appointing Authority who could only determine the relevance of subjects.

5. The learned Counsel relies upon the decision of All India Council for Technical Education Vs. Surinder Kumar Dhawan and Others, . Mohd. Sohrab Khan Vs. Aligarh Muslim University and Others, and Dr. Rajbir Singh Dalal Vs. Chaudhari Devi Lal University, Sirsa and Another, in support of the above submissions.

6. I have heard the learned Counsels appearing for the respective parties at length and I have considered the facts and circumstances of the case.

7. It is an admitted fact that the petitioner possessed requisite qualification in the same subject in graduation stage as also in respect of his Master Degree. The only dispute was with regard to M.Phil degree obtained by the petitioner in Environmental Science. Admittedly, in the advertisement, the concerned post was of Lecturer in Zoology. For proper adjudication of the points involved in this case, the eligibility criteria as prescribed by the respondent No. 3 in its Advertisement No. 3/2008 is quoted below :

C. Eligibility : Ref: G.O. No. 756 (Edn.(CS) dated 28.11.2008 read with G.O. No. 627 Edn. (CS) dated 17.06.1999 of the Government of West Bengal (HED) and U.G.C. Notification.

(I) for Degree Colleges :

(i) Consistently good academic record with at least 55% marks (without any sort of grace or an equivalent grade in the Master's Degree preceded by 3 years honours degree in the concerned subject with at least 2nd class marks.

Relaxation of 5% from 55% of the marks is admissible to candidates (a) belonging to SC/ST/PH category and (b) certified in the JRF examination conducted by the UGC/CSIR only prior to 1989.

(ii) Qualifying of the Eligibility Test for JRR/Lecturer conducted by UGC/CSIR(NET) or UGC accredited State Eligibility Test (SET), the earlier SLET conducted by WBCSC or possessing of PH.D. or M.Phil degree in the concerned subject

(iii) Good power of expression (Speaking, reading & writing) in Bengali/ Nepali.

The provisions of Clause-E of the above Advertisement are also quoted below :

E. Qualification in certain subjects in respect of which Master Degree and Honours Degree in the same subject are not essential are as follows :

Sl. No.

Subject

Sub. required At Master Degree

sub. Required at Hons. Degree

1.

Defence Studies

Defence studies/

Any Science sub.

2.

Environmental Science

Environmental Science

Any Science sub.

3.

Film studies

Film studies

Any subject

4.

Journalism

Journalism

Any subject

5.

Molecular Biology/

Molecular Biology/ Molecular Biology & Genetics Biology.

Molecular Biology and Genetics Biotechnology/ Microbiology/ Cell Biology.

6.

Santhali

Santhali

Any subject.

7.

Fine Arts

Fine Arts/ Visual Arts

Fine Arts/ Visual Arts

8.

Political Science/

Political Science/ International Relation.?

Political Science

8. As observed hereinabove, there is no dispute with regard to possession of requisite qualification by the petitioner in respect of Clause-C(I)(i). The only question which is to be decided is whether the M.Phil degree in Environmental Science was a degree in the concerned subject so far as the post of Lecturer in Zoology was concerned. I find that the University Grants Commission in its communication dated June 14, 2007 addressed to the Vice Chancellor, University of Calcutta, observed that relevance of the subject was to be decided by the concerned University as per its requirements. The above communication dated June 14, 2007 is quoted below :

University Grants Commission

Bahadur Shah Zafar Marg

New Delhi 110002.

No. F.1.3/2007(PS) The Vice Chancellor, University of Calcutta, Kolkata-700073. Sub : Clarification for the appointment as Lecturer-regarding.

June, 2007 14 June, 2007

Sir,

With reference to your D.O. letter No. U-7/177/2007 dated 27.04.2007 addressed to Prof. Sukhadeo Thorat, Chairman, U.G.C. on the above subject, I am directed to say that M.Phil/Ph.D. should be in the concerned subject for the appointment as Lecturer. However, the relevance of the subject is to be decided by the concerned University as per its requirements.

Yours faithfully, Sd/- (Mrs. Shashi Munjal) Under Secretary

Copy to :

The Director, W.S.R.C. and Coordinator. M.Phil (Women Studies) Calcutta University. Alipur Campus. Kolkata with reference to her letter WSRC/OFF/ 833/2007 dated 23.04.2007.

Sd/- (Hari Pawar) Section Officer

9. Therefore, the appointing Authority, namely, the West Bengal State University at Barasat was competent to examine the relevance in view of the above observation. The respondent No. 3 was not competent to examine the relevance.

10. I do not find any substance in the submissions made on behalf of the respondent No. 3 that the phrase "concerned subject" used in Clause-C(I)(ii) purports same subject in view of the observations made hereinabove. I do not also find any substance in the submissions made on behalf of the respondent No. 3 that the "concerned subject" used in Clause-C(I)(i) purports the same

interpretation because Clause-C(I)(i) prescribed the essential qualification for graduation stage and master degree. After considering Clause-E of the above Advertisement, I find that certain subjects were mentioned there where the master degree and honours degree were not required to be obtained in the same subject. Since Zoology was not included in Clause-E, it was not the "concerned subject" with regard to master degree or honours degree. But Clause-E had no bearing on the qualification prescribed in Clause-C(I)(ii) with regard to M.Phil degree.

11. I do not find that the decisions of All India Council for Technical Education (supra) and Rajbir Singh Dated (supra) is applicable in this case. Because it was decided in the above cases that the eligibility criteria cannot be fixed in course of judicial review. I am not fixing the eligibility criteria. I have examined the decision-making process of the of the respondent No. 3 in rejecting the candidature of the petitioner in the light of the qualification prescribed by the concerned authority. The decision of Mohd. Sohrab Khan (supra) has no manner of application in this case in view of the distinguishable facts and circumstances of that case. In that case, the appointing Authority prescribed qualification in the advertisement and subsequently accepted the candidature of the candidates in deviation from the qualification prescribed in the advertisement.

12. In view of the discussions and observations made hereinabove, the decision of the respondent No. 3 to cancel the candidature of the petitioner is quashed and set aside. The respondent No. 3 is directed to obtain the opinion of the West Bengal State University at Barasat as per its requirements in the matter of relevance of M.Phil degree in Environmental Science with the post of Lecturer in Zoology within a period of one month from the date of communication of this order and to take a decision in the matter on the basis of the above opinion within a period of three weeks from the date of receipt of such opinion. This writ application is, thus, disposed of. There will, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.