
(2004) 01 KL CK 0041
In the High Court Of Kerala
Case No : W.A. No. 2030 of 2003

Sally Thomas and Another	Vs	APPELLANT
State of Kerala and Others"		RESPONDENT

Date of Decision : 23-01-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2004) 1 KLJ 662

Hon'ble Judges : N.K. Sodhi, J;K.K. Denesan, J

Bench : Division Bench

Advocate : Benoy Thomas, for the Appellant;

Final Decision : Dismissed

Judgement

Denesan, J.—Appellants are High School Teachers seeking appointment by transfer to the post of Higher Secondary School Teachers (Computer Science/ Computer Application). They applied for the post in response to Notification dated 20-09-2001 issued by the Director of Higher Secondary Education, Thiruvananthapuram. By the same notification applications were invited from eligible and qualified candidates for appointment to the post of Higher Secondary School Teachers in other subjects also which are shown as SI. Nos. 1 to 36 in the notification Computer Science is Si. No. 37 and Computer Application is SI. No. 38 in that notification. Qualifications prescribed for the notified posts are shown against the concerned subject. In addition to the academic qualifications like post graduate degree in the concerned subject and training qualification, a pass in State Eligibility Test (for short SET) in the subject concerned is also prescribed as one of the essential qualifications. Qualifications prescribed for SI. No. 37 Computer Science and SI. No. 38 Computer Application as per the notification are different from those prescribed for posts shown against SI. Nos. 1 to 36. For easy reference, qualifications for Computer Science and Computer Application are extracted below:

37. Computer Science

38. Computer Application

1. Master's Degree in Engineering or Technology in Computer Science/Computer Engineering / Information Technology / Software Engineering with not less than 50% marks from a recognised University.

OR

Master's Degree in Computer Application / Computer Science / Information Technology with not less than 50% marks from a recognised University

2. In the absence of qualified hands under item 1, above, B Tech, or BE. Degree with not less than 50% marks in any branch of study with Com. Sc. / Comp. Engg. / Int. Tech. from a recognised University.

OR

B. Tech. or B. Engg. Degree with not less than 50% marks in any branch of study with PGDCA.

OR

Master's Degree with not less than 50% marks, in Mathematics/Physics / Statistics with. " PGDCA.

OR

M. Tech Degree with not less than 50% marks in Electronics & Telecommunication / Electronics Engg. from a recognized University.

OR

B.Sc. Degree in Comp. Sc. With not less than 50% marks and PGDCA.

Unlike other subjects, a pass in SET is not prescribed for appointment to the post of H.S.S.T. Computer Science, Computer Application and Electronics.

2. Appellants possess the academic qualifications prescribed for Computer Science / Computer Application. 1st appellant has passed the SET as well. 2nd appellant possess M. Phil which would enable him to get exemption from passing SET in case he is required to pass that test.

3. It is not in dispute that qualifications shown in the notification are in conformity with those laid down in the Special Rules for the Kerala Higher Secondary Education Subordinate Service which govern appointment to the post of H.S.S.T. These rules were issued as per G.O.(P) No. 144/2001/G. End. dated 16-4-2001. The case of the appellants is that respondents 1 and 2 ought to have included in the Special Rules as also the notification, a pass in SET as one of the essential qualifications for the post of Computer Science / Computer Application. According to them, exclusion of SET from the qualifications prescribed for the post of Higher Secondary School Teacher in Computer Science / Computer Application is a case of under-inclusion offending Articles 14 and 16 of the

Constitution.

4. Director of Higher Secondary Education has prepared a seniority list of qualified teachers (Ext. P5 with the writ petition) showing their preference for appointment as H.S.S. Teachers. In that list, some of the teachers who have not passed SET have been assigned higher ranks whereas the appellants are placed lower down in that list. According to the appellants, if a pass in SET is made compulsory for the post of H.S.S.T Computer Science / Computer Application, the appellants would have got higher ranks in the final select list to the exclusion of those who did not possess that qualification, which would have accelerated their appointment to the post of Higher Secondary School Teacher in Computer Science / Computer Application. In the above circumstances appellants filed W.P (C) No. 23351 of 2003 praying, among other, for a declaration that "the exclusion of SET as a mandatory requirement for appointment to the post of Higher Secondary School Teacher in Computer Science was violative of Articles 14 and 16 of the Constitution". They also sought for a writ of certiorari quashing the final seniority list of qualified H.S. As. and U.P.S. As/L.P.S. As. for appointment by transfer as H.S.S. Teachers/H.S.S. Teachers (Junior). A learned Single Judge of this Court as per judgment dated 22-7-2003 dismissed the above writ petition holding that the concept of under-inclusiveness does not apply to the facts of this case. This writ appeal is directed against the above judgment of the Learned Single Judge.

5. Having heard the learned counsel for the appellants and perused the impugned judgment as also the documents produced with the writ petition, we are clearly of the view that the appeal is devoid of merit.

6. Admittedly, the State Government is competent to, lay down the qualifications for appointment to the post of Higher Secondary School Teachers. It is true that whenever the State lays down the conditions or qualifications for appointment to a post or to employment under the State, in general, such conditions must be applicable to all candidates, subject of course to rules or reservation. However, if the State lays down different qualifications or eligibility conditions for different posts, there would be no violation of Article 14 or 16 of the Constitution, because the doctrine of equality does not envisage that unequal's shall be treated equally. In *Satish Chandra Anand Vs. The Union of India (UOI)*, the Apex Court held that equality of opportunity in matters of appointment can be predicated only as between persons who are seeking the same appointment or employment. The rule is not liable to be struck down on the ground that parity is not maintained in the matter of prescription of the qualifications between different posts.

7.. Appellants have no case that the qualifications prescribed by the Special Rules for the post of H.S.S.T. Computer Science/Computer Application are irrelevant or unrelated to the purpose for which appointment is made to that teacher post. That being so. the appellants cannot be heard to say that a particular test qualification or eligibility criterion also should have been insisted

for that post. Merely for the reason that SET is prescribed by the Special Rules for certain posts of Higher Secondary School Teachers, there is no justification nor is it proper for this Court to hold that SET shall be insisted for other posts also lest the rule relating to qualification should be declared unconstitutional for the vice of under inclusiveness or hostile discrimination. Since we are of the opinion that the qualifications prescribed as per the Special Rules for the post of Higher Secondary School Teacher (Computer Science/Computer Application) are neither unreasonable nor irrational, it is beyond the scope of judicial review to compel the rule making authority to include one more qualification for that post.

8. Before us, the learned counsel for the appellants raised one more contention, namely, that the case of the appellants deserves to be dealt with on the basis of the qualifications prescribed as per the executive orders issued by the Government prior to the framing of the special rules because some of the vacancies had arisen before the said rules had come into force. We do not think it necessary to examine the merit of the Aforesaid contention for the reason that no such contention was raised in the writ petition nor before the learned Single Judge. Appellants cannot be allowed to raise such questions of fact, for the first time, in this writ appeal. The Writ Appeal fails and it is accordingly dismissed without any order as to costs.