

(2008) 07 KL CK 0006
In the High Court Of Kerala
Case No : W.A. No's. 1555 of 2005

Sankara Narayanan, V.R.

APPELLANT

Vs

Gopinathan, A.P. and Others

RESPONDENT

Date of Decision : 17-07-2008

Acts Referred:

Calicut University Act, 1975 — Section 23, 36, 37, 37(4)
Constitution of India, 1950 — Article 14

Citation : (2008) 07 KL CK 0006

Hon'ble Judges : P.N. Ravindran, J;J.B. Koshy, J

Bench : Division Bench

Advocate : Elvin Peter, P.J., S. Ramesh, P.N. Santhosh, Naveen, T., T.G. Sunil, C.X. Antony Benedict and Pooja Surendran, for the Appellant; Govind K. Bharathan Benny Gervacis, Sr. Government Pleader, E.S. Asharaf, S.C., Calicut University, C.S. Ramanathan and B. Praveen, for the Respondent

Final Decision : Allowed

Judgement

J.B. Koshy, J.—The main challenge in the Writ Petitions is the requirement of a University degree for the promotion to the post of Section Officer prescribed by the Syndicate in its resolution dated 16-12-2000. The post of Selection Grade Assistant is the feeder category for promotion to the post of Section Officer. Formerly, no particular educational qualification was prescribed for the post of Section Officer. By Ext. P-5 resolution dated 26-7-2000 in W.P. (C) No. 36498 of 2000 passed in the joint meeting of the Standing Committee, it was recommended as follows:

6. The minimum general qualification required for promotion from the feeder category of Selection Grade Assistants to Section Officers be fixed as a University Degree:

Provided that in the case of Selection Grade Assistants who do not possess University degree as on the date of the Syndicate decision be exempted from acquiring the minimum prescribed educational qualification. Steps are taken to

incorporate the above provision in the ordinance.

It was accepted by the Syndicate in its resolution dated 16-12-2000, but it was decided that those Assistants in service without degree would be exempted till 31-12-2002 (Ext. P-7 resolution). The above resolution of the Syndicate was also placed before the Senate and the Senate at its meeting held on 30-3-2001 considered and approved the amendment to Ordinance 2(3) relating to the non-teaching posts. The Chancellor gave assent for the amendment to the Ordinance on 14-2-2004. As per amended Schedule even for direct recruitment to the feeder category, University degree is compulsory. For the post of Assistant Grade II also, University degree is compulsory. The contentions of the Petitioners which were accepted by the Single Judge was that prescription of University degree has no nexus considering the duties carried out by the Petitioners. It is also noticed by the learned Single Judge that some unions made representation and on the basis of the representation such a representation was passed without any necessity. It was argued before us that the Petitioners who were in service before the amendment of the Schedule to the Ordinance should be promoted without considering the conditions in the Ordinance. It is also argued that since the Chancellor gave assent only in 2004, even if the amendment to the Ordinance is correct and the Syndicate decision is valid, it is valid only when the Chancellor gave assent. It is also submitted that this is a vanishing category as at present, for being appointed in the feeder category also graduation is necessary and most of the Petitioners have reached the age of superannuation and therefore their rights shall not be affected.

2. First we shall consider the argument that there is no nexus for the requirement of higher qualification. It is the admitted fact that the post of Section Officer is a supervisory post. The University is not only dealing with the undergraduate students but also students who are studying for postgraduate and Doctorate courses. A large number of employees are working in the University. As per the new amendment even Assistant Grade II post requires degree. Therefore almost all the Assistants have degree. It is true that in the feeder category the appointments also are made from direct recruits and the promotion is at the ratio of 2:1. But once they are merged into one service, they became single category and therefore for their further promotion, only the required qualification in the promotion post need be looked into. Those who have not the required qualification is not entitled to be promoted. The employees who are in service also bound by valid amendments as there is no fundamental right or vested right for promotion. Of course, those who got promotion as per the existing rules cannot be reverted because of the subsequent change in the service rules. These matters were settled by the Hon'ble Supreme Court in The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, and T.R. Kapur and Others Vs. State of Haryana and Others, .

Recently, the Supreme Court in P. Venugopal Vs. Union of India (UOI), held that a person entering into Government service is no doubt liable to be dealt with by

the relevant Act or the Rules as amended but it ceases to be so in the event of his success in challenging the constitutional validity of the same. A person appointed in Government service acquires a status and his service conditions are determined by service rules or statutory rules and not by contrary or inconsistent terms of contract, and such terms and conditions of service can be unilaterally altered by the Government. However, such amendment should not be unconstitutional. A University degree is made compulsory for promotion to the post of Section Officer by service rules. It cannot be stated that the existing employees in the University when the amendment was introduced are not bound by the same. The contention that there is no nexus in fixing the qualification of University degree for the post of Section Officer also cannot be accepted by us. Only if the qualification fixed is arbitrary, this Court can interfere. The post of Section Officer is a supervisory post. It cannot be stated that the fixation of University degree for promotion is illegal or discriminatory, so as to violate Article 14 of the Constitution especially even for direct recruitment for Assistant Grade II itself graduation is made compulsory. Considering the nature of duties of Section Officer and considering the availability of graduates in the feeder category, it cannot be stated that the fixation of University degree as a minimum qualification for promotion to the post of Section Officer is illegal so as to warrant interference of this Court. The fixation of qualification in the promotion post cannot be held to be discriminatory. Similar issue was considered by a Full Bench of this Court in *Subaida Beevi, S. v. State of Kerala and Ors.*(4) after considering various Supreme Court decisions. Therefore, we are of the view that fixation of University degree as basic qualification cannot be faulted and it cannot be said that there is no nexus in fixing any such qualification for promotion to the post of Section Officer.

3. Then the question is when this amendment will come into effect. The Syndicate at its meeting on 16-12-2000 decided that the University degree must be made compulsory for promotion to the post of Section Officer. But to avoid an immediate shock to the persons expecting promotions the Syndicate also decided not to implement the amendment till 31-12-2002, so that the immediate expectations are not spoiled. Section 23 of the Calicut University Act, 1975, (hereinafter referred to as the "Act") which gives powers to the Syndicate to make amendment to service. Section 23(ii) of the Act gives power to the Syndicate to make Ordinance and to amend or repeal the same. With regard to amendment of the statute it can only propose the amendment for consideration of the Senate as can be seen in Sub-clause (iii). Section 36 of the Act also states that subject to the provisions of this Act and the Statutes, the Syndicate shall have power to make Ordinances providing for all or any of the matters mentioned therein including the fixation of the scales of pay of various posts in the University and the terms and conditions of service of officers of the University. Section 37 of the Act deals with procedure for making ordinance. But Section 37(4) of the Act makes it clear that no Ordinance involving expenditure shall be valid or come into force until assented to by the Chancellor.

4. Then the question is whether amendment of the Ordinance and fixing higher qualification for the post of Section Officer involves any additional expenditure. The number of Section Officer is not increased by the amendment of the Ordinance. Financial liabilities were not increased. Of course, scale of pay also being changed from time to time. Scale of pay mentioned in the Ordinance was in existence even before the amendment. Therefore by the amendment creates no additional financial expenditure and the assent of the Chancellor is not necessary to effect this amendment. The Syndicate resolution dated 16-12-2000 came into force effect from 31-12-2002. The Senate has approved the same at its next meeting on 30-3-2001. Apart from the above, only because the entire schedule was amended, the matter was placed before the Chancellor and the Chancellor gave assent in 2004. The amendment schedule as approved by the Chancellor itself says that this amendment will take effect with effect 31-12-2002. Therefore for promotion to the post of Section Officer, the minimum qualification will be University degree from 1-1-2003. In the above circumstances, the Assistants cannot be promoted to the vacancy that arose after 1-1-2003, if they do not possess the University degree.

In the above circumstances, we set aside the judgment of the learned Single Judge and allow the Writ Appeals.