

(2023) 02 J&K CK 0010
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 840 Of 2022

Shahid Hameed

APPELLANT

Vs

UT Of Jammu And Kashmir And Others

RESPONDENT

Date of Decision : 02-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 02 J&K CK 0010

Hon'ble Judges : Sanjeev Kumar, J;Moksha Khajuria Kazmi, J

Bench : Division Bench

Advocate : A.H.Naik, Zia, Bakhat Parvaiz, Shah Amir, Jahangir Iqbal Ganai, Ruqaya Sidique, Asifa Padroo, F.A.Natnoo

Final Decision : Allowed

Judgement

Sanjeev Kumar, J

1 Pursuant to an indent/request received from the Department of Higher Education, Government of UT of Jammu and Kashmir, the Jammu and Kashmir Public Service Commission [?the PSC?] vide its Notification No.10-PSC (DR-P) of 2017 dated 27.10.2017 invited applications, inter alia, for ten (10) posts of Assistant Professor (Geology) which included five (5) posts in the open merit. As per the said Notification, the eligibility\ prescribed was as under:

(a). Good academic record as defined by the concerned University with at least with 55% marks (50% excluding any grace marks, in case of scheduled Caste/ Scheduled Tribe/Differently-abled (physically and visually differently abled) Categories/Ph.D degree holders, who have obtained their Master?s Degree prior to 19th September 1999) or an equivalent grade in a point scale where grading system is followed at the Master?s Degree level in the relevant subject form an Indian Unviersity, or an equivalent degreem form an accredited foreign Univeristy;

(b). The candidate must have cleared NET/SLET/SET Conducted by the UGC,

CSIR/AIU;

(c). The candidate who are, or have been awarded a Ph.D Degree in accordance with the University Grants Commissioner (minimum standards and procedure for Award of Ph.D degree regulations), 2009 shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET, and;

(d) NET/SLET/SET shall also not be required for such Master?s Programmes in disciplines for which NET/SLET/SET is not conducted.

2 The petitioner, being possessed of, amongst others, Master?s Degree in ? Applied Geology? also applied for the post in question.

However, the PSC, on scrutiny, found the petitioner not eligible for the post and, accordingly vide notice dated 26.03.2019 rejected candidature of the petitioner. It is this Notification issued by the PSC which was subject matter of challenge before the Central Administrative Tribunal Jammu Bench [?CAT?] in TA No. 7953/2021.

3 The case of the writ petitioner, as set up before the CAT was that he possessed Master?s Degree in Applied Geology which, as per the communication dated 19.12.2017 addressed by the Under Secretary to the Government, Higher Education Department, to the PSC, was a qualification equivalent to M.Sc. Geology and, therefore, the petitioner?s candidature could not have been rejected on the ground that he did not possess Post Graduate Degree in the ? relevant subject? for being appointed as Assistant Professor (Geology). The petitioner also placed reliance upon the expert opinion tendered in this regard by the University of Jammu and University of Kashmir.

4 The application of the petitioner was contested by respondents No. 1 to 3 by submitting that M.Sc. in Applied Geology was not the same qualification as M.Sc. in Geology and, therefore, the PSC was correct in rejecting the candidature of the petitioner on the ground of his ineligibility to apply for the post in question.

5 The CAT, after considering the rival contentions and vide its judgment dated 15.02.2022, impugned in this petition, approved the view taken by the PSC with regard to the ineligibility of the petitioner. The CAT held that it was the prerogative of the user Department to stipulate the qualifications for the post in its establishment and once the qualifications prescribed in the advertisement were treated as essential, there was no way to ignore them. Relying upon the judgments of the Supreme Court rendered in the cases of Zahoor Ahmad Rather vs. Sheikh Imtiyaz Ahmad (2019) 2 SCC 404 and Zonal Manager, Bank of India, Zonal Office Kochi vs. Aarya K. Babu, (2019) 8 SCC 587, the CAT came to the conclusion that it was the prerogative of the concerned Department to prescribe the qualification for the post and the Courts cannot enter the arena of finding out the equivalence, more so, when the Recruitment Rules prescribing qualification did not stipulate any equivalent qualification. The CAT also held that in case the condition of eligibility as prescribed in the Advertisement Notification is relaxed in

favour of the petitioner, it would lead to an anomaly namely the relaxation would be only in respect of the petitioner and, in this way, the persons similarly situated with the petitioner would be seriously prejudiced. This would call for the entire exercise to be done afresh and such disastrous consequences, which are in flagrant violation of the statutory requirement, ought to be avoided. In a nutshell, the petitioner, who was possessing the qualification of M.Sc. in Applied Geology, instead of Master Degree in Geology, was found ineligible and, therefore, the application challenging the impugned Notification of the PSC rejecting the candidature of the writ petitioner was dismissed vide judgment impugned. It is this judgment which is called in question in this writ petition filed by the petitioner under Article 226 of the Constitution.

6 Having heard learned counsel for the parties and perused the material on record, we find the impugned notice dated 26.03.2019 issued by the PSC, which was subject matter of challenge before the CAT, is not sustainable in law. The petitioner, who admittedly possesses the qualification of Post Graduate Degree in Applied Geology, has been erroneously and arbitrarily declared ineligible for being appointed as Assistant Professor in Geology in Higher Education Department.

7 It is true that it is the prerogative of the employer to prescribe the essential qualification and conditions of eligibility for appointment to a post borne on its establishment and the Courts are not the Authority competent to add to or subtract from the qualification so prescribed. It is equally indisputable that the Selection Body, which is enjoined to make the selection of eligible candidates, is bound to make recruitment of the candidates strictly in terms of the qualification and conditions of eligibility prescribed by the employer to participate in the selection process.

8 In the instant case, the qualification prescribed for the post in question is, amongst others, ?Master's Degree level in the relevant subject from an Indian University, or an equivalent Degree from an accredited foreign University.? A candidate, to be eligible to be appointed as Assistant Professor must possess, inter alia, Post Graduate Degree in the relevant subject. The Degree equivalent to Post Graduation in relevant subject from an Indian University, is provided only in respect of a Degree of the same level obtained by a candidate from an accredited foreign University. We, in this case, are not confronted with a Degree obtained by a candidate from an accredited foreign University which is claimed to be equivalent to Master Degree in the relevant subject. The claim of the petitioner is that M.Sc. in ?Applied Geology? is equivalent and same as ?Master Degree in Geology? is and, therefore, it cannot be said that the petitioner does not possess Master Degree in the relevant subject from an Indian University.

9 Much stress was laid by learned Senior Counsel appearing for the petitioner on the expression ?Master's Degree level in relevant subject? to impress upon this Court that, going by the syllabi of two Degrees i.e., M.Sc. Geology and M.Sc. in Applied Geology, it is incorrect to hold that M.Sc. in Applied Geology is not a

Master Degree in the relevant subject i.e the subject of Geology.

10 We find great deal of substance in the argument of learned Senior Counsel appearing for the petitioner. As a matter of fact, the CAT has not gone into this aspect of the matter. Persuaded by the observations made by the Hon^{ble} Supreme Court that it is not within the province of the Courts to find out equivalence or relevance of the qualification prescribed by the statutory rules which is always a prerogative of the employer, the CAT has dismissed the claim of the petitioner and held the notice issued by the PSC rejecting his candidature correct in law. We have carefully gone through the judgment impugned as also the case law relied upon and we find that the CAT has clearly misdirected itself and has not approached the controversy involved for adjudication in proper perspective. The qualification for the post indicated in the Advertisement Notification which, in turn, is a qualification prescribed by the statutory recruitment rules, does not provide the qualification of M.Sc. Geology, but provides Master's Degree level in the relevant subject.

11 The question that begs determination is whether, for the post of Assistant Professor in Geology, a candidate possessing Master Degree in Applied Geology can also be held to possess the requisite qualification in the relevant subject. The distinction needs to be drawn between 'relevant subject' and the 'subject concerned'. Master's Degree level in the concerned subject may indicate that a candidate must possess M.Sc. in Geology, whereas 'Master's Degree in relevant subject' would denote that the qualification, which may have different nomenclature, but is a qualification relevant to teaching of Geology, would also be the qualification prescribed for the post of Assistant Professor (Geology).

12 It is true and we have no quarrel with the proposition that it is not for the Courts to read into or assume and thereby include certain qualifications which have not been included in the notification by the employer. Even the relevance or equivalence of the qualification prescribed for the post does not fall within the domain of judicial review and the matter should be best left to the experts in the field. This is what has been held by the Supreme Court in its judgment rendered in the cases of Zahoor Ahmad Rather (supra) and Zonal Manager, Bank of India (supra) which have been strongly relied upon by the CAT. However, in the instant case, when the doubts were raised by the PSC with regard to the eligibility of petitioner to apply for the post in question, the employer (Department of Higher Education), on the basis of expert opinion tendered by the University of Jammu and University of Kashmir, intimated to the PSC that the qualification of M.Sc. in Applied Geology, possessed by the petitioner is a relevant qualification for the post of Assistant Professor in Geology in Higher Education Department. In the face of aforesaid opinion by the Expert Bodies, the CAT could have simply held the petitioner eligible for the post being possessed of qualification which is found by the Experts a relevant qualification for the post.

13 At this juncture, we would like to make a reference to the communication of the University Grants Commission [UGC] bearing No. F-17-6/2013(PS/Misc)

issued in September, 2015, whereby the UGC issued a clarification in response to the query in the following manner:

Query

Reply

What does relevant subject mean by provision in para 4.4.0? when recruiting a candidate for ?commerce subject? does a candidate having done MBA (Management) subject become relevant subject for commerce ?

The relevance of subject or inter disciplinary nature of subject is required to be decided by the concerned University/appointing authority with the help of subject experts in the concerned/related field as per the requirement

14. From the clarification issued by the UGC, it becomes abundantly clear that the relevance or equivalence of a subject is required to be determined by the concerned University/Appointing Authority with the help of subject experts.

15 In the case on hand, the Appointing Authority i.e., the Department of Higher Education, took up the matter with two Expert\ Bodies i.e University of Jammu and University of Kashmir. The clarification issued by the University of Kashmir which was on record before the CAT reads thus:

"Deputy Registrar (Academic) University of Kashmir vide letter No. F(Clar-AP-Gel) Acad/17 dated 24.10.2017 has intimated that the Master?s Degree awarded by the University of Kashmir in Applied Geology is same s the Master?s Degree in Geology awarded elsewhere and therefore the M.Sc. applied Geology students may be considered eligible for Assistant Professor/Lecturer posts in the Higher Education Department"

16. To the similar effect is the opinion of the University of Jammu which, for facility of reference, is also set out below:

"Master?s in Applied Geology and Master?s are equivalent and recognized degrees. Most of the employees including UPSC, ONGC, Coal India Ltd. recognize the M.Sc. (Applied Geology)/M.Sc. Tech (Applied Geology) and M.Tech (Applied Geology) for consideration of candidates for appointments in different category as Geologists along with the candidates having M.Sc. (Geology) Degree. Also all the Universities appoint candidates with above mentioned Degree as Assistant Professors. University of Jammu is also giving M.Sc. Applied Geology since 2014".

17 Mr. Jahangir Iqbal Ganaie, learned Senior Counsel appearing for the private respondents may not be incorrect when he contends that, when the Recruitment Rules or the Advertisement Notification does not provide for equivalent qualification, it is not legally permissible even for the employer to request the PSC-the selection body to consider the candidates possessing equivalent qualification. However, the fact remains, that, in the instant case, the writ petitioner is not claiming that the qualification of M.Sc. in Applied Geology possessed by him should be declared as a qualification equivalent to MSc.

Geology, but his plea is that the qualification of M.Sc. Applied Geology is a qualification in the relevant subject i.e the subject of Geology as is opined by the two Apex Level Academic Bodies of UT of Jammu and Kashmir i.e University of Jammu and University of Kashmir. We also cannot lose sight of the fact that the qualification, which is equivalent to the qualification prescribed, cannot, by any stretch of reasoning, be held to be a qualification not relevant in the subject in which appointment is to be made. What is equivalent would necessarily be relevant. The equivalent qualification means a qualification that is equal in function, value, significance or level or similar in function, whereas the definition of relevant qualification, as given in the Collins Dictionary, is a qualification having direct bearing on the matter in hand; pertinent. It is, thus, evident that a qualification which is equivalent to the prescribed qualification would indeed be a qualification in the relevant subject for which recruitment is sought to be made.

18 We agree with the learned Senior Counsel appearing for the private respondents that the opinion tendered by the University of Jammu and University of Kashmir is not specific to the relevance of qualification, however, by reading the two opinions in their entirety, one would find that both the Universities are *ad idem* that the Degrees of M.Sc. Geology and M.Sc. Applied Geology are same and equivalent and, therefore, relevant to the subject to be taught by an Assistant Professor in the Higher Education Department. We have no reason, nor are we provided with such material as would persuade us to take a view or formulate an opinion contrary to the one rendered by the Expert Bodies.

19 At this stage, we would like to refer to and rely upon what is said by the Supreme Court in the recent judgments rendered in the cases of *Devender Bhasker and others vs. State of Haryana* 2021, SCC Online SC 1116 and *Zonal Manager, Bank of India* (*supra*) which is also referred to and relied upon by the CAT in the impugned judgment.

20. In the case of *Zonal Manager, Bank of India* (*supra*), the Supreme Court, in paragraphs 12 and 16 has held thus:

12. Though we have taken note of the said contention we are unable to accept the same. We are of such opinion in view of the well established position that it is not for the Court to read into or assume and thereby include certain qualifications which have not been included in the Notification by the employer. Further the rules as referred to by the learned counsel for the respondents is pointed out to be a rule for promotion of officers. That apart, even if the qualification prescribed in the advertisement was contrary to the qualification provided under the recruitment rules, it would have been open for the candidate concerned to challenge the Notification alleging denial of opportunity. On the other hand, having taken note of the specific qualification prescribed in the Notification it would not be open for a candidate to assume that the qualification possessed by such candidate is equivalent and thereby seek consideration for appointment nor will it even be open for the employer to change the requirements midstream during the ongoing selection process or accept any

qualification other than the one notified since it would amount to denial of opportunity to those who possess the qualification but had not applied as it was not notified.

16. Further it is not for the Court to provide the equivalence relating to educational qualifications inasmuch as the said issue has been settled by the Constitution Bench of this Court in the decision relied upon by the learned counsel for the appellants in the case of Mohammad Shujat Ali & Ors. vs. Union of India & Ors, (1975) 3 SCC 76 wherein it is held that the question in regard to equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications and where the decision of the Government is based on the recommendation of an expert body which possesses the requisite knowledge, skill and expertise for adequately discharging such a function, the Court, uninformed of relevant data and unaided by the technical insights necessary for the purpose of determining equivalence, would not lightly disturb the decision of the Government”.

21 From a reading of two paragraphs of the judgment reproduced above, two things are clearly evident: first, if a particular qualification is prescribed by the Statutory Rules or in the Advertisement, it would not be open to the Courts to deviate from such qualification and add to it the qualification which may be even equivalent or relevant as that would be tantamount to amending the Recruitment Rules or modifying the Advertisement Notification and; two, it is not within the domain of the Courts to find out the equivalence of the prescribed qualification as the question of equivalence of educational qualification is a technical question based on proper assessment and evaluation of academic standards and practical attainments of such qualification and, therefore, such decision should be best left to the Government/Appointing Authority to be taken on the basis of the recommendations of an Expert Body which possesses the requisite knowledge, skill and expertise for adequately discharging such functions.

22 Similar view has been taken by the Supreme Court in Devender Bhakser (supra).

23 As we have stated above that there is no quarrel with the above proposition put forth by the learned Senior Counsel appearing for the respondents, but, what is relevant qualification in terms of the recruitment rules is required to be spelled out by the Appointing Authorities, of course, on the basis of domain experts.

24. In the instant case, with a view to find out whether the qualification of M.Sc. in Applied Geology is a qualification in the relevant subject i.e the subject of Geology, the Appointing Authority i.e respondent No.1 took up the matter with two Apex Level Academic Bodies i.e University of Jammu and University of Kashmir and it is on the basis of opinion of these expert bodies, the Government unequivocally conveyed to the PSC that the qualification possessed by the petitioner was the relevant qualification for the post of Assistant Professor

Geology and, therefore, the petitioner was eligible. It is, thus, not understandable as to how the selection body like the PSC could sit over the opinion of the appointing authority based on the expert advice given in respect of relevance of the qualification i.e., 'M.Sc. Applied Geology' possessed by the petitioner.

25 We are aware that the opinion of the appointing authority based on the recommendations of the subject experts in respect of equivalence or relevance of the qualification prescribed for a post is not always and as a thumb rule binding on the Courts or is to be accepted as correct under all the circumstances. There may be cases where even the opinion of the expert is on the face of it, absurd or even actuated by bias or mala fide consideration. In such situation, nothing prevents a Constitutional Court to examine such opinion in the exercise of its power of judicial review.

26 Learned counsel for the PSC or for that matter, learned Senior Counsel appearing for the private respondents could not bring to our notice any power or competence conferred upon the PSC to sit over such decision of the appointing authority in respect of prescribed qualification particularly when such opinion of the appointing authority is based upon the recommendations of the experts domain. We have no doubt in our mind that it is neither for the selection body, nor for the Courts to enter into the arena of finding out the equivalence or relevance of the qualification prescribed for the post. We make it clear that the need to seek the expert opinion and the point of view of the appointing authority in respect of qualification may arise only when there is some confusion or ambiguity in the prescribed qualification. Had the statutory Recruitment Rules and the Advertisement notification notified the qualification for the post of Assistant Professor in Geology as M.Sc. Geology, perhaps it was not permissible for the appointing authority or, for this court, to look for any equivalent or relevant qualification. However, in the instant case, the Advertisement Notification did not prescribe qualification of M.Sc. Geology or M.Sc. in Applied Geology, but instead, it stipulated a Post Graduate Degree level in the relevant subject. It was in this context, a controversy arose as to whether the qualification of M.Sc. in Applied Geology is a qualification in the relevant subject or not. The Government, when confronted with this position, took up the matter with University of Jammu and University of Kashmir to obtain their expert opinion and it was on the basis of the expert opinion tendered by the Apex level Academic Autonomous Bodies, the appointing authority conveyed it to the PSC that the qualification of M.Sc. in Applied Geology possessed by the petitioner is also the relevant qualification and, therefore, the petitioner was entitled to be considered in the selection process. The PSC of its own and without having any such authority or competence set aside the opinion of the Government and vide notice impugned rejected the candidature of the petitioner for the post in question. The CAT has completely strayed away from the point in issue and has dismissed the plea of the petitioner on the ground that the qualification prescribed in the Advertisement Notification i.e. the Post Graduation in the relevant subject is Post Graduation in Geology only.

27 We, for the reasons given above, are not in a position to accept the view taken by the CAT.

28 For the foregoing reasons, the writ petition is allowed. The judgment impugned passed by the CAT is set aside. The impugned notification issued by the PSC declaring the petitioner ineligible is also set aside. The PSC shall proceed to complete the selection process by considering the petitioner also as an eligible candidate for the post of Assistant Professor in Geology in accordance with law.