

(2001) 12 KL CK 0068

In the High Court Of Kerala

Case No : O.P. No's. 2869, 2909 and 3125 etc. of 2001 and 37061 of 2000

Sheeba, A.K. and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 21-12-2001

Acts Referred:

Kerala Education Act, 1958 — Section 36
Kerala Education Rules, 1959 — Rule 3(1)
Kerala State and Subordinate Services Rules, 1958 — Rule 10, 13

Citation : (2001) 12 KL CK 0068

Hon'ble Judges : B.N. Srikrishna, C.J;M. Ramachandran, J

Bench : Division Bench

Advocate : N. Nandakumara Menon, K. Vinod Kumar, Anu Sivaraman, Harish, V. Rajendran, Jeena Joseph and P.V. Mohanan, for the Appellant; P.C. Sasidharan, for Respondent 2 and Roy Chacko, Government Pleader for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

M. Ramachandran, J.—The above Original Petitions, which got referred to a Division Bench, were heard together in view of the identity of the issues canvassed. The Petitioners are graduates who also possessed the qualification of B.Ed. In response to a notification of the Public Service Commission, inviting applications to the post of Lower Primary School Assistants and Upper Primary School Assistants (LPSA and UPSA) in the Government schools, the Petitioners had responded. It is nobody's case that they were having the (exact) qualification prescribed by the notification. The Public Service Commission had rejected the applications, and Lad went on with the process of selection, excluding the Petitioners. It was at that juncture that the Original Petitions happened to be filed. Though petitions urging interlocutory orders facilitating the Petitioners to participate in the written examinations had been presented and pressed, the Division Bench did not grant the reliefs as prayed for. That order has become final. The selection has proceeded thereafter and is at the final stages.

Urgency for hearing and disposal had been expressed by the Petitioners pointing out that once the selection process is complete, the writ petitions are likely to become anfractuious. Taking note of the request so made, the petitions were taken up for hearing out of turn.

2. Averments made in O.P. No. 2869 of 2001 and documents referred to therein could be taken up as a representative case. A counter affidavit has been filed by the Public Service Commission in one of the cases and it has been adopted in the rest of the petitions. On behalf of the Petitioners, we had opportunity to hear N. Nandakumara Menon, Anu Sivaraman, Harish, V. Rajendran, Jeena Joseph, K.G. Eldho and P.V. Mohanan. Mr. P.C. Sasidharan, Standing Counsel represented the Public Service Commission and we had heard Mr. Roy Chacko, Sr. Government Pleader for the State. Opposing the claims made by the Petitioners, we had also heard Advocate Sri Vishnu, who represented persons who had got themselves impleaded to the proceedings. At the outset itself, we may observe that we were not impressed by the plea of the Petitioners as regards any legal injury sustained and are constrained to hold that the challenge posed is misconceived. We will deal with the contentions as below.

3. Ext. P-1 dated 8th June 1999 is the notification issued by the Public Service Commission. The prayers as urged in the Original Petitions, are for quashing the above to the extent it seeks to conduct the selection to the notified posts, excluding B.Ed. holders. Such decision leading to Ext. P-2, according to them, is illegal and a declaration is sought to the effect that the Petitioners are legally entitled for selection and appointment to the notified posts, in the light of the Judgment of this Court in W.A. No. 744 of 1999.

4. In fact heavy reliance is placed on the above Judgment, *State of Kerala v. Geetha* ILR 2000 Ker 682, dated 18th February 2000. The arguments could be summarised as following:

Ext. P-1 notification prescribes the minimum qualification as S.S.L.C. or equivalent and T.T.C. course conducted by the Controller of Examinations of the Kerala Government, or a pass in the Pre-degree examination conducted by the Kerala University with Pedagogy as Optional Subject, or a pass in the Basic T.T.C. Examination (Malayalam) of the Madras Government or a pass in Malayalam Vidwan Examination. It is urged that it had been the consistent stand of the Government that B.Ed. examination was equal to T.T.C. Course. Reference had been made to the past notifications issued by the Public Service Commission. This will of course appear to be surprising. Notwithstanding that B.Ed. was not specifically included as a basic qualification, persons who had B.Ed. degree were permitted to make applications and had been got selected in the process. This went on unchallenged. It had also been highlighted that the above factual position had duly been found by the Division Bench in the reported decision in *Geetha's* case referred to earlier.

5. Our attention had also been invited to a notification issued by the Government

dated 8th February 2000, marked as Ext. P-3 by S.R.O. No. 506/2000. In exercise of powers conferred by Section 36 of the Kerala Education Act, 1958, the Government had amended the Kerala Education Rules, 1959 whereunder Sub-rule (1) of Rule 3 had been substituted as following:

A pass in S.S.L.C. examination conducted by the Commissioner for Government Examinations, Kerala or its equivalent or a pass in Pre-degree examination conducted by any of the Universities in Kerala or any examination recognised by any such Universities as equivalent to Pre-degree examination or a pass in a Higher Secondary Examination conducted by the Board of Higher Secondary Examination, Kerala or any other examination recognised by Government as equivalent thereto and a pass in T.T.C. Examination conducted by the Commissioner for Government Examinations, Kerala or a degree in any subject and B.Ed./B.T./L.T. conferred by or recognised by the Universities in Kerala.

A degree in any subject and B.Ed. or B.T. or L.T. conferred by or recognised by the University of Kerala also were recognised as sufficient qualification thereby.

6. With the above in arsenal, it had been submitted that notwithstanding the notification, persons who had B. Ed. also were entitled to be considered and rejection of their implications by the Public Service Commission was uncalled for. The present discrimination, according "to them, was patent and capable of not being explained. The explanatory note to Ext. P-3 S.R.O., referred to earlier, according to the Petitioners, intended to throw light to the general purport of the amendment. It is evident that the Government intended of course to equate the graduates with B.Ed. degree for selection and appointment to the post of Upper Primary School Assistant (and net to L.P.S.A.).

7. Petitioners, therefore, submitted that there was no jurisdiction for the Public Service Commission to exclude the B.Ed. degree holders from the purview of the selection, and depart from the past practice.

8. The arguments, as above, may appear to be attractive. But it is difficult to take the substantive submissions of the Petitioners in its face value. A reading of the Judgment in Geetha's case shows that it has not declared the law, as the Petitioners wish to understand it. The operative portion of the Judgment also does not come to the help of the Petitioners. The Division Bench, in Geetha's case, while adverting the contentions raised on Rule 10(a)(i) of the Kerala State and Subordinate Service Rules (though such discussions are not urged in the present case) held in unambiguous terms, as following:

What Rule 10(a)(ii) envisages is that incases where acceptance of equal qualification is provided for in the rules, the qualification found acceptable by the Commission as per Rule 13(b)(i) shall be sufficient for the post. Likewise such of those qualifications which presuppose the acquisition of the lower qualification prescribed for that pest shall be sufficient acceptable qualification as an equivalent qualification. Can the candidate having B. Ed. qualification presupposes the acquisition of qualification of pass in T.T.C. Not necessarily. It

depends on the facts of each case. In order to acquire B.Ed. qualification a candidate need not have a pass in T.T.C. He can straight away join for B.Ed. course after obtaining the degree But a B.Ed. holder may have a pass in T.T.C. not as a lower qualification but as a training qualification he may have obtained after the pass in S.S.L.C. Therefore, we cannot accept B.Ed. qualification as a qualification which pre-supposes the acquisition of qualification of T.T.C. prescribed for the post.

The following paragraph of the Bench decision also might be relevant:

The learned Judge finally held that in view of the principles laid down in the aforesaid decisions, B.Ed. is not a qualification prescribed and therefore B.Ed. holders are ineligible to apply. When the matter is thus considered only in the premise of Ext. P-3 notification we cannot say that the learned Judge has committed any error in holding that P.S.C. is not justified in searching for an equivalent or better qualification.

9. Observations relied had come only by accepting the stand of the-Government as seen from the counter affidavit, about a proposed policy change. Further directions in the appeal came to be passed only in the above context. And this was confined to future selections. The directions were as given, below:

The Government have expressed in the affidavit dated 19th January 2000 that they would frame rules in accordance with the decision taken on 2nd June 1999 in consultation with the P.S.C. for future appointments of T.T.C. hands only in U.P. Schools and B.Ed. holders and T.T.C. hands in U.P. schools as expeditiously as possible. This is a solemn undertaking which should be implemented with extreme swiftness. We do not want to keep the position uncertain and vague as far as future appointments are concerned. It is made clear that we have validated the appointments already made for apparent reasons referred to above. We therefore direct the Government to frame rules as above expeditiously, at any rate within a period of three months from today and to regulate all future selection and appointment accordingly.

Thus we find that the Petitioners can draw little sustenance from the writ appeal judgment.

10. Now we may examine the issue from the other angle as well. Mr. Sasidharan has urged two contentions. First is that when a notification is issued by the Public Service Commission, unless it is withdrawn or cancelled, selection has to be made strictly in consonance with the express terms advertised. In the past, on Government instructions, of course for U.P.S.A. posts, B.Ed. hands also were entertained. But now it is not found possible. The Judgment of the Division Bench has pointed out that for selection of L.P.S.A., B.Ed. is insufficient. What is presently contemplated is a common selection, and therefore it is inconceivable to entertain the applications from B.Ed. hands. By way of authority for the proposition, Mr. Sasidharan invited our attention to the Judgment of the Supreme Court, reported in.

Gopal Krushna Rath Vs. M.A.A. Baig (Dead) by Lrs. and Others, . When the selection process has actually commenced and the last date for inviting applications is over, any subsequent change in requirement regarding qualifications will not affect the process of selection which has already commenced. The Supreme Court points out that otherwise it would involve issuing a fresh advertisement with new qualifications. He had also brought to our attention to another decision reported in P. Mahendran and others Vs. State of Karnataka and others, . It was a case where the rules regarding qualification for appointment was amended during the continuance of the process of selection. The selection process was completed under the old rules and select list was finalised accordingly. The Supreme Court held that such a list was not vitiated by the amendment of rules. We are of the opinion that the Judgments, as above, sufficiently supports the legal submissions that are made by the Standing Counsel for the Public Service Commission, and effectively silences the arguments raised by them.

11. The notification (Ext. P-1) was issued on 8th June 1999. The pronouncement of this Court, reported in ILR 1999 Ker 500 (Geetha v. State of Kerala) had come by that time, and it was binding on the Commission. The Court had categorically decreed the inclusion of B.Ed. holders for selection to categories of U.P.S.A. and L.P.S.A. This Judgment was the subject-matter of the appeal in P. Mahendran and others Vs. State of Karnataka and others, , (referred to supra). Notification was therefore to be expressly made in terms of the directions made therein. It has been scrupulously followed. He, therefore, urges that the conduct of the Commission could never have been faulted.

12. We are of the view that the stand taken by the Commission is perfectly justified. Once a selection process has commenced, as suggested by the Petitioners, the parameters cannot be changed midway. As pointed out by the Standing Counsel, innumerable B.Ed. holders, seeing the notification with express stipulations, might have refrained from making application. Instant experimental fashion, the Petitioners might have ventured to make applications, ignoring their express disability. On the basis of the Division Bench Judgment, if their claims are directed to be entertained now, it would work as a fraud on others. The submission, we find, is unexceptionable.

13. The Standing Counsel also pointed out another difficulty for the Petitioners as well, with reference to Ex.t. P-3 amendment. The change in qualification is with reference to the Aided Sector of education only. As far as Government teachers are concerned, the qualifications are governed by separate orders. The change in Kerala Education Rules is not automatically made applicable, but of course the Government has to adapt them by appropriate orders. Ext. P-3 has been brought in, obviously in view of the Division Bench Judgment in Geetha's case, and exclusively concerns aided schools teachers. Therefore, the Petitioners may not be able to draw benefit from the above amendment, even if it is theoretically presumed that B.Ed. is a qualification which is equivalent to qualifications

prescribed by Ext. P-1. The learned counsel for the Petitioners fairly submitted that the legal position as highlighted above with reference to Ext. P-3 is undisputable.

14. Shri Vishnu, learned counsel appearing for the additional Respondents also endorsed the submissions made by the Standing Counsel for the Public Service Commission and therefore is not necessary for dealing with them separately.

15. A fervent prayer had been made by the Petitioners thereafter pointing out that the Petitioners are over aged and it may not be possible for them to partake in any selections for Government service. But when the issue is examined with reference to the law that is applicable, there cannot be any justification for holding in favour of the Petitioners based on sympathetical considerations. Though the apprehension of the Petitioners might be true, on the face of the materials that have forth come, the above plea cannot be countenanced.

16. Before concluding the matter, we may also refer to another Judgment which had been passed by a Division Bench of this Court in Writ Appeal No. 725 of 1993, though not cited at the bar. The Division Bench had endorsed the view of a learned Single Judge and it had been held that B.Ed. qualification was equivalent to the qualifications spoken to in Ext. P-1 notification. Of course it pertains to an earlier selection and this Judgment explains the stand of the Public Service Commission for permitting B.Ed. holders as coming within the eligible group. However, at this distance of time, and in view of the change in the policies, we do not think it necessary to confer any benefits to the Petitioners on the basis of the above unreported Judgment. Perhaps if the above Judgment had been brought to the attention of the learned Single Judge, the findings as reported in ILR Ker 500 might not have been there as presently been incorporated. We leave the matter as such.

17. In the aforesaid view, we see no merit in the Original Petitions-and they are dismissed. There will be no order as to costs.