
(2002) 08 AP CK 0099

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12420 of 1998

Smt. A. Ramamani and Others

APPELLANT

Vs

Bharat Dynamics Ltd. and Others

RESPONDENT

Date of Decision : 06-08-2002

Acts Referred:

Citation : (2002) 08 AP CK 0099

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Vedula Srinivas, for the Appellant; K. Srinivasa Murthy, for R1 and 2 and V.S.R. Anjaneyulu, for RR3-14, for the Respondent

Judgement

L. Narasimha Reddy, J.—The petitioners are officers of the cadre of Deputy General Manager working in the Bharat Dynamics Limited, the 1st respondent herein. The 1st respondent is part of a defence establishment and works directly under the control of Ministry of Defence, Government of India. The posts held by the petitioners are classified as Grade VI.

2. The 1st respondent intended to undertake selections and appointments to 9 posts of Additional General Managers of various divisions, in the year 1998. These posts are classified as Grade VII. Inasmuch as the selection was restricted to the internal candidates, petitioners and several Officers of the 1st respondent-Organisation, holding the requisite qualifications, were issued Circulars individually as well as through their respective departments, enabling them to apply. The petitioners and other eligible officers responded to the Circulars. Inasmuch as each post of the Additional General Manager was of different division and specialisation, applications were required to be made individually for each post. Accordingly, each petitioner made applications to 4 to 5 such posts, out of which some are common and the others specific to the individual petitioners.

3. After completion of the selection process in accordance with the Rules, the 1st

respondent notified the list of selected candidates through proceedings dated 24-4-1998. Through those proceedings, respondents 6 to 14 were appointed. The petitioners challenge the same on several grounds.

4. The main contention of the petitioners is that the Recruitment and Promotion Rules (for short "the Rules") framed by the 1st respondent stipulate requisite qualifications as well as experiences for various posts and the same have not been followed in the appointments in question. They allege that the persons who do not hold the basic qualifications prescribed under the Rules have not only been considered, but were appointed. A further contention was also raised that the selection process stipulated under the Rules was deviated from.

5. The 1st respondent filed a detailed counter affidavit furnishing the particulars of the posts that were filled together with their specialisations. The gist of the contentions of the respondent is that the posts in question required special skills, expertise and experience and, in that view of the matter, strict compliance may not be possible as regards the qualifications prescribed under the Rules. It is stated that the Departmental Promotion Committee (for short "the DPC") has considered the strategic importance of the individual projects and has selected the most suitable and competent candidates to handle such projects and such an assessment cannot be interfered with, at the instance of the unsuccessful candidates. It is their further contention that almost all the selected candidates have fulfilled the prescribed qualifications and it is only in respect of three candidates, viz., respondents 8, 12 and 14, that the qualifications held by them were to be treated as equivalent to the one prescribed under the Rules.

6. The individual respondents have also filed counter affidavits and supported the action taken by the 1st respondent in selecting and appointing them.

7. Sri Vedula Srinivas, learned counsel for the petitioners, has advanced two contentions. His first contention is that according to the procedure stipulated under Rule 43.3 of the Rules, several factors, such as seniority, qualifications, experience, performance at the interview, etc are to be taken into account while selecting the candidates, whereas the respondent has selected candidates only on the basis of the interview. His second contention is that some of the respondents, particularly, respondents 8, 12 and 14 did not hold the requisite qualifications and, as such, their selection cannot be sustained. He relied upon the judgments of the Hon"ble Supreme Court in support of his contentions.

8. Sri K. Srinivasa Murthy, learned Standing Counsel for respondent No.1 and Sri V.S.R. Anjaneyulu, the learned counsel for the selected candidates, submit that the petitioners did not raise the ground of non compliance of the procedure in the writ petition and, as such, it was not open to them to raise the same at the stage of arguments. As regards the second contention, they submit that the DPC found that the qualifications held by various candidates fulfilled the requirements under the Rules and no illegality has taken place. They also submit that in view of the fact that the posts for which the selections were held are strategic in

nature, no interference is called for.

9. Coming to the first contention of the learned counsel for the petitioners, it needs to be observed that though in Paragraph 5 of the affidavit, the petitioners have referred to the procedure to be followed for the purpose of selection; they did not allege that such procedure has not been followed. The learned counsel for the petitioners contends that, from the counter affidavit filed by the 1st respondent, it is evident that the DPC has taken into account the performance of the candidates at the interview alone and other aspects were not followed. In the affidavit filed by the petitioners, it is not alleged that the 1st respondent and the DPC constituted by it did not follow the procedure. In the absence of any specific plea in this regard, it is not at all possible to expect the respondents to answer such allegation or for the Court to record its finding. The averments in Paragraph 6 of the counter affidavit cannot be taken in isolation. Though the 1st respondent said that the DPC has taken into account the performance of the candidates at the interview, they cannot be said to have stated that the other factors were not taken into account. Therefore, the first contention advanced by the learned counsel for the petitioners cannot be accepted. So far as the second contention is concerned, it is not in dispute that the post in question is classified as Grade VII. The Rules prescribe the qualifications as well as the experience for appointment to various posts, whether by direct recruitment or promotion. The table appended to the Rules stipulates the minimum qualifications, experience, age limit, etc., for technical posts in Grade I and above. The relevant entries in the table are as under:

GRADE	DDIRECT	QUALIFICATIONS	PERIOD	AGE	PROMOTIONS	EXTENT TO
PROMOTIONS	PERIOD OF	RECRUITMENTT	OF	LIMIT	WHICH	EXPERIENCE
EXPE-	EDUCATIONAL	REQUIRED	FOR	RIENCE	QUALIFICATION	RELAXING
CAN BE	EDUCATIONAL	RELAXED	QUALIFICATIONS	(1)	(2)	(3)
(4)	(5)	(6)	(6)	Grade		
IDegree in Engg.	Nil	Or Technology Diploma in Engg.	4yrs.	years	Or Technology	
or Equivalent	40yrs.	N.A.C. ITI/B.Sc. SSLC	8 years	9 years	11 years	
Management Trainees in Gr.II recruited under the Scheme of Recruitment & Training of Graduate Engineers 1st Class Degree in Aeronautical Mechanical, Electronics, Nil Electrical, Chemical, Computer Science, Metallurgical Engineering/ Technology						

25yrs. ---- (Gr.III, IV and V omitted, since not necessary for this case) Grade VI Degree in Engg. Or 10 yrs. Technology 45yrs Diploma in Engg. Or Technology Or equivalent 1414 years Grade VII/ VII Degree in Engg. Or 11yrs. Technology

45yrs No relaxation

10. For the posts in Grades VII and VII, the qualification stipulated is Degree in Engineering or Technology and the period of experience is 11 years. A specific item viz., item No.5, is provided for in the table to indicate the extent to which educational qualifications can be relaxed. Though the extent of relaxation is

provided for all the posts up to Grade VI, no such relaxation is permitted as far as posts in Grade VII and VIII are concerned. Therefore, the 1st respondent or its DPC is expected to strictly adhere to the educational qualifications, while undertaking selections to the posts in Grade VII, with which we are now concerned. The learned counsel for the petitioners has submitted that the experience referred to in the table should be taken to the one in the feeder posts. On the basis of this submission, he states that several candidates who did not put in that length of service in the feeder posts have been selected. In this context, it may be observed that the relevant entry in the table does not indicate that the experience referred to therein should be in the feeder posts. Therefore, it has to be taken as experience whether in the feeder posts or any other posts.

11. There is no dispute as to the fulfilment of the educational qualifications of various candidates except for respondents 8, 12 and 14. It is stated that respondent No.8 did not possess the Degree in Engineering or Technology. This fact is not disputed. However, it is stated by the 1st respondent that he studied AMIE conducted by the Institute of Engineers and the same is equivalent to B.E., Degree. The learned counsel for the respondents submit that the Government of India as well as the Government of Andhra Pradesh have treated AMIE as equivalent to B.E., Degree. However, unless the 1st respondent itself has provided for such equation, the said degree cannot be treated as equivalent to the prescribed qualification. A perusal of the table referred to above indicates that wherever the 1st respondent wanted to provide equivalent, it did so specifically. In the absence of such specification, no equation of degree can be undertaken.

12. The petitioners contended that respondent No.12 does not hold any Engineering Degree at all. It has been stated in the counter affidavit filed on behalf of the 1st respondent that respondent No.12 was a Wing Commander in Air Force Logistics branch with the M.Sc., (Defence Studies). According to them, the post for which he was selected requires a candidate with specialisation and expertise in movement of defence equipments and since there is no specialised study in Engineering in that branch, he was selected. It is also their contention that the experience of the 12th respondent as Wing Commander in Logistics branch and his qualification in M.Sc., (Defence Studies) is better suited for handling the missiles.

13. So far as respondent No.14 is concerned, it is not in dispute that he does not hold the B.E., degree and that he is a Post Graduate in M.Sc.(Statistics). The 1st respondent justified his selection on the ground that he had past experience in the Organisation and on several occasions, when he was promoted from one post to the other, the qualification held by him was equated to the Engineering degree. The respondents also relied upon the inherent powers of the Organisation to relax or modify the qualifications depending on the specific requirement.

14. Once an employer stipulates the qualifications to be possessed by the

candidates for any particular post, whether by way of direct recruitment or promotion, it is expected to adhere to the same strictly. There may be cases in which the posts are of specialised nature and it may be too difficult to get the candidates with the requisite qualifications. In such cases, the Rules themselves provide for relaxation of the qualifications subject to certain limitations and guidelines. However, where the qualifications are stipulated without reserving any power to relax, there is no scope for consideration of the candidates, who do not possess those qualifications. The law on the subject is more than settled.

14. In *District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi*, , the Hon"ble Supreme Court summed up the law as under:--

"When an advertisement mentions a particular qualification and an appointment is made in disregard to the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No Court should be a party to the perpetuation of the fraudulent practice."

15. In *Satish Kumar Vs. Jalandhar Improvement Trust, Jalandhar and Another*, it was held that the power to appoint to a particular post or general power of supervision and control does not take in its fold the power to appoint a person without basic qualification. In *State of Madhya Pradesh and Another Vs. Dharam Bir*, , the Hon"ble Supreme Court took the view that, howsoever wide the experience gained by a candidate may be, the same cannot be equated with the educational qualifications that are required to be possessed as a condition of eligibility for appointment or promotion to the higher post.

16. If the case on hand is examined with reference to these principles, it emerges that respondents 8, 12 and 14 did not held the qualifications stipulated for the posts. The main contention put forward by the 1st respondent in this regard is that the various posts that were filled with respondents 6 to 14 are of strategic importance involving the handling of missiles of vital importance and, in that view of the matter, strict compliance need not be insisted as to the qualifications.

17. Law accords absolute freedom to the employers to stipulate or prescribe qualifications for the posts to be filled up by them. The reason is that the employer is presumed to know the requirements of the posts and the expertise needed for the same. While granting the freedom to stipulate qualifications or other conditions, the law insists that the same be adhered to. It is not uncommon that, with a view to over-come certain peculiar and special circumstances, the employers themselves provide for relaxation of the

qualifications and other such conditions. One does not have to search for examples. As indicated earlier, the 1st respondent itself, up to the post of Grade VI, provided for relaxation of the qualifications, to the extent indicated in the table. The 1st respondent has consciously framed the Rules to the effect that so far as the posts of Grade VII and VIII are concerned, there shall not be relaxation of any qualifications. It connotes the importance, which the 1st respondent has given to the qualifications as far as posts of Grade VII and VIII are concerned. As long as that stipulation stands, it is not open to the 1st respondent to deviate from the same.

18. If the 1st respondent felt that, having regard to the strategic importance of the posts, the qualifications needed to be relaxed to enable them to select persons with expertise and specialisation, it was for them to make appropriate amendments to the relevant Rules. It is not as if there was any insurmountable difficulty in amending the Rules. It may be true that the posts in questions are job specific and required great expertise. But all the same, as long as the Rules stand and they do not provide for any relaxation, the situation cannot be helped. Therefore, the appointments of respondents 8, 12 and 14 cannot be said to have been made in accordance with the Rules. As such they deserve to be set aside.

19. A contention was advanced on behalf of the respondents that since the petitioners are not eligible to be selected automatically, even if the appointment of some of the respondents are set aside, the relief that may be granted to the petitioners will be only academic. This Court was rather reluctant to set aside the appointments of respondents 8, 12 and 14, if it was to be an academic exercise. It was, in this context, that the learned counsel for the respondent was required to state as to whether the DPC prepared any panel or it just cleared the individual candidates. If it were to be a case where the DPC prepared a panel, duly assigning ranks to the candidates and that the petitioners figured at an insignificant place in the list, setting aside of the selection of some of the respondents, would not have enured to the benefit of the petitioners. The petitioners, in such circumstances, cannot be said to have suffered any prejudice. That unfortunately was not to be so. It is represented that the DPC did not prepare any panel, but has just cleared respondents 6 to 14. In such a situation, the petitioners can certainly be said to have suffered prejudice. If unqualified candidates are eliminated from the fray, the petitioners and other applicants can certainly stand to chance of being considered.

20. For the foregoing reasons, the selection and appointment of respondents 8, 12 and 14, who are found to be lacking prescribed qualifications, are set aside. The 1st respondent is directed to consider the cases of such of the petitioners, who have applied for the posts held by respondents 8, 12 and 14, along with other candidates. The writ petition is allowed to the extent indicated above. There shall be no order as to costs.