

(1994) 04 KL CK 0023
In the High Court Of Kerala
Case No : O.P. No. 2387 of 1993-H

Sobha Menon

APPELLANT

Vs

Secretary, Kerala Public Service Commission and Others

RESPONDENT

Date of Decision : 07-04-1994

Acts Referred:

Kerala State and Subordinate Services Rules, 1958 — Rule 13, 13A

Citation : (1994) 04 KL CK 0023

Hon'ble Judges : P.K. Balasubramanyan, J

Bench : Single Bench

Advocate : H. Subhalakshmi, for the Appellant; M.K. Damodaran and P.C. Sasidharan for Respondents 1 to 4 and B. Krishnamani and V. Premchand for 5th Respondent, for the Respondent

Judgement

P.K. Balasubramanyan J.

1. The Petitioner was an applicant for the post of Lecturer in History of Arts and Aesthetics in the Department of Technical Education (College of Fine Arts) pursuant to the Notification Ext. P-1 dated 15th October 1991. She approached this Court praying for the issue of a writ of certiorari for quashing the selection of one Ramachandran to the said post ahead of her. The Petitioner, for reasons best known to her, did not implead the said Ramachandran as a Respondent in this Original Petition. But the said Ramachandran filed C.M.P. 12145/1993 for getting himself impleaded as additional Respondent No. 5 in this Original Petition. That application was allowed by this Court. Thus the defect in the Original Petition was cured.

2. The qualification prescribed under Ext. P-1 for the post is a First Class or Second Glass Master's Degree in History of Arts from a recognised University with not less than 55 percent marks. According to the Petitioner she possesses a first Class Master's Degree in M.A. (Fine) Arts History from the Department of Art History and Aesthetics of the Maharaja Sayajirao University of Baroda with 69.5 percent marks. Respondent No. 5 who was also an applicant possessed the

Degree M.A. (Fine) Art Criticism from the same University. According to the Petitioner, Respondent No. 5 did not possess the requisite qualification prescribed by Ext. P-1, Notification but was being preferred for the post in question, in view of the all pervasive influence he seems to have exerted. The Petitioner had earlier approached this Court with O.P. 1787 of 1993 praying for a direction to the Respondents to strictly follow the conditions laid down in the Notification Ext. P-1. By judgment Ext. P-2 dated 8th February 1993 this Court dismissed the Original Petition recording the submission made on behalf of the Kerala Public Service Commission to the effect that the selection will be made in accordance with law and making it clear that the dismissal of that petition will not stand in the way of the Petitioner approaching this Court again if it became necessary. According to the Petitioner, it has become necessary to approach this Court again in view of the illegal selection to the post made by the Respondents.

3. It is pointed out that the qualification prescribed under Ext. P-1 is a Master's Degree in History of Arts. It is seen from Ext. P-1 that there is no mention of any other equivalent qualification or alternate qualification. According to the Petitioner, the qualification, Masters Degree in History of Arts is available only in the University of Madras and is not available in any other University. According to the first Respondent Public Service Commission, none of the applicants to the post advertised under Ext.P-4 possessed a post-graduate Degree in History of Arts. It was therefore decided to make the selection from among the applicants who possessed equivalent degrees. According to the Public Service Commission, the Petitioner possessed the qualification of a post-graduate Degree in Arts History and Respondent No. 5 possessed a post-graduate Degree in Art Criticism. According to the first Respondent, both the said degrees could be treated as sufficient to meet the requirements of Ext. P-1 notification or as equivalent qualifications and on comparison, it was found that Respondent No. 5 was better qualified and hence he was selected. The Petitioner contends that a post-graduate degree in Art Criticism cannot be treated as equivalent to a post-graduate degree in History of Arts whereas, the degree held by the Petitioner in Arts History was identical as a post-graduate degree in History of Arts since the distinction between the two degrees was only a distinction without a difference. According to Respondent No. 5, the subjects he studied for his post-graduate course would show that the degree held by him is equivalent to a post-graduate degree in History of Arts and that the selection was made by the Public Service Commission only after a due and proper assessment of the merits of the applicants and there are no legal grounds to set aside the selection of Respondent No. 5 to the post. It is contended that he is better qualified to hold the post of Lecturer in History of Arts and Aesthetics.

4. The Petitioner has attempted to produce material to show that there is no distinction between the degree in Art History and History of Arts. It is pointed out with reference to Ext. P-8 that the expressions have been used interchangeably and that there is no real distinction between the two. According to the learned Counsel for the Petitioner, the Petitioner did possess the qualification mentioned

in Ext. P-1 notification and there was no justification for the Public Service Commission to go in search of equivalent degrees for making the selection. It is also pointed out that there is no power in the Public Service Commission to go in for a selection on the basis of equivalent degrees possessed by the applicants and which is not one specified in the notification inviting the applications. Since the Petitioner alone was qualified in terms of Ext. P-1, according to the learned Counsel, the Petitioner should have been selected.

5. The first aspect that has to be considered is whether a post-graduate degree in History of Arts and a post-graduate degree in Arts History are one and the same. In the counter affidavit filed on behalf of the first Respondent it is pointed out that the Petitioner also did not have a post-graduate degree in History of Arts and both the Petitioner and Respondent No. 5 obtained their respective qualifications from the same Maharaja Sayajirao University of Baroda. It was stated that though the qualification of the Petitioner and Respondent No. 5 did not have terminological exactitude with the qualification prescribed in Ext. P-1 it was considered that both of them possessed equivalent qualifications and an assessment of the comparative merits was made and Respondent No. 5 was selected. It is submitted that the subjects studied by Respondent No. 5 would show that his degree in Art Criticism contained sufficient coverage of the study of history of Arts and hence it was decided that Respondent No. 5 also possessed the requisite qualification. Respondent No. 5 has also put forward a contention that the study of Art Criticism sufficiently includes the study of History of Arts and that therefore his qualification can be treated as equivalent or sufficient to enable him to claim the post notified under Ext. P-1.

6. In view of the fact that the qualifications of both the Petitioner and Respondent No. 5 did not have terminological exactitude with the qualification prescribed in the notification, Ext. P-1, the Public Service Commission took up the exercise of finding out whether the qualifications possessed by the applicants could be treated as equivalent to the qualification notified. It appears to me that this process adopted by the Public Service Commission would prejudice various prospective applicants who might not have applied since the notification Ext. P-1 did not provide for any alternate qualification. It also appears to me that by not prescribing an equivalent qualification and prescribing the qualification only as a post-graduate degree in History of Arts, the Public Service Commission has kept out candidates who might be deemed to have an equivalent degree. In the normal course, only candidates possessing a post-graduate qualification in History of Arts would have applied or would have considered themselves fit to apply. The procedure adopted by the Public Service Commission after the notification and submission of applications by undertaking the exercise of finding out whether any of the applicants who had applied possessed a qualification which can be treated as equivalent to the one notified, would be arbitrary and unjust and would have deprived many a fit candidate of the opportunity of applying for the post. In the view of the matter, it appears to me that the selection of Respondent No. 5 on the ground that he possessed a

qualification which could be considered equivalent to the notified qualification and that he had more merit than the Petitioner could not be sustained.

7. It is pointed out that a post-graduate degree in History of Arts is only awarded by the University of Madras and not by any other University. The Notification Ext. P-1 hence ex-facis confines the application to those who had obtained post-graduate degree from the University of Madras. This aspect of the matter has not been traversed in the counter affidavit filed on behalf of the Public Service Commission. But going by the notification it appears to me that the proper thing to do is to consider only the applications of those applicants who did possess the qualification notified. It is submitted on behalf of the Commission that the Commission is empowered to accept an application treating the qualification possessed by the candidate as equivalent to the notified qualification under Rule 13(b)(i) of the Kerala State and Subordinate Service Rules. Rule 13 says that no person shall be eligible to appointment to any service unless he possessed such special qualification as has been prescribed in that behalf in the Special Rules, or possessed such other qualification as may be considered to be equivalent to the said qualification by the Commission in cases where the appointment has to be made in consultation with the Commission. This power, in my view, cannot enable the commission or the appointing authority to give a go by to a specific notification fixing a specific qualification and that too after receipt of the applications from the candidates. By not indicating any equivalent qualification in the notification Ext. P-1 itself and by not indicating at least that applicants with equivalent qualifications would also be considered, a large number of candidates who could have applied had been kept out from applying for the post advertised. To search out an equivalent qualification at a later stage would be unjust and arbitrary. The power under Rule 13 cannot be exercised to achieve such a result.

8. Qualification is the fundamental requirement of selection. That fundamental requirement should be determined and finalised before setting in motion the process of selection. If not done initially it cannot be done at all. The power conferred by Rule 13(b)(i) has to be exercised consistent with this principle. That would mean, the Commission has to indicate at the stage of inviting applications that equivalent qualifications would also be considered. The expression "appointment" in relation to Rule 13(b)(i) would cover the entire process of appointment. The process of appointment has to necessarily commence from the issue of the notification inviting application. The power under Rule 13(b)(i) has to be exercised at the time of inviting applications. If the notifications itself does not indicate that equivalent qualifications would also be considered, there is no question of exercising the power under Rule 13(A)(i) midstream. Of course, the power to decide what is an equivalent qualification would rest with the Public Service Commission.

9. It is true that as held by the Supreme Court in *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, and reiterated in *V.K. Sood v. Secretary, Civil Aviation* and Ors. 1993 (2) S.C.J. 573 it is not the function of the

court to prescribe a qualification. But when an abrupt exercise is undertaken after the notification and after the applications are received to find out an equivalent qualification thus keeping out many other aspirants who may also possess such qualifications, it appears to me that the proper thing for the court to do is to strike down the entire selection process and to direct the authorities concerned to issue a fresh notification prescribing the qualification including the alternate qualification if any so as to enable a wide section of the aspirants to apply.

10. In the light of my above conclusion, I set aside the entire selection process leading to the selection of Respondent No. 5 to the post of Lecturer in History of Arts and Aesthetics and direct the Respondents to initiate a fresh process of selection for filling the post of Lecturer in History of Arts and Aesthetics. In the view I have taken, the Petitioner is not entitled to the relief of a direction to the Respondents to select her for the post or to appoint her in the post. Hence the prayer of the Petitioner in that behalf is declined and the selection of Respondent No. 5 is quashed.

In the result, the Original Petition is allowed to the above extent and Respondents 1 to 4 are directed to initiate fresh steps for making appointment to the post of Lecturer in History of Arts and Aesthetics in the Department of Technical Education. In the circumstances I make no order as to costs.