
(2011) 06 KL CK 0137

In the High Court Of Kerala

Case No : WA. No's. 1570 of 2010 and 686 of 2011

State of Kerala and Others

APPELLANT

Vs

Thulasibai and Others

RESPONDENT

Date of Decision : 27-06-2011

Acts Referred:

Citation : (2011) 3 ILR (Ker) 157 : (2011) 3 KLT 181

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; A.G. Aneetha, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Gopinathan, J.—W.A. 1570 of 2010 was filed by Respondents 1 and 2 in W.P. (C) 10132/2010. The other appeal was filed by the 5th Respondent. Petitioner in the writ petition is the first Respondent in both the appeals. (Hereinafter the parties are referred to as arrayed in the writ petition.) The Petitioner entered service in the Chemical Examiner's Laboratory Department, of which the second Respondent is the Head, as a Technical Assistant on 10.2.1982 with a graduate degree in Chemistry. On 6.10.1985, she was promoted as Junior Scientific Officer. On 18.4.1991, she was promoted as Assistant Chemical Examiner. While in service, she acquired Master's Degree in Chemistry in 2007 through Distance Education Programme of Madurai Kamaraj University. Apprehending that she would not be considered by the Departmental Promotion Committee (DPC) for the reason that the post graduate degree acquired by her is through Distance Education Programme, she moved this Court seeking a direction in the nature of mandamus to Respondents 1 and 2 to include the Petitioner in the select list for consideration by the DPC as she had required qualification for promotion under the Kerala Chemical Examiner's Laboratory Special Rules, copy of which is produced as Ext.P1 and for a direction to Respondents 1 and 2 to hold the DPC without delay to consider her name along with other eligible candidates for the

vacancies that may accrue.

2. The learned Single Judge, after considering the Petitioner's claim, in the light of Ext.P4 Government Order and the decisions of this Court in Mohanan Nair v. State of Kerala 1994 (2) KLT 537, Mujeeb Rahman Vs. State of Kerala, , State of Kerala Vs. Suja Kumari, , Public service Commission v. Abdul Rasheed 2007 (3) KLT 881 and Ani G. Mattathil v. State of Kerala 2009 (1) KLT 917, arrived at a finding that Ext.P1 Special Rules do not make any distinction between a post graduate degree obtained after a regular course of study and one obtained by correspondence course/ distance education. The educational qualification for the post of Joint Chemical Examiner is a Master's degree with at least 50% marks in Chemistry or Forensic Science or Bio-Chemistry of a recognized University. It is admitted by Respondents 1 and 2 that Madurai Kamaraj University is a University established under a State Statute. Consequently, it was found that the Petitioner is having sufficient qualification for promotion as Joint Chemical Examiner. Therefore, the Petitioner is entitled for a decree for direction and declaration. Consequently, the writ petition was allowed as prayed for. Now these appeals.

3. Going by Ext.P1, we find that for the post of Joint Chemical Examiner, the educational qualifications that the Special Rules mandate is only a Master's degree with at least 50% marks in Chemistry or Forensic science or Bio chemistry of a recognized university. The Rules do not insist that the degree obtained shall be after a regular course of study. In other way, the qualification acquired by the distance education is not at all anyway inferior. In this view of the matter, we find that the learned Single Judge was correct in allowing the writ petition. In the appeal memorandum by Respondents 1 and 2, various grounds were raised. Five documents were produced along with the appeal memorandum. Annexures A, B and C were produced to show that the University of Calicut, University of Kerala and the Mahatma Gandhi University had not recognized the M. Sc. degree in Chemistry awarded by Madurai Kamaraj University under the distance education scheme. Annexure D was produced to show that the Kerala Public Service Commission informed the Government that it would accept the qualification acquired through distance education only if the candidate produces the eligibility certificate from any of the universities in Kerala. Annexure E was produced to show that the claim of the Petitioner was rejected on the date on which the writ petition was disposed of. The question as to whether the Universities in the State had recognized the M. Sc degree in Chemistry awarded by the Madurai Kamaraj University is not at all germane. So also, the conditions imposed by the Public Service Commission for accepting the qualification through distance education is an extraneous matter. Annexure E would only show that the first Respondent, knowing that the matter is pending before this Court, rejected the claim of the Petitioner. It is a pendente lite decision and it would no way affect the enforcement of the judgment. Therefore, the documents produced in appeal wouldn't tilt the scale. Ext.P4 order dated 17.7.1965 issued by the first Respondent would show that other degrees and diplomas awarded by the statutory universities established by the Central or State legislature or by other

institutions of higher learning recognized as universities by the Central Universities Grants Commission should be recognized. There is no case for the Respondents that Madurai Kamaraj University is not recognized by the Central Universities Grants Commission. Therefore, the Petitioner holds a Masters degree recognized by the first Respondent. Annexure A to C are contrary to Ext.P4. Ext.P4 does not distinguish a degree obtained after a regular course of study and a degree obtained under distance education programme. According to the learned Government Pleader, the post of the Joint Chemical Examiner is a very important technical post as the Joint Chemical Examiner has to deal with analysis of materials objects involved in grave crimes like murder, sexual offences, poisoning, Abkari offences, Narcotic drugs and psychotropic substances etc. and that an officer possessing Master's degree under the distance education is not competent to hold such highly technical posts as the experience in the laboratory is practically nil. We find no merit in the submission as Ext.P1 Rules insist only two years experience as Assistant Chemical Examiner. It is the will of the Government that is reflected in Exts.P1 and P4. So long as Ext.P1 Special Rules as now stands, we are constrained to reject the submission made by the learned Government Pleader.

4. If what is submitted by the learned Government Pleader is true and the intention of the Government is what is submitted by the learned Government Pleader, what the Government should have done is to amend the Special Rules. Once the Special Rules are framed and notified, the same should be followed. In the event it is felt to a Head of the Department that a particular rule is against the public interest it is for him to appraise the Government and to get the rule amended and not to file an appeal against a judgment delivered upholding the right of a party in accordance with the rule. So also, if it is brought to the notice of a Government Pleader that a Head of the Department is proposing to file such appeal, it is the duty of the Government Pleader to bring the matter to the notice of the Government through Advocate General and to advise the Government to amend the rules. A Government Pleader is not expected to canvass a decision against the rules. Any such attempt would be an abuse of the process of law which we can no way encourage, but to deprecate.

The 5th Respondent has got a case that simultaneously the Petitioner has acquired LLB degree through distance education even without availing leave for a single day. Regarding that there is no supporting material. If the Petitioner had practised any malpractice in acquiring the degree, that should be dealt in the manner prescribed by law and not otherwise. We find no merit in these appeals. Accordingly, the appeals are dismissed with liberty to the State to amend the Special Rules, if so proposed. No costs.