

(2010) 02 UK CK 0073
In the Uttarakhand High Court

State of Uttarakhand and Others

APPELLANT

Vs

Km. Kiran Chaudhary

RESPONDENT

Date of Decision : 19-02-2010

Acts Referred:

Citation : (2010) 1 UD 246

Hon'ble Judges : J.S. Khehar, C.J; Tarun Agarwala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—The present special appeal arises against the order of the learned Single Judge dated 28th February, 2006 issuing a writ of mandamus directing the respondents (now ?appellants? in the special appeal) to consider the case of the petitioner by awarding her quality points as provided under the U.P. Subordinate Educational (Trained Graduate Grade) Service Rules, 1983 (hereinafter referred to as Rules of 1983).

2. The brief facts leading to the filing of the writ petition is, that an advertisement was issued by the respondents inviting applications for appointment of Assistant Teachers in various subjects. The petitioner applied for the post of Assistant Teacher/Mistress in Arts. The results were declared in June, 2003 in which the name of the petitioner did not figure in the select list. The petitioner alleged that candidates obtaining 49.86 quality points marks were found in the select list. According to the petitioner, she had 53.23 quality points marks and, consequently, was liable to be selected. It was alleged that 10 quality points marks relating to her post-graduate qualification was not added and consequently the petitioner filed a writ petition praying for a writ of mandamus commanding the respondents to award quality points marks for her post-graduate qualification and consider her on the post of Assistant Mistress L.T. grade Arts in accordance with the provision of Appendix ?D? of the Rules of 1983.

3. The respondents took a stand that the petitioner was not selected for the post

of Assistant Teacher as she could not fulfill the eligibility criteria provided in Appendix ?D? of the Rules, 1983. The respondents submitted that the petitioner was a post-graduate in Home Science and not a post-graduate in Arts. The petitioner applied for an appointment on the post of Assistant Mistress in Arts. The respondents submitted that a post-graduate degree in the concerned subject was an essential qualification for obtaining quality points marks and since the petitioner did not have the requisite post-graduation degree in the concerned subject, she was not entitled for the quality points marks for her post-graduation degree. The respondents further submitted that the quality points marks which the petitioner had obtained was 43.23 points whereas the last selected candidate had obtained 49.86 points.

4. The learned Single Judge, after considering the matter, allowed the writ petition and held that the petitioner was entitled to be given the quality points marks for her post-graduation degree and accordingly issued a writ of mandamus to the respondents to consider the petitioner on the post of Assistant Mistress in Arts after considering her quality points marks in accordance with the provision of Appendix ?D? of the Rules, 1983.

5. Heard Shri K.P. Upadhyaya, the learned Addl. C.S.C. for the appellants and Shri Manoj Tiwari, the learned Senior Counsel duly assisted by Shri Alok Mehra, the learned Counsel for the respondent.

6. The controversy arising in this special appeal lies in a short compass. The question for consideration is, whether a postgraduate degree in the concerned subject is required for obtaining quality points marks as contemplated in Appendix ?D? to the Rules, 1983 ? For a proper appreciation, the provisions of Rule 8, Rule 15 and Appendix ?D? is extracted below:

8. Academic qualification.- A candidate for direct recruitment to the various posts in the service must possess the following qualifications or as specified by the Government from time to time:

Sl. Post Qualification Preferential No. qualification

1

5. Assistant Master/ Assistant Mistress (Arts). 1. Intermediate examination of the Board of High School and Intermediate Education Uttar Pradesh and any equivalent examination with Art, Master's Training Certificate (formerly) known as Drawing teacher certificate) of Government School of Arts and Crafts, Lucknow or a certificate recognized as equivalent thereto.

2. Bachelor of Arts Degree from a recognized University or a degree recognized as equivalent thereto with a certificate awarded by the Government Drawing and Handicrafts Centre, Allaha bad (since abolished) or a certificate recognized as equivalent thereto.

Or

3. Intermediate Examination with Technical Drawing with one of the following examination -

(a) Fine Arts Diploma of the Government School of Arts and Crafts, Lucknow.

Or

(b) Bachelor's degree in Arts with Drawing and Painting from a recognized University or a degree recognized by the Government as equivalent thereto.

(c) Fine Arts Diploma of Kala Bhawan, Shantiniketan.

Or

(d) Fine Drawing Teachership Examination Calcutta.

Or

(e) Teacher Senior Certificate Examination Mayor School of Arts, Lahore.

15. Procedure for direct recruitment. - [(1) (a) The Regional Deputy Director of Education concerned shall in respect of the vacancies of both branches (Men's and Women's Branch) to be filled by direct recruitment, advertise the vacancies subject-wise, along with the number of vacancies to be reserved for the candidates belonging to the Schedule Castes/Tribes and other categories of persons in at least two leading newspapers, one having wide circulation in the region and the other in the State, and invite applications for direct recruitment in the proforma given in Appendix 'C'. Such advertisement shall, inter alia, mentioned the pay and allowances relating to the posts, minimum academic qualifications for appointment thereto and such other information as may be considered necessary.

(b) The application referred to in Clause (a) shall be sent, by registered post, to the Regional Deputy Director of Education within three weeks from the date of publication of advertisement in the newspaper, so as to reach the office of the Regional Deputy Director of Education on or before the last date of receipt of application mentioned in the advertisement.

(c) The application referred to in Clause (a) shall be accompanied by -

(i) a fee of fifteen rupees in the form of Crossed Postal Order payable to the concerned Regional Deputy Director of Education:

Provided that such fee shall in the case of candidates belonging to the Scheduled Castes and Scheduled Tribes be five rupees:

(ii) a self-addressed envelope; and

(iii) other documents as may be required.

(d) No application sent in accordance with Clause (b) or (c) shall be taken into consideration.

(2) The Regional Deputy Director of Education shall scrutinize the applications and shall cause the lists of candidate to be prepared on the basis of quality points specified in Appendix-D. The Regional Deputy Director of Education shall place the lists alongwith the applications before the Selection Committee.

(3) There shall be a Selection Committee for selection of candidates for appointment by direct recruitment comprising:

(i) Appointing authority.

(ii) The Regional Deputy Director of Education or the Regional Inspectress of Girls Schools, who is not appointing authority.

(iii) Regional Assistant Director of Education (Basic).

The appointing authority shall be the Chairman.

(4) The Selection Committee shall, after considering the cases of candidates on the basis of lists referred to in sub-rule (2), prepare subject-wise lists of selected candidates for appointment in L.T. Grade in order of merit as disclosed by the quality points compiled under sub-rule (2). If two or more candidates obtain equal quality points, the name of the candidate who is older in age shall be placed higher in list. The number of names in the list shall be larger (but not larger by more than twenty five percent) than the number of vacancies advertised under sub-rule (1).

Appendix "D"

[See Rule 15 (2)]

Quality points for selection by direct recruitment

Name of Examination Quality Points

1. High School The Percentage of marks 10
2. Intermediate The Percentage of marks X 2 10
3. Graduate Degree The Percentage of marks X 4 10
4. Others I II III Training Division Division Division (a) Theory 12 6 3 (b) Practical 12 6 3
5. Post-Graduate 15 10 5 Degree

7. The qualification for the post of Assistant Teacher in Arts is provided in Rule 8 (5) which indicates that the candidate must possess a Bachelor's Degree in Arts with drawing and painting as the subjects. Rule 15 provides the procedure for direct recruitment. A perusal of this Rule indicates that there is no written test or interview of the candidate and that the appointment is made on the basis of the formula mentioned in Appendix ?D?. Clause (1) of Rule 15 indicates that the vacancy has to be advertised subject-wise alongwith the number of vacancies to

be reserved for the candidates belonging to Scheduled Castes/Tribes and other categories in at least two leading newspapers. The advertisement would also indicate the minimum academic qualification for appointment. Sub-clause (2) of Rule 15 indicates that the applications submitted by various candidates would be scrutinized and that a list of candidates would be prepared on the basis of quality points specified in Appendix ?D?. The said list would then be placed before the Selection Committee. Sub-clause (3) of Rule 15 contemplates the formation of the Selection Committee and under Sub-clause (4), the Selection Committee, after considering the case of the candidates on the basis of the list referred to in Sub-rule (2), would prepare subject-wise list of the selected candidates for appointment in L.T. grade in the order of the merit as disclosed by the quality points compiled under Sub-rule (2) of Rule 15, i.e., on the basis of quality points specified in Appendix ?D?

8. Appendix ?D? indicates the formula for calculating the quality points. Item Nos. 3 and 5 of Appendix ?D? is of importance. Item No. 3 indicates the method of calculating the quality points of a candidate having a graduate degree. Item No. 5 indicates that if a candidate has a post graduation degree and if the candidate has a 1st division, the said candidate would get 15 quality points. If the candidate holds a 2nd division, he would get 10 quality points and if the candidate holds a 3rd division, the said candidate would get 5 quality points.

9. Item No. 5 of Appendix ?D? only mentions a post-graduate degree. It does not mention that the candidate should have a post graduate degree in the concerned subject. Under Rule 8, the essential qualification is a graduation degree in the concerned subject. Post-graduation is not an essential qualification. Quality points are calculated as per Appendix ?D?, if the candidate possesses a post-graduate degree. The language used in item No. 5 of Appendix-D is plain and simple and is not unambiguous. The Supreme Court in *Dayal Singh and Others Vs. Union of India (UOI) and Others*, has held that the court has to find out the legislative intent only from the language employed in the statutes. The Court held that it is a settled principle of law that the Court should not read anything into the statutory provision which is plain and unambiguous and that the Court has to find out the legislative intent only from the language employed in the statute and that surmises and conjectures cannot be restricted to for interpretation of statutes. Similar view was held by the Supreme Court in *Union of India v. Filip Tiago De Gama AIR 1990 SC 981*. In *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, . The Supreme Court held:

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute.

10. Similar view was held by the Supreme Court again in AIR 2003 SC 2103 .

11. In view of the aforesaid, the Court is of the opinion that where the language of the statutory provision is plain and unambiguous, the respondents cannot invoke a right by reading the same into a statute although admittedly there exists none.

12. In the light of the aforesaid, the Court is of the opinion that item No. 5 of Appendix ?D? only indicates a post-graduate degree. The language is plain and simple and, therefore, a post-graduate degree in any subject would qualify for the quality points. It is not necessary that a post- graduate degree in the concerned subject is required in order to obtain quality points.

13. A similar analogy can also be drawn from item No. 3 of Appendix ?D? which indicates a graduate degree. Normally, a graduate degree has three subjects and the calculation of quality points to be calculated is on the basis of the total number of marks obtained overall in the graduation degree and is not based on the basis of the marks obtained in the concerned subject. If the Legislature had the intention to calculate the marks in the concerned subject in the graduation degree, it would have specified accordingly. But the same has not been done. The Court is informed that the calculation for quality points marks for the graduation degree is based on the calculation of the marks obtained by the candidate in all the subjects and not confined to the marks obtained in the concerned subject.

14. In the light of the aforesaid, the Court is of the opinion that since the writ petitioner had a post-graduate degree, she was entitled to be given the quality points marks. Since the same was not done, the learned Single Judge rightly issued a writ of mandamus to the respondents. We do not find any error in the judgment passed by the learned Single Judge. The special appeal fails and is dismissed. In the circumstances of the case, there shall be no order as to cost.