

(2016) 04 RAJ CK 0120

In the Rajasthan High Court

Case No : Special Appeal (Writ) No.1476 of 2011 in Civil Writ Petition No. 7336 of 2011

Suresh Kumar Ola

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 13-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 WLCRajUC 177

Hon'ble Judges : Mr. M.N. Bhandari and Mr. Vijay Kumar Vyas, JJ.

Bench : Division Bench

Advocate : Mr. Anoop Dhand, Advocate, for the Petitioner; Mr. Nikhil Simlote for Mr. RB Mathur, Advocates, for the Respondent; Mr. Sandeep Sharma, Advocate, for the Respondent No. 3

Final Decision : Dismissed

Judgement

1. By this special appeal, a challenge is made to the order dated 29.8.2011 whereby writ petition of the petitioner was dismissed.
2. Learned counsel submits that on issuance of an advertisement for the Post of Tax Assistant, petitioner submitted an application form as he was pursuing the required diploma course in the last year. He had completed five semester out of six on the date of submission of application form. The petitioner was finally called for Computer Test but he was declared ineligible for want of the result of the required qualification on or before the Computer Test.
3. As per the prospectus issued by the institution from where petitioner had undertaking the MC. course, one was entitled to get the degree on successful completion of 2nd year of MCA course. The petitioner had already completed two years of MCA course thus, became entitle to get Master's degree. The respondents have ignored the aforesaid while treating petitioner to be ineligible for the Post of Tax Assistant. Learned Single Judge did not consider the aforesaid aspect while dismissing the petition.

4. This court directed the petitioner-appellant to implead institution as a party-respondent so as to clarify as to whether the petitioner would be entitled to MCA's degree on completion of two years course, which is prior to the date of Computer Test.

5. Learned counsel for the appellant submits that the prospectus issued by the Educational Institution provides about grant of MCA's degree on completion of two years course thus the petitioner be held eligible for the Post of Tax Assistant and accordingly his candidature be considered.

6. Learned counsel for the respondent have opposed the appeal. It is submitted that one is required to possess required course of three years, given in the advertisement. It is in consonance to the Rules. The petitioner had not passed out required course on or before the date of Computer Test.

7. AS per the advertisement a candidate pursuing required course and is in the last year of the course or has appeared in the final examination, is made eligible to submit application form subject to possessing the required qualification on or before the Computer Test. The petitioner could not possess required qualification on the date of Computer Test. He was thus ineligible for the post.

8. Learned counsel appearing for the institution submits that on completion of two years course of MCA, the degree is granted to those who discontinued the course. The petitioner is one who has not discontinued the course thus the relevant rule does apply to him. He was not entitled for the degree of MCA as per the prospectus.

9. I have considered rival submissions of the parties. The petitioner is claiming himself to be eligible for the post based on the prospectus issued by the Educational Institution. It is looking to the fact that he has already completed two years out of three years MCA's course on or before the Computer Test. It is, however, clarified by the learned counsel appearing for the Educational Institution that petitioner was not entitled for degree of MCA on completion of two years as he had continued with the course and the degree would be conferred on him on completion of all the six semesters. It would be subsequent to the date when Computer Test was held.

10. In the light of the fact given by the learned counsel appearing for the Educational Institution and taking into consideration the terms of advertisement, the petitioner cannot be held to be eligible for the Post as he did not qualify the required course on or before the Computer Test. It was one of the conditions of the advertisement and otherwise of the Rules. The relevant part of the advertisement about educational qualification is quoted hereunder for ready reference:-

(i) "kS{kf.kd ;ksX;rk %&

Hkkjr esa fof/k }kjk LFkkfir fdlh fo"fof|ky; ls dEI;wVj ,Iyhds"ku@dEI;wVj foKku esa Lukrd ;k Hkkjr esa fof/k }kjk LFkkfir ekU;rk izkIr fdlh iksfyVsDuhd egkfo|

ky;@laLFkk ls dEI;wVj ,Iyhds"ku esa iksLV iksfyVsfDud fMIyksek ;k dEI;wVj foKku vkSj vfHk;kaf=dh esa rhu o"khZ; fMIyksekA

(ii) nsoukfxjh fyfi esa fyf[kr fgUnh dk O;ogkfjd Kku rFkk jktLFkku dh laLd`fr dk KkuA

uksV %& mijksDr ;ksX;rk ds ikB~;dze dh vfUre o"kZ dh ijh{kk tks dj lgk;d ds in ds fy, U;wure "kS{kf.kd vgZrk gS] esa vH;FkhZ lFEefyr gqvk gS ;k lFEefyr gksus okyk gS]

vkosnu djus ds fy;s ik= gksxk fdUrq foHkkx }kjk vk;ksftr dh tkus okyh dEI;wVj izoh.krk ijh{k.k ijh{kk gksus ls iwoZ visf{kr "kS{kf.kd vgZrk vftZr djus ds izek.k (lcwr) foHkkx dks izLrqr djuk vko";d gksxkA

Li"Vhdj.k %& ;g Li"V fd;k tkrk gS fd mDr lqfo/kk dk os gh vH;FkhZ mi;ksx dj ldsaxs] tks vkosnu izkfIr dh vafre fnukad rd fu/kkZfjr "kS{kf.kd vgZrk dh vfUre o"kZ dh ijh{kk esa lFEefyr gq, ;k lFEefyr gksus okys gSaA

11. As per the para quoted above, the proof of possession of the required qualification is to be produced on the date of Computer Test but as the petitioner completed MCA's course of six semester subsequent to the date of Computer Test, he was held to be ineligible. Learned Single Judge considered the issue of eligibility, however, it was not in reference to the prosecution of the Educational qualification which has now been considered by us. The case of the petitioner is however not improved even then. We do not find any illegality in the action of the official respondents so as to cause interference in the impugned order of learned Single Judge thus, the appeal is dismissed.