

Mukesh Vs. State of Kerala

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Court : Kerala

Decided On : May-29-2006

Reported in : 2006(3)KLT63

Judge : K. Balakrishnan Nair, J.

Acts : Kerala State and Subordinate Service Rules, 1958 - Rules 10 and 13

Appeal No. : W.P. (C) No. 36370 of 2005

Appellant : Mukesh

Respondent : State of Kerala

Advocate for Def. : Augustine Joseph, Government Pleader,; G. Sasidharan Chempazhanthiyil,;

Advocate for Pet/Ap. : Kaleeswaram Raj, Adv.

Judgement :

K. Balakrishnan Nair, J.

1. The petitioner was a candidate, who applied for appointment to the post of Welfare Officer Grade-II in the Department of Jail, pursuant to Ext.PI notification. The qualifications prescribed for the post were:

(1) Degree from a recognized University.

(2) Degree or Diploma in Social Service or Social Work, obtained from a recognized University or Institution.

(3) Ability to read and write Malayalam.

The petitioner, who is a Master's Degree holder in Social Work, applied for the post. During the selection process, the petitioner found that respondents 3 to 9 were also allowed to participate in the interview, though their qualification was M.A. Degree in Sociology. So, this Writ Petition was filed, seeking appropriate reliefs. During the pendency of the Writ Petition, the rank-list was published in which, the petitioner was included as Rank No. 5. In the rank-list, persons with M.A. Sociology qualification were placed above the petitioner. The petitioner prays for a declaration that candidates having M.A. Degree in Sociology are not entitled to be included in the rank-list. He also prays, the Public Service Commission may be directed to exclude those persons from the rank-list.

2. The Public Service Commission has filed a counter affidavit, resisting the prayers in the Writ Petition. According to it Rules 10 and 13 of Part II, K.S. & S.S.R authorise the P.S.C to decide, what are the qualifications equivalent to the notified qualification. In exercise of that power conferred by the Rules, it was decided that M.A. Degree in Sociology, is a qualification equivalent to the notified qualification. Therefore, there is nothing illegal with the selection process or published rank-list, it is submitted.

3. The party respondents contended that their qualification is not an equivalent qualification, but is a prescribed and notified qualification. Therefore, none of the contentions raised by the petitioner, could affect their inclusion in the rank list, it is submitted.

4. Heard the learned Counsel on both sides. The learned Counsel for the petitioner relied on the decision of this Court in Sobha Menon v. Public Service Commission 1994 (1) KLT 986 in support of his submissions. The party respondents would submit that the said decision is not applicable to the facts of this case, as their qualification is a notified qualification. One of the notified qualifications, with which we are concerned, is Degree or Diploma in Social

Service or Social Work, obtained from a recognized University or institution. Social Service or Social work, as understood in common parlance, cannot be equated with Sociology. A person of reasonable intelligence will not perceive that a Degree in Sociology will be treated as a Degree in Social Service or Social Work. So, the contention of the party respondents that M.A. Sociology is a notified qualification, cannot be accepted. The Public Service Commission is, of course, empowered by Rule 13 of Part II, K.S. & S.S.R., to decide, what are the qualifications equivalent to the qualifications prescribed in the Special Rules. But, it has to take a decision regarding the equivalent qualifications, before the notification is issued and they should be specified in the notification or at least the P.S.C. should say in the notification that the applications of persons having equivalent qualification also will be considered, so that a person thinking that he is having equivalent qualification, can also apply. In this case, there may be several candidates, having Degree or Diploma in Sociology. They may not apply, going by Ext.P1 notification. So, the stand of the P.S.C., taken in its counter affidavit, cannot be accepted, especially, in view of the decision of this Court in *Sobha Menon v. Public Service Commission* 1994 (1) KLT 986. The relevant portion of the said judgment reads as follows:

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.P1 hence ex facie 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 appeals 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 special 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.PI 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 applications. The power under Rule 13(b)(i) has to be exercised at the time of inviting applications. If the Notification itself does not indicate that equivalent qualifications would also be considered, there is no question of exercising the power under Rule 13(b)(i) midstream. Of course, the power to decide what is an equivalent qualification would rest with the Public Service Commission.

The above decision squarely covers the case of the petitioner.

5. In view of the above position, it is ordered that all the persons included in the rank-list with M.A. Sociology qualification or any other qualification, not notified as per Ext.P1, shall be excluded and the rank-list shall be modified accordingly. The advice and appointment of candidates with those qualifications shall stand quashed, The 2nd respondent shall decide whether it proposes to give a chance to the persons with equivalent qualification to apply for the above said post, within two months from the date of production of a copy of this judgment. If it does not take the decision as directed above, to give persons with equivalent qualification

also a chance, it shall advise candidates from the modified rank-list without further delay. If the P.S.C decides to give persons with equivalent qualifications also, a chance, it shall issue an erratum notification, make a fresh selection in accordance with law and publish a fresh rank-list in accordance with the said selection.

The Writ Petition is disposed of as above.

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