

Geetha Vs. State of Kerala

Geetha Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/731669

Court : Kerala

Decided On : Jan-25-1999

Reported in : (1999)ILLJ1204Ker

Judge : K.S. Radhakrishnan, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : O.P. No. 19187/1997

Appellant : Geetha

Respondent : State of Kerala

Advocate for Def. : V.K. Mohanan, Government Pleader and; O.V. Radhakrishnan, Adv.

Advocate for Pet/Ap. : G. Sasidharan and; Chempazanthiyil Rethi T., Adv.

Disposition : Petition partly allowed

Judgement :

K.S. Radhakrishnan, J.

1. The Kerala Public Service Commission invited applications for selection to the post of LPS./UPS Assistant (Malayalam) in the Education Department for Pathnamthitta District. Notification was published in the gazette dated November

22, 1994. Qualifications prescribed for the post are as follows:

(1) Pass in S.S.L.C conducted by the Commissioner for Government Examinations, Kerala, or any other equivalent qualification.

(2) Pass in TTC conducted by the Commissioner for Government Examinations, Kerala, or pass in Pre-degree of Kerala University with pedagogy as optional subject or pass in basic TTC examination (Malayalam) conducted by the Government of Madras or pass in Malayalam Vidhwan examination.

2. Several persons submitted applications on the basis of above mentioned gazette notification, including the petitioner. Petitioner passed SSLC examination in March, 1990, and TTC in 1994, both in first class, and was fully qualified for being considered for appointment to the post of LPS/UPS Assistant. Petitioner and others were called for a written test which was held on August 25, 1995 and a short list was published on September 20, 1996. Petitioner was called for interview on January 22, 1997. Second respondent published a rank list for Pathnamthitta District. Similar rank list was also published for other districts as well. Ext. P6 is the rank list published in respect of Pathnamthitta District. Petitioner's rank was 210 in the general category. On enquiry petitioner came to know that Public Service Commission entertained applications from B.Ed. holders who do not possess TTC for the post, but were included in the rank list. Petitioner then filed a complaint before the Public Service Commission with regard to inclusion of persons who are having B.Ed. degree, and not possessing TTC, as per the notification published by the Public Service Commission. Petitioners were served with Ext.P7 reply stating that Public Service Commission considered the applications from B.Ed. holders on the basis of various orders issued by this Court and the Government. Petitioner's request was therefore rejected. Petitioner is aggrieved by the action of respondents in entertaining applications submitted by B.Ed. holders, who do not possess TTC for the post of LPS/UPS Assistant. Counsel further contended that in any view of the matter, Public Service Commission was not justified in entertaining applications of B.Ed. holders, who have not passed TTC examination. According to counsel, the scheme of training and the content of the training envisaged for B.Ed., are totally different from that of

TTC. Counsel submitted the objectives and methodology of TTC are totally different from that of B.Ed. course, since the former is concerned with small children, in the age group of 5 to 12 years whereas the latter deals with grown up children, and are not concerned with teaching students of lower primary schools. According to counsel, TTC holders are trained to teach all the subjects prescribed in the primary level. Counsel submitted there is no justification in treating TTC holders and B.Ed. holders alike. In any view of the matter, counsel submitted, in the absence of any stipulation in the notification of B.Ed. as a qualification for the post of LPS/UPS Assistant (Malayalam), there is no justification for the Public Service Commission to entertain applications from B.Ed. holders, who are not having TTC.

3. Counter affidavits have been filed by respondents 1 and 2. It is not justified by counsel appearing for the respondents that B.Ed. was not a qualification prescribed in the notification. Government have clarified vide G.O. (MS) 6588/G1.Edn. dated March 5, 1988 that persons possessing the basic training qualifications of teaching, viz. TTC would alone be considered for appointment as Lower Primary School Assistant and Upper Primary School Assistant in aided schools, even if they are having B.Ed. qualification. It was noticed that several aided schools appointed teachers who are having B.Ed. qualification. In fact in O.P.No. 9246 of 1988 this Court held that B.Ed. holders could be appointed as Lower Primary School Assistants, and their appointments could be approved. This was the view taken by this Court in Mathew v. State of Kerala, 1992(2) KLT 116. The said decision was later confirmed by a Division Bench of this Court in Thulasibhai Amma v. Asst. Edul. Officer, 1993(2) KLT 245. Public Service Commission also took the view it is by virtue of various Government orders issued, and the judgments of this Court, Public Service Commission entertained the applications from B.Ed. holders for appointment to the post of LPS/UPS Assistant.

4. In the counter affidavit filed by the Public Service Commission, it was stated that several persons who are having B.Ed. applied for the post notified and 430 candidates included in the rank list are B.Ed. holders. It was also stated out of 30 candidates advised on July 29, 1997, 15 candidates were B.Ed. holders and the remaining 15 were TTC holders. Counsel for the Public Service Commission

further submitted out of 189 candidates advised, 94 were B.Ed. degree holders and some of the B.Ed. degree holders advised have also passed TTC as well.

5. The main question to be considered in this case is whether Public Service Commission is justified in entertaining applications from those persons who are having B.Ed. but are not having TTC. It is evident from the notification, B.Ed. degree is not a qualification prescribed. Since it was not a qualification prescribed in the notification, very many B.Ed. holders might not have applied for the post notified. Irrespective of the fact that B.Ed. was not a prescribed qualification as per the notification, some persons might have applied, and those applications were entertained by the Public Service Commission, and a rank list was prepared. Since B.Ed. degree holders were appointed in the Pathnamthitta District, Petitioner took out notice by publication with regard to inclusion of those persons in the rank list.

6. Supreme Court in District Collector & Chairman, Vizianagaram S.W.R.S. Society v. M. Tripura Sundari Devi, (1990-II-LLJ-153) held:

'When an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No Court should be a party to the perpetuation of the fraudulent practice.'

In the instant case, the notification specifically mentions the qualification. B.Ed. is not a qualification prescribed in the notification. Those persons who are having B.Ed. are not expected to apply, since it is not a prescribed qualification. Since it is not a prescribed qualification, Public Service Commission should not have entertained the applications preferred by B.Ed.holders.

7. A Division Bench of this Court in (XP.No.213 of 1996 took the view that when a particular qualification is prescribed, there is no justification in saying that an

overqualified: candidate is desirable or required. Bench also held that when advertisement mentions particular qualification, and if appointments are made in disregard to the same, it amounts to a fraud on public. The same question has been dealt with in *Shoba Menon v. Public Service Commission*, 1994 (1) KLT 986, *Jayanthi v. Public Service Commission*, 1996 (2) KLT SN 72 *Latha v. Public Service Commission*, 1997 (2) KLT 624 and *Sadananda v. State of Travancore*, ILR 1996 (3) Ker 780, and the Supreme Court in *Karnataka Public Service Commission v. N.C. Hugar*, 1981 1 SLR 469. All the above mentioned decisions were considered by this Court in *Sujatha v. State of Kerala* 1998(2) KLT 809. In that case, this Court took the view that after issuing notification inviting applications, and if applicants having post-graduation are selected, that would be a fraud committed on the public, since many of the post-graduates would not have applied for the post. I am of the view that the above mentioned principle squarely applies to the facts of the present case. In this case, as already stated, B.Ed. is not a qualification prescribed, and therefore, B.Ed. holders are ineligible to apply and many of the B.Ed. holders might not have applied for the post. In the said circumstances, these applications, should not have been entertained by the Public Service Commission. Petitioner is, therefore, right in her contention that Public Service Commission committed a grave error in entertaining applications from B.Ed. holders and including them in the rank list. As already mentioned, since the inclusion of B.Ed. holders in the rank list is illegal, the question whether B.Ed. qualification is desirable for the post of UPS/LPS Assistant does not arise for consideration. In any view of the matter, after having invited applications, Public Service Commission is not justified in searching for equivalent and better qualification. Such a procedure is illegal and against public policy. As already mentioned, it is a fraud on the public.

8. In the above mentioned circum-stances, Original Petition succeeds and it is declared that B.Ed. holders who are not having TTC and who have been included in the rank list should be deleted from the rank list. Accordingly there will be a direction to the Public Service Commission to re-arrange the rank list in the Pathanamthitta District, after excluding above mentioned persons. This exercise should be done within a period of one month from the date of receipt of a copy of this judgment.

9. There will also be a direction to the P.S.C. to cancel the advice which has already been made as far as B.Ed. holders who are concerned not having TTC and there will be a direction to the Government to cancel the appointment already made to all those persons whose advice are to be cancelled by the P. S. C.

Original Petition is allowed to the above extent.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com