

A.S. Sajith Vs. the Director of Technical Education and ors.

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Court : Kerala

Decided On : Oct-20-2006

Reported in : 2008(1)KLJ913; 2008(2)KLT732

Judge : A.K. Basheer, J.

Acts : Kerala Technical Education Service Rules

Appeal No. : WP(C) No. 31553 of 2005 (F)

Appellant : A.S. Sajith

Respondent : The Director of Technical Education and ors.

Advocate for Def. : Philip T. Varghese and; Thomas T. Varghese, Advs. and; T

Advocate for Pet/Ap. : P. Leelakrishnan and; Shyam Krishnan, Advs.

Judgement :

A.K. Basheer, J.

1. The short question that arises for consideration is whether the petitioner was entitled to get promotion as Professor, IInd Grade in Painting in Fine Arts College, Trivandrum with effect from April 12, 2005.

2. The Departmental Promotion Committee took the view that petitioner was not entitled to be promoted since he did not possess the requisite minimum seven

year's teaching experience at the higher education level in the field concerned, as provided under the Special Rules for the Kerala Technical Education Service. At the same time, the Committee held that respondent No. 5 was eligible for promotion since he satisfied the above condition in the Special Rules. Accordingly, Ext.P8 select list was finalised.

3. Petitioner preferred Ext.P4 revision petition against the above decision of the Departmental Promotion Committee which was rejected by respondent No. 2 on the ground that it was filed beyond the period of limitation. Ext.P5 is a copy of the order passed by respondent No. 2. Petitioner has preferred this writ petition praying for issuance of a writ of certiorari to quash Ext.P5 and also Ext.P8 to the extent it relates to the promotion of respondent No. 5. Petitioner has also prayed for other incidental and consequential reliefs as well.

4. It is contended by the petitioner that the Departmental Promotion Committee was not justified in overlooking the 'standing' or 'educational experience' while preparing the select list. Petitioner has produced several documents to show his credentials and excellent track record. After graduating in Fine Arts from the University of Kerala, petitioner had obtained his Master's Degree in Fine Arts (Painting with Graphics as Subsidiary) from the Central University of Hyderabad in First Class. Petitioner had also passed the National Education Test conducted by the University Grant Commission. He had participated in the U.G.C. Sponsored Refreshed Course in Fine Arts and had undergone a short term course on Architectural Photography under the Department of Architecture in National Institute of Technology, Calicut. I do not deem it necessary to refer to the various papers/articles authored by the petitioner in view of the order that I propose to pass in this writ petition. A perusal of the documents produced by the petitioner undoubtedly shows that petitioner's contributions in the field of art particularly in painting is not insignificant at all. It is true that the proceedings of the Departmental Promotion committee do not indicate that it had considered any aspect other than teaching experience while assessing the merit of the petitioner vis-a-vis respondent No. 5.

5. In this context, it is pertinent to note that two posts of Professor Second Grade were available. It is also not in dispute that only the petitioner and respondent No. 5 were available in the zone of consideration. Apparently, only one post has been filled up by appointing respondent No. 5.

6. Laying heavy emphasis on the relevant clause in the Special Rules (Ext.P7) dealing with qualification and experience prescribed for promotion, learned Counsel contends that the Departmental Promotion Committee was not justified in totally ignoring the otherwise meritorious credentials of the petitioner, even assuming that he did not have the requisite teaching experience. Sub-clause (a) of clause 3(A) in Annexure referred to in Rules of the Special Rules, which deals with experience reads thus:

(a) 7 years teaching experience in the concerned field to the Higher Education level or standing or educational experience after obtaining the prescribed qualifications.

(b) Original works in the concerned branch, participation in International or National Exhibitions, Seminars, one man show and group shows.

(emphasis supplied)

The contention raised by the petitioner that the 'standing' or 'educational experience' that he had to his credit, had not been considered by the Departmental Promotion Committee, is not without force. Apparently, the Committee had considered only the teaching experience. It may be true that respondent No. 5 was selected since he had admittedly got seven years' teaching experience, which the petitioner did not have. It is true, petitioner did not have seven years experience to his credit. But Sub-clause (a) clearly stipulated an alternate qualification. If a candidate did not have seven years' teaching experience in the concerned field, his standing or educational experience ought to have been considered. It is in this context that petitioner's credentials, not only in the field of painting but also his literary contribution on the subject as well as his work in the computer related graphics and animation, become relevant. It is fairly conceded by the petitioner that he does not have any compunction or grudge

against the promotion of respondent No. 5. But his only grievance is that the eligibility and entitlement of the petitioner for promotion in view of his standing, educational experience and other contributions in the field, ought to have been given due credit or at least they should have been considered by the Departmental Promotion Committee. This not having been done, great injustice has been meted out to the petitioner, it is contended by the learned Counsel. The terminology 'standing' used in the clause extracted supra undoubtedly has a wide connotation and amplitude. It is all the more so in the field of art and culture; particularly in fine art like painting. Necessarily, therefore, the qualification of the petitioner with apparent meritorious credentials should not have been overlooked in a cursory manner. His original works in the branch concerned should also have been kept in view.

7. The counter affidavit filed by respondents 2 and 3 does not reveal that the above aspects had been considered by the Departmental Promotion Committee. In that view of the matter, I am satisfied that the claim for promotion made by the petitioner has to be reconsidered. I am persuaded to take this view for yet another reason.

8. As indicated earlier, two posts of Professor Grade II were available at the time when the selection process was completed. Learned Govt. Pleader submits that the second post is still available as indicated in paragraph 4 of the counter affidavit.

9. Respondent No. 2 has rejected the revision petition preferred by the petitioner on the ground that it was filed beyond the prescribed period of limitation. The above contention is also untenable. Admittedly, the select list was published in the Gazette dated May 31, 2005. It is on record that petitioner had preferred the revision petition even before the publication of Gazette, viz., on May 29, 2005 to be precise. It is true that the revision petition was forwarded through proper channel. May be it reached the office of respondent No. 2 a little late. But Ext.P6 communication sent by the Principal in this connection undoubtedly shows that the revision petition was preferred on May 29, 2005. In that view of the matter, respondent No. 2 was not justified in rejecting the revision petition as time barred.

Therefore, Ext.P5 is quashed.

10. In my view, the Departmental Promotion Committee ought to have considered the latter part of Sub-clause (a) which deals with 'standing' or 'educational experience'¹ after obtaining prescribed qualification. Any how, since I am inclined to issue a direction to respondents 2 and 3 to constitute a Departmental Promotion Committee once again, to reconsider the eligibility of the petitioner for promotion, I do not deem it necessary to deal with the question of eligibility of the petitioner for promotion. Suffice it so say, the view taken by respondent No. 2 has to be reconsidered in the light of the observations made above.

11. In the above facts and circumstances, this writ petition is disposed of with a direction to respondent No. 2 and/or 3 to constitute a Departmental Promotion Committee once again to reconsider the eligibility and suitability of the petitioner for promotion to the post of Professor Grade II in Painting. Appropriate steps in this regard shall be taken as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment. The Departmental Promotion Committee shall finalise the proceedings within two months from its constitution. Needless to mention that if the petitioner is found eligible for promotion, he shall be entitled to get the service benefits attached to the promotion post with effect from April 12, 2005 except arrears of pay and allowance from the date.

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