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Court : Chennai

Decided On : Oct-30-2012

Judge : D. Hariparanthaman

Appeal No. : W.P.No.2260 of 2012

Appellant : A. Bharathi

Respondent : The University of Madras Represented by Its Registrar University Centenary Building Chennai and Others

Advocate for Pet/Ap. : For the Petitioner: M/s. Isaac Mohanlal, Advocate. For the Respondents R1, Mrs. G. Thilakavathi, R2 & R3, Rm. Muthukumar, Government Advocate, R4, B. Ravi, R5, G. Mohan, Advocates.

Judgement :

(Prayer: This Writ Petition is filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus calling for the impugned proceedings of the first respondent University of Madras Letter No.A-II/PSG/Sir-Theagaraya/2011/1196 dated 18.10.2011, quash the same and further direct the first respondent / University of Madras to give Qualification Approval to the petitioner for her appointment as Lecturer in Zoology in the 4th respondent college forthwith by passing orders on the proposal dated 29.09.2011.

Prayer amended as per order dated 04.10.2012 made in M.P.No.2 of 2012)

1. The petitioner joined the fourth respondent college initially in an unaided post of Lecturer in Zoology on 24.07.2006. She belongs to Most Backward Class. She possessed M.Sc. (Zoology) and M.Phil (Zoology). She passed M.Sc., with 69.5% and obtained 80.5% in M.Phil.
2. The second respondent, Director of Collegiate Education, permitted the fourth respondent college to fill up 20 posts of Lecturers (aided) by proceedings dated 26.07.2007 and 30.03.2009. Out of 20 posts, five posts are earmarked for Zoology.
3. Based on the aforesaid proceedings dated 26.07.2007 and 30.03.2009, the fourth respondent college invited applications from the candidates by way of an advertisement made on 06.05.2009 in various Newspapers. The last date for submission of application was 27.05.2009. The petitioner also made application pursuant to the said advertisement.
4. The Selection Committee constituted as per the norms conducted interview on 23.09.2009. The petitioner was selected. The fifth respondent was given the first rank and the petitioner was given the second rank.
5. The College Committee appointed the petitioner as Lecturer in Zoology by order dated 29.04.2010 and was instructed to report for duty on 16.06.2010, after the vacation was over. In the mean time, the fifth respondent filed Writ Petition seeking to cancel the appointment of the petitioner and obtained interim order. Hence, the petitioner was not able to join at the appointed date.
6. It is now admitted that the fifth respondent was also given appointment and his qualification was also approved by the first respondent University. Though the fifth respondent is shown as a party, no claim is made against the fifth respondent. The fifth respondent has also no quarrel for the appointment of the petitioner as a Lecturer. In view of the aforesaid development, the Writ Petition filed by the fifth respondent Dr.M.Viswanathan was disposed of, after recording the aforesaid facts.

7. After the disposal of the Writ Petition, the petitioner joined duty on 15.06.2011. She has been working in the college as Lecturer in the Zoology Department. The fourth respondent college made an application to the first respondent University for approval of the qualification as required under Section 15 of the Tamil Nadu Private Colleges Regulation Act.

8. The first respondent passed an order dated 18.10.2011 refusing to approve the qualification of the petitioner on the ground that the petitioner is not having either Ph.D or pass in SLET/NET examination.

9. The petitioner has filed this Writ Petition to quash the aforesaid order dated 18.10.2011 of the first respondent and a direction for the first respondent to approve her qualification. Unless the qualification is approved, the college cannot get grant for payment of salary to the petitioner.

10. According to the petitioner, neither Ph.D. nor a pass in SLET/NET examination is required when the advertisement was made i.e., as on last date for submitting the application pursuant to the advertisement dated 06.05.2009, the required qualification was Post-Graduate Degree in the concerned subject and M.Phil. The only condition is that the candidate should have obtained 55% marks in the Post-Graduate Degree. The last date for submission of the application was 27.05.2009. As per UGC regulations, M.Sc., (Zoology) and M.Phil., are the qualification required for the appointment of Lecturer (Zoology). Hence, the Selection Committee consisting of seven members, namely, the Chairman of the College committee, the Principal of the College, the Head of the Department of Zoology, two subject Experts from other Colleges nominated by the Madras University Vice-Chancellor and two nominees from the University, selected the petitioner.

11. The first respondent filed counter affidavit refuting the allegations and the first respondent sought to sustain the impugned order.

12. The fourth respondent college also filed counter affidavit and the counter affidavit supports the stand of the petitioner.

13. Heard both sides.

14. The learned counsel for the petitioner reiterates that the crucial date is the last date for submission of application pursuant to the advertisement calling for application for filling up the posts. The learned counsel has relied on the following decisions in this regard.

(i) (1993) 2 Supreme Court Cases 429 (Dr.M.V.Nair ..vs.. Union of India and others);

(ii)(2000) 5 Supreme Court Cases 262 (Bhupinderpal Singh and Others ..vs.. State of Punjab and others);

(iii) (2007) 4 Supreme Court Cases 54 (Ashok Kumar Sonakr ..vs.. Union of India and others); and

(iv) (2011) 9 Supreme Court Cases 438 (Alka Ojha ..vs.. Rajasthan Public Service Commission and another).

15. On the other hand, learned counsel appearing for the University has submitted that as per G.O.Ms.No.111 Higher Education Department dated 24.03.1999, the petitioner should have passed SLET/NET Examination. The other submission of the learned counsel for the first respondent is that the petitioner was not appointed in the approved post.

16. I have considered the submissions made on either side.

17. It is well settled that the qualification of the candidate shall be with reference to the last date of the submission of the application for the concerned post unless the rules otherwise required. The four judgments, viz., (1993) 2 Supreme Court Cases 429 (Dr.M.V.Nair ..vs.. Union of India and others); (2000) 5 Supreme Court Cases 262 (Bhupinderpal Singh and Others ..vs.. State of Punjab and others); (2007) 4 Supreme Court Cases 54 (Ashok Kumar Sonakr ..vs.. Union of India and others); and (2011) 9 Supreme Court Cases 438 (Alka Ojha ..vs.. Rajasthan Public Service Commission and another), relied on by the learned counsel for the petitioner has also made this position clear. The Hon'ble Apex Court also held that the relevant date is the last date of submission of the application. The relevant passages in the judgment reported in (1993) 2 Supreme Court Cases 429 (Dr.M.V.Nair ..vs.. Union

of India and others) would run as follows:-

"9. In the above situation, it was necessary for the Tribunal to have recorded a finding on the correctness or otherwise of the above submission of the Union of India and Dr. Nair. Without doing so, the Tribunal could not have set aside the appointment of Dr. Nair to the said post. The Tribunal was also not justified in holding that Dr. Bhatnagar was also equally qualified and eligible for the said post like Dr. Nair when Dr. Bhatnagar had himself come forward with the plea that he was not eligible and asked for grant of relaxation to make him eligible. The Tribunal, in our opinion, was also not justified in stating, in the direction granted by it, that inasmuch as Dr. Bhatnagar "has by now become eligible in all respects under the recruitment rules, his suitability should be considered along with other eligible candidates and if he is found suitable for the appointment he should be appointed to the said post." It is well settled that suitability and eligibility has to be considered with reference to the last date for receiving the applications, unless, of course, the notification calling for applications itself specifies such a date."

18. The relevant passage in the judgment reported in (2000) 5 Supreme Court Cases 262 (Bhupinderpal Singh and Others ..vs.. State of Punjab and others) would be as follows:-

"12. All the appeals and the writ petitions have been taken up for hearing analogously. The only question arising for decision in this case is by reference to which date the eligibility of the several candidates is to be judged and the consequences flowing from failure to satisfy the eligibility test in the facts & circumstances of the case.

13. Placing reliance on the decisions of this Court in Ashok Kumar Sharma Vs. Chander Shekhar & Anr. JT 1997 (4) SC 99; A.P. Public Service Commission Vs. B. Sarat Chandra & Ors. 1990 (4) SLR 235; The Distt. Collector and Chairman, Vizianagaram (Social Welfare Residential School Society) Vizianagaram and Anr. Vs. M. Tripura Sundari Devi 1990 (4) SLR 237; Mrs. Rekha Chaturvedi Vs. University of Rajasthan & Ors. JT 1993 (1) SC 220; Dr. M.V. Nair Vs. Union of India & Ors. 1993 (2) SCC 429; and U.P. Public Service Commission, U.P., Allahabad & Anr. Vs. Alpana JT 1994 (1) SC 94, the High Court has held (i) that

the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice."

19. The relevant portion in the judgment reported (2007) 4 Supreme Court Cases 54 (Ashok Kumar Sonakr ..vs.. Union of India and others) would run as follows:-

11. The question as to what should be the cut-off date in absence of any date specified in this behalf either in the advertisement or in the reference is no longer res integra. It would be last date for filing application as would appear from the discussions made hereinafter.

20. The relevant portion in the judgment reported in (2011) 9 Supreme Court Cases 438 (Alka Ojha ..vs.. Rajasthan Public Service Commission and another) would run as follows:-

"15. The question whether the candidate must have the prescribed educational and other qualifications as on the particular date specified in the Rule or the advertisement is no longer res integra. In Bhupinderpal Singh v. State of Punjab(2000) 5 SCC 262, this Court referred to the earlier judgments in A.P. Public Service Commission v. B. Sarat Chandra(1990) 2 SCC 669, District Collector and Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi(1990) 3 SCC 655, M.V. Nair (Dr.) v. Union of India (1993) 2 SCC 429, Rekha Chaturvedi v. University of Rajasthan1993 Supp. (3) SCC 168, U.P. Public Service Commission, U.P., Allahabad v. Alpana(supra) and Ashok Kumar Sharma v. Chander Shekhar(supra) and approved the following

proposition laid down by the Punjab and Haryana High Court:

"13. (i) that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications and that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority."

16. The same view was reiterated in M.A. Murthy v. State of Karnataka(2003) 7 SCC 517 and Ashok Kumar Sonkar v. Union of India(2007) 4 SCC 54. Therefore, the Full Bench of the High Court rightly held that a candidate who does not possess driving licence on the last date fixed for submission of the application is not eligible to be considered for selection."

21. Therefore, it has to be seen whether the petitioner was in possession of the required qualification as on 27.05.2009, the date of submission of her application for the appointment to the post of lecturer in the Zoology Department of the fourth respondent college.

22. The learned counsel for the first respondent has relied on G.O.Ms.No.111 Higher Education Department dated 24.03.1999. In fact the Government Order supports the case of the petitioner. As per the Government Order, the candidates having M.Phil., degree in the concerned subject are exempted from SLET/NET Examination. This Government Order is given effect from 14.06.2006. As on the date of advertisement and the last date of making application, the Government Order prescribed the required qualification. Therefore, I am of the view that the petitioner was in possession of requisite qualification at the time of making application.

23. In fact, the petitioner was also in possession of the required qualification when she was appointed by the fourth respondent college by an order dated 29.04.2010. Only thereafter, the University Grants Commission Regulations, 2010, came into force that has required a pass in SLET/NET Examination for appointment to the

post of Lecturer. In the said circumstances, I am of the view that the impugned order is liable to be quashed and accordingly, the same is quashed and the Writ Petition is allowed.

24. In the result, the Writ Petition is allowed. A direction is issued to the first respondent University to grant approval to the qualification of the petitioner under Section 15 of the Tamil Nadu Private Colleges Regulation Act, within a period of two weeks from the date of receipt of a copy of this order. No costs.

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