

Zonal Manager, Bank Of India, Zonal ... vs Aarya K. Babu on 8 August, 2019

Equivalent citations: AIRONLINE 2019 SC 1078, 2019 (8) SCC 587, (2019) 12 SCALE 181, (2019) 3 KER LT 802, (2019) 3 PAT LJR 457, (2019) 3 PLR 627 (SC), (2019) 3 SERVLJ 171, (2019) 4 SCT 54, (2020) 1 SERVLR 901

Author: A.S. Bopanna

Bench: A.S. Bopanna, R. Banumathi

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6206 OF 2019
(Arising out of SLP (Civil) No.16567 of 2016)

Zonal Manager, Bank of India, Zonal Office, Kochi & Ors.Appellant(s)

Versus

Aarya K. Babu & Anr. ... Respondent(s)

WITH

CIVIL APPEAL NO. 6207 OF 2019
(Arising out of SLP (Civil) No.24764 of 2016)

Syndicate Bank Ltd.Appellant(s)

Versus

Anandu V.S.& Anr. ... Respondent(s)

JUDGMENT

A.S. Bopanna,J.

Leave granted.

2. In the civil appeal arising out of SLP(C) No.16567/2016 the appellant□Bank of India is before this

Court assailing the order dated 24.05.2016 passed in W.A.No.313/2016. The said appeal before the High Court of Kerala at Ernakulam was filed against the order passed in WP(C) No.39083/2015 whereby the learned Single Judge of that High Court had allowed the writ petition by an order dated 20.01.2016. In the appeal arising out of SLP(C) No.24764/2016 the appellant Syndicate Bank Ltd. is assailing the order dated 24.05.2016 passed in Writ Appeal No.404/2016, whereby the Division Bench of the High Court of Kerala had upheld the order passed by the learned Single Judge in WP(C)No.17403/2015 dated 20.12.2016.

3. Though in these two appeals the parties are different, keeping in view the question arising for consideration is the same in both these appeals and since the High Court has disposed of the appeals through the common order, these two appeals are taken up, heard together and disposed of by this common order. For the purpose of narration of facts, the case as pleaded in SLP(C) No.16567/2016 is taken note. In respect of the recruitment to be made in the Banking Sector the respondent No.2 herein, an institute of Indian Banking Personnel Selection ("IBPS" for short) undertakes the process of recruitment by issue of appropriate Notification in that regard.

4. In the instant fact situation, the Notification dated 17.11.2014 was issued calling for applications from interested candidates for the different posts that were advertised therein. The consideration herein relates to the recruitment for the post of Agricultural Field Officer (Scale I). The private respondents in both these appeals are applicants for the said post. The process of selection was undertaken and the private respondents in both these appeals were provisionally selected, subject to verification of their documents and were accordingly allotted by the IBPS to the respective appellant Banks herein. However, the selection of both the private respondents was cancelled on the ground that the private respondents herein did not possess the qualification prescribed in the notification for appointment. It is in that regard the private respondents claiming to be aggrieved by such action were before the learned Single Judge of the Kerala High Court assailing the termination orders in the respective writ petitions as taken note above.

5. The learned Single Judge on taking note that though the requirement in the Notification was of graduates possessing Degree in "Agro-Forestry" had taken into consideration that the private respondents herein had secured the 4-year Degree in "Forestry" and held the same to be sufficient. In that regard the learned Single Judge had taken note that there is no 4-year Degree Programme being offered in this country for "Agro-Forestry" and in that background on referring to the information furnished by the Indian Council of Agricultural Research ("ICAR" for short) which had been relied upon by the private respondents herein, had taken into consideration that as per the said institution, the definition of Agriculture included "Forestry". In that background finding the same to be an appropriate qualification had favourably considered the case of the private respondents herein. That apart it was also taken note that the Ministry of Agriculture and Farmers Welfare as also the Ministry of Finance have subsequently taken note of the error that there is no 4-year Course in "Agro-Forestry" in the country and that "Agro-Forestry" is covered comprehensively as the subject in ICAR approved syllabus for B.Sc. in "Forestry" and that it can be considered as the qualification for the post of Agricultural Field Officer in Banks. In that background, taking into consideration all these aspects of the matter the termination orders issued to the private respondents in withdrawing the offer of appointment were set aside and the appellants herein were

directed to take back the private respondents into service.

6. The appellants herein claiming to be aggrieved by the said decision of the learned Single were before the Division Bench in the appeals as referred to above. The Division Bench also had taken note of these aspects and the consideration made by the learned Single Judge in this regard was upheld. In the course of the proceedings in the Writ Appeal the appellants herein had relied upon the judgment dated 09.02.2016 passed by the High Court of Judicature at Bombay, Nagpur Bench at Nagpur in W.P.(C) No.4823/2015 titled as Kishor Deoramji Gahane vs. The Institute of Banking Personnel Selection & Others. The said judgment was cited since the very issue relating to qualification of B.Sc. in "Agro□Forestry" had arisen for consideration and in that background it was also taken note therein that a corrigendum dated 16.01.2016 had been issued whereby the 4 year B.Sc. Degree in Forestry, Agricultural Biotechnology, Food Science and Agricultural Business Management were also included as the recognised educational qualification for appointment to the post of Agricultural Field Officer (Scale□). In that circumstance, in that case it was noticed that the advertisement was of the year 2015 while the corrigendum was issued on 16.01.2016 and in that view the Division Bench of the Nagpur Bench had declined the relief to the petitioner therein by holding that the qualification depicted in the notification will be relevant. The Division Bench of the Kerala High Court in the present case had however, respectfully disagreed with the said view and proceeded to uphold the order passed by the learned Single Judge and dismiss the appeal filed by the appellants herein. It is in that light the appellants are before this Court.

7. In the above background we have heard Shri A.B. Dial, learned senior counsel in the appeal arising out of SLP(C) No.24764/2016, Shri Rajesh Kumar, learned counsel appearing in the appeal arising out of the SLP© No.16567/2016 as also Shri Kaleeswaram Raj and Shri Jagat Arora respective learned counsel for the respondents. We have also perused the appeal papers including the impugned judgments passed by the High Court.

8. Though extensive arguments were advanced the issue lies in a very narrow compass. The short question for consideration is as to whether the courts would be justified in undertaking the exercise of providing equivalence to another qualification so as to declare it to be equivalent to the qualification prescribed in the recruitment Notification by taking note of the extraneous factors though such equivalence of qualification is not declared by the employer who makes the recruitment. The second aspect would be as to whether any particular educational qualification made eligible subsequent to issue of recruitment Notification can be considered retrospectively in respect of the recruitment process which has commenced prior to such an additional educational qualification being treated as eligible and the process of recruitment in respect of such notification is already concluded. In that background an examination of these aspects is necessary in the instant case.

9. The qualification prescribed for the post of Agricultural Field Officer (Scale□) as issued under the Notification dated 17.11.2014 which is the subject matter herein, is as hereunder:

“4 year Degree (graduation) in Agriculture/ Horticulture/ Animal Husbandry /
Veterinary Science / Dairy Science / Agri Engineering / Fishery Science / Pisciculture

/ Agri Marketing & Co^operation / Co^operation & Banking / Agro^oForestry.”
(emphasis supplied)

10. The private respondents herein had applied in response to the said notification, on 24.11.2014 and despite the private respondent in the appeal arising out of SLP(C) No.16567/2016 had admittedly possessed the qualification of B.Sc. (Forestry) had indicated the qualification as Agro^oForestry in the application. Be that as it may, the process of selection was undertaken and appointment letter was issued to the private respondents in the two appeals, on 17.09.2015 and 29.05.2015 respectively. In the letter of appointment, it was specifically mentioned that the appointment is subject to producing the original documents which included the proof regarding qualification. Needless to mention that the proof regarding qualification refers to the qualification as depicted in the notification dated 17.11.2014. However, since it was subsequently noticed that she did not possess the degree in B.Sc. (Agro^oForestry), she was issued a show cause notice dated 03.11.2015 and she was terminated through the order dated 10.12.2015. A similar course was adopted in so far as the other private respondent as well. It is no doubt true that on 18.11.2015 an Office Memorandum was issued by the Ministry of Agriculture and Farmers Welfare, Department of Agriculture, Co^operation and Farmers Welfare (Policy Division), whereby on taking note that no 4^o year Bachelor Program in Agro^oForestry is available in the country and since Agro^oForestry is covered comprehensively as a subject in the ICAR approved syllabus for B.Sc.(Forestry), it was suggested that it will be appropriate that B.Sc. (Forestry) graduation be considered for the position of Agricultural Field Officer in Banks. Accordingly, a corrigendum dated 16.01.2016 was issued by IBPS. It is not in dispute that based on such decision taken, for the recruitment made subsequently, B.Sc. (Forestry) was included as the qualification for recruitment of Agricultural Field Officer (Scale^o).

11. The issue however is, when the said qualification was not depicted in the relevant recruitment Notification which is the subject matter and in that circumstance if recruitment has been wrongly made of the persons who did not possess the qualification which was notified but had still applied and the appointment made on that basis is sustained, would it not be to the disadvantage of other persons who had possessed the same qualification of B.Sc. (Forestry) degree but had not applied since the Notification did not depict the said qualification but had indicated some other qualification. In that regard, at the outset it is necessary to take note that the decision of the High Court of Judicature at Bombay, Nagpur Bench in the case of Kishor Deoramji Gahane (supra) relied upon by the appellants herein before the High Court in fact had addressed this issue wherein it was held that the corrigendum issued subsequent to the advertisement would not be beneficial, since the petitioner therein did not possess the qualification notified in recruitment Notification.

12. The learned counsel for the private respondents however contended that the High Court was justified in taking note that the course for Degree in B.Sc. (Agro^oForestry) was not being imparted in the country and in such event the very Notification seeking for candidates possessing 4^o year Degree in B.Sc. (Agro^oForestry) was erroneous and as such the Degree in B.Sc. (Forestry) should be considered. The learned counsel seeks to rely upon the Bank of India (Officers) Service Regulations, 1979 to contend that in Clause^o 6.9 thereof a reference is made to “Special Officers” wherein it is indicated that one of the category therein being “Agriculture Officers”, the qualification thereunder

indicated is Degree in Agriculture and/or allied subjects and recruited/promoted/converted as such. In that view the learned counsel contends that as per the information furnished by ICAR dated 01.04.2015 the definition of "Agriculture" would include "Forestry" and in such event it will have to be construed that even though the Notification seeks for candidates possessing Degree in B.Sc. (Agro□Forestry) it would include B.Sc. (Forestry) which is an allied subject of Agriculture.

13. Though we have taken note of the said contention we are unable to accept the same. We are of such opinion in view of the well□established position that it is not for the Court to read into or assume and thereby include certain qualifications which have not been included in the Notification by the employer. Further the rules as referred to by the learned counsel for the respondents is pointed out to be a rule for promotion of officers. That apart, even if the qualification prescribed in the advertisement was contrary to the qualification provided under the recruitment rules, it would have been open for the candidate concerned to challenge the Notification alleging denial of opportunity. On the other hand, having taken note of the specific qualification prescribed in the Notification it would not be open for a candidate to assume that the qualification possessed by such candidate is equivalent and thereby seek consideration for appointment nor will it even be open for the employer to change the requirements midstream during the ongoing selection process or accept any qualification other than the one notified since it would amount to denial of opportunity to those who possess the qualification but had not applied as it was not notified.

14. In fact, this view is fortified by the decision of this Court in the case of Mohd. Sohrab Khan vs. Aligarh Muslim University & Ors. (2009) 4 SCC 555 relied on by the learned counsel for the appellant. In the said decision it is held as hereunder:

24. According to us, the Selection Committee as also the University changed the rule in the midstream which was not permissible. The University can always have a person as a Lecturer in a particular discipline that it desires to have, but the same must be specifically stated in the advertisement itself, so that there is no confusion and all persons who could be intending candidates, should know as to what is the subject which the person is required to teach and what essential qualification the person must possess to be suitable for making application for filling up the said post.

25. We are not disputing the fact that in the matter of selection of candidates, opinion of the Selection Committee should be final, but at the same time, the Selection Committee cannot act arbitrarily and cannot change the criteria/qualification in the selection process during its midstream. Merajuddin Ahmad did not possess a degree in Pure Chemistry and therefore, it was rightly held by the High Court that he did not possess the minimum qualification required for filling up the post of Lecturer in Chemistry, for Pure Chemistry and Industrial Chemistry are two different subjects.

26. The advertisement which was issued for filling up the post of Lecturer in Chemistry could not have been filled up by a person belonging to the subject of Industrial Chemistry when the same having been specifically not mentioned in the advertisement that a Master's degree□holder in the said subject would also be

suitable for being considered. There could have been intending candidates who would have applied for becoming candidate as against the said advertised post, had they known and were informed through advertisement that Industrial Chemistry is also one of the qualifications for filling up the said post.

27. The Selection Committee during the stage of selection, which is midway could not have changed the essential qualification laid down in the advertisement and at that stage held that a Master's degree holder in Industrial Chemistry would be better suited for manning the said post without there being any specific advertisement in that regard. The very fact that the University is now manning the said post by having a person from the discipline of Pure Chemistry also leads to the conclusion that the said post at that stage when it was advertised was meant to be filled up by a person belonging to Pure Chemistry stream.

If the above decision is kept in perspective it is clear that while examining the correctness of the action of the employer what would be sacrosanct will be the qualification criteria published in the Notification, since if any change made to the qualification criteria midstream is accepted by the Court so as to benefit only the petitioners before it, without making it open to all the qualified persons, it would amount to causing injustice to the others who possess such qualification but had not applied being honest to themselves as knowingly they did not possess the qualification sought for in the Notification though they otherwise held another degree. Therefore, if there is any change in qualification / criteria after the notification is issued but before the completion of the selection process and the employer / recruiting agency seeks to adopt the change it will be incumbent on the employer to issue a corrigendum incorporating the changes to the notification and invite applications from those qualified as per the changed criteria and consider the same along with the applications received in response to the initial notification. The same principle will hold good when a consideration is made by the Court.

15. If in that background the instant facts are taken note, it would disclose that the Notification depicting the qualification required as Degree in B.Sc. (Agro Forestry) was issued on 17.11.2014 and the process of selection had come to an end when the private respondents herein were issued the appointment letters dated 17.09.2015 and 29.05.2015 respectively. Admittedly as on such date the Notification required the candidates possessing B.Sc. (Agro Forestry) but the private respondents were graduates in B.Sc. (Forestry) and as such were not qualified to respond. The change was made subsequent thereto by the general corrigendum dated 16.01.2016 by including the qualification of B.Sc. (Forestry), which would be effective from that day by providing opportunity to all those holding that qualification. Therefore, in such cases the change of qualification whereby the qualification of the private respondents gets included subsequently cannot enure to their benefit alone when several others who could have applied were prevented from doing so.

16. Further it is not for the Court to provide the equivalence relating to educational qualifications inasmuch as the said issue has been settled by the Constitution Bench of this Court in the decision relied upon by the learned counsel for the appellants in the case of Mohammad Shujat Ali & Ors. vs. Union of India & Ors, (1975) 3 SCC 76 wherein it is held that the question in regard to equivalence of

educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications and where the decision of the Government is based on the recommendation of an expert body which possesses the requisite knowledge, skill and expertise for adequately discharging such a function, the Court, uninformed of relevant data and unaided by the technical insights necessary for the purpose of determining equivalence, would not lightly disturb the decision of the Government.

17. In that backdrop, though in the instant facts presently the qualification possessed by the private respondents is decided to be included for the purpose of recruitment to the post of Agricultural Field Officer, as on the date of the recruitment Notification the same was not included therein, which cannot be substituted by the Court with retrospective effect for the reasons stated above. Therefore, in the said circumstance, in the present facts, the High Court was not justified in its conclusion. We, however, make it clear that though we have referred to the legal position and applied the same to the case of the parties who are before us, if in the case of similar recruitment, the employers themselves have permitted the equivalence and have continued such of those officers recruited, this decision shall not be applied to initiate action against such officers at this distant point of time. Subject to the above, the orders passed by the High Court of Kerala which are impugned herein are set aside.

18. Having arrived at the above conclusion we also take note of the submission of the learned counsel for the private respondent in the appeal arising out of SLP© No.16567/2016 namely Smt. Aarya K. Babu that she is placed in a very difficult circumstances subsequent to the discharge from service which is also due to certain set back in her personal life. Though we do not wish to articulate the actual fact situation narrated we have no reason to disbelieve the same, hence, we find it appropriate that in her case it is necessary to exercise our discretion under Article 142 of the Constitution to serve the ends of justice and do complete justice without prejudicing either of the parties. In that view, we direct the appellant Bank of India to provide appointment to Smt. Aarya K. Babu as Agricultural Field Officer or such other equivalent post if the vacancy exists as on today or in the vacancy that would arise in future. In that regard it is made clear that the same will be considered as a fresh appointment from the date of appointment and no previous benefit can be claimed by her. Further, it is made clear that this direction is issued in the peculiar facts and circumstances of this case and the same shall not be treated as a precedent for any other case.

19. Subject to the above observations, both the appeals are allowed with no order as to costs. All pending applications stand disposed of.

.....J. (R. BANUMATHI)J. (A.S. BOPANNA) New Delhi, August 08, 2019