

Sanjay Kumar Manjul vs The Chairman, Upsc And Ors on 13 September, 2006

Author: S.B. Sinha

Bench: S.B. Sinha, Dalveer Bhandari

CASE NO.:

Appeal (civil) 4098 of 2006

PETITIONER:

Sanjay Kumar Manjul

RESPONDENT:

The Chairman, UPSC and Ors.

DATE OF JUDGMENT: 13/09/2006

BENCH:

S.B. Sinha & Dalveer Bhandari

JUDGMENT:

J U D G M E N T [Arising out of SLP (Civil) No.26297 of 2005] W I T H CIVIL APPEAL NO. 4099 OF 2006 [Arising out of SLP (Civil) No.4976 of 2006] S.B. SINHA, J :

Leave granted.

The Archaeological Survey of India is a department of Archaeology of the Government of India. The post of Superintending Archaeologist fell vacant. Sanjay Kumar Manjul (Appellant) and Dr. S. Rajavelu, Respondent No.4 herein applied therefor. An advertisement was issued for direct recruitment to the said post. 169 applications were received therefor. 16 applicants including that of Sanjay Kumar Manjul were interviewed. Four of them had been selected on 04.08.2004. Indisputably, the case of Dr. S. Rajavelu was not considered by the Union Public Service Commission (for short, 'the Commission) on the premise that he did not fulfill the essential qualifications requisite therefor.

An original application was filed by some candidates before the Central Administrative Tribunal, Principal Bench, New Delhi, marked as O.A. No. 1899 of 2004, which was dismissed by an order dated 15.07.2005.

Dr. S. Rajavelu also filed an original application before the Central Administrative Tribunal, Madras, which was marked as O.A. No.720 of 2004. By an order dated 28.04.2005, the said original application was also dismissed.

Being aggrieved by and dissatisfied therewith, he filed a writ petition before the High Court of Madras. Even till the time of filing of the said original applications and writ petition, selection process of the candidates was not finalized and by an order dated 21.07.2005, the High Court passed an interim order on the following terms :

" .if any appointment is made in the meantime, such appointment shall be subject to result of the present writ petition and it shall be so indicated clearly in the appointment order that if ultimately the petitioner succeeds in the present writ petition, such appointment shall be liable to be quashed, returnable within three weeks. Private notice is also permitted."

The Archaeological Survey of India, however, issued unconditional offer of appointment to the selected candidates, inter alia, stating :

"I am directed to inform that on the recommendations of the Union Public Service Commission, the President is pleased to offer you the post of Superintending Archaeologist (G.C.S. Group 'A' Gazetted) in the pay scale of Rs.10,000-15200/- in the Archaeological Survey of India. Your pay will be fixed in accordance with the normal rules or instructions issued by the Government and you will also be entitled to draw dearness and other allowances at the rates admissible and subject to the rules and orders governing the grant of such allowances, in force, from time to time."

The Appellant herein was not impleaded as a party in the said writ petition. By reason of the impugned judgment, the writ petition of the Fourth Respondent was allowed.

Before the High Court as also before us, the question raised was as to whether experience in Epigraphy may be considered to be 'field experience in Archaeology'.

Mr. Ranjit Kumar, the learned Senior Counsel and Mr. Vikas Singh, the learned Additional Solicitor General of India, appearing on behalf of the Appellants, in the respective appeals, submitted that having regard to the extant rules, field experience in Epigraphy would not satisfy the test of essential qualifications for appointment to the post of the Superintending Archaeologist. The expressions 'Archaeology' and 'Epigraphy', it was urged, mean two different disciplines and in fact not only the scope of study thereof are different, their cadres are also distinct and different.

It was submitted that the Commission as also the Archaeological Survey of India being experts bodies, the High Court should not have ordinarily interfered with the decision taken by the department as 'Archaeology' and 'Epigraphy' constitute two different disciplines.

In any event, the Commission having short-listed the candidates providing for better meritorious candidates, the writ petition of the Fourth Respondent should not have been allowed. It was also urged that the Appellant having not been impleaded in the writ petition, the same was not maintainable.

Mr. K.V. Viswanathan, the learned counsel appearing on behalf of the Fourth Respondent, on the other hand, would submit that :

- (i) The Appellant having not been appointed on the date of filing of the writ petition and the High Court having directed that his appointment would be subject to the result of the writ petition, he was not a necessary party.
- (ii) The Commission undoubtedly had the jurisdiction to shortlist the candidates; but the same was required to be done in terms of the rules.
- (iii) Eligible candidates in the name of short-listing could not have been made ineligible and, thus, non-consideration of the case of the Fourth Respondent herein by the Commission violates his fundamental right under Article 16 of the Constitution of India.
- (iv) Study of Epigraphy being a part of study of Archaeology, experience gained therein would amount to experience in Archaeology. By way of an example, it was contended that cardiology although is a speciality, the same has been held to be a part of medicine by this Court in Dr. M.C. Gupta and Others v. Dr. Arun Kumar Gupta and Others [(1979) 2 SCC 339].

The requisite essential qualifications for recruitment to the post of Superintending Archaeologist are as under :

- "(i) At least a second class Master's Degree of a recognized University or equivalent in Indian History/Archaeology/Anthropology with knowledge of Stone Age Archaeology Geology with knowledge of Pleistocene Geology;
- (ii) Diploma in Archaeology from the Archaeological Survey of India with three years field experience;

OR Field experience of at least five years in Archaeology and knowledge of Monuments and Antiquities.

- (iii) Doctorate Degree in any of the above subjects or equivalent published research work (evidence to be furnished).

Desirable Qualifications :

Knowledge of Sanskrit, Pali, Prakrit, Persian or Arabic upto degree level.

Age prescribed for the post not exceeding 40 years on normal closing date relaxable for other Backward Classes candidates upto 3 years in respect of the vacancies reserved for them. Relaxable for Employees of Government of India and Union

Territories upto 5 years."

Entitlement of the Appellant herein for consideration of the recruitment to the said post is not in dispute. Archaeological Survey of India is a multi-faceted organization. Its technical officers fall under the following separate cadres :

- (a) Archaeological cadre
- (b) Conservation cadre
- (c) Science cadre
- (d) Epigraphy cadre
- (e) Horticulture cadre.

We are concerned with the essential qualifications of EQ-II, namely, a diploma in Archaeology with three years' field experience or field experience of at least five years in Archaeology and knowledge of monuments and antiquities. In the Post-Graduate Diploma in Archaeology, there are thirteen subjects, twelve being theory papers and one practical. Out of total 2000 marks, Epigraph and Numismatics carries only 100 marks i.e. 50 marks for Epigraph and 50 marks for Numismatics. The Post Graduate Diploma Course, therefore, provides that Epigraphy forms only 2.5% of Archaeology.

So far as PGDA Course is concerned, the qualifications therefor are as under :

"The qualification for admission are Master's Degree in Ancient or Medieval Indian History/Archaeology/Anthropology from a recognized University or equivalent including Indian Classical languages such as Sanskrit, Pali, Prakrit, Tamil, Arabic or Persian or Geology with knowledge of Pleistocene age with a minimum of 55% marks in aggregate, relaxable by 5% in the case of SC/ST/OBC candidates and candidates working in the Archaeological organization, Central/State Government and University Departments."

We may for the sake of clarity refer to the dictionary meanings of the said terms :

Webster American Dictionary :

"Archaeology is the study of human history and pre- history through the excavation of sites and the analysis of artifacts and other physical remains."

Oxford Dictionary :

"It is the study of human history and prehistory through the excavation of sites and analysis of physical remains."

Webster American Dictionary :

"Epigraphy is the study and interpretation of ancient inscription; epigraphs collectively. It is an inscription on a building, statue or coin; a short quotation or saying at the beginning of a book or chapter, intended to suggest its theme."

We may usefully notice that in Advanced Law Lexicon, 3rd Edn., the term 'Archaeology' has been defined to mean : "A systematic description or study of antiquities", whereas the term "Epigraph" has been defined to mean "An old inscription of a durable material".

It is also significant to notice that in 'The New Encyclopaedia of Britannica in 'The Study of History', 'Archaeology' and 'Epigraphy' have been discussed separately; both the subjects although have been put under a common heading, namely, 'Ancillary Fields'. They have been dealt with separately. 'Epigraphy' has been stated to be the study of written matter recorded on hard or durable materials and is the prime tool in recovering much of the firsthand record of antiquity.

It is interesting to note therein that 'Archaeology' and 'Epigraphy' have been distinguished, stating :

"Strictly speaking, archaeology is not concerned with the analysis and interpretation of the bones of ancient man himself whether fossilized or not. The study of the skulls and skeletons of ancient man is the concern of the physical anthropologist or human paleontologist. Neither is the archaeologist normally prepared to decipher or interpret the writings of ancient man this is the specialty of the epigraphist and philologist."

The question as to whether Archaeology is a compendious expression, as was urged by Mr. Viswanathan, has to be considered in the aforementioned backdrop.

'Epigraphy' is a study of inscription is not denied or disputed. There are persons who have expertise in different parts of Epigraphy. Persons may acquire expertise in the study of inscription in different languages. The Fourth Respondent is an expert in respect of inscription only in the language of Tamil.

The qualifications for recruitment to a post are laid down in terms of the statutory rules. The Fourth Respondent raised a contention before the Tribunal that several persons named in Ground 'G' of the writ petition had occupied the very post in the Archaeological Department, although they were experts in Epigraphy.

The aforementioned contention of the Fourth Respondent herein has specifically been denied and disputed. It has been contended that recruitment rules of the Deputy Superintending Archaeologist are different from the Superintending Archaeologist. Whereas in the case of the former, two years' research experience in various subjects including Epigraphy was considered to be sufficient, in the case of latter, what was necessary was field experience of five years in Archaeology and knowledge of monuments and antiquities.

The statutory authority is entitled to frame statutory rules laying down terms and conditions of service as also the qualifications essential for holding a particular post. It is only the authority concerned who can take ultimate decision therefor.

The jurisdiction of the superior courts, it is a trite law, would be to interpret the rule and not to supplant or supplement the same.

It is well-settled that the superior courts while exercising their jurisdiction under Articles 226 or 32 of the Constitution of India ordinarily do not direct an employer to prescribe a qualification for holding a particular post.

What was, therefore, permissible for recruitment to the post of Deputy Superintending Archaeologist need not necessarily be held to be permissible for recruitment of Superintending Archaeologist. Once a person holds the post of Deputy Superintending Archaeologist, keeping in view the decision of this Court in *Roshan Lal Tandon v. Union of India* [(1968) 1 SCR 185], he may be treated identically; but then it would not mean that while making a direct recruitment to a higher post, the Commission must have jurisdiction to relax the rules. The power of relaxation, it is well-settled, must also be expressly conferred.

In this case both the Commission as also the Archaeological Survey of India categorically opined that the requirements for both the posts are different. The Commission categorically stated :

" The experience in Epigraphy cannot be construed as experience in Archaeology. Similarly his experience as Sub Editor cannot be considered as field experience in Archaeology. Hence, he does not possess the required experience under educational qualification (ii) and hence he is ineligible for the post."

Archaeological Survey of India in its Counter Affidavit also took the same plea, stating :

"Epigraphy is a separate Branch of Archaeology Survey of India and constitutes a separate cadre, which is distinct and different from that of the archaeological cadre."

Strong reliance, as noticed hereinbefore, has been placed by Mr. Viswanathan on *Dr. M.C. Gupta (supra)*. Therein, this Court was considering the definition of the word 'medicine' contained in Section 2(f) of the Indian Medical Council Act, 1956. It was held to mean modern scientific medicine in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery. The Court although opined that it was too wide a definition, but proceeded to consider the question having regard to the regulations operating in the field. While holding that teaching experience in the subject forms part of general medicine, it was opined that keeping in view the regulations operating in the field, the Commission was amply justified in reaching at the conclusion that the Appellant therein possessed the requisite teaching qualification.

We may, however, notice that the aforementioned opinion was arrived at keeping in view the expert opinion as also the opinion of the Medical Council of India in that behalf in the following terms :

" An extreme argument was urged that in adopting this approach it may be that somebody may be working in different specialist branches such as neurology, gastroenterology, psychiatry, etc. and each one would qualify for being appointed as Professor of Medicine without having even a tickle of experience on the subject of general medicine. This wild apprehension need not deter us because it should be first remembered that any one going into specialist branch under medicine has to be M.D. (Medicine). Thereafter, if he wants to become a professor in the specialist branch such as cardiology, the academic qualification required is to hold a degree of D.M. in the specialist branch. This becomes clear from a perusal of the regulations. It is not necessary, therefore, to go into the dictionary meaning of the expression "medicine" to determine whether it includes cardiology. The Medical Council of India, a body composed of experts have in the regulations clearly manifested their approach when they said that cardiology is a specialist branch under medicine. Ipso facto, medicine includes cardiology. It was not disputed that one qualifying for M.D. (Medicine) has to learn the subject of cardiology. And it must be remembered that the four experts aiding and advising the commission have considered teaching experience in cardiology as teaching experience in medicine. The counter-affidavit on behalf of the Commission in terms states that medicine is a wide and general subject and includes cardiology whereas for the post of Professor of Cardiology a further two years' special training in cardiology or D.M. in cardiology after M.D. in medicine has been laid down as a requisite qualification by the Medical Council. It is further stated that teaching experience in cardiology will make the person eligible for the post of Professor of Medicine. That was the view of the experts who assisted the Commission "

The opinion of experts in this case is just the converse. In an academic field, apart from Dr. M.C. Gupta (supra), the court would normally be governed by the opinion of the experts in the field particularly in the academic field.

The said decision does not help the case of the Fourth Respondent. The situation therein was entirely different. Opinions of the experts were duly considered in arriving at the decision.

In *Tariq Islam v. Aligarh Muslim University and Others* [(2001) 8 SCC 546], this Court stated the law thus :

" This Court stated that normally, it is wise and safe for the courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the courts generally are. Area of interference by courts would be limited to whether the appointment made by the academic body had contravened any statutory or binding rule and while doing so, the court should show due regard to the opinion expressed by the experts and on whose recommendations the academic body had acted and not to treat such expert body as a quasi-judicial tribunal, deciding disputes referred to it for decision. Equivalence of a qualification pertains purely to an academic matter and courts would naturally hesitate to express a definite opinion,

particularly, when it appears that the experts were satisfied that the equivalence has already been considered and declared by it "

Mr. Viswanathan relied on N. Suresh Nathan and Another v. Union of India and Others [(1992) Supp. 1 SCC 584] for the proposition that construction in consonance with the long standing practice is permissible. There is no dispute with regard to the aforementioned proposition of law. What, however, is necessary for applying the principle of interpretation of statute is to take recourse to the literal interpretation and only when the same would result in absurdity or anomaly, other principles, depending upon the nature of the statute, may be applied. It is not a case where the terms are statutorily defined. The dictionary meaning or the meaning attached to the expression in the context of the rules, therefore, must be given effect to not only having regard to the purport and object thereof but also the opinion of the experts in the field.

We have noticed hereinbefore that even in common parlance Archaeology and Epigraphy contain two different disciplines. It is used both in the broader and narrower sense. Although the term 'Archaeology' may include a science of Epigraphy, for the purpose of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and the regulations framed thereunder, essential qualifications required for holding the post may have to be construed differently.

Upon interpretation of the terms, this Court is satisfied that the Fourth Respondent did not hold the requisite essential qualifications and, thus, was not eligible to hold the post. Furthermore, we do not have sufficient materials to hold as to on what basis, the Archaeological Survey of India opined differently in the cases of persons named in Ground 'G' of the writ petition of the First Respondent. We may, however, notice that the same has been explained. Mr. Viswanathan submitted that no explanation has been offered in respect of Dr. Ramesh. We refrain ourselves from going into the said question, simply on the proposition that Article 14 of the Constitution of India carries with it a positive concept and the equality clause contained therein cannot be said to have any application in a case of illegality.

For the views we have taken, we are of the opinion that it is not necessary for us to advert to the other contentions raised by the learned counsel.

For the reasons aforementioned, the impugned judgment of the High Court cannot be sustained, which is set aside accordingly. The appeals are allowed. No costs.