

[2019] 11 S.C.R. 65

DR. SRIDIP CHATTERJEE

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v.

DR. GOPA CHAKRABORTY & ORS.

(Civil Appeal No. 6102 of 2019)

AUGUST 06, 2019

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[L. NAGESWARA RAO AND HEMANT GUPTA, JJ.]

Service Law – Appointment – Eligibility criteria – When cannot be interfered – Respondent-University published advertisement inviting applications from suitable candidates for the post of Assistant Professor in Physical Education (Yoga Therapy) – Appellant appointed to the said post – Respondent No.1 aggrieved by the appointment of the appellant, filed writ petition in the High Court – Appointment of the appellant set aside by Single Bench – Intra-court appeal filed by the appellant – Dismissed – Held: Condition of the advertisement was Diploma in Yoga or Yoga Therapy – Appellant possessed Diploma in Yoga Education – Undoubtedly, in the proceedings of the Selection Committee, it was not recorded that the Diploma possessed by the appellant was equivalent to the educational qualifications advertised, but the Selection Committee was comprised of experts in the subjects and, therefore, even if it was not specifically mentioned, the decision could not have been interfered with only because the Court found that Diploma in Yoga Education is not the same as Diploma in Yoga or Yoga Therapy – Not only the Selection Committee found the appellant suitable but even the Equivalence Committee, constituted in terms of the directions of the Single Bench, also found the Diploma of the appellant as the one satisfying the requirement of the advertisement – Therefore, once the Experts took decision that the appellant met the eligibility conditions of the advertisement, the Court in exercise of power of judicial review could not have come to the conclusion that the Diploma possessed by the appellant does not satisfy the eligibility conditions advertised and set aside the appointment of the appellant – Judgment passed by the High Court set aside – Appellant be reinstated in service forthwith with all consequential benefits, seniority and pay fixation but he will not be entitled to pay for the period he was out of service.

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A **Allowing the appeal, the Court**

- HELD:** 1.1 The condition of the advertisement was Diploma in Yoga or Yoga Therapy. The appellant possesses Diploma in Yoga Education. The Court in exercise of power of judicial review could not come to a conclusion that the Diploma possessed by the appellant does not satisfy the eligibility conditions advertised. The Court only looked to the bare nomenclature of Diploma possessed by the appellant. No doubt, in the proceedings of the Selection Committee, it is not recorded that the Diploma possessed by the appellant is equivalent to the educational qualifications advertised but the Selection Committee was comprised of experts in the subjects and, therefore, even if it was not specifically mentioned, the decision could not have been interfered with only because the Court finds that Diploma in Yoga Education is not the same as Diploma in Yoga or Yoga Therapy.
- D The qualification prescribed in the advertisement remains the same i.e. Post Graduate Diploma in Yoga or Yoga Therapy. It is only Diploma in Yoga Education which has been considered as equivalent to Diploma in Yoga or Yoga Therapy. Not only the Selection Committee has found the appellant suitable but even the Equivalence Committee, constituted in terms of the directions of the Single Bench, also found the Diploma of the appellant as the one satisfying the requirement of the advertisement. Therefore, once the Experts have taken a decision that the appellant meets the eligibility conditions of the advertisement, the Court could not have interfered with and set aside the appointment of the appellant. Consequently, the judgment passed by the High Court is set aside. The appellant shall be reinstated in service forthwith with all consequential benefits, seniority and pay fixation but will not be entitled to pay for the period he was out of service. [Paras 16, 17 & 19] [72-D-G; 73-A-C]
- G *B.C. Mylarappa v. Dr. R. Venkatasubbaiah & Ors.*
(2008) 14 SCC 306 : [2008] 14 SCR 288 ; Rajbir Singh Dalal (Dr.) v. Chaudhari Devi Lal University, Sirsa & Anr. (2008) 9 SCC 284 : [2008] 11 SCR 992 ; Prakash Chand Meena & Ors. v. State of Rajasthan & Ors. (2015) 8 SCC 484 : [2015] 3 SCR 729 – referred to.

<u>Case Law Reference</u>	A
[2008] 14 SCR 288	referred to
[2008] 11 SCR 992	referred to
[2015] 3 SCR 729	referred to
CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6102 of 2019.	B
From the Judgment and Order dated 16.12.2016 & 22.12.2016 (corrected order) of the High Court of Calcutta in FMA No. 682 of 2015 in C.A.N. No. 1256 of 2016.	
P. V. Surendranath, Sr. Adv., Subhasish Bhowmick, Ms. Leekha, Advs. for the Appellant.	C
Kishore Datta, Sr. Adv., Joytosh Majumdar, Mohit Paul, Ms. Sunaina Phul, Billwadal Bhattacharya, Kunal Chatterji, Ms. Maitrayee Banerjee, Saurav Gupta, Advs. for the Respondents.	D
The Judgment of the Court was delivered by	
HEMANT GUPTA, J.	
1. Leave granted.	
2. This appeal has been preferred against the impugned judgment dated December 16, 2016, passed by the Division Bench of the High Court of Calcutta, by which the High Court has dismissed the appeal preferred by the appellant Dr. Sridip Chatterjee and confirmed the judgment dated April 16, 2014, passed by the learned Single Judge whereby appointment of the appellant to the post of Assistant Professor in Physical Education (Yoga Therapy) under the respondent University was set aside.	E
3. The subject matter of challenge in this appeal is the selection and subsequent appointment of appellant to the post of Assistant Professor in Physical Education (Yoga Therapy) of the Jadavpur University.	F
4. Brief facts, giving rise to the present appeal as emerging from the material on record, are that the respondent-University published an advertisement on November 22, 2012 inviting applications from suitable candidates for the post of Assistant Professor in Physical Education (Yoga Therapy).	G

- A 5. The qualification prescribed in the advertisement for the said post is Masters in Yoga/Yoga Therapy or Masters in Physical Education with Post Graduate Diploma in Yoga/Yoga Therapy with at least 55% (or an equivalent grade in a point scale wherever grading system is followed). The appellant applied for the said post and appeared in the selection process with other candidates. The appellant appeared before the Selection Committee consisting of Dr. Arun Kumar Uppal, Prof. Rajesh Tripathi, Prof. Krishna Banerjee, Dr. Sudip Sunder Das, Prof. Sanat Kr. Naskar and Dr. A.N. Dey for an interview on March 26, 2013. He was selected to the said post on March 28, 2013.
- C 6. Respondent No. 1 submitted a representation before respondent No.3 challenging the eligibility of the appellant to participate in the selection process as according to respondent No.1, appellant did not fulfil the essential qualification for the said post. Subsequently, in reply to an application under the Right to Information Act, 2005, respondent No. 1 came to know that the appellant had already been appointed to the said post by a letter of appointment dated March 28, 2013.
- E 7. Respondent No. 1, being aggrieved by the appointment of appellant to the post of Assistant Professor in Physical Education (Yoga Therapy), filed writ petition in the High Court of Calcutta. The learned Single Bench of the High Court set aside the appointment of the appellant and held that the duty of the University is to form an Equivalence Committee, which must comprise experts and on the basis of the reports gathered from the institute awarding a certain degree. The committee of the University on its own should not have come to a conclusion that the qualification possessed by a candidate is equivalent or not. It was found that the University has not clarified that the appellant had the requisite qualification to be appointed for the said post as University was required to come to a conclusion that Post Graduate Diploma in Yoga Education is equivalent to the Post Graduate Diploma in Yoga/Yoga Therapy. It was held that eight candidates were considered by the Selection Committee but why the appellant was considered best even in the teeth of the apparent incongruity in the educational qualification possessed by him and laid down in the advertisement. The University should have found that the Diploma in Yoga Education was equivalent to Post Graduate Diploma in Yoga/Yoga Therapy. In view of the said fact, the Court directed the University to take appropriate steps for a fresh selection from amongst the candidates who had applied pursuant to the advertisement in accordance with law.

8. Aggrieved against the said judgment, the appellant availed the remedy of intra-court appeal. The learned Division Bench dismissed the appeal and held as under:

“Admittedly, the appellant did not possess Post Graduate Diploma in Yoga/Yoga Therapy with at least 55% marks which was one of the essential criteria for participating in the selection process for the post of Assistant Professor in Physical Education (Yoga Therapy). It was also not in dispute that according to the reply dated April 12, 2013, there was no difference in between the Diploma in Yoga Education and Post Graduate Diploma in Yoga Education. But the requisite qualification required for the post in question, as mentioned in the advertisement, was Post Graduate Diploma in Yoga/Yoga Therapy, and not Post Graduate Diploma in Yoga Education. No material was brought on record to show that the Diploma in Yoga Education was equivalent to Post Graduate Diploma in Yoga/Yoga Therapy. Therefore, there was no error in the decision making process of the learned Single Judge in arriving at a conclusion that the above reply did not resolve the dispute.”

9. Still aggrieved, the appellant is in appeal before this Court.

10. The University has filed an affidavit dated May 01, 2019 before this Court wherein, a report of Equivalence Committee dated May 24, 2016 has been produced. Such Equivalence Committee was constituted in terms of the directions of the learned Single Bench. The Committee observed as under:

“1. Going by the contents of the course, the degree in M.Sc. (Human Consciousness and Yogic Sciences) and Master’s in Yoga/Yoga Therapy are equivalent.

2. Based on the following points the committee opines that P.G. Diploma in Yoga Therapy and Diploma in Yoga Education are equivalent:

(i) Qualifying examination for the said courses is any graduate degree;

(ii) The papers taught in the said courses are almost the same with the only difference being that the P.G. Diploma in Yoga Therapy (of J.U.) has been under semester-system

- A whereas Diploma in Yoga Education (of Kaivalyadhama SMYM Samiti) has been under annual-system;
- (iii) Contents of the papers taught in the said courses are almost the same;
- B (iv) Some flexibilities in the curriculum frame work for NCTE programs are allowed by itself, including the said courses;
3. The committee also finds the degree/diploma in Yoga courses of other applicants as equivalent to the essential qualifications specified in the advertisement A2/C/2/2012 dt. 22.11.2012.”
- C 11. Learned counsel for the appellant contends that appellant has a Master Degree in Physical Education and Post Graduate Diploma in Yoga Education. The requirement for appointment to the post is Post Graduate Diploma in Yoga or Yoga Therapy. The relevant condition reads as under:
- D “Master’s in Yoga/Yoga Therapy or Master’s in Physical Education with Post Graduate Diploma in Yoga/Yoga Therapy with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed).”
12. Learned counsel for the appellant has filed the statement given
- E by Principal and Joint Director of the Kaivalyadhama Shriman Madhava Yoga Mandir (S.M.Y.M.) Samiti vide Annexure S-11 and submitted that the qualification possessed by the appellant meets the requirement of Post Graduate Diploma in Yoga or Yoga Therapy. It is contended that different institutes grant Diploma with different nomenclature. The
- F Diploma in Yoga Education is nothing but Diploma in Yoga, therefore, the appellant satisfies the eligibility requirement. Though, the Selection Committee has not specifically recorded that the qualification possessed by the appellant is in terms of the conditions of advertisement but the members of the Selection Committee were experts in the subject and once the appellant was appointed, it necessarily means that they were
- G satisfied with the qualification possessed by the appellant as one satisfying the eligibility conditions advertised. It is further contended that in terms of the directions issued by the learned Single Bench, the University has constituted an Equivalence Committee and has found that the Diploma certificate produced by the appellant satisfies the eligibility conditions,
- H therefore, even if there were some procedural irregularities in not

recording the eligibility of the appellant in the initial minutes of the Selection Committee, such irregularities stand cured when the Equivalence Committee considered the appellant eligible for appointment. It is also contended that the suitability of the candidate in terms of eligibility conditions advertised is for the experts to consider and once experts have found that the appellant possesses the required educational qualification, the Court while exercising power of judicial review, could not take a different view that the qualification possessed by the appellant does not meet the qualification prescribed in the advertisement. The reliance is placed upon judgment of this Court in **B.C. Mylarappa v. Dr. R. Venkatasubbaiah & Ors.**¹, wherein this Court held as under:

“26. Admittedly, there is nothing on record to show any mala fides attributed against the members of the expert body of the University. The University Authorities had also before the High Court in their objections to the writ petition taken a stand that the appellant had fully satisfied the requirement for appointment. In this view of the matter and in the absence of any mala fides either of the expert body of the University or of the University Authorities and in view of the discussions made hereinabove, it would be difficult to sustain the orders of the High Court as the opinion expressed by the Board and its recommendations cannot be said to be illegal, invalid and without jurisdiction.”

13. In **Rajbir Singh Dalal (Dr.) v. Chaudhari Devi Lal University, Sirsa & Anr.**², this Court held as under:

“29. It may be mentioned that on a clarification sought from UGC whether a candidate who possesses a Masters degree in Public Administration is eligible for the post of Lecturer in Political Science and vice versa, UGC wrote a letter dated 5-3-1992 to the Registrar, M.D. University, Rohtak stating that the subjects of Political Science and Public Administration are interchangeable and interrelated, and a candidate who possesses Masters degree in Public Administration is eligible as Lecturer in Political Science and vice versa. Thus, this is the view of UGC, which is an expert in academic matters, and the Court should not sit in appeal over this opinion and take a contrary view.”

¹(2008) 14 SCC 306

²(2008) 9 SCC 284

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- A 14. On the other hand, learned counsel for the respondents contended that it is not permissible for the Selection Committee to change the selection criteria midway. Since the eligibility condition as per the advertisement was Diploma in Yoga or Yoga Therapy, therefore, Diploma in Yoga Education could not be treated as a qualification in terms of the conditions of the advertisement. Reliance is placed upon judgment of this Court in *Prakash Chand Meena & Ors. v. State of Rajasthan & Ors.*³ wherein it was held that the Court could not go into the question whether a degree is equivalent or superior to the qualification prescribed in the advertisement.
- C 15. We have heard learned counsel for the parties and find that the judgment of the Division Bench of the High Court is not sustainable in law.
16. The condition of the advertisement was Diploma in Yoga or Yoga Therapy. The appellant possesses Diploma in Yoga Education.
- D The Court in exercise of power of judicial review could not come to a conclusion that the Diploma possessed by the appellant does not satisfy the eligibility conditions advertised. The Court has only looked to the bare nomenclature of Diploma possessed by the appellant. No doubt, in the proceedings of the Selection Committee, it is not recorded that the Diploma possessed by the appellant is equivalent to the educational qualifications advertised but the Selection Committee was comprised of experts in the subjects and, therefore, even if it was not specifically mentioned, the decision could not have been interfered with only because the Court finds that Diploma in Yoga Education is not the same as Diploma in Yoga or Yoga Therapy.
- F 17. On the other hand, the judgments referred to by the learned counsel for the respondents are in respect of change of eligibility criteria midway of the selection process. Such is not the fact in the present case. The qualification prescribed in the advertisement remains the same i.e. Post Graduate Diploma in Yoga or Yoga Therapy. It is only
- G Diploma in Yoga Education which has been considered as equivalent to Diploma in Yoga or Yoga Therapy. Not only the Selection Committee has found the appellant suitable but even the Equivalence Committee, constituted in terms of the directions of the learned Single Bench, also found the Diploma of the appellant as the one satisfying the requirement

³ (2015) 8 SCC 484

of the advertisement. Therefore, once the Experts have taken a decision A
that the appellant meets the eligibility conditions of the advertisement,
the Court could not have interfered with and set aside the appointment
of the appellant.

18. Learned counsel for the respondents has referred to a B
curriculum of Kaivalyadhama to argue that the Post Graduate Diploma
in Yoga Education and Post Graduate Diploma in Yoga/Yoga Therapy
are different. We do not find that such curriculum can be relied upon by
the respondents to hold that the appellant is not eligible when the committee
of experts have found the appellant eligible.

19. Consequently, we allow the present appeal and set aside the C
judgment passed by the High Court. The appellant shall be reinstated in
service forthwith with all consequential benefits, seniority and pay fixation
but will not be entitled to pay for the period he was out of service. No
order as to costs.

Divya Pandey

Appeal allowed.