

Bihar Public Service Commission & Ors vs Kamini & Ors on 16 April, 2007

Equivalent citations: 2007 AIR SCW 2554, 2007 (5) SCC 519, (2007) 3 PAT LJR 60, (2007) 5 SCALE 735, (2007) 2 UPLBEC 1506, (2007) 3 MAD LJ 885, (2007) 3 SCT 275, 2007 AIR SCW 2554 (FROM, 2007 (2) AIR JHAR R 927, (2007) 3 JLJR 60, (2007) 3 SERVLR 360, (2007) 3 LAB LN 950, (2007) 2 ESC 305

Author: C.K. Thakker

Bench: C.K. Thakker, Altamas Kabir

CASE NO.:

Appeal (civil) 1970 of 2007

PETITIONER:

BIHAR PUBLIC SERVICE COMMISSION & ORS

RESPONDENT:

KAMINI & ORS

DATE OF JUDGMENT: 16/04/2007

BENCH:

C.K. THAKKER & ALTAMAS KABIR

JUDGMENT:

J U D G M E N T CIVIL APPEAL NO. 1970 of 2007 ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 14469 OF 2003 C.K. THAKKER, J.

Leave granted.

This appeal is filed against the judgment rendered by a Division Bench of the High Court of Judicature at Patna on May 13, 2003 in Letters Patent Appeal No. 381 of 2003. By the said judgment, the Division Bench allowed the appeal filed by the respondent herein-original petitioner and set aside the judgment of the learned Single Judge, dated April 1, 2003 in CWJC No. 12618 of 2002.

Necessary facts leading to the filing of present appeal by the Bihar Public Service Commission ('Commission' for short) are that the first respondent Miss Kamini, passed her B.Sc. (Hons.) in the year 1989 in Chemistry with Zoology and Botany in First Class from Tilka Manghi Bhagalpur University in the State of Bihar. Her principal/main subject in B.Sc. Degree was Chemistry, alongwith Zoology and Botany as subsidiary/optional subjects. An advertisement was issued on December 21, 1999 by the Commission inviting applications from eligible candidates for

appointment to the post of District Fisheries Officer-cum-Chief Executive Officer in the pay scale of Rs.6500-10500/- in the Bihar Fisheries Service Class-II. It was stated therein that the candidate must have qualifications of B.Sc. Zoology with a two years Diploma in Fisheries Science from Central Institute of Fisheries Education, Mumbai or a Graduate Degree in Fisheries Science (B.F.S.C.) from a recognized University or M.Sc. (Inland Fisheries Administration & Management) with Zoology from the Central Institute of Fisheries Education, Mumbai. Though the first respondent was not eligible as she did not possess the requisite qualifications of B.Sc.-Zoology, inadvertently, a letter was issued by the Commission on October 17, 2002 calling upon her to appear before the Interview Board on November 5/6, 2002. On closure scrutiny of the mark-sheet, however, it was found that she was not having Hons. Degree in Zoology and was not eligible for the post. On 5th November, 2002, therefore, when she appeared for the interview, she was informed that she was not possessing requisite educational qualifications and her candidature had been rejected. She made a representation on November 6, 2002 to the Chairman of the Commission to reconsider the decision of cancellation of her candidature. Since there were some cases of this nature, an Expert Committee was constituted by the Commission to consider a question whether a student can be called a Graduate in Zoology subject if he/she has cleared the Degree Examination with Zoology as a subsidiary/optional subject and not the principal subject. The Committee submitted its Report on November 24, 2002. As per the said Report, a student will be considered a Graduate in the subject if he/she has obtained the Degree in that subject at the Graduate level. The first respondent, as per the said report, was found ineligible. Her cancellation was, therefore, held proper.

The first respondent was not satisfied with the Report of the Expert Committee and challenged the said decision by filing a writ petition in the High Court of Judicature at Patna. The learned single Judge dismissed the petition but the Letters Patent Appeal was allowed by the High Court. The Commission has challenged the said decision of the Division Bench.

The learned counsel for the appellant submitted that the Division Bench of the High Court was wholly wrong in allowing the appeal and in setting aside the order passed by the learned Single Judge and in ignoring the Report submitted by the Expert Committee. He also submitted that even otherwise, the action of the Commission could not be said to be illegal or contrary to law. When the requisite educational qualification was B.Sc. Zoology, such person must have passed B.Sc. with Zoology as principal/main subject and not as a subsidiary or optional subject. Admittedly, the first respondent had passed B.Sc. with Chemistry as principal subject and Zoology as optional/subsidiary subject. She, therefore, could not be held qualified and the action of the Commission was in consonance with law and was legal and proper. It was also submitted that after the representation was received from the first respondent, the Commission constituted an Expert Committee for considering the grievance of the first respondent and even the Expert Committee opined that in its opinion i.e. in the opinion of the Committee, a student would be called Graduate in the subject if he/she has Honours in that subject at the Graduate level. If the subject is subsidiary (or side subject), he/she could not be called a Graduate in that subject. It was because a Honours student at the Graduate level studies eight papers in that subject whereas he/she studies only two papers in subsidiary subject. In accordance with the Report, the action was taken which was proper. The counsel also submitted that the learned Single Judge was wholly right in upholding the contention

of the University that the first respondent could not be said to be B.Sc. Honours in Zoology and dismissed the petition. The Division Bench was in error in setting aside the said order which deserves interference.

The learned counsel for the first respondent, on the other hand, supported the order passed by the Division Bench. He submitted that the first respondent was eligible and possessed requisite educational qualifications. It was because of her eligibility that she applied for the post of District Fisheries Officer. Even the Commission was satisfied about her qualifications and was asked to appear for interview. The counsel also submitted that the Division Bench was right in observing that the first respondent was granted admission by the Central Institute of Fisheries Education, Mumbai. Had the first respondent not possessed a Bachelor of Science Degree with Zoology, the institute would not have given her admission. It was, therefore, clear that the first respondent was treated as B.Sc. with Zoology, she applied to Central Institute of Fisheries Education, Mumbai, she was admitted in the Institute and also cleared the course. It was also asserted in the counter affidavit filed in this Court by the first respondent (original petitioner) that two similarly situated persons, namely, i) Jai Prakash, and (ii) Shailendra Kumar had been appointed in the year 1993 though they had similar qualifications. It was, therefore, submitted that the Division Bench was right in issuing necessary directions and the appeal deserves to be dismissed.

Having heard learned counsel for the parties, in our opinion, the appeal deserves to be allowed. The advertisement is explicitly clear and states that the candidate must be Honours in B.Sc. Zoology. It is not in dispute that first respondent has obtained B.Sc. Degree with First Class but her main subject was Chemistry of eight papers of 800 marks and in addition to Chemistry, she had two papers of Zoology and Botany. In pursuance of the advertisement, which was clear, the first respondent was not eligible for the appointment to the post of District Fisheries Officer. In spite of that, she applied for the said post. True it is that initially a letter was issued by the Commission on October 17, 2002 calling upon her to appear before the Commission for interview. It was, however, a mistake on the part of the Commission. As soon as the appellant-Commission realised that the first respondent was not having requisite qualifications for the post and was not eligible, her candidature was rejected. When a representation was made by the first respondent that cancellation of her candidature was not proper and that the decision should be reconsidered by the Commission, the Commission thought it fit to look into her grievance and an Expert Committee was appointed. The Expert Committee considered the question and submitted a report on November 24, 2002, inter alia, stating that in its 'considered opinion', a student would be called a Graduate in the subject if he/she has Honours in the subject at the Graduate level, meaning thereby that it must be the principal subject. In our opinion, such a decision could not be said to be contrary to law. Again, it is well settled that in the field of education, a Court of Law cannot act as an expert. Normally, therefore, whether or not a student/candidate possesses requisite qualifications should better be left to educational institutions [vide *University of Mysore v. Govinda Rao*, (1964) 4 SCR 576 : AIR 1965 SC 591]. This is particularly so when it is supported by an Expert Committee. The Expert Committee considered the matter and observed that a person can be said to be Honours in the subject if at the Graduate level, he/she studies such subject as the principal subject having eight papers and not a subsidiary, optional or side subject having two papers. Such a decision, in our judgment, cannot be termed arbitrary or otherwise objectionable. The learned Single Judge, in our opinion, was,

therefore, right in dismissing the petition relying upon the Report of the Committee and in upholding the objection of the Commission. The Division Bench was in error in ignoring the well considered report of the Expert Committee and in setting aside the decision of the learned Single Judge. The Division Bench, while allowing the appeal, observed that the 'litmus test' was the admission granted to the first respondent by the Central Institute of Fisheries Education, Mumbai. According to the Division Bench, if the first respondent did not possess Bachelor of Science Degree with Zoology, the Institute would not have admitted her to the said course. The Division Bench observed that not only the first respondent was admitted to the said course, she had passed it with "flying colours". In our opinion, the Division Bench was not right in applying 'litmus test' of admission of the first respondent by Central Institute of Fisheries Education, Mumbai. The controversy before the Court was whether the first respondent was eligible for the post of District Fisheries Officer, Class II. The correct test, therefore, was not admission by Mumbai Institution. If the requirement was of Honours in B.Sc. with Zoology and if the first respondent had cleared B.Sc. Honours with Chemistry, it could not be said that she was eligible to the post having requisite educational qualifications. By not treating her eligible, therefore, the Commission had not committed any illegality.

With regard to two instances cited by the first respondent in her counter affidavit before this Court, it is sufficient to state that the Letters Patent Appeal was not allowed by the Division Bench of the High Court on that ground. Even otherwise, the learned counsel for the appellant-Commission is right in submitting that the cases related to remote past in 1993. He further stated that the advertisement was issued in 1999, several other candidates who had not obtained Degree of B.Sc. (Honours) with Zoology as principal subject had applied and all of them have been treated ineligible and were not called for interview.

In our opinion, the submission of the learned counsel for the Commission is well founded and must be accepted. Therefore, even if in 1993, some ineligible candidates were wrongly treated as eligible, the first respondent cannot insist that she also must be treated eligible though she is ineligible. In our considered opinion, such an action cannot give rise to equality clause enshrined by Article 14 of the Constitution. It is well settled and needs no authority that misconstruction of a provision of law in one case does not give rise to a similar misconstruction in other cases on the basis of doctrine of equality. An illegality cannot be allowed to be perpetuated under the so-called 'equality doctrine'. That is not the sweep of Article 14. Even that contention, therefore, has not impressed us.

For the foregoing reasons, the appeal deserves to be allowed and is accordingly allowed. The order passed by the Division Bench of the High Court is set aside and the order passed by the learned Single Judge is restored and the petition filed by the first respondent-original petitioner stands dismissed, however, with no order as to costs.