

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:- 28.11.2005

CORAM

THE HON'BLE MR. JUSTICE P.SATHASIVAM
AND
THE HON'BLE MR. JUSTICE S.K.KRISHNAN

Writ Petition No.25039 of 2004
and
W.P.M.P. No.30436 of 2004

The Union of Public Service Commission,
represented by its Secretary,
Dholpur House,
New Delhi - 110003.

... Petitioner

vs

1. Dr. C. Gobalakrishnan
2. Union of India,
Union Territory of Pondicherry,
represented by its Secretary,
Education Department,
Government of Pondicherry,
Pondicherry.
3. The Director of Education,
Pondicherry.
4. The Principal,
Tagore Arts College,
Pondicherry.
5. The Registrar,
Central Administrative Tribunal,
Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India,
praying for issuance of a Writ of Certiorari to call for the
records pertaining to the order dated 05.02.2004 of the 5th
respondent herein in O.A. No.428 of 2003 and to quash the same.

For Petitioner : Mr. K. Sridhar,
Sr. Central Govt. Standing Counsel

For R-1 : Mr. K.M.Ramesh

For R-2 to R-4 : Mr.Vijay Anand, for
Govt. of Pondicherry.

O R D E R

(Order of the Court was made by P. Sathasivam, J)

By consent of both the parties, Writ Petition itself is taken up for disposal.

2. Aggrieved by the order of the Central Administrative Tribunal, Chennai Bench, dated 05.02.2004, made in O.A.No.428 of 2003, the Union Public Service Commission, New Delhi, has filed the above Writ Petition.

3. The subject matter of the dispute relates to the recruitment of two posts of Lecturers in Sociology and Social Work in Government Colleges, Pondicherry Administration. The posts were advertised on 11.05.2002 with closing date as 30.05.2002. Of the two posts, one was reserved for OBC candidates and the remaining one was unreserved. The age limit for the said posts is not exceeding 35 years on normal closing date and not exceeding 40 years for SC candidates and relaxable for OBC candidates upto 3 years in respect of vacancies reserved for them and upto 5 years for Government servants. The pay scale fixed for the said posts is Rs.8000-13500/-. The essential educational qualification is (i) Master's degree in Sociology and Social Work from a recognised University or equivalent, (ii) the candidate should have cleared the eligibility test for Lectureship conducted by the University Grants Commission, Council for Scientific and Industrial Research or similar test accredited by the University Grants Commission. The qualifications are relaxable at Commission's discretion in case of candidates otherwise well qualified.

In response to the advertisement, applications were received from 356 candidates (including 83 OBC candidates). Out of these, there were 51 eligible applications against a single post reserved for OBC candidates and 200 eligible applications against a single post under the unreserved category. Therefore, the Commission resorted to a short-listing procedure. Accordingly, only those eligible candidates under the OBC category, who had one

year experience of teaching Sociology/Social Work were called for interview. Experience as part-time Lecturer/Guest Lecturer/honorary basis/hourly basis were not considered as the relevant teaching experience. On the basis of the short-listing criteria approved by the Commission, 19 OBC candidates and 15 General category candidates were called for the interviews which were held on 28th, 29th and 30th of April 2003. The Commission on 19.05.2003 also approved the Interview Board Report. The results have been kept in sealed covers.

The first respondent herein was a candidate under OBC category bearing Roll No.75. He was working as a Lecturer on hourly paid basis in a college under the administration of Government of Pondicherry. As he was not meeting the short-listing criteria approved by the Commission, he was not called for the interview.

The first respondent filed O.A.No.428 of 2003 dated 20.05.2003 before the Central Administrative Tribunal, challenging the action of the Commission in not considering him for the post of Lecturer in Sociology/Social Work. The Tribunal passed a common order along with other Applications and in so far as the claim of the first respondent/applicant in O.A.No.428 of 2003 is concerned, the Tribunal directed that he shall be considered for selection, treating him that he possessed adequate teaching experience. Questioning the said direction, the petitioner/Union Public Service Commission has filed the above writ petition.

4. Heard learned Senior Central Government Standing Counsel appearing for the petitioner/Service Commission, learned counsel for the first respondent as well as the counsel representing the Government of Pondicherry.

5. The only point for consideration in this writ petition is as to whether the Central Administrative Tribunal is justified in issuing a direction for considering the claim of the applicant/first respondent herein treating him that he possessed adequate teaching experience.

6. In order to consider the above claim, we verified Advertisement No.9, dated 11.05.2002, issued by the petitioner/Commission. We also verified the Office Order, dated 30.04.2003, of the Government of Pondicherry, Tagore Arts College, which shows that the first respondent herein was engaged as Lecturer on Hourly Paid Wages (HPW). In the earlier part of our order, from the information furnished in the affidavit, we have mentioned that the matter relates to the recruitment of two posts of Lecturers in Sociology/Social Work in Government Colleges, Pondicherry Administration. Out of the two posts, one was reserved

for OBC and the remaining one was unreserved. The particulars furnished also show that pursuant to the advertisement, applications were received from 356 candidates (including 83 OBC candidates). It also shows that out of these, there were 51 eligible applications against a single post reserved for OBC and 200 eligible applications against a single post under unreserved category. In such circumstances, according to the Commission, they resorted to a short-listing procedure. In this regard, it is relevant to note that even in the advertisement published in the newspaper, under the head "NOTE", in clause 3 relating to minimum educational qualifications, the Commission has made it clear that where the number of applications received in response to an advertisement is large and it will not be convenient or possible for the Commission to interview all the candidates, it would be open to the Commission to restrict the number of candidates to a reasonable limit by any or more of the following methods:

- " (a) On the basis of either qualifications and experience higher than the minimum prescribed in the advertisement or
- (b) On the basis of experience in the relevant field, or
- (c) By counting experience before or after the acquisition of essential qualifications, or
- (d) By holding a screening test."

In view of the above information, it cannot be claimed that the Commission has no power or authority to short-list when eligible candidates are more in number.

7. In this regard, the learned counsel appearing for the petitioner has brought to our notice the decision of the Apex Court reported in (1994) 6 SCC. 293 (M.P. Public Service Commission v. Navnit Kumar Potdar), wherein Their Lordships approved the action of the Commission in short-listing the candidates, because, the eligible candidates were more in number. The said case relates to the selection for the post of Presiding Officers of Labour Courts. The question that was posed before the Supreme Court was that whether in the process of short-listing, the Commission has altered or substituted the criteria or the eligibility of a candidate to be considered for being appointed against the post of Presiding Officer, Labour Court. The following conclusions of Their Lordships are relevant,

" 6. It may be mentioned at the outset that whenever applications are invited for recruitment to the different posts, certain basic qualifications and criteria are fixed and the applicants must possess those basic qualifications and criteria before their

applications can be entertained for consideration. The Selection Board or the Commission has to decide as to what procedure is to be followed for selecting the best candidates from amongst the applicants. In most of the services, screening tests or written tests have been introduced to limit the number of candidates who have to be called for interview. Such screening tests or written tests have been provided in the concerned statutes or prospectus which govern the selection of the candidates. But where the selection is to be made only on basis of interview, the Commission or the Selection Board can adopt any rational procedure to fix the number of candidates who should be called for interview. It has been impressed by the courts from time to time that where selections are to be made only on the basis of interview, then such interviews/viva voce tests must be carried out in a thorough and scientific manner in order to arrive at a fair and satisfactory evaluation of the personality of the candidate.

8. The sole purpose of holding interview is to search and select the best among the applicants. It is obvious that it would be impossible to carry out a satisfactory viva voce test if large number of candidates are interviewed each day till all the applicants who had been found to be eligible on basis of the criteria and qualifications prescribed are interviewed. If large number of applicants are called for interview in respect of four posts, the interview is then bound to be casual and superficial because of the time constraint. The members of the Commission shall not be in a position to assess properly the candidates who appear before them for interview. It appears that Union Public Service Commission has also fixed a ratio for calling the candidates for interview with reference to number of available vacancies. " (emphasis supplied)

After saying so, the Apex Court concluded that the High Court has not appreciated the true implication of the short-listing which does not amount to altering or changing of the criteria prescribed in the rule, but is only a part of the selection process. Their Lordships also concluded,

" As we have already pointed out that where the selection is to be made purely on the basis of interview, if the applications for such posts are enormous in number with reference to the number of posts available to be filled up, then the Commission or the Selection Board has no option but to short-list such applicants on some rational and reasonable basis. "

8. In Judgments Today 1997 (5) SC 48 (Union of India and another v. T.Sundararaman & others), the Supreme Court, following the principles laid down in (1994) 6 SCC 293 (cited supra), upheld the short-listing of candidates on rational and reasonable basis and also accepted the procedure adopted by the Commission since the same was legitimate.

9. The above decisions make it clear that when there is a large number of eligible candidates and the posts available are minimal, the Service Commission is well within its power to short-list the candidates for selection. We have already referred to the number of persons applied and eligible applicants against the single post reserved for OBC candidates and in such circumstances, we are of the view that the method adopted by the petitioner/Commission is well founded and cannot be faulted with.

10. Now, let us consider as to whether the Commission is justified in not considering the case of the first respondent.

Even according to the first respondent, he had teaching experience only on hourly basis. It is true that the first respondent filed an Additional affidavit before the Tribunal as well as before us in the form of counter affidavit stating that he had 60 hours in his account, but this relevant fact was not considered by the Commission before not calling him for interview. Here again, it is relevant to point out that the Commission had considered only those eligible candidates under OBC category, who had one year experience of teaching Sociology/Social Work, for interview. The Commission has not considered experience as part time Lecturer/Guest lecturer/honorary basis/hourly basis as relevant teaching experience. Inasmuch as this has been followed or adopted not only to the case of the first respondent but applied in general, the said course followed by the Commission cannot be faulted with. On the other hand, as mentioned in the notification as well as the decisions of the Supreme Court, the said method is permissible under Law. These relevant aspects have not been considered by the Tribunal and it has committed an error in issuing a direction, treating the applicant in O.A.No.428 of 2003, the first respondent herein, as possessed adequate teaching experience for selection.

11. In the light of what is stated above, the impugned order of the Central Administrative Tribunal dated 05.02.2004 made in O.A.No.428 of 2003 is quashed and the writ petition is allowed. No costs. Connected Miscellaneous Petition stands closed.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary,
Education Department,
Government of Pondicherry,
Pondicherry.
2. The Director of Education,
Pondicherry.
3. The Registrar,
Central Administrative Tribunal,
Chennai.

+ 1 cc to Mr. K.M. Ramesh, Advocate SR No.46673

+ 1 cc to Mr.K. Sridhar, Advocate SR No.46598

+ 1 cc to Senior Government Pleader cum Senior Public Prosecutor
for Pondicherry SR No.46708

TA(CO)
SR/8.12.2005

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and
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