

Chairman School of Buddhist Philosophy, Leh, Ladakh (J&K)

Vs

Makhan Lal Mattoo and Another

Civil Appeal No. 3492 of 1990

(N. M. Kasliwal, Kuldip Singh JJ)

25.07.1990

JUDGMENT

KULDIP SINGH, J. -

1. Special leave granted.

2. The School of Buddhist Philosophy, Leh (hereinafter called the 'School') is an affiliate institution of the Sampurnanand Sanskrit University, Banaras, the Management of the School is in the hands of the society called Central Institute of Buddhist Studies, Leh which is registered under Jammu and Kashmir Registration of Societies Act. Appointment to various posts in the School are regulated by the rules framed by the Board of Management in the year 1973. The academic and other qualification for the posts of Principal under the rules are as under :

"Academic Qualification - at least Master Degree in the Humanities or Social Sciences, with knowledge of the rules and regulations, procedure and accounts.

Experience - Minimum experience of 7 years, out of the which at least 2 years should be in administration such as Administrative Assistant and not less than 3 years in teaching in Higher Secondary and/or Degree classes."

The qualifications for the post of Administrative Officer under the 1973 rules are identical.

3. M. L. Mattoo (respondent 1) who was functioning as the Administrative Officer, was given the additional charge of the post of Principal by an order dated March 26, 1973 issued by the Ministry of Education and Social Welfare, Government of India, New Delhi.

4. The Board of management in its meeting held on August 22, 1978 decide that the apart from the qualifications prescribed under the Rules, the person selected for the post of Principal should have a through academic background in Buddhist philosophy. Pursuant to the said decision the qualifications/ experience for the post of Principal prescribed under the Rules were revised as under :

"Essential :

(a) A consistently goods academic record possessing eminent scholarship in Buddhist Philosophy as a subject of specialisation at MA or Doctoral level.

or

Acharya Degree with research experience to Buddhist Philosophy or equivalent.

or

An equivalent degree of traditional monastic education in Buddhism.

(b) Evidence of research work and/or public work in the filed.

Desirable :

(a) 5 years teaching experience in Buddhist Philosophy and allied subject at the degree level.

(b) 5 Years of administrative experience."

5. The Board of Management constitution a selection committee to appoint a suitable person as Principal of the School. By an order dated January 9, 1979 one Shri Tashi Paljor, who fulfilled the revised qualifications, was appointed as Principal of the School. Aggrieved by the said appointment M. L. Mattoo filed Civil Writ petition No. 256 of 1979 in the High Court of Jammu and Kashmir on the ground that he was removed from the additional charge without affording an opportunity of hearing to him and further that he was not considered by the selection committee. He contended that selection was liable to be quashed being violative of Article 16 of the Constitution of India. The writ petition was resisted by the management on the ground that it was not a 'State' under Article 12 of the Constitution of India and as such the writ petition was not competent. At the hearing of the writ petition the counsel for the management conceded that the society was a 'State' within Article 12 of the Constitution of India and as such the writ petition could not be dismissed on the ground. The High Court rejected the contention of M. L. Mattoo that he was entitled to an opportunity of hearing or Article 311 was attracted. The High Court, however, allowed the writ petition on the ground that the petitioner was not considered for the post of Principal and as such his right under Article 16 of the Constitution of India stood infringed. The operative part of the High Court judgment is as under :

"Mr. V. K. Gupta has on the authority of Ajay Hasia case (Ajay Hasia v. Khalid Mujib Sehrawardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258) frankly conceded that the society being an instrumentality or agency of the Government of a India, was 'State' for the purpose of Part III of the Constitution as such, the petitioner had a fundamental right to be considered for the post along with respondent 3. He not having been so considered, and it also being admitted that he possessed the requisite qualifications, that rule of equality enshrined in Articles 14 and 16 of the 16 of the Constitution stood clearly violated. That being so, as in fact it is the impugned order passed by respondent 2 appointing respondent 3 as the Principal of the School has to be quashed."

6. Thereafter the management advertised post of Principal to be filled by direct recruitment on the basis of revised qualification. The advertisement was published in the Kashmir Times of January 5, 1982.

7. M. L. Mattoo filed another writ petition being Civil Writ Petition No. 29 of 1982 challenging the advertisement on the ground that the revised qualification had not been validly prescribed and as such the post of Principal could only be filled on the basis of the pre-revised qualifications.

According to him the revised qualification were advertised only to make him ineligible for the post. The main thrust of Mattoo's argument was that his earlier writ petition was decided by the High Court on October 29, 1981 wherein the counsel for the management conceded that he possessed the requisite qualifications for the post of Principal. Admittedly Mattoo does not possess the revised qualifications. According to him the earlier writ petition was filed in the year 1979 and had the qualifications been revised by amending the rules in 1978, the counsel for the management would have certainly brought the same to the notice of the court and since it was not done there was factually no amendment to the rules. The High Court accepted the contention of Mattoo and allowed the writ petition by its judgment dated June 9, 1988 on the following reasoning :

"It is stated in para 13 of their counter that qualifications were changed in August 1978 with the approval of the Government of the India. This statement is not accepted for two reasons one that this was not the defence of the respondent in Writ petition No. 256 of the 1979 in which petitioner eligibility was granted by the High Court for the post of Principal and second, that after the decision of the High Court granting eligibility to the petitioner for the post of Principal in Writ Petition No. 256 of 1979, the respondent plea on the basis of the some policy or note whereby qualifications were changed in 1978 prior to the filing of the writ Petition No. 256 of 1979 cannot be now pressed into service nor would be permitted to be made because same will be barred by doctrine of construction *res judicata*."

8. The High Court quashed the advertisement dated January 5, 1982 and restrained the management from filling the post of Principal on the basis of the impugned advertisement. The management has come up to this Court in appeal against the abovesaid judgment of the High Court of Jammu and Kashmir.

9. The learned counsel for the appellant has invited our attention to the proceedings of the meeting of the management of the School held on August 22, 1978. It was decided in the said meeting that the person selected for the post of Principal of the School must have academic background in Buddhist Philosophy in addition to the qualifications prescribed under the Rules. Thereafter the amended the qualification which have been reproduced above were prescribed by the Board of Management.

10. It is not disposed that the recruitment rules could be altered by the Board of Management at any time with the sanction of the Government of India. Mr. E. C. Agarwala appearing for the respondent M. L. Mattoo has, however, contended that the recruitment rules were never amended and in any case there was no sanction of the Government of India regarding the amended rules.

11. Learned counsel for the appellant has invited our attention to the affidavit of Dr. (Mrs.) Kapila Vatsyayan, Chairman, Board of Management of the School filed before the High Court. Dr. Kapila Vatsyayan is the Additional Secretary to Government of India in the Ministry of Education and Culture. Para 13 of the affidavit is as under :

"When in the year 1978 the question of the appointment of a Principal of the School on regular basis was under the consideration of the Board of Management, it was held that the keeping in view the objects of the school being a research institution to propagate Buddhist Philosophy a thorough academic background in Buddhist Philosophy was considered as one of the essential qualifications for the post of principal of the School as will be evident from the extract from brief note on Agenda Item I considered in the meeting of the Board of Management held on August 22,

1978 Annexure IV. Shri. Tashi Paljore was appointed as Principal as stated in para 5 of the petition as he possessed this qualification and was selected by a duly appointed Selection Committee. The contention of the petitioner that this qualifications has been added now after the decision of Writ Petition No. 256 of 1979 is incorrect. As stated above, the qualifications were changed in August 1978 with the approval of Government of India.

These qualification are obviously very necessary for the fulfilling of the objectives of the School of Buddhist Philosophy, Leh (Ladakh). In the absence of the these qualifications the very object for which the institution exists is bound to be defeated. The qualification has been provide in the interest of the institution and for the attainment of the object for the which it exists namely imparting and propagating Buddhist Philosophy. The Recruitment Rules of 1975. Annexure 'D' to the petition were framed by the Board at that the time. Under the Rules and Regulations of the Board, the Board of Management is competent of the amend the same."

12. It is obvious from the affidavit of Dr. Kapila Vatsyayan reproduced above that the qualification for the post of Principal were revised by amending the Rules and the revised qualifications were approved by the Government of India. No rejoinder was filed by M. L. Mattoo to the above affidavit.

13. The High Court was not justified in disbelieving the contents of the affidavit. The rules are not statutory. The Board of Management is fully competent to alter or amend the rules in any manner and at any time. The affidavit by the Chairman of the Board of management who is Additional Secretary to Government of India to the effect that the rules were amended in 1978 with the approval of the Government of India, should have put an end to the controversy. We have no hesitation in the holding that the qualifications for the post of Principal of the School stood validly revised by the amendment of the Rules in August 1978. Since respondent 1 Shri M. L. Mattoo does not possess the revised qualification he is not eligible to be considered for the said post.

14. In the earlier Writ Petition No. 256 of 1979 the question as to whether the qualification for the post of Principle had been revised was not before the High Court. The main contention of the management, before the High Court, was that the management society was not a 'State' under Article 12 and as such no writ petition was competent. At the hearing the counsel for the management, however, conceded that the society was a 'State' under Article 12 of the Constitution of India. It is no doubt that the High Court has mentioned that it was admitted by the counsel for the management that Mattoo possessed the requisite qualifications for the post but we do not understand how in the face of categoric affidavit of Dr. Kapila Vatsyayan such a statement could be made before the High Court.

15. We, therefore, hold that the qualifications/experience for the post of Principal were validly revised by amending the Rules in August 1978. The advertisement issued on January 5, 1982 was in accordance with the Rules and High Court was not justified in quashing the same. We, therefore, allow the appeal, set aside the judgment of the High Court and dismiss the petition filed by M. L. Mattoo before the High Court. There shall be no order as to costs.

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