

Gopal Krushna Rath

Vs

M. A. A. Baig (Dead) by Lrs. and Others

Civil Appeal No. 7416 of 1993

(Sujata V. Manohar, M. Srinivasan JJ)

16.09.1998

ORDER

1. On 1-6-1991, an advertisement was issued for the post, inter alia, of a Professor in the Postgraduate Department of Law, University of Sambalpur. In the advertisement, the essential qualifications for the post of Professor were :

An eminent scholar, actively engaged in research with published work of high quality. About 10 years' experience of teaching and/or research. Experience of guiding research at doctoral level.

OR

An outstanding scholar with established reputation who has made significant contribution to knowledge.

2. The essential qualifications prescribed in the advertisement included 10 years' experience of teaching and/or research. This was in accordance with the then existing guidelines of the University Grants Commission prescribing minimum qualifications for appointment to the post of Professor. The last date of submitting applications was 15-7-1991.

3. On 25-7-1991, the Syndicate prepared an assessment chart of the candidates who had submitted their applications pursuant to the advertisement. On 11-5-1992, interviews were held for the post by the specially constituted Selection Committee. The Committee selected the present appellant for appointment to the post of Professor in the Postgraduate Department of Law, University of Sambalpur.

4. The original Respondent 1 challenged the selection and appointment of the appellant on the ground that the guidelines prescribed by the University Grants Commission were changed with effect from 19-9-1991. Under the changed guidelines, for the post of Professor, 10 years' experience of teaching now prescribed was in postgraduate teaching and/or research at the university/national level institutions including experience of guiding research at doctoral level. The contention of the original respondent that the appellant did not possess 10 years' experience of teaching at the postgraduate level was accepted by the High Court which set aside the appointment. The appellant has, however, continued in the post pursuant to the directions originally given by the High Court and thereafter on account of the interim order of this Court. The original 1st respondent is now dead. He was one of the candidates for the post and had submitted that since he was at No. 2 in the select list, he should have been selected in place of the appellant. This aspect of the dispute does not now survive. The only narrow question which remains for consideration is about the qualification of

the appellant for being appointed to the post of Professor at the relevant time.

5. It is an accepted position that on the date of the advertisement and on the last date prescribed for the receipt of applications, the qualification prescribed by the University Grants Commission was 10 years' experience of teaching and/or research. Therefore, the advertisement also prescribed the same qualification. The appellant possessed that qualification. Even on the date when the Syndicate prepared an assessment chart, the position was the same. It was only thereafter, on 19-9-1991, that the new qualification regarding ten years' teaching experience at the postgraduate level came into effect.

6. When the selection process has actually commenced and the last date for inviting applications is over, any subsequent change in the requirements regarding qualifications by the University Grants Commission will not affect the process of selection which has already commenced. Otherwise it would involve issuing a fresh advertisement with the new qualifications. In the case of P. Mahendran v. State of Karnataka ((1990) 1 SCC 411 : 1990 SCC (L&S) 163 : (1990) 12 ATC 727) this Court has observed : (SCC p. 416, para 5)

"5. It is well-settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect."

The Court further observed that :

"Since the amending Rules were not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force, the amended Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment."

7. In the present case, therefore, the appellant possessed the necessary qualifications as advertised on the last date of receiving applications. These qualifications were in accordance with the Rules/guidelines then in force. There is also no doubt that the appellant obtained higher marks than the original Respondent 1 at the selection. There is no challenge to the process of selection, nor is there any allegation of mala fides in the process of selection.

8. In the result, the impugned judgment and order of the High Court is set aside. The original writ petition filed before the High Court is dismissed and the selection of the appellant is upheld. The appeal is disposed of accordingly.