

SUPREME COURT OF INDIA

Ajith K

Vs.

Aneesh K.S.

C.A.No.6178-6185 of 2019

(Dr.D.Y.Chandrachud and Indira Banerjee,JJ.,)

21.08.2019

JUDGMENT

Dr.D.Y.Chandrachud,J.,

SLP(C)No.11863-11870 of 2019

1 This batch of appeals arises from a judgment dated 10 December 2018 of a Division Bench of the High Court of Kerala. Affirming the correctness of the judgment of the Kerala Administrative Tribunal dated 20 December 2017, the High Court dismissed the writ petition filed by the appellants under Article 227 of the Constitution.

2. On 16 August 1972, the Government of Kerala in exercise of its powers under Section 11 of the Kerala Municipal Common Service Rules 1967, specified the method of recruitment and qualifications for posts in the Municipal Common Service. The posts were specified in an annexure to the order. The post of Health Inspector / Food Inspector Grade-II was among those posts and the qualifications were:

"Minimum general educational of S.S.L.C. Standard. Sanitary Inspectors' Certificate of Bombay or Madras; or Health Inspectors' Certificate of Trivandrum Medical College; or

Sanitary Inspectors' Certificate of the All India Institute of Local Self Government, Bombay or the certificate in Sanitary Inspectors course awarded by the National Council for Rural Higher Education. Age - Not below 18 years and above 30 years". 3 On 26 December 2014, Kerala Public Service Commission advertised vacancies in nine districts for the post of Junior Health Inspector Grade-II in the Municipal Common Service. The notification specified the qualifications for the post in the following terms:

" Qualifications:-

1. S.S.L.C.

2. Sanitary Inspectors' Certificate of Bombay or Madras.

OR

Health Inspectors' Certificate of Trivandrum Medical College.

OR

Sanitary Inspectors' Certificate of All India Institute of Local Self Government, Bombay.

OR

The certificate in Sanitary Inspectors' Course awarded by the National Council for Rural Higher Education.

OR

Sanitary Inspector' Training Course conducted by the Rural Institute, Thavannur.

Note:-KS&SSR Part-II, Rule-10(a)(ii) is applicable for selection to this post".

The note above has some bearing on the outcome of the present case.

4. On 29 May 2015, a notification was published for posts in five additional districts. The qualifications for the post remained the same. On 27 November 2015, a common written test was conducted. On 16 November 2016, KPSC published a list of selected candidates for the district of Kottayam. Lists containing the names of candidates selected for other districts were also published. Candidates possessing the qualification of a Diploma in Health Inspectors Course , a two-year course conducted by the Director of Health Service, were also included in the shortlists. The DHIC was not one of the qualifications specifically prescribed in the rules or in the advertisement. Candidates who claimed to be affected by the inclusion of candidates possessing a DHIC qualification filed cases before the Tribunal, challenging the State's decision to include persons possessing a DHIC qualification in the shortlists.

5. During the pendency of the proceedings before the Tribunal, on 10 January 2017, a three-member Committee conducted a comparative study of the syllabi of the DHIC programme and the Sanitary Inspector Diploma Course . The Committee submitted a report holding that:

i)While the DHIC is a two-year course, the duration of the SIDC (the certificate prescribed) is 52 weeks;

ii)While there are prescribed textbooks for the DHIC, no recommended texts exist under the available syllabus for the SIDC;

iii) The topics in both sets of syllabi are almost the same except for some ‘minute differences’; and

iv) While the number of theory sessions is greater in the DHIC, the SIDC has more practical sessions.

6. On 20 February 2017, KPSC filed a reply before the Tribunal stating that the two year DHIC is a higher qualification in the same faculty and that it had accordingly been decided to consider candidates possessing a DHIC for the post of Junior Health Inspector Grade-II by adhering to the provisions of Rule 10(a)(ii) of the Kerala State and Subordinate Services Rules 1958 . On 24 May 2017, the office of the Director of Health Service addressed a communication to the Principal Secretary, Local Self Government Institutions Department, Thiruvananthapuram to consider candidates with a DHIC qualification for the post of Junior Health Inspector in the Municipal Common Service. On 7 July 2017, the Principal Secretary to the Government in the Local Self Government (EU) Department addressed a communication to the Secretary, KPSC stating that, in the view of the State Government, the DHIC qualification can be reckoned to be a higher qualification in comparison with the qualifications prescribed in the notification. The Tribunal was subsequently informed of this decision.

7. The Tribunal by its judgment dated 20 December 2017 allowed the OAs instituted before it and directed that the shortlist of candidates be recast by excluding candidates in possession of the DHIC qualification. The Tribunal issued this direction after holding that KPSC had erroneously entertained applications from holders of the DHIC qualification. Aggrieved by the decision of the Tribunal, the writ jurisdiction of the High Court was invoked by candidates affected. The High Court dismissed the writ proceedings holding that the report of the three-member committee merely concludes that the DHIC is a ‘higher qualification’ than the certificate course, which is not sufficient under Rule 10(a)(ii) of Part II of the KSSSR. The High Court observed that the report does not indicate that the acquisition of the diploma pre-supposes the completion of the certificate course prescribed for the post. Moreover, the High Court held that the entire exercise by the committee was carried out after the publication of the shortlists by KPSC, and during the pendency of the proceedings before the Tribunal. In this backdrop, it was held that the rules governing the process of selection could not be altered mid-way. On this ground the writ petition was dismissed.

8. Assailing the judgment of the High Court, Mr S Nagamuthu, learned Senior Counsel appearing for the appellants submitted that an exercise was carried out under Rule 10(a)(ii) for the purpose of determining the equivalence of the DHIC qualification with the Sanitary Inspector Certificate course originally prescribed for the post in question. The notification inviting applications contained a specific reference to Rule 10(a)(ii). Hence, it was urged that once the State Government concluded that the DHIC was a higher qualification, the Tribunal should not have directed the exclusion of persons possessing the said qualification. That apart, it was urged, relying on the decision of this Court in *Jyoti K K v Kerala Public Service Commission* (“*Jyoti K K*”), that if a person possesses a higher

qualification in the same faculty, such a qualification can be stated to pre-suppose the acquisition of the lower qualifications prescribed for the post. Learned Senior Counsel submitted that the judgment of the High Court is contrary to public interest since holders of the DHIC qualification undergo a better course than the SIDC which was prescribed as a qualification in 1972. Hence, it was submitted that once a committee had, upon a detailed evaluation, concluded that the DHIC course is a higher qualification, there was no justification for the Tribunal to direct the exclusion of candidates possessing the DHIC qualification.

9. Both the State Government and KPSC have supported the line of argument put forth by the appellants. It has been urged on their behalf that while affirming the judgment of the Tribunal, the High Court has only considered one aspect of Rule 10(a)(ii) - whether the higher qualification pre-supposes the acquisition of the lower qualification prescribed for the post - ignoring the other part which allows a determination by KPSC under Rule 13(b)(i) of the Special Rules.

10. Mr V Giri, learned Senior Counsel supported the judgment of the Tribunal and the High Court. He submitted that in the present case, there was no determination of the equivalence of the qualifications in advance, and it was only during the pendency of the proceedings before the Tribunal that such an exercise was carried out. Learned Senior Counsel submitted that the rules could not be changed mid-way. It has been urged that the post of Junior Health Inspector Grade-II is available both in the Municipal Common Service as well as in the Health Services Department. In the Health Services Department, the qualification for the post is a DHIC, whereas in the Municipal Common Service, the qualification for the post is generally, the Sanitary Inspector's Certificate. Hence, it was urged that there is a clear distinction between the posts in the two departments. The SIDC, conducted by the Local Self Government Institutions, Rural Educational Department, and the DHIC, conducted by the Directorate of Health Services, are designed keeping in view the different duties and functions attached to those two posts in their respective departments. Moreover, it was submitted that, responses to queries under the Right to Information Act 2005 revealed that the DHIC course conducted by the Directorate of Health Service is not of a superior qualification to the SIDC. In a communication dated 14 March 2017, the Director of Urban Affairs specified that the DHIC programme conducted by the Directorate of Health Services is neither an equivalent nor higher qualification to the SIDC certificate course prescribed as a qualification for the post of Junior Health Inspector Grade-II in the Municipal Common Service. This was reiterated by the Personal and Administrative Reforms Department on 16 May 2017.

11. The starting point of our enquiry in the present case is the order of the State Government dated 16 August 1972, published in the Kerala Gazette on 29 August 1972. It specifies the minimum qualifications required for the post of Health Inspector/ Food Inspector Grade-II. The qualification prescribed is a Sanitary Inspector's Certificate originating in specified institutions. The DHIC is admittedly not one of the specified qualifications for the post. Reliance was however placed on the provisions of Rule 10(a)(ii) of Part II of the KSSSR. Rule 10(a)(ii) reads as follows:

"10. Qualifications (a) (ii) Notwithstanding anything contained in these rules or in the Special Rules, the qualifications recognized by executive orders or standing orders of Government as equivalent to a qualification specified for a post, in the Special Rules or found acceptable by the Commission as per rule 13 (b) (i) of the said rules in cases where acceptance of equivalent qualifications is provided for in the rules and such of those qualifications which pre-suppose the acquisition of the lower qualification prescribed for the post, shall also be sufficient for the post." Rule 10(a)(ii) commences with a non-obstante provision. It contemplates three situations:

(i) Qualifications recognized by executive orders or standing orders of the government as being equivalent to a qualification specified for a post in the Special Rules; or

(ii) Qualifications found acceptable by the Commission in accordance with Rule 13(b)(i) in cases where acceptance of equivalent qualifications is provided for in the Special Rules; and

(iii) Qualifications which pre-suppose the acquisition of a lower qualification prescribed for the post. Any of these would be treated as sufficient for the post. The Tribunal observed that although a diploma course could be treated as superior to a certificate course, to qualify under Rule 10(a)(ii), the diploma course should be one which pre-supposes the completion of the certificate course. In that context, the Tribunal held:

"The post of Junior Health Inspector Grade II is available in Municipal Common Service as well as in the Health Services Department. The qualification prescribed for the above post in these two departments differ. In the Department of Health Services, the qualification for the post of Junior Health Inspector Grade II is a Diploma in Health Inspectors' course whereas in Municipal Common Service it is generally Sanitary Inspectors' Certificate. There is, therefore a clear distinction between the above post in these two Departments."

The Tribunal noted that the duties and functions attached to the Junior Health Inspector's post in the Municipal Common Service are distinct from those in the Health Services Department. Moreover, the Tribunal noted that neither KPSC nor any duly constituted authority had endeavoured to determine whether the DHIC is to be treated as a superior qualification, the Tribunal held:

"The question, therefore, to be considered is whether any authority or the Public Service Commission itself has endeavoured to find whether the qualification of DHIC could be treated as a superior qualification which pre-supposed the possession of Sanitary Inspectors Training Course. On winnowing through the pleadings and the materials on record, the answer is in the negative. Neither the

Public Service Commission nor the authorities concerned have endeavoured to do so. The post that is notified is that of Junior Health Inspector Grade II in Municipal Common Service and, therefore, the question whether any other course could be treated as equivalent to the above course or whether any course could be treated as a superior qualification which pre-supposes the qualification of Sanitary Inspectors' Course had to be ascertained and declared by the administrative department or the appointing authority. In the present case, the authorities concerned are the Local Self Government Department and the Director of Urban Affairs. What is brought on record is a communication, Annexure R5(a) dated 7.7.2017 issued by the Secretary, Local Self Government Department to the Public Service Commission. The Secretary, Local Self Government Department informs that the Director of Health Services has intimated that the course conducted by them i.e. the DHIC course could be treated as a higher qualification to Sanitary Inspectors' Certificate. According to the Secretary, in the light of the above information considering that DHIC qualification was prescribed for the post of Junior Health Inspector Grade II in the health Service Department, it could be viewed as a higher qualification to the qualification prescribed for the post of Junior Health Inspector Grade II in Municipal Common Service. It is noted that Annexure R5(a) communication only offers an opinion, it does not declare the above course of DHIC to be a superior qualification. It also does not consider the fact whether the possession of DHIC would pre-suppose the possession of Sanitary Inspectors' course and whether the Junior Health Inspectors post in the Directorate of Health Services was a superior post to that of the Junior Health Inspectors post in Municipal Common Service. Moreover, Annexure R5(a) communication, it is noted, is not an executive order coming within the purview of Articles 162 and 166 of the Constitution of India. Annexure 5(a) is in the nature of a communication expressing an opinion to a query by the Public Service Commission. The same does not declare DHIC course to be a superior qualification to that of Sanitary Inspectors' Course in accordance with Rule 10(a)(ii) and 13(b)(i) Part II KS&SSR."

This view of the Tribunal has been accepted by the High Court.

12. On a careful analysis, it emerges that none of the conditions stipulated in Rule 10(a)(ii) have been fulfilled. The first situation contemplated by Rule 10(a)(ii) is where qualifications are recognized by executive orders or standing orders of the government as equivalent to a qualification specified for a post. This is not satisfied. With reference to the second situation contemplated in Rule 10(a)(ii) there was no determination by KPSC in accordance with Rule 13(b)(i) of the equivalence of the qualifications. Finally, the last condition contemplated in Rule 10(a)(ii) adverts to those qualifications which pre-suppose the acquisition of a lower qualification prescribed for a post. The expression pre-suppose means subsumed in. All that we find from the report of the three-member Committee are general observations about the duration of the DHIC being longer, of a similarity of the topics in the syllabi and a comparison between the number of theory and practical sessions. There has been no finding that the acquisition of the DHIC pre-supposes the completion of the certificate course.

13. The decision in Jyoti K K concerned a situation where KPSC invited applications for selection for the post of Sub-Engineers (Electrical) in the Kerala State Electricity Board⁷. The technical qualifications prescribed were as follows:

“2. Technical qualifications—

(a) Diploma in Electrical Engineering of a recognised institution after 3 years' course of study,

OR

(b) a certificate in Electrical Engineering from any one of the recognised technical schools shown below with five years' service under the Kerala State Electricity Board,

[Not fully extracted as not relevant]

OR

(c) MGTE/KGTE in electrical light and power (higher) with five years' experience as IInd Grade Overseer (Electrical) under the Board.”

The appellants were B.Tech degree holders or Bachelor's degree holders in electrical engineering. KPSC held that they were not eligible for selection. The candidates contended that they were persons possessing higher qualifications and hence could not be excluded. This Court interpreted the provisions in Rule 10(a)(i) and held:

“7. It is no doubt true, as stated by the High Court that when a qualification has been set out under the relevant Rules, the same cannot be in any manner whittled down and a different qualification cannot be adopted. The High Court is also justified in stating that the higher qualification must clearly indicate or presuppose the acquisition of the lower qualification prescribed for that post in order to attract that part of the Rule to the effect that such of those higher qualifications which presuppose the acquisition of the lower qualifications prescribed for the post shall also be sufficient for the post. If a person has acquired higher qualifications in the same Faculty, such qualifications can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In this case it may not be necessary to seek far.

8. Under the relevant Rules, for the post of Assistant Engineer, degree in Electrical Engineering of Kerala University or other equivalent qualification recognised or equivalent thereto has been prescribed. For a higher post when a direct recruitment has to be held, the qualification that has to be obtained, obviously gives an indication that such qualification is definitely higher qualification than what is

prescribed for the lower post, namely, the post of Sub-Engineer. In that view of the matter the qualification of degree in Electrical Engineering presupposes the acquisition of the lower qualification of diploma in that subject prescribed for the post, shall be considered to be sufficient for that post.”

14. The above extract indicates that the qualification for the promotional post of assistant engineer was a degree in engineering. Consequently, the acquisition of the degree was held to pre-suppose the acquisition of the ‘lower qualification’ of the diploma prescribed for the post of sub-engineer. This constitutes a distinguishing factor and hence the decision in *Jyoti K K* does not apply to the present facts. The decision in *Jyoti K K* was subsequently distinguished in *State of Punjab v Anita*, as noted by this Court in a more recent decision in *Zahoor Ahmad Rather v Sheikh Imtiyaz Ahmad* . (See also in this context, the decision of the two judge Bench in *P M Latha v State of Kerala* .)

15. The Principal Secretary to the State Government (EU) in a communication dated 7 July 2017 to KPSC stated:

“Though, diploma in Health Inspector course having a duration of 2 years is not included in the qualifications required as per the notification for Junior Health Inspector, Grade II in Municipal Common Service, the PSC has included those candidates having qualifications in diploma in Health Inspectors Course shortlist of the said post by taking the same as an additional qualification to the rest of qualifications... Since in the circumstances that the report submitted by the Director of Health Department after conducting comparison study of syllabus of both the course, the diploma in Health Inspectors course is a higher qualification above the qualification prescribed under the concerned special rule and that diploma in Health Inspector course is accepted as a qualification to the post of Junior Health Inspector in the Health Department, the diploma in Health Inspectors Course can be accepted and reckoned as a higher qualification compared to the qualification prescribed to the post of Junior Health Inspector Grade II in Municipal Common Service.”

(Emphasis supplied)

16. The reference to the diploma being an additional qualification is extraneous to Rule 10(a)(ii). The reference to a diploma being acceptable in the Health Department is again an extraneous consideration. Ex facie, it is evident that in coming to the conclusion extracted above, there was no application of mind to the requirements contained in Rule 10(a)(ii). There was no determination of equivalence by any executive order or standing order of the State Government. Nor was there any finding that a DHIC pre-supposes the acquisition of the lower qualification. KPSC has not carried out any exercise as required by the provisions of the rule.

17. In the above view of the matter, we are of the view that the judgment of the High Court does not suffer from error. The appeals shall stand dismissed. There shall be no order as to costs. Pending application(s), if any, stand disposed of.

Judgment Referred.