



2023/KER/33951

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

TUESDAY, THE 20TH DAY OF JUNE 2023 / 30TH JYAISHTA, 1945

WP(C) NO. 16098 OF 2023

PETITIONERS:

- 1 NAVANEETH MOHANAN K.P.
AGED 32 YEARS
S/O MOHANAN P., SREESHYLAM,
PANDIYALAMUKKU, PINARAYI,
KANNUR, PIN - 670741
 - 2 NOORJAHAN S
AGED 32 YEARS
D/O SHAHJAHAN J
KANJIRAVILA PUTHENVEEDU, ELAMANNOOR P.O.,
MARUTHIMOODU, ADOOR, PIN - 691524
 - 3 ALEXY ELIZABETH CHANDY
AGED 32 YEARS
D/O GEORGE CHANDY,
MULAPPON PARACKAMANNIL HOUSE, MARAMON P.O.,
MARAMON, PATHANAMTHITTA, PIN - 689549
- BY ADVS.
N. ANAND
RAJESH O.N.

RESPONDENTS:

- 1 STATE OF KERALA
BACKWARD CLASSES DEVELOPMENT DEPARTMENT,
REPRESENTED BY ITS SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 2 KERALA STATE BACKWARD CLASSES DEVELOPMENT
CORPORATION LTD. - KSBDC
II FLOOR, T.C. NO 27/588 (7) & (8) PATTOOR,
VANCHIYOOR P.O. REPRESENTED BY ITS MANAGING
DIRECTOR THIRUVANANTHAPURAM, PIN - 695035



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3 KERALA PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY THULASI HILLS,
PATTOM PALACE P.O.,
THIRUVANANTHAPURAM, PIN - 695004

BY ADVS.
SRI.M.SASINDRAN
SRI. P.C. SASIDHARAN
SRI.K.S.ANIL
SMT.K.P.SAROJINI, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 20.06.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



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N. NAGARESH, J.

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Dated this the 20th day of June, 2023

J U D G M E N T

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The petitioners seek to declare that they are qualified and entitled to be considered for being appointed as Assistant Managers in the 2nd respondent-Kerala State Backward Class Development Corporation.

2. The 1st petitioner holds B.Tech Degree in Information Technology awarded by Cochin University of Science and Technology and petitioners 2 and 3 hold B.Tech in Computer Science and Engineering from Mahatma Gandhi University and University of Calicut respectively. The



petitioners also hold MBA Degrees. The 2nd respondent-Corporation notified vacancies of Project Assistants on contract basis with qualification of Graduation and DCA. In the competitive selection process, the petitioners were successful and were appointed as Project Assistants on contract basis.

3. By Ext.P14, the 3rd respondent-Public Service Commission notified vacancies for appointment to the post of Assistant Managers. The notification prescribed (i) Degree in any Discipline, (ii) MBA in any discipline and (iii) PGDCA, as requisite educational qualification. Though the petitioners applied online, the web portal insisted the petitioners to upload their PGDCA Certificate.

4. The petitioners state that their candidatures are liable to be accepted and considered even though they don't hold PGDCA, for the following reasons:

1. Their B.Tech Degree is a higher qualification than PGDCA and hence they need not hold a PGDCA to apply for the post.



2. Ext.P7 B.Tech Syllabus of Mahatma Gandhi University and Ext.P8 PGDCA Scheme of the IHRD would show that the petitioners in their B.Tech program have covered all the topics taught for PGDCA and much more and hence the PGDCA qualification should not be insisted for B.Tech Graduates in IT and Computer Science and Engineering.

3. In the selection proceedings for recruitment to the posts of HSST (Junior) and Computer Programmer in Department of Medical Education, PGDCA is not insisted for Engineering Graduates.

5. The counsel for the petitioners further pointed out that the Kerala State and Subordinate Service Rules are applicable to the 2nd respondent-Corporation and Rule 10(a)(ii) suffices qualifications which presuppose the acquisition of lower qualification prescribed for the post. Non consideration of higher qualified candidates like the petitioners would therefore be illegal and would undermine public interest.

6. The counsel for the petitioners, relied on the judgment of the Apex Court in ***Jyoti K.K. and others v. Kerala Public Service Commission and others*** [(2010) 15



SCC 596], wherein it was held that higher qualifications which presuppose acquisition of the lower qualification prescribed for the post shall also be sufficient for the post. The 3rd respondent is therefore legally compellable to accept and consider the candidature of the petitioners for selection to the posts of Assistant Manager in the 2nd respondent-Corporation, urged the counsel for the petitioners.

7. I have heard the learned counsel for the petitioners, the learned Government Pleader representing the 1st respondent and the learned Standing Counsel for the 3rd respondent.

8. Ext.P14 PSC Notification for recruitment to the post of Assistant Manager prescribes (i) Degree in any Discipline, (ii) MBA in any discipline and (iii) PGDCA, as requisite educational qualifications. The argument of the petitioners is that the B.Tech Degree possessed by them is a higher and superior qualification than PGDCA and hence candidates like the petitioners who hold B.Tech Degree need not separately hold PGDCA.



9. The petitioners, based on Exts.P7 and P8, would further urge that the B.Tech Degree Course underwent by them covers all that is taught in PGDCA and much more. Whether one qualification is equivalent to another or whether one qualification would subsume another lesser qualification are factors within the realm of academics and in the matter of recruitment to services, it is for the employers to, based on their assessment and requirements, decide such matters. In the absence of patent illegality, perversity or proven legal *malafide*, courts will not enter in that arena which is best left to the employer.

10. In ***J. Rangaswamy v. Government of Andhra Pradesh*** [(1990) 1 SCC 288], ***Yogesh Kumar v. Government of NTC, Delhi*** [(2003) 3 SCC 548] and in ***Zahoor Ahmad Rather v. Sheikh Imtiyaz Ahmad*** [(2019) 2 SCC 404], the Apex Court held that once a conscious decision was taken by the employer prescribing a specific qualification, thereafter unless it is found to be most arbitrary, the same cannot be subject matter of a judicial review.



Courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualification.

11. The petitioners would then contend that in the recruitment processes evidenced by Exts.P9 and P10 Notifications of the very same Kerala Public Service Commission, PGDCA is not insisted for those who hold Degree in Engineering. The petitioners, who have applied for the post of Assistant Manager under the 2nd respondent-Corporation, are subjected to discrimination. Ext.P9 is a recruitment notification for appointment to the posts of Higher Secondary School Teachers (Junior). Ext.P10 Notification is for recruitment of Computer Programmer in the Medical Education Service.

12. Both Notifications are for recruitment to different institutions. It is for the employer/Government Departments to assess their requirements of educational qualifications in the matter of selection of employees. Comparison in educational qualification requirements cannot be drawn in such circumstances, especially when the 2nd respondent-



Corporation functions in a totally different area/sector.

13. Rule 10(a)(ii) of the KS&SSR reads as follows:

10. Qualifications. - (a) (i) The educational or other qualifications, if any, required for a post shall be as specified in the Special Rules applicable to the service in which that post is included or as specified in the executive orders of Government in cases where Special Rules have not been issued for the post/service.

(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.

Under Rule 10(a)(ii), in order to deem that another qualification not prescribed should be sufficient for a post, the following Triple Test should be satisfied:

(1) There should be an executive order or standing order recognising a qualification as equivalent to a qualification specified for the post in the recruitment rules or the Public Service Commission should find such qualification acceptable as per Rule 13(b)(i).



(2) Acceptance of equivalent qualification should be provided for in the Rules.

(3) Such of those qualifications should presuppose the acquisition of the lower qualification prescribed for the post.

In the case of recruitment to the post of Assistant Manager in the 2nd respondent-Corporation and of the qualifications possessed by the petitioners, these tests are not satisfied. Therefore, the petitioners cannot rely on Rule 10(a)(ii) to assert that they are qualified for appointment as Assistant Managers, in spite of the fact that they are holding a higher Degree.

14. It is true that in the judgment in **Jyoti K.K.** (supra), the Hon'ble Apex Court, in the context of Rule 10(2)(ii) of the KS&SSR, has held that such of those higher qualifications which presuppose acquisition of a lower qualification prescribed for the post shall also be sufficient for the post. The said finding of the Apex Court is based on the facts of the said case.



15. The Apex Court in **Jyoti K.K.** (supra) was considering the case of appointment to the post of Sub Engineers in KSEB for which the qualification prescribed was Diploma in Electrical Engineering. The candidature of the appellants before the Supreme Court who held Degree qualification in Electrical Engineering, were not entertained. The Hon'ble Apex Court noted that the next promotional post of Sub Engineer was Assistant Engineer and for direct recruitment to the post of Assistant Engineer, the prescribed educational qualification was Degree in Electrical Engineering.

16. In that context, the Apex Court held that for a higher post where 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. No such scenario is brought to my notice in this writ petition. Therefore, the judgment of the Apex Court in **Jyoti K.K.** (supra) is of no assistance to the petitioners.



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For all the aforesaid reasons, the writ petition fails and the writ petition is consequently dismissed.

Sd/-

N. NAGARESH, JUDGE

aks/20.06.2023

APPENDIX OF WP (C) 16098/2023

PETITIONER'S EXHIBITS

- Exhibit-P1 TRUE COPY OF THE DEGREE CERTIFICATE ISSUED BY COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY ISSUED TO PETITIONER NO. 1
- Exhibit-P2 TRUE COPY OF THE MBA DEGREE AWARDED BY KANNUR UNIVERSITY TO THE PETITIONER NO. 1
- Exhibit-P3 TRUE COPY OF THE CERTIFICATE AWARDED BY THE MAHATMA GANDHI UNIVERSITY TO PETITIONER NO. 2
- Exhibit-P4 TRUE COPY OF THE CERTIFICATE AWARDED BY THE KERALA UNIVERSITY TO PETITIONER NO. 2 IN THE EXAMINATIONS OF AUGUST 2016
- Exhibit-P5 TRUE COPY OF THE CERTIFICATE ISSUED BY THE UNIVERSITY OF CALICUT TO PETITIONER NO. 3 FOR THE EXAMINATIONS HELD IN DECEMBER'2012
- Exhibit-P6 TRUE COPY OF THE CERTIFICATE ISSUED BY MAHATMA GANDHI UNIVERSITY TO PETITIONER NO. 3 FOR THE EXAMINATION HELD IN AUGUST 2016
- Exhibit-P7 TRUE COPY OF THE RELEVANT PORTION OF THE SYLLABUS OF B.TECH OFFERED BY THE MAHATMA GANDHI UNIVERSITY
- Exhibit-P8 TRUE COPY OF THE RELEVANT PORTION OF PGDCA SCHEME AND SYLLABUS ISSUED BY THE INSTITUTE OF HUMAN RESOURCES DEVELOPMENT
- Exhibit-P9 TRUE COPY OF THE NOTIFICATION DATED 01.10.2022 ISSUED FOR HSST (JUNIOR) BY RESPONDENT NO. 3
- Exhibit-P10 TRUE COPY OF THE NOTIFICATION DATED 30.12.2021 FOR THE POST OF COMPUTER PROGRAMMER IN DEPARTMENT OF MEDICAL EDUCATION SERVICE ISSUED BY RESPONDENT NO. 3



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- Exhibit-P11 TRUE COPY OF THE EXPERIENCE CERTIFICATE DATED 12.11.2021 ISSUED BY RESPONDENT NO. 2 TO PETITIONER NO. 1 IN NO. 5568/E1/2021/KSBCDC
- Exhibit-P12 TRUE COPY OF THE EXPERIENCE CERTIFICATE DATED 22.09.2021 ISSUED BY RESPONDENT NO. 2 TO PETITIONER NO. 2 IN NO. 2500/E1/2019/KSBCDC
- Exhibit-P13 TRUE COPY OF THE EXPERIENCE CERTIFICATE DATED 07.10.2021 ISSUED BY RESPONDENT NO. 2 TO PETITIONER NO. 3 IN NO. 2500/E1/2019/KSBCDC
- Exhibit-P14 TRUE COPY OF THE NOTIFICATION DATED 15.09.2021 ISSUED BY RESPONDENT NO. 3 COMMISSION TO THE POST OF ASSISTANT MANAGER IN CATEGORY NO. 345/2021
- Exhibit-P15 TRUE COPY OF THE SCREENSHOTS FROM THE PETITIONER NO. 1'S DASHBOARD IN THE WEBSITE OF RESPONDENT NO. 3
- Exhibit-P16 TRUE COPY OF THE SCREENSHOTS FROM THE PETITIONER NO. 2'S DASHBOARD IN THE WEBSITE OF RESPONDENT NO. 3
- Exhibit-P17 TRUE COPY OF THE SCREENSHOTS FROM THE PETITIONER NO. 3'S DASHBOARD IN THE WEBSITE OF RESPONDENT NO. 3