A.F.R.

Court No. - 40

Case :- WRIT - A No. - 15873 of 2021

Petitioner :- Anand Bihari
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Vineet Kumar Singh,Sr. Advocate
Counsel for Respondent :- C.S.C.,Avanish Mishra,M.N. Singh,Nipun Singh

Hon'ble Surya Prakash Kesarwani,J.
Hon'ble Vikas Budhwar,J.

1. Heard Sri H.N. Singh, learned Senior Advocate assisted by Sri Rishabh Srivastava, learned counsel for the petitioner, learned Standing Counsel for the respondent no. 1, Sri Nipun Singh, learned counsel for the respondent no. 2 and Sri Avanish Mishra, learned counsel for the respondent no. 3.

2. This writ petition has been filed for the following relief:-

A. Issue a writ order or direction in the nature of certiorari calling the respondents to produce the order of the State Government dated 13 December, 2017 referred in the order of the Joint Secretary U.P. Public Service Commission dated 21 December, 2017 and the Hon'ble Court may be pleased to quash the order of the State Government dated 13 December, 2017, the order of the Joint Secretary U.P. Public Service Commission dated 21 December, 2017 (Annexure-5) and all the further proceeding of selection on the post of Lecturer cum Statistician advertised by U.P. Public Service Commission by Advertisement No. 4/2014-2015 dated 17.03.2015 including interview of the said selection scheduled on 9th November, 2021.

B. Issue a writ order or direction in the nature of certiorari quashing the qualification prescribed by Medial Council of India now National Medical Commission (N.M.C.) by Minimum Qualification for Teachers in Medical Institutions Regulations, 1998 for the post of Lecturer cum Statistician in the department of Community Medicine so far it requires the experience of 3 years as Tutor/Demonstrator/Resident/Registrar/Epidemiologist/He alth Officer.

C. Issue a writ order or directions in the nature of mandamus commanding the respondents to say all selection proceeding including interview of the post of Lecturer Statistics advertised by U.P. Public Service Commission vide advertisement No. 4/2014-2015 dated 17.03.2015 during the pendency of the writ petition before the Hon'ble Court.

D. Issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

E. Award the cost of writ petition.

3. The submissions of learned counsel for the petitioner are as under:-

(i) The qualification prescribed by the Medical Council of India for the post of Lecturer (Statistics) is non workable in as much as there shall be none who may have three years teaching experience from such recognized medical college as Resident/ Registrar/ Demonstrator/Tutor.

(ii) The respondents are neither adhering to the advertisement nor to the guidelines of the Medical Council of India in connection with the selection process for the post of Lecturer in Statistics, in-as-much as the prescribed qualification requiring for three years teaching experience as Resident/Registrar/Demonstrator/Tutor contractual basis is not workable and possible hence deserves to be set aside. Although, the petitioner also possesses the experience but it was acquired by him subsequent to the advertisement. The person who possess post graduate in Statistics, cannot possess the experience of Resident/Registrar/Demonstrator/Tutor, for which the qualification prescribed by the Medical Council of India is M.B.B.S. Therefore, a candidate cannot possess both the qualifications, namely, M.Sc. (Statistics) and M.B.B.S. The persons who have been short listed, do not possess the required qualification, as provided in the guidelines of the Medical Council of India and the advertisement, read with the qualification letter/impugned order dated 13.12.2017. Only the qualification as prescribed by the Medical Council of India can be made applicable for selection on the post of Lecturer (Statistics). Therefore, the persons short-listed and called for interview, cannot be selected in-as-much as they do not possess the required qualification, prescribed by Medical Council of India.

4. Sri Nipun Singh, learned counsel for the respondent no. 2 submits that interview has finally taken place today i.e. 09.11.2021 in which five candidates were called, out of which, four candidates have turned up to appear in the interview. He submits that selection has been made in accordance with the qualification and experience

provided in the "Minimum Qualification for Teachers in Medical Institutions Regulations, 1998".

5. Sri Avanish Mishra, learned counsel for the respondent no. 3 submits that the petitioner participated in the entire selection process but when he was not called for interview being not illegible, only then he filed the present writ petition challenging the Regulation 1998. Thus, the relief sought by the petitioner is lead to the principle of approbate and reprobate and therefore, the writ petition deserves to be dismissed.

6. The learned Standing Counsel supports the impugned order and submits that the writ petition is hit by the principle of laches in-as-much as it has been filed to challenge the impugned order dated 21.12.2017, after more than three years, without any proper explanation for delay.

7. We have carefully considered the submissions of learned counsel for the parties and perused the record.

8. The Medical Council of India in exercise of the powers conferred by section 33 of the Indian Medical Council Act 1956 (102 of 1956) with the previous sanction of the Central Government has enacted the “Medical Council of India Minimum Qualification for Teachers in Medical Institutions Regulations, 1998" (As amended up to 08.06.2017) regulating the appointment of medical teachers, with minimum qualification and experience in various departments of medical colleges and institutions imparting graduate and post graduate education.

9. The qualification for the post of **Lecturer in Statistics** as well as of Tutor/ Demonstrator/ Resident/ Registrar/ Epidemiologist/ Health Officer is reproduced below:-

Lecturer in Statistics	M.Sc (Statistics)	(i)Requisite recognised postgraduate qualification in the subject. (ii) Three years teaching experience in the subject in a recognised medical college as Resident/Registrar/Demonstrator/ Tutor
Tutor/ Demonstrator/ Resident/ Registrar/ Epidemologist/Health Officer	M.B.B.S.	

10. Thereafter, an advertisement was published by the respondent no. 2 being Advertisement No. 4/2014-15 date: 17/03/2015 inviting applications to fill up various posts in different departments in the State of Uttar Pradesh including the post of Lecturer-Statistic. The relevant extract of the advertisement is being quoted hereunder:-

> *"**Serial No. 17. Lecturer-Statistician cum Lecturer (A)** A post graduate degree in the concerned subject recognized by University/Institute."*

11. The counsel for the respondent no. 2 has argued that there are number of candidates who had applied for the said post having the qualification so prescribed by the Medical Council of India but as on the date of advertisement the petitioner did not have three years teaching experience in the subject in a recognized medical collage as Tutor/Demonstrator/Resident/Registrar.

12. Prescription of qualification and other conditions of service is essentially and primarily the field of policy exclusively with the domain of the employer subject to the limitation envisaged in the Constitution of India and it is not for this Court while exercising its jurisdiction under Article 226 of the Constitution to arrogate to itself that function. It is neither the function nor the role of the Court to adjudge or assess the suitability or desirability of a particular qualification that may be stipulated. Equivalence of degree and educational qualification is necessarily the function reserved for the experts in the field namely the academicians.

13. In the case of **P.V. Joshi And Others Vs. Accountant General, Ahemdabad And Others 2003 (2) SCC 632** the Hon'ble Supreme Court has held as under:-

> "10.We have carefully considered the submissions made on behalf of both parties. **Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by**

substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service." (Emphasis supplied by us)

14. In the case of **Sanjay Kumar Manjul v. U.P.S.C.(2006) 8 SCC 42** the Hon'ble Apex Court has held as under:-

"25. **The statutory authority is entitled to frame statutory rules laying down terms and conditions of service as also the qualifications essential for holding a particular post.** It is only the authority concerned who can take ultimate decision therefor.

26. **The jurisdiction of the superior courts, it is a trite law, would be to interpret the rule and not to supplant or supplement the same.**

27. It is well-settled that the **superior courts while exercising their jurisdiction under Articles 226 or 32 of the Constitution of India ordinarily do not direct an employer to prescribe a qualification for holding a particular post."** (Emphasis supplied by us)

15. The Supreme Court in the case of **Zahoor Ahmad Rather Vs. Sheikh Imtiyaz Ahmad (2019) 2 SCC 404** has held as under:-

*"26. ..... **The prescription of qualifications for a post is a matter of recruitment policy. The State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review.** Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine. The decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] turned on a specific statutory rule under which the holding of a higher qualification could presuppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench [Imtiyaz Ahmad v. Zahoor Ahmad Rather, LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] of the High Court was justified in reversing the judgment [Zahoor Ahmad Rather v. State of J&K, 2017 SCC OnLine J&K 936] of the learned Single Judge and in coming to the conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision [Imtiyaz Ahmad v. Zahoor Ahmad Rather, LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] of the Division Bench."*

(Emphasis supplied by us)

16. The Hon'ble Apex Court in the case of **Maharashtra Public Service Commission Vs. Sandeep Shriram Warade 2019 (6) SCC 362** has held as under:-

"*9. **The essential qualifications for appointment to a post are for the employer to decide.** The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide*

the requirements a candidate must possess according to the needs of the employer and the nature of work. ***The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review.*** *If the language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same."*

(Emphasis supplied by us)

17. More recently three learned Judges of the Supreme Court in **Punjab National Bank Vs. Anit Kumar Das 2020 SCC Online SC 897** has observed as under:-

"21. Thus, as held by this Court in the aforesaid decisions, ***it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the Courts to consider and assess.*** *A greater latitude is permitted by the Courts for the employer to prescribe qualifications for any post. There is a rationale behind it.* ***Qualifications are prescribed keeping in view the need and interest of an Institution or an Industry or an establishment as the case may be. The Courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications....."***

(Emphasis supplied by us)

18. A full Bench decision of this Court in the case of **Deepak Singh and Others Vs. State of U.P. and Others (2020) All LJ 596 (FB)** held as under:-

> ***"The State Government, while prescribing the essential qualifications or desirable qualifications are best suited to decide the requirements for selecting a candidate for nature of work required by the State Government and the courts are precluded from laying down the conditions of eligibility. If the language in the Rules is clear judicial review cannot be used to decide what is best suited for the employer."*** *(Emphasis supplied by us)*

19. The proposition of law as culled out by the Hon'ble Apex Court as well as this Court clearly mandates that the Court under Article 226 of the Constitution of India cannot trench into the province which is earmarked for the rule making authority and discharge the role and the function of the experts to prescribe a particular qualification for a post to be filled namely, the academicians.

20. The submission of learned Senior Counsel for the petitioner that there is inconsistency in the prescription of the qualification provided in the advertisement in question viz a viz the qualification prescribed by the Medical Council of India in the Regulations of 1998, is thoroughly misconceived. From bare perusal of the advertisement in question, it is clear that it stipulates the condition that the qualification prescribed in the Regulations of 1998 is to be followed and a candidate is to be selected on the basis of said qualification.

21. The Hon'ble Apex Court in the case of **Asheesh Kumar Vs. State of U.P. and Others (2018) 3 SCC 55** has cautioned in para 27, as under:-

> *"27. **Any part of the advertisement which is contrary to the statutory rule has to give way to the statutory prescription.** Thus, looking to the qualification prescribed in the statutory rules, appellant fulfills the qualification and after being selected for the post denying appointment to him is arbitrary and illegal. It is well settled that **when there is variance in the advertisement and in the statutory rules, it is statutory rules which take precedence.** In this context, reference is made in judgment of this Court in the case of Malik Mazhar Sultan & Anr. Vs. U.P. Public Service Commission & Ors., 2006 (9) SCC 507. Paragraph 21 of the judgment lays down above proposition which is to the following effect:*
>
> > *"21. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 01.07.2001 and 01.07.2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisements but the recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise ot ligible according to the Rules. The relaxation of age can be granted only of permissible under the Rules and not on the basis of the advertisement. If the interpretation of the*

> *Rules by PSC when it issued the advertisement was erroneous, no right can accrue onbasis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules."*
>
> (Emphasis supplied by us)

22. There is another aspect of the matter which is to be taken notice of and be addressed with regard to the undisputed fact that the advertisement in question as well as the selection for the post of Lecturer in Statistics is being challenged after a period of 4 years. The advertisement itself was issued way back in the year 2015. The writ petition has been filed in the last of the month of October, 2021 whereas the date of the interview has been fixed on 09.11.2021. Neither there is any pleading with regard to the reasons for delay in approaching this Court nor any serious argument has been raised in this regard by the learned counsel for the petitioner. Thus, the writ petition is also hit by laches.

23. The Hon'ble Apex Court in the case of **P.S. Sadasivaswamy Vs. State of Tamil Nadu (1975) 1 SCC 152** has considered the question of laches and held as under:-

> *"2. .....if the appellant was aggrieved by it he should have approached the Court even in the year 1957 after the two representations made by him had failed to produce any result.* ***One cannot sleep over the matter and come to the Court questioning that relaxation in the year 1971.*** *……in effect he wants to unscramble a scrambled egg. It is very difficult for the Government to consider whether any relaxation of the rules should have been made in favour of the appellant in the year 1957. The conditions that were prevalent in 1957 cannot be reproduced now. ……It is not that 'here is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time.* ***But it would be a sound and wise exercise of***

discretion for the Courts to refuse to exercise their extra-ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters" (Emphasis supplied by us)

24. The Hon'ble Apex Court in the case of in SS Balu v. State of Kerala **(2009) 2 SCC 479**, observed thus:

"17. It is also well-settled principle of law that ***"delay defeats equity"****. …It is now a trite law that* ***where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment."***

(Emphasis supplied by us)

25. Similarly, in the case of **Vijay Kumar Kaul v. Union of India (2012) 7 SCC 610** the Hon'ble Apex Court has held as under:-

*"27. …****It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and paves the path of extinction with the passage of time."***

(Emphasis supplied by us)

26. The Hon'ble Apex Court in **State of Uttar Pradesh v. Arvind Kumar Srivastava (2015) 1 SCC 347**, has observed that:-

" 22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the

normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim."

27. Recently, the Hon'ble Apex Court in the **Civil Appeal No. 852 of 2020** decided on **31.01.2020** in the case of **Chairman/Managing Director U.P. Power Corpporation Ltd. & others Vs. Ram Gopal** has held as under:-

"16. ***Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester.*** *Fencesitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists."*

7 (Emphasis supplied by us)

28. Following the principles of law laid down in the above noted judgments we find that there is unexplained delay of

approximately 4 years in filing the present writ petition. Thus, the present writ petition is also barred by laches.

29. In totality of the matter this Court finds that the post of Lecturer-cum-Statistician is a specialized post in a medical fraternity and the prescription of qualification is a specialized task of the experts being academicians which cannot be made a subject matter of a judicial review, particularly when there is nothing on record to show that the rule making authority has no legislative competence to lay down the qualification.

30. Resultantly, the present writ petition is devoid of merit and is hereby **dismissed**.

Order Date :- 9.11.2021

Nisha