

THE HIGH COURT OF TRIPURA
AGARTALA

W. P.(C) No.433 of 2015

The Association of MCA Degree Holders,
a registered Association having its office at Bordowali, Milan
Sangha, P.O. AD Nagar, Pin-799 003, Agartala, West Tripura,
represented by its Secretary, Sri Kishalay Modak

.....**Petitioner**

- Vs -

1. The State of Tripura,
represented by the Secretary,
Urban Development Department,
Government of Tripura,
New Secretariat, P.O. Secretariat, Pin-799 010, Agartala,
West Tripura
2. Agartala Municipal Corporation,
represented by the Municipal Commissioner, City Centre,
P.O. Agartala, Pin-799 001, Agartala, West Tripura
3. The Secretary,
Information Technology Department,
Government of Tripura, New Secretariat,
P.O. Secretariat, Pin-799 010, Agartala, West Tripura
4. The, Municipal Commissioner,
Agartala Municipal Corporation, City Centre,
P.O. Agartala, Pin-799 001, Agartala, West Tripura

.....**Respondents**

B E F O R E

THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	: Mr. C. S. Sinha, Advocate
For the respondent No.1	: Mr. T. D. Majumder, GA
For the respondents No.2, 3 & 4	: None
Date of hearing and delivery of Judgment and order	: 07.10.2015
Whether fit for reporting	: NO

Judgment and Order (Oral)

Heard Mr. C. S. Sinha, learned counsel appearing for
the petitioner, namely the Association of MCA Degree Holders,

which is a registered Trade Union as well as Mr. T. D. Majumder, learned GA appearing for the respondent No.1.

02. The grievance as enumerated in this writ petition is that Recruitment Rules framed and published in the Tripura Gazette Extra-ordinary Issue dated 28.08.2014 for the post of System Analyst in the scale of pay of Rs.9570-30000/- (Pay Band 3) with Grade Pay of Rs.3,500/- by Agartala Municipal Corporation have exclude the degree of Master of Computer Application from the array of qualifications.

03. Mr. Sinha, learned counsel for the petitioner has submitted that for the post of System Analyst the qualification for Master of Computer Application, in short MCA, is sufficient qualification. To strengthen the said contention, he has referred to the Office Memorandum dated 30.05.2014 issued by the Director (Estt-I) of Ministry of Personnel, PG & Pensions, Department of Personnel & Training, Government of India, Annexure-2 to the writ petition, where the post of System Analyst is also included in the Model Recruitment Rules. The said Model Recruitment Rules have encompassed the various Group-A and Group-B posts in Electronic Data Processing (EDP) including the post of System Analyst. From the annexure to that Memorandum dated 30.05.2014, it appears that for the post of Senior Programmer/Systems Analyst/System Security Officer/Data Entry Operator Grade 'F', the following essential qualifications are prescribed:

(i) Master's Degree in Computer applications or M.Sc. (Computer Science/Information Technology) from a recognized University/Institute; or B.E./B.Tech. in Computer Engineering/Computer Science/Computer

**Technology/Computer Science & Engineering/
Information Technology from a recognized University/
Institute.**

04. Mr. Sinha, learned counsel for the petitioner has further submitted that in other organizations also the Master of Computer Applications has been recognized as the adequate qualification for appointment to the post of the System Analyst or equivalent post. He has, therefore, contended that exclusion of the Master of Computer Applications as the qualification for appointment to the post of System Analyst by Agartala Municipal Corporation is entirely arbitrary and the differentia that has been created is not based on reasonableness or having nexus to the object that it intends to achieve. Mr. Sinha, learned counsel for the petitioner has further submitted that a batch of unemployed youth having the Master of Computer Applications had made a representation to the Municipal Commissioner of Agartala Municipal Corporation on 11.09.2015. The said representation dated 11.09.2015 has been made in aegis of the petitioner but according to Mr. Sinha, learned counsel for the petitioner was not at all considered and even if considered, its outcome has not been made known to the petitioner or the persons who filed the representation.

05. By the advertisement dated 07.09.2015, Annexure-7 to the writ petition, the Municipal Commissioner, Agartala Municipal Corporation convened a walk-in interview for filling up of one post of System Analyst on the basis of the said Recruitment Rules. As such the persons having the Master of Computer Applications (MCA) could not appear in the said interview. Mr. Sinha, learned counsel for the petitioner has submitted that the action of the

respondent Corporation is entirely offensive to the provisions of Article 14 and 16 of the Constitution of India inasmuch as that the other organisations have recognised the said qualification i.e. Master of Computer Applications (MCA) as sufficient qualification. Exclusion of the said qualification from the Recruitment Rules is demonstrative of prohibiting a class without having any intelligible differentia.

06. From the other side, Mr. T. D. Majumder, learned GA appearing for the Government of Tripura has submitted that the employer has the prerogative of selecting the qualification having regard to the post and its duties. For that reason the competent authority is not bound to give any reason. However, Mr. Datta Majumder, learned GA has submitted that if the petitioners are interested, they may make a fresh representation with all relevant information as they have by now gathered including those expounded in the writ petition for consideration of the competent authority whether the degree of Master of Computer Applications (MCA) can be included as the qualification in the Recruitment Rules or not. But Mr. Datta Majumder, learned GA has stiffly resisted the proposition that there was any infringement of provisions of Article 14 and 16 of the Constitution of India.

07. Confronted thus, spearheaded by the rival contentions from the learned counsel for the parties, this Court is of the view that Mr. Datta Majumder, learned GA is substantially correct that the employer has its own prerogative to regulate the qualification for appointment to a post but that as co-terminus, must be subject to the test that those qualifications should be incorporated in a

manner that no discrimination is caused to the persons who have the qualifications which might be different only by their nomenclature. But this Court cannot play the role of the expert to comment on whether the degree of Masters of Computer Applications (MCA) and the qualifications those have been enlisted in the Recruitment Rules are substantively equivalent or separated by nomenclature. The Court cannot make such exercise.

08. On the face of the records, this Court is satisfied that the Municipal Commissioner ought to have attended and disposed of the representation by a reasoned order. Every citizen has the right to know why he has been excluded from such process. The persons who is in charge of dispensation shall ordinarily apprise the citizen the reasons for his or her exclusion from a particular process.

09. Having regard to that aspect of domain, the petitioner is permitted to file a fresh representation with all necessary records and documents to the Municipal Commissioner urging inclusion of the qualification of Master of Computer Applications (MCA) in the Recruitment Rules of the System Analyst as the qualification. The Municipal Commissioner after receipt of the said representation, if any, filed in pursuance of this order shall consider whether such qualification can be included in the Recruitment Rules to achieve the purpose for which the post of System Analyst has been created. After such consideration, the petitioner shall be communicated of the outcome of such consideration.

10. In view of the direction made above, this writ petition is disposed of. A copy of this judgment and order be sent to the Municipal Commissioner, Agartala Municipal Corporation as this order has been passed in his absence. However, Mr. Datta Majumder, learned GA has submitted before this Court that he will communicate about this order to the Municipal Commissioner, Agartala Municipal Corporation. The petitioner is directed if they intend to file any representation, that representation shall be filed within a period of one month from today.

JUDGE

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