

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2484 of 2018

and CMP No.20077 of 2018

C. Senthil Kumar ... Appellant

Vs.

1. The Chairman
University Grants Commission (UGC),
Bahadur Shah Zafar Marg,
New Delhi - 110 002.

2. Government of Tamil Nadu,
Rep. by Secretary to Government,
Law Department,
Fort St. George, Chennai.

3. The Member Secretary,
Teachers Recruitment Board,
EVK Sampath Maligai,
DPI Compound, College Road, Chennai.

4. The Director,
Director of Legal Studies,
Purasawalkkam High Road,
Kilpauk, Chennai.

5. The Registrar,
The Tamil Nadu Dr.Ambedkar Law University,
No.5, Greenways Road, Chennai - 600 028.

6. The Secretary,
Bar Council of India,
No.21, Rouse Avenue,
Institutional Area, New Delhi - 110 002.

7. The Secretary,
Bar Council of Tamil Nadu & Puducherry,
Madras High Court Campus,
Chennai - 600 104.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the Order dated 07.09.2018 made in W.P.No.23186 of 2018.

Prayer in W.P.No.23186 of 2018:

Writ Petition filed under Article 226 of the constitution of India praying for the issuance of a writ of Certiorarified Mandamus to Call for the records relating to impugned notification No.2/2018 dated 18.07.2018 in Clause (4) qualification: Assistant Professor (Pre-Law) sub clause (ii) and (iv) issued by the 3rd respondent and quash the same in so far as the petitioner is concerned and consequently direct the 3rd respondent to issue to revised notification in respect of educational qualification for the post of assistant Professor (Pre-law) and to permit the petitioner to participate in the selection process of Direct Recruitment Assistant Professors / Assistant Professors (Pre-law) in government law colleges for the year 2017-2018 the details of vacancies as per the G.O.Ms.No.464 Law(LS) Department dated 17.07.2017 by the 2nd respondent.

For Appellant : Mr.E.C.Ramesh

J U D G E M E N T

(Order of the Court was delivered by S.MANIKUMAR, J)

An aspirant for the post of 'Assistant Professor (Pre-Law)' has challenged conditions (ii) and (iv) of clause 4 of the notification issued by the Teachers Recruitment Board, Chennai, 3rd respondent herein and consequently, sought for a direction to the respondents to issue a revised notification in respect of the additional qualification for the post of 'Assistant Professor (Pre-Law)'. Appellant has also sought for a direction to the respondents to permit him to participate in the selection process of Direct Recruitment to the post of 'Assistant Professor (Pre-Law)' in Government Law Colleges for the year 2017-18.

2. Clause 4 of the notification issued by respondent No.3 dated 18.07.2016 applicable to the post of 'Assistant Professor (Pre-Law)' is extracted hereunder.

Assistant Professor (Pre-Law)

i. MA Degree in any of the Universities in the State of Tamil Nadu or a degree of equivalence in the respective subjects as may be specified by the Government from time to time with not less than 55 percent of marks in the respective subject and a good academic record;

Provided that candidates belonging to Scheduled Castes and Scheduled Tribes shall possess not less than 50 percent of marks;

Provided further that holders of PhD degree who have passed their Master's degree in the respective subject prior to the 19th September 1991, shall possess not less than 50 percent of marks.

AND

ii. Master's degree in Law of any recognised University with not less than 55 percent of marks and a good academic record.

Provided that candidates belonging to Scheduled Castes and Scheduled Tribes shall possess not less than 50 percent marks;

Provided further that holders of PhD in Law who have passed their Master's degree in Law prior to the 19th September 1991, shall possess not less than 50 percent marks in the Master's degree in Law;

AND

iii. Must have qualified in National Eligibility Test (NET) or an accredited Test.

Provided however, that candidates, who are or have been awarded a Ph.D. Degree in accordance with the University Grants Commission (Minimum standards and Procedure for Award of Ph.D. Degree) Regulations, 2009, as amended in 2016 (3rd Amendment) shall be exempted from the requirement of the minimum eligibility condition of NET/SLT/SET or an accredited Test".

AND

iv. Must have enrolled as an advocate in the Bar council."

3. Appellant is aggrieved over conditions (ii) and (iv) of the above clause. Appellant has filed the writ petition on 03.09.2018, i.e., after the last date for submission of application, 06.08.2018.

4. Noticing the same, writ Court, vide order dated 07.09.2018 dismissed the writ petition. Being aggrieved, instant writ appeal is filed, on the following grounds.

(i). Writ Court has failed to consider that the appellant has obtained Master Degree in Political Science and cleared State Eligibility Test (SET) in Political Science and eligible for the post of Asst. Professor (Pre-Law) in Political Science, in addition to the qualification fixed by the 3rd respondent that the candidates should have passed Master Degree in Law and must have enrolled in Bar Council for the post for Asst. Professor (Pre-Law) in Political Science is arbitrary, illegal and irrational.

(ii). Writ Court has failed to consider that as per G.O.Ms.No.464 Law (LS) Department dated 17.07.2017 and G.O.Ms.No.264 (Law) Department, dated 20.12.2005, Notification No.2/2018 dated 18.07.2018 has been issued by the 3rd respondent and the above said notification specifying the educational qualification for Asst. Professor (Pre-Law) for M.A., degree along with M.L. Degree (Master of Law) and enrolment in the Bar Council is arbitrary, illegal and against law.

(iii). Writ Court has failed to consider that G.O.Ms.No.264 (Law) Department, dated 20.12.2005 prescribing the qualification for Asst. Professor (Pre-Law) subjects is against the UGC Norms and Appointment of Guest Lecturer Norms, in Government Law Colleges, in the State of Tamil Nadu.

(iv). Writ Court has failed to consider that UGC Norms and Appointment of Guest Lecturer Norms in Government Law Colleges, in the State of Tamil Nadu do not demand dual Master Degree and enrollment in Bar council for the post of Asst. Professor (Pre-Law) in Political Science.

(v). Writ Court has failed to consider that the 2nd respondent has no power to fix educational qualification for the post of Asst. Professor and Asst. Professor (Pre-Law) in Government Law Colleges."

5. During the Course of hearing, learned counsel for the appellant fairly submitted that the examination for filling up the abovesaid post by direct recruitment is already over.

6. Though, Mr.E.C.Ramesh, learned counsel for the appellant reiterated the grounds stated supra, we are not inclined to entertain the appeal for the following reasons,

(1) Examination for filling up of the abovesaid post of 'Assistant Professor (Pre-Law)' is stated to be over.

(2) Besides, as rightly observed the appellant has approached this Court after the last date of submission of application is over

(3) Thirdly, it is for the employer to prescribe the required qualifications for any post in the service.

7. In P.U.Joshi and others vs. Accountant General Ahmedabad and others reported in (2003) 2 Supreme Court cases 632, the Hon'ble Supreme Court, held that prescription of educational / other qualifications is purely the prerogative of the Government and that it is not open to the petitioner or any other applicant to suggest what should be the educational or other qualifications required for the post. At paragraph No.10 of the judgement, the Hon'ble Supreme Court held as follows:

"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 is 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 of 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/subtraction 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 the 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."

8. P.U.Joshi's case has been considered in Chandigarh Admn. v. Usha Kheterpal Waie, reported in (2011) 9 SCC 645 , wherein at paragraph No.12, the Hon'ble Supreme Court held thus,

"12It is now well settled that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment.

Courts and tribunals can neither prescribe the qualifications nor entrench upon the power of the concerned authority so long as the qualifications prescribed by the employer is reasonably relevant and has a rational nexus with the functions and duties attached to the post and are not violative of any provision of Constitution, statute and Rules."

9. For the reasons stated supra, instant Writ Appeal is dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

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New Delhi - 110 002.

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+lcc to M/S.E.C.Ramesh, Advocate Sr.77304

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