

29.08.2022

Sl. 101

Ct.No. 03

Amalranjan

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

MAT 190 of 2020

Ramanuj Mukhopadhyay
Vs.
State of West Bengal

Mr. Kamalesh Bhattacharya
Mr. Aninda Bhattacharya
..... for the appellant

Mr. Pulak Ranjan Mondal
Ms. Bandana Mondal
... for the college service commission

The West Bengal College Service Commission started a recruitment process in 2008. It was for preparation of a panel for various posts in Non-Government Colleges and Teachers Training Colleges affiliated to the State Universities of West Bengal.

Posts in Calcutta University were also included. There were six posts for computer science in the general category. We are concerned with that category only in this appeal.

The eligibility criteria for degree colleges was as follows:

“i. Consistently good academic record
with at least 55% marks (without any

sort of grace or an equivalent grade in the master's degree preceded by 3 yrs Hons. Degree in the concerned subject with at least 2nd class marks.

Relaxation of 5% from 55% of the marks is admissible to candidates (a) belonging to SC/ST/PH category, and (b) qualified in the JRF examination conducted by the UGC/CSIR only prior to 1989.

- ii. Qualifying of the Eligibility Test for JRF/Lectureship conducted by UGC/CSIR(NET) or UGC accredited State Eligibility Test (SET) earlier SLET conducted by WBCSC or possessing of Ph.D. or M.Phil. Degree in concerned subject.
- iii. Good power of expression (speaking, reading & writing) in Bengali/Nepali."

The stipulation, which has created the controversy in this case, is "degree in the concerned subject". To be eligible a candidate should have had a Master's Degree preceded by a 3 years Hons. Degree in the "concerned subject with the least 2nd Class marks".

The Supreme Court has made it clear and there could be no dispute with the proposition laid down in the cases cited by learned counsel for the respondent, *P. U. Joshi & Ors. Vs. Accountant General, Ahmedabad & Ors.*, reported in (2003)2 SCC 632; *Chandigarh Administration Through the Director Public Instructions (Colleges), Chandigarh Vs. Usha Kheterpal Waie & Ors.* reported in (2011) 9 SCC 645 (paragraph 22); *West Bengal Joint Entrance Examination Board & Ors. Vs. Sarit Chakroborty & Ors.* reported in (2015) 13 SCC 668 that the court has no power to change the eligibility criteria set by a selecting authority for the purpose of recruitment.

However, in *Chandigarh Administration Through the Director Public Instructions (Colleges), Chandigarh Vs. Usha Kheterpal Waie & Ors.* reported in (2011) 9 SCC 645, the same court has not hesitated to condition the above general principles by laying down that “the courts and tribunal can neither prescribe the qualifications nor entrench upon the power of the authority concerned 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.....”.

Hence the court has the power to apply any condition reasonably and in a fair and just manner.

This selection process did not involve any examination. The recruitment was done only on the basis of viva-voce.

The appellant/writ petitioner was disqualified from being considered on the ground that the B.Sc. Physics Hons Bachelor's degree qualification on the basis of which he got admission in to the Master's courses in computer science and obtained M.Sc. degree in computer science, Master's in computer application and M.Phil. degree in computer science did not meet the criteria for eligibility “concerned subject”. The concerned subject had to be the same subject as argued by learned counsel for the respondent relying on *Ganapath Singh Gangaram Singh Rajput Vs. Gulbarga University* represented by its Registrar & Ors. reported in (2014) 3 SCC 767.

Mr. Kamallesh Bhattacharya, learned counsel for the appellant/petitioner submits, without contradiction that the computer science

bachelor's degree course was introduced for the first time in Calcutta University in 1994. The appellant/petitioner joined the B.Sc. Hons course with Physics Hons course in 1991 when there was no computer science course at least in our State. He obtained the B.Sc. Physics Hons qualification in 1996.

Since there was no computer science course, the appellant/petitioner had been admitted into the said Master's degree in computer science courses on the basis of B.Sc. Physics Hons qualification.

In fact, much after start of the computer science course in 2013–2014 in our State the information brochure of the University of Calcutta stated that a Physics Hons graduate would be entitled to study M.Sc. in computer science application.

Therefore, the Supreme Court in *Ganapath Singh Gangaram Singh Rajput Vs. Gulbarga University* represented by its Registrar & Ors. reported in (2014)3 SCC 767 was interpreting in the facts of that case whether the relevant qualification was the “same qualification”. In our case, B.Sc. Hons degree in Physics was considered by the Calcutta University a very much

relevant degree for the purpose of admission in the M.Sc. in computer application course.

Therefore, in the facts and circumstances of this case, the West Bengal College Service Commission ought to have considered B.Sc. Physics Hons degree of the appellant/petitioner as one obtained in the concerned subject. Only in that way could a rational, reasonable, just and proper interpretation of the eligibility clause be made as indicated by the Supreme Court in Chandigarh Administration Through the Director Public Instructions (Colleges), Chandigarh Vs. Usha Kheterpal Waie & Ors. reported in (2011) 9 SCC 645.

We are told by learned counsel for the respondent that the said six vacancies have been filled up. Now there is no vacancy in the computer science department of the University of Calcutta.

We, therefore, direct the West Bengal College Service Commission that if there exists any vacancy now for the post of Assistant Professor in Computer Science in Calcutta University or whenever such vacancy occurs in the next five years, the West Bengal College Service Commission shall very actively consider

recommending the appellant/ petitioner to the post by relaxing the age criterion.

The impugned judgment and order dated 18th December, 2019 is set aside.

The appeal is allowed to the above extent.

Mr. Pulak Ranjan Mondal, learned counsel for the respondent, prays for stay of operation of the judgment and order, which is considered and refused.

(Subhendu Samanta,J.)

(I. P. Mukerji,J.)