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Kerala High Court

Mageeja.M. Nair vs State Of Kerala on 22 October, 2005

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 18TH DAY OF JUNE 2014/28TH JYAISHTA, 1936

WP(C).No. 31583 of 2011 (W)

PETITIONER :

MAGEEJA.M. NAIR, W/O.SUBASH,
GEETHA VILASAM, ARAMPUNNA, ELAMAPAL P.O.,
PUNALUR.

BY ADVS.SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS

RESPONDENT(S):

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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
HIGHER EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PINCODE-695 001.
 2. THE DIRECTOR,
CO-OPERATIVE ACADEMY OF PROFESSIONAL EDUCATION,
(CAPE), CO BANK TOWERS, 1ST FLOOR,
VIKS BHAVAN, THIRUVANANTHPURAM-695 033.
 3. CO-OPERATIVE ACADEMY OF PROFESSIONAL
EDUCATION (CAPE), CO BANK TOWERS, 1ST FLOOR,
VIKS BHAVAN, THIRUVANANTHPURAM-695 033

REPRESENTED BY ITS DIRECTOR.

R1 BY GOVERNMENT PLEADER SRI.SOJAN JAMES
R2 & R3 BY SMT.P.VIJAYAMMA, SC,
SRI.E.K.MADHAVAN
SRI.V.KRISHNA MENON
SRI.P.J.ANILKUMAR
SMT.J.SURYA
SRI.C.UNNIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18-06-2014, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

sts

WP(C).No. 31583 of 2011 (W)

APPENDIX

PETITIONER(S) EXHIBITS

- EXT.P1 TRUE COPY OF THE CERTIFICATE DATED 22.10.2005
ISSUED BY THE INSTITUTION OF ENGINEERS (INDIA)
- EXT.P2 TRUE COPY OF THE MARK LIST OF SECTION AOF THE
EXAMINATION ISSUED BY INSTITUTION OF ENGINEERS (INDIA)
- EXT.P3 TRUE COPY OF THE MARK LIST OF SECTION B OF THE
EXAMINATION ISSUED BY INSTITUTION OF ENGINEERS (INDIA)
- EXT.P4 TRUE COPY OF THE CERTIFICATE ISSUED BY THE AMRITA
VISWAVIDYAPEETOM UNIVERSITY.
- EXT.P5 TRUE COPY OF THE NOTIFICATION DATED 16.1.2006
ISSUED BY THE GOVERNMENT OF INDIA.
- EXT.P6 TRUE COPY OF THE RELEVANT EXTRACT OF THE GAZETTE
OF INDIA DATED 11.02.2006.
- EXT.P7 TRUE COPY OF THE NOTIFICATION PUBLISHED BY THE 2ND
RESPONDENT.
- EXT.P8 TRUE COPY OF THE EXTRACT OF AICTE (PAY SCALES,
SERVICE CONDITIONS AND QUALIFICATIONS FOR THE
TEACHERS AND OTHER ACADEMIC STAFF IN TECHNICAL
INSTITUTIONS (DEGREE) REGULATIONS, 2010.
- EXT.P9 TRUE COPY OF THE ELIGIBILITY CERTIFICATE DATED 9/12/2012
ISSUED BY THE UNIVERSITY OF KERALA

EXT.P10 TRUE COPY OF THE LETTER DATED 8/1/2001 ISSUED BY THE ALL
INDIA COUNCIL FOR TECHNICAL EDUCATION

EXT.P11 TRUE COPY OF THE ORDER DATED 16/08/1978 ISSUED BY
GOVERNMENT OF INDIA

EXT.P12 TRUE COPY OF THE ORDER DATED 31/08/1977 ISSUED BY INDIAN
INSTITUTE OF TECHNOLOGY, BOMBAY

EXT.P13 TRUE COPY OF THE ORDER DATED 27/02/1978 ISSUED BY UNION
PUBLIC SERVICE COMMISSION.

EXT.P14 TRUE COPY OF THE ORDER DATED 24/02/1978 ISSUED BY INDIAN
INSTITUTE OF MANAGEMENT, AHAMEDABAD

RESPONDENTS' EXHIBITS : NIL
/TRUE COPY/

sts

P.A.TO.JUDGE

P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 31583 of 2011  
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Dated, this the 18th day of June, 2014

JUDGMENT

Denial of appointment of the petitioner to the post of Assistant Professor, pursuant to Ext. P7 notification, stating that the petitioner is not qualified to hold the post, is the subject matter of challenge in this writ petition.

2. The petitioner is a graduate, having obtained the qualification of AMIE, as borne by Ext. P1 certificate dated 22.10.2005. Later, based on the said basic qualification, the petitioner was given admission to the Post Graduate Course by Amrita Viswavidyapeetom University, from where the petitioner bagged M.Tech, as borne by Ext. P4 certificate, in the year 2007. In the meanwhile, Ext. P7 notification was issued by the second respondent for filling up of posts of Assistant Professors and some other posts, specifying the required qualification and other eligibility criteria. Qualification prescribed for the post of Assistant Professor, as per Ext. P7, is in the following terms:

W.P.(C) No. 31583 of 2011 "Qualification & Experience for Assistant Professors in Engineering Qualification :

BE / B Tech and ME / M Tech in relevant subject with First Class or equivalent either in BE / B.Tech or ME / M.Tech"

3. According to the petitioner, he is having the required qualification, more so, when the basic qualification 'AMIE' obtained by the petitioner was very much equivalent to

graduate level qualification 'BE'. Despite this, no hall ticket was issued to the petitioner, which made him to approach this Court by filing writ petition, with the following prayers:

(a) To declare that by virtue of Ext. P5 and P6 notification issued by the Government of India, Ext. P1 qualification obtained by the petitioner is equivalent to B.E./B.Tech degree of the recognized Universities in India.

(b) To issue a writ of mandamus or other appropriate writ, order or direction commanding the respondents 2 and 3 to permit the petitioner to participate in the written examination scheduled on 26.11.2011 for selection to the post of Assistant Professor in the Engineering Colleges under the 3rd respondent;

W.P.(C) No. 31583 of 2011

(c) grant such other and further reliefs as this Hon'ble Court may deem fit to grant in the facts and circumstances of the case.

4. When the matter came up for consideration on 25.11.2011, an interim order was passed, directing the respondents 2 and 3 to permit the petitioner to participate in the written examination scheduled on 26.11.2011 provisionally, for selection to the post of Assistant Professors in the Engineering Colleges under the 3rd respondent. Based on the said order, the petitioner was permitted to participate in the examination and came to be ranked at serial No. 2 in the rank list. It is pointed out that respondents 2 and 3 have given appointment from the rank list, to persons with lesser traits (ranked below the petitioner). Since appointment is denied to the petitioner, there is a prayer to declare the qualification of the petitioner as equivalent to B.E/B.Tech degree of the recognized Universities in India and to direct the concerned respondent to give appointment to the petitioner.

5. A counter affidavit has been filed on behalf of the second and third respondents, particularly contending that 'AICTE' (All India Council for Technical Education) is the competent authority to

W.P.(C) No. 31583 of 2011 stipulate the qualification, particularly the equivalency. Paragraph 4 of the counter affidavit raising such contention is extracted below for convenience of reference :

"4. I submit that the third respondent has issued notification evidenced by Ext. P7 inviting application for different teaching posts prescribing the qualification. The qualifications were prescribed in line with the qualification notified by All India Council for Technical Education (AICTE for short) which is the authority competent to issue equivalency certificate. It is submitted that AICTE has prescribed the qualification for the post of Asst. Professor as BE/B.Tech and ME/M.Tech in the relevant subject. It is submitted that AICTE has not recognized AMIE as an equivalent qualification to BE/B.Tech for teaching post. I understand and stated that AICTE has clarified that AMIE course is not approved by it. In view of this, candidates possessing AMIE are not eligible for applying to the post notified as per notification evidence by Ext. P7. As petitioner is an AMIE and not a BE/B.Tech graduate, she is not

eligible to be considered for the post of Asst. Professor notified as per Ext. P7 notification."

By virtue of the nature of contention raised from the part of the above respondents, some additional documents have been

W.P.(C) No. 31583 of 2011 produced by the petitioner along with reply affidavit as Exts. P9 and P10, besides producing some more additional documents as Exts. P11 to P14 along with I.A. No. 7220 of 2014.

6. The learned counsel for the petitioner points out that there is absolutely no merit or bonafides in the contention raised from the part of the respondents 2 and 3 as to the alleged lapse or deficiencies on the part of the petitioner or her qualification. It is also pointed out that the idea and understanding of the respondents 2 and 3, blindly seeking to place reliance on 'AICTE' as the competent authority, to certify equivalency of qualification, is wrong and misconceived. Reference is made to Ext. P10, which is a communication dated 08.01.2001 issued by the AICTE in this regard. When the AICTE was required to certify equivalency of AMIE from the Indian Institute of Engineers, India, it was clarified as follows :

"The equivalence of AMIE will be approved either by the Board of Assessment MHRD or by the Association of Indian Universities for employment and other purposes and for academic equivalence respectively."

From the above, it is quite evident that, for the purpose of employment, even according to AICTE, equivalency has to be

W.P.(C) No. 31583 of 2011 approved and certified by the Board of Assessment, MHRD (Ministry of Human Resource and Development) and if it is for academic purpose, it is for the association of Indian Universities, to certify the position.

7. Coming to the question whether the qualification of 'AMIE' was approved by the MHRD, reliance is sought to be placed by the petitioner on Ext. P5 proceedings dated 16.01.2006 of the said Ministry. The said notification categorically stipulates 15 courses of Section A & B examination as revised and conducted by the Institute of Engineers India. The said 15 courses stand recognized by the MHRD as equivalent to Degree in the appropriate branch of Engineering of the recognized Universities in India, which includes the subject 'Computer Science and Engineering' (which is relevant for the petitioner), enlisted at 'serial No. 6'. Nothing is mentioned with regard to Ext. P5 or P10 either in the counter affidavit of the respondents 2 & 3; nor is there any additional counter affidavit in this regard. It is also brought to the notice of this Court that Ext. P9 is the equivalency certificate issued by the Kerala University, while Ext. P11 is issued by the Ministry of Education and Social Welfare Department, as early as on

W.P.(C) No. 31583 of 2011 16.08.1978 i.e. even prior to Ext. P5 issued in this regard. Ext. P12 certificate dated 31.08.1977 has been issued by Indian Institute of Technology, Bombay accepting equivalency of AMIE for its graduation purpose. Ext. P13 dated 27.02.1978 is the proceedings of the UPSC, considering AMIE as an equivalent qualification. Ext. P14 is a copy of the proceedings dated 24.02.1978 of the Indian

Institute of Management to the effect that AMIE can be accepted for its post graduate program.

8. After hearing both the sides, this Court finds that the stand taken by the 2nd and 3rd respondents to oust the petitioner from the field of consideration, stating that, the petitioner does not have the requisite qualification, AMIE having not been certified as equivalent to B.E/B.Tech, does not hold any water at all. By virtue of the position made clear by the AICTE vide Ext. P10 and also by virtue of Ext. P5 position made clear by the Ministry of Human Resources and Development, the qualification of AMIE has necessarily to be considered as an equivalent qualification for the purpose of employment. The writ petition was admitted as early as on 25.11.2011 and it is pending for nearly three years, but no steps have been taken by the respondents to ascertain the factual

W.P.(C) No. 31583 of 2011 position, if they were having any doubt in this regard, by getting the same clarified by AICTE. No proceeding of the AICTE to the contrary has been produced to hold that the qualification of 'AMIE' possessed by the petitioner is not an equivalent qualification.

9. In the said circumstances, this Court finds that the petitioner is entitled to succeed. Accordingly, it is declared that the qualification of 'AMIE' secured by the petitioner is an equivalent qualification for appointment to the post of Assistant Professor, notified as per Ext. P7. Therefore, the respondents 2 and 3 are directed to give appointment to the petitioner to any of the existing vacancies or in the next arising vacancy in the post of Assistant Professor, based on the position in the rank list and notionally reckoning seniority from the date of appointment of the immediate junior appointed from the rank list. It is made clear that expiry of rank list will not be a bar for giving effect to the judgment.

The Writ Petition is allowed. No cost.

Sd/-

P. R. RAMACHANDRA MENON, (JUDGE) kmd