

Rajiv Kumar and Another Vs State of Haryana and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 7, 2010

Acts Referred: Constitution of India, 1950 " Article 226

Citation: (2010) 6 SLR 198

Hon'ble Judges: M.M. Kumar, J; A.N. Jindal, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

M.M. Kumar, J.

This petition filed under Article 226 of the Constitution challenges the action of the respondents for not considering the candidature of the petitioners for the post of Lecturer (College Cadre) Group "B", H.E.S.-II (Haryana). A mandamus has been sought

commanding the respondents to consider the petitioners as eligible for the said post.

2. Brief facts of the case are that an advertisement No. 1/2005 (P-14) was issued by the Department of Education, Haryana, for recruitment of

381 temporary posts of Lecturers (College Cadre) Haryana Education Service (Group "B") in various subjects. Out of 381 temporary posts, ten

posts pertained to the subject of Management (Business Administration/Marketing Management), which were also advertised and are shown at Sr.

No. 3 of the table in the advertisement. The dispute relates to the educational qualifications in respect of the aforesaid ten posts. Out of ten, six

posts were to be filled up from the candidates belonging to General category, three from Scheduled Castes of Haryana and one from Backward

Class of Haryana. In para 6 of the advertisement various essential qualifications were prescribed for all subjects besides specific qualifications for

the posts of Lecturer in Music and Lecturer of Journalism and Mass Communication. The essential qualifications which are relevant for the present

controversy reads thus:

6. ESSENTIAL QUALIFICATIONS:

(I) Lecturers (all subjects) except the Lecturers in Music and Journalism & Mass Communication:

(a) Good academic record with at least 55% of marks or an equivalent grade of B in the 7 point scale with letter grades O, A, B, C, D, E and F at

the Master's Degree level in the relevant subject from an Indian University, or an equivalent degree from a Foreign University.

(b) Knowledge of Hindi upto Matric standard.

(c) Besides fulfilling the above qualifications, candidates should have cleared the National Eligibility Test (NET) for lecturers conducted by the

University Grants Commission, Council of Scientific and Industrial Research or similar test accredited by the University Grants Commission.

3. Note 2 below para 6 of the advertisement further stipulates the criteria for determining good academic record and relaxation. Note 3 further

states that the prescribed essential qualifications were minimum and mere possession of the same does not entitle candidates to be called for

interview. Notes 2 and 3 being relevant are reproduced as under:

NOTE: 2. Criteria for determining good academic record:

For determining good academic record a candidate should either have average of 55% marks in two of the three examinations in the first attempt

without any improvement, if any (not below Matric or equivalent) prior to Master's degree or 50% marks in each of these two examinations

separately.

For determining Good Academic Record, if total number of marks in two examinations are different then the average of percentage is to be

calculated by dividing the marks obtained in two examinations by total number of marks in those two examinations.

RELAXATION:

The following relaxation will however operate:

(i) To the Candidates with 55% or above marks in M.A. or M.Sc in relevant subject and possessing Ph.D degree in relevant subject the criterion

of good academic record will not apply at all.

(ii) Candidates with 55% or above marks in M.A. or M.Sc in relevant subject and possessing M.Phil degree in relevant subject should have 50%

marks in one of the lower examination i.e. B.A., prep or Plus 2, Matric.

(iii) Candidates who have obtained first class first in the University in the relevant subject in M.A. or M.Sc. should have 50% marks in one of the

lower examinations i.e. B.A., prep or Plus 2, Matric in the first attempt without any improvement, if any.

(iv) Relaxation of 5% may be provided from 55% to 50% of the marks in determining good academic record for SC/ST and Physically

Handicapped category candidates.

NOTE: 3. The prescribed essential qualifications are minimum and mere possession of the same does not entitle candidates to be called for

interview. Where the number of applications received in response to advertisement is large and it will not be convenient or possible for the

department to interview all these candidates, the Department may restrict the number of candidates for interview to a reasonable limit on the basis

of qualifications and experience higher than the minimum prescribed in the advertisement by holding a Screening Test or any other method devised

by the Department.

4. Both the petitioners belong to the reserved category of Scheduled Caste. Petitioner No. 1 possesses the educational qualifications of

Matriculation, Senior Secondary Certificate Examination, Bachelor of Arts and a degree in Master of Marketing Technology from Kurukshetra

University, Kurukshetra (P-1 to P-4). He has also cleared the eligibility test for lectureship in the subject of Management conducted by the

Bharathidasan University, Tiruchirappalli, Tamil Nadu, in November 1999 (P-5) and National Educational Test in the subject of Management in

March 2001, which was conducted by the University Grants Commission in June 2000 (P-6). Similarly, petitioner No. 2 possesses the educational

qualifications of Matriculation, Senior Secondary Certificate Examination, Bachelor of Arts and a degree in Master of Marketing Technology from

Kurukshetra University, Kurukshetra (P-8 to P-11). He has also cleared the eligibility test for lectureship in the subject of Management Studies

conducted by the University of Jammu on 15.10.2000 (P-12).

5. In response to the advertisement (P-14), the petitioners applied against the advertised posts of Lecturer in Management. It is claimed that even

after lapse of more than three months the petitioners did not receive any intimation regarding holding of interviews by the respondents. In the last

week of November 2005 it came to their notice from the other candidates that the respondents have fixed the date of interviews, which were to be

held on 5.12.2005. Upon making inquiries they came to know that their candidature has been rejected on the ground that they do not possess the

degree of Master of Business Administration (MBA). However, no rejection letter was issued to them. On 30.11.2005, the petitioners made a

representation to the Higher Education Commissioner, Haryana (Recruitment Cell), Chandigarh, requesting for issuance of interview letter (P-17).

Even then no response was received, which compelled the petitioners to file the instant petition.

6. On 5.12.2005, while issuing notice of motion, a Division Bench of this Court directed that the petitioners be interviewed provisionally subject to

the outcome of the writ petition and their result was not to be declared till further orders. On 30.1.2006 the writ petition was admitted to Division

Bench and the appointments in pursuance to Advertisement No. 1 of 2005 were stayed till further orders.

7. In the written statement filed on behalf of the respondents, in para 6 of the preliminary submissions it has been asserted that the petitioners do

not possess Master's degree in Business Administration (MBA) and the degree in Marketing Technology, which is possessed by the petitioners, is

not equivalent to MBA. In para 7 it has been further disclosed that the interim orders dated 5.12.2005 passed by this Court were not received by

the respondents till the conclusion of interviews on 5.12.2005, therefore, the petitioners could not be interviewed provisionally on the fixed date

because they did not turn up on that day. The interim orders were received on 7.12.2005 and by that time the members of Selection Committee

had already left. The respondents have also placed on record the clarification dated 11.10.2005 received from the concerned branch of the

Education Department on the basis of the information/clarification received from the Kurukshetra University, Kurukshetra, dated 15.9.2005 (R-1).

In the clarification of the concerned branch it has been mentioned that the degrees in Marketing Technology, Business Economics and MFC are

not considered equivalent to the degree of MBA. In its clarification dated 15.9.2005, the Kurukshetra University, Kurukshetra, in para (B) has

informed that MBA (International Business) and MBA (Finance) are equivalent to MBA. Whereas the Master in Marketing Technology and

Master in Business Economics & MFC cannot be considered equivalent to MBA as their nomenclature and degree are different. It has, thus, been

submitted that the petitioners do not possess the prescribed qualification for the post of Lecturer in Management and, therefore, they were not

called for interview for the said post which were held on 5.12.2005.

8. In the replication filed by the petitioners it has been submitted that as per the advertisement a candidate is required to possess Master's degree

in the relevant subject from an Indian University. For the subject of Management, the candidates could not have qualifications of either Master of

Administration or Master's degree in Marketing Management. According to the petitioners the respondents have wrongly projected that only the

qualification of Master of Business Administration (MBA) was required for the posts in question. It has further been pleaded that once they have

cleared the eligibility tests for Lectureship in Management conducted by the respective Universities/UGC, the respondents cannot reject their

candidature on the ground that they do not possess the degree in Master of Business Administration (MBA). The petitioners have also placed on

record certificates dated 6.12.2005 and 13.12.2005 issued by the Registrar, Kurukshetra University, Kurukshetra, certifying that the Master of

Marketing Technology (MMT) course is a Management course with specialization in Marketing Management and the petitioners are eligible for the

post of Management Lecturer in Universities/Colleges (P-18 and P-19). The petitioners have emphasised that all the candidates who were either

having Master's degree in Business Administration or Marketing Management were eligible for the post in question. With regard to non-holding of

interview of the petitioners on 5.12.2005, it is conceded position that the interim directions issued by this Court reached the respondents only on

7.12.2005. However, the respondents were under a legal obligation to hold their interviews provisionally by calling the concerned members of the

Selection Committee because the interviews in other subjects continued till 20.12.2005.

9. On 18.5.2009, when the matter came up for consideration before a Division Bench of this Court following order was passed:

Challenge in this petition is to rejection of eligibility of the petitioners for the posts of Lecturers in Management (Business Administration/Marketing Management).

As per advertisement, requirement is to have a Master's Degree in Business Administration/Marketing Management. The petitioners have

Master's Degree in Marketing Technology and on the basis of Annexure p-6, claim of the petitioners is that the qualification possessed by them is

at par with qualification required in the advertisement.

Learned Counsel for the State relies on certificate of the University, to the effect that the degree is not comparable to the degree required in terms

of advertisement. However, she seeks time to further check up whether the syllabus is same or there are any other factors, which may be relevant

to show that the degree possessed by the petitioner is not comparable to the degree required in the advertisement.

On her request, adjourned to 6.8.2009.

10. Eventually an additional affidavit dated 23.11.2009 was filed by the Deputy Secretary to Government Haryana, Department of Higher

Education, Haryana. In para 2 of the affidavit a comparative chart has been prepared showing the syllabus of Master of Marketing Technology

(MMT) for the session 1997-98, which has been studied by the petitioners, and the syllabus for the session 2009-10 which was to be taught by a

Lecturer of Management. On the basis of the comparison of both the syllabi it has been submitted that there is difference between the syllabus

studied by the petitioners and the syllabus for the session 2009-10. In para 4 of the affidavit, the contents of the clarification given by the

Kurukshetra University, Kurukshetra, vide its letter dated 27.8.2009, have been quoted, which reads as under:

It is reiterated that MBA (International Business) and MBA (Finance) are equivalent to MBA but Master in Marketing Technology (MMT) and

Master in Business Economics (MBE) and Master in Finance & Control (MFC) cannot be considered equivalent to MBA as their nomenclature

and degree are different.

However, the candidates with the degree of MMT, MBE and MFC can be considered for the Post of Lecturer in the University/Colleges to teach

specialized papers of marketing Area, Business Economics Area & Finance Area in the Faculty of Commerce & Management.

11. The issue which arises for determination is whether the degree of Master of Marketing Technology (MMT) possessed by the petitioners

answers the essential qualification required for the advertised posts of Lecturer of Management (Business Administration/Marketing Management).

12. The mere fact that the petitioners have applied for the post in question would not arm them with any right. They have not been able to produce

any material to show that the degree of Master of Marketing Technology (MMT) would answer the subject of Business Administration/Marketing

Management, which an incumbent is to teach on selection. According to the respondents only a candidate possessing the degree of Master of

Business Administration (MBA) is eligible for the post of Lecturer in Management (Business Administration/Marketing Management). It is further

clear that no material has been brought on record showing that the degree of Master of Marketing Technology (MMT) acquired by the petitioners

is equivalent to Master of Business Administration (MBA), which respondents have accepted as answering the description of the advertised posts.

In the affidavit dated 23.11.2009, the respondents have tried to show tangible difference in the syllabus of the degree course studied by the

petitioners during the academic session 1997-98 and the syllabus prescribed for the academic session 2009-10 which was to be taught by a

Lecturer of Management, which is as under:

Session 1997-98 Session 2009-10

(Syllabus studied by the petitioners) (If appointed, syllabus that will
be taught by the petitioners)

FIRST SEMESTER

Managerial Economics Fundamentals of Management &

Organizational Behaviour

Management Concepts and Business and Marketing

Organizational Behaviour Environment

Marketing Management Managerial Economics

Legal and Marketing Environment Business Statistics in India

Quantitative Techniques Accounting for Marketing

Decisions

Computer Applications-I Principles of Marketing

(A) Theory

(B) Practical

Accounting & Finance ---

Seminar/Workshop/Case Studies ---

SECOND SEMESTER

International Marketing Strategic Management

Business Policy and Strategic Sales Management

Management

Product and Pricing Management Product and Brand Management

Advertising Management Marketing Research

Marketing Research Advertising Management

Computer Applications-I Retailing and Logistics

(A) Theory Management

(B) Practical

Seminar/Workshop/Case Studies ---

THIRD SEMESTER

Sales Management Global Marketing

Logistic and Distribution Information Technology and E-
Management Commerce

Mass Communication and Publicity Consumer Behaviour

Consumer Behaviour Strategic Marketing Management

Strategic Marketing Planning International Business
Environment

Branding and Packaging Summer Training Report and
Management Viva-voce

Training Report and Viva-voce ---

FOURTH SEMESTER

Advertising and Media Industrial Marketing

Industrial Marketing Rural Marketing

Marketing of Services Service Marketing

Direct Marketing Advertising and Media Research

A close scrutiny of this table would show that the petitioners have not studied many subjects, which they are required to teach. Although the

Courts have no expertise to opine yet the table shows that in the syllabus 2009-2010 they are required to teach Business Statistics, Accounting for

Marketing Decisions and Product and Brand Management. Therefore, it is not possible for us to impose such candidates on the respondents.

13. On a broader principle also the petitioners would not be able to succeed. It is not for the Courts to undertake an exercise of equating one

qualification with the other. The issue does not call for detailed consideration because it stands settled more than three decades ago by the

Constitution Bench of Hon"ble the Supreme Court in the case of Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, . On

the issue of equation of qualification it has been laid down in para 13 of the judgment that the subject of equivalence of educational qualifications is

a technical question based on proper assessment and evaluation of the relevant academic standards. It involves practical attainments of such

qualifications and the experts are required to aid in deciding the issue. The Court being not an expert and armed with relevant data and unaided by

technical insights necessary for the purpose of determining equivalence, would not undertake such a task unless it emanates from mala fide,

extraneous considerations or so irrational or perverse that a reasonable person would not accept the same. Similar view has been expressed by

Hon"ble the Supreme Court in the case of State of Rajasthan and Others Vs. Lata Arun, , wherein it has been held that prescribing minimum

educational qualification for admission to a course and recognising certain educational qualification as equivalent to or higher than the prescribed

one, involves a policy decision to be taken by the State Government or the authority vested with the power under any statute. Discussing the scope

of interference by the courts, it has been further laid down in para 10 that there is a limited scope to interfere by the Courts which could examine

whether the policy decision or the administrative order dealing with the matter is based on a fair, rationale and reasonable ground or such a

decision is arbitrary and is informed by extraneous consideration or mala fide intention. On facts, precedents and principles the petitioners have no

case and the petition is liable to be dismissed.

14. As a sequel to the above discussion, the question posed above is answered in the negative and against the petitioners. Accordingly, the instant

petition fails and the same is dismissed.