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Meera Singh Vs State of U.P. and others

C.M.W.P. No. 2967 of 1999

Court: Allahabad High Court

Date of Decision: Oct. 15, 1999

Acts Referred:
Constitution of India, 1950 â€" Article 254#General Clauses Act, 1897 â€" Section 8#Uttar Pradesh Higher Education Services Commission (Procedure for Selection of Teachers) Regulations, 1983 â€" Regulation 3#Uttar Pradesh State Universities Act, 1973 â€" Section 50

Citation: (2000) 1 AWC 341 : (2000) 2 UPLBEC 1041

Hon'ble Judges: B. Dikshit, J; Alok Chakrabarti, J

Bench: Division Bench

Advocate: R.N. Singh, V.K. Singh and A.P. Sahi, for the Appellant; S.C., Nripendra Misra and A.S. Diwakar, for the Respondent

Final Decision: Allowed

Judgement

Aloke Chakrabarti, J.
The relevant facts stated in the writ petition are that Higher Education Service Commission by its advertisement No.

26/98 dated 15.8.1998 advertised twenty two posts of Lecturer in Commerce mentioning that all applicants should possess the qualification as

prescribed by the University Grants Commission and as per the qualification as prescribed by the State Universities Act. 1973 and the Statutes

and Ordinances framed thereunder. Regulation 3 of the U. P. Higher Education Service Commission (Procedure for Selection of Teachers)

Regulations, 1983, provides that the minimum qualifications for appointment as a teacher shall be as given in the Statute, referred to in Section 50

of the U. P. State Universities Act. 1973 (hereinafter referred to as said Act).

2. University Grants Commission by its notification dated 5.10.1991 framed Regulations laying down minimum qualifications for the post of

Lecturer in various Universities and their affiliated colleges. According to the said notification, the minimum requisite academic qualifications for the

post of Lecturer is good academic record with atleast 55% marks at the Master''s Degree level in the relevant subject from an Indian University or

equivalent degree from a foreign University. However, in the said notification, the expression ""good academic record"" was not defined.

3. When the petitioner approached the Commission for making application against the said advertisement, along with application form a Brochure

had also been issued wherein instructions and minimum requisite qualifications were mentioned. Item No. 4 of the said Brochure laid down the

minimum requisite qualification for the post of Lecturer as 55% marks at the Post Graduate level along with good academic record. The expression

good academic record"" was defined in para 4 (5) of the said Brochure as 55% marks at the graduation level along with IInd division Intermediate

degree or 50% marks separately at the graduation and Intermediate level. Thus, the Commission was requiring some thing more than what was

required by the University Grants Commission.

4. According to the definition in the first Statute of Allahabad University and according to the definition given under the University Grants

Commission, the petitioner has a good academic record. But, according to the definition given in the Brochure issued by the Commission, the

petitioner is ineligible. Therefore, relying on the law as referred to in the writ petition as also the law as explained by the Apex Court in the case of

University of Delhi Vs. Raj Singh and others, , the petitioner has contended that such alteration of minimum qualification is not permissible and the

petitioner is entitled to said post in view of her qualification. Making appropriate prayer, the writ petition was filed seeking petitioner''s

consideration as a candidate in the said post of Lecturer in Commerce.

5. U. P. Higher Education Service Commission filed counter-affidavit as also a supplementary affidavit.

6. Heard Mr. R.N. Singh, learned counsel for petitioner and Mr. A.S. Diwekar as also Mr. Nripendra Misra, learned counsel for respondents.

7. Learned counsel for the petitioner contended that the advertisement against which the petitioner offered herself as a candidate required ""good

academic record"" and not ""consistently good academic record"". Notification issued under the University Grants Commission which was prevailing

on the date of issue also required good academic record with atleast 55% marks at the Master''s Degree level. Law required the qualification

prescribed by the University Grants Commission or by the U. P. State Universities Act, 1973 or the Statutes or Regulations framed thereunder to

be applicable. The Higher Education Service Commission has no power to fix qualifications or to alter the minimum qualifications required by the

University Grants Commission or U. P. State Universities Act.

8. It has also been contended on behalf of the petitioner that in such circumstances though short listing is permissible but minimum qualifications can

not be altered and in support of such contention, reference was made to the case of Raj Singh (supra). Further reference was made to Annexure-1

to the counter-affidavit. It was a letter dated 7.11.1997 by the Secretary, Higher Education, Government of Uttar Pradesh to the Vice Chancellors

of all the State Universities relating to qualifications required for appointment in the post of Lecturer in Universities and in Degree Colleges, in the

said letter for the purpose of consistency, request was made to incorporate in all the Regulations the minimum qualification for the posts of Lecturer

to be good academic record with atleast 55% marks in Master"s Degree level. Reference was also made to para 13 of the counter-affidavit stating

that ""good academic record"" is same as ""consistently good academic record"". Learned counsel for petitioner has referred to Statute 11.01 of first

Statutes of University of Allahabad showing prescription of qualifications as 55% marks in M.A. and good academic record. Therefore, it has

been contended on behalf of the petitioner that when advertisement itself stated the qualifications prescribed by the Universities and University

Grants Commission and in both the cases qualification is same and the petitioner is having such qualification, her candidature could not be refused

to be considered.

9. Learned counsel for Higher Education Service Commission contended that the University Grants Commission Act provides the power to the

Commission. It has been contended that First Statutes of all the Universities of Uttar Pradesh are having two separate parts for teachers in

University and for teachers in affiliated colleges. By way of example, reference was made to the first Statute of Agra University and particularly

Statute 11.01 and 11.13 thereof. Moreover, it was contended that the Executive Council effected the alteration and as Executive Council is to deal

with University teachers, it can be reasonably concluded that the Executive Council was not dealing with the provision relating to affiliated college

teachers. It has thus been contended that though they form parts of the same subordinate legislation but when amendments are by Executive

Council or Chancellor and the original provisions are by the Government, law decided in the case of Gauri Shankar Gaur and Others, etc. Vs.

State of U.P. and Others, 9, will apply and amendment of Statute 11.01 in the first Statutes of Agra University will not affect the present case as

the appointment is for affiliated colleges and governed by Statute 11.13.

10. After considering the aforesaid contentions, it appears that advertisement prescribed that qualifications for the post of Lecturer is to be same as

prescribed by the University Grants Commission or under the State Universities Act or Statutes and Regulations framed thereunder. Statutes have

been framed for different Universities in the State. Learned counsel for both sides agreed that similar provisions are there in ali such Statutes,

providing for qualification of Lecturers. By way of example provision of Statutes of Agra University have been referred by both sides for clarifying

their respective contentions. There Statute 11.01 in Part I and Statute 11.13 in Part II of Chapter XI contains relevant provisions. Sub-clause (1)

of Statute 11.01, dealing with qualification for teachers in the University, originally required minimum qualification as 55% in Master''s degree and

consistently good academic record. Sub-clause (5) of Statute 11.01 clarified ""consistently good academic record"". Statute 11.13, dealing with

qualification for teachers in affiliated colleges, also required 55% in Master''s degree and consistently good academic record and in sub-clause (5)

thereof explained ""consistently good academic record"" by reference to sub-clauses (5) of Statute 11.01.

11. Admittedly Statute 11.01 has been amended on 24.11.1994. By such amendment, qualification for post of Lecturer has been prescribed as

55% marks in Master''s degree level and good academic record. In clause (2) of amended Statute 11.01 ""good academic record"" has been

explained as candidates not having Ph.D. but having high second class in Master''s degree and second class in graduation or second class in

Master''s degree and first class in graduation. The Higher Education Service Commission is not empowered to fix or alter minimum qualification for

Lecturer and. therefore, the prescription by Brochure supplied along with application form could not alter the position already existing. The

petitioner when was having requisite qualification as required by advertisement and law, her candidature could not be refused to be considered.

The contention of the Higher Education Service Commission in this respect, as made in the counter-affidavit, is that the ""good academic record"" is

same as ""consistently good academic record"". Moreover, in paragraph 13 of the counter-affidavit, the Commission has stated that Universities are

solely authorised to define good academic records. Therefore, there is no reason to treat the qualification prescribed by the U. P. Higher Education

Service Commission as required one in the present case.

12. With regard to contention that clause (5) of Statute 11.13 adopted provision in Statute 11.01 (5) only by reference and, therefore, amendment

on 24.11.1994 in Statute 11,01 will not affect Statute 11.13, we have considered the law. This aspect has been decided in various cases. Most of

such cases considered such incorporation of a provision of one Statute into another Statute and taw has been discussed in the said background.

While considering Legislation by incorporation, it was held that incorporated provisions would become part and parcel of the later fresh Statute as

if it is written by pen in ink or printed bodily therein as part of the later Statute and became an integral scheme of that Act. The underlined principle

for such purpose has been considered by the Apex Court in the case of Bolani Ores Ltd., . In the said case, consideration was Bihar and Orissa

Motor Vehicles Taxation Act and Mysore Motor Vehicles Taxation Act, 1957, adopted the definition of ""Motor Vehicles"" contained in Motor

Vehicles Act. 1914 and subsequently amended in the year 1939. It was held that the intention of the Parliament for modifying the Motor Vehicles

Act has no relevance in determining the intention of the said State Legislature in a Taxation Act. With regard to case of legislation by reference, law

has been considered by the Apex Court in various cases and in the case of Gauri Shankar Gaur (supra) it has been held as follows :

If a later Act merely makes a reference to the earlier Act or existing law, it is only by way of reference and all amendments, repeals, new law

subsequently made will have effect unless its operation is saved by Section 8(1) of the General Clauses Act or void under Article 254 of the

Constitution.

13. In the present, facts, the consideration is in respect of two provisions of the same subordinate Legislation relating to prescription as regards

qualifications of Lecturer in University and its affiliated colleges. Qualification has been mentioned in the part dealing with Lecturers in Universities

and in the subsequent part dealing with the Lecturers in affiliated colleges. The earlier provision has been adopted by reference. Admittedly, there

is a change in the original provision prescribing qualifications as contained in the provision dealing with Lecturers in University. In such background,

in view of law as discussed herein above, we are of the opinion that amendment in provision dealing with Lecturers in University will also apply in

respect of provision dealing with Lecturers in affiliated colleges. Our this view is fortified as admittedly the concerned authorities were expressing

requirement of consistency in respect of qualifications of Lecturer and in this connection reference may be made to the letter of Secretary of State

of Uttar Pradesh dated 7.11.1997 at Annexure-1 to the counter-affidavit.

14. We are also of the opinion that when advertisement referred to good academic record and not consistently good academic record, the

indication therefrom is clear.

15. In view of aforesaid position, we hold that the petitioner is entitled to be considered as a candidate for the post of Lecturer in response to

advertisement at Annexure-1 to the writ petition and, therefore, the writ petition is allowed to the aforesaid extent.