

[2015] 1 S.C.R. 875

SWAPNA SUKUMAR & ORS.

v.

STATE OF KERALA & ORS.

(Civil Appeal Nos. 226-227 of 2015 ETC)

JANUARY 08, 2015

**[FAKKIR MOHAMED IBRAHIM KALIFULLA AND
ABHAY MANOHAR SAPRE, JJ.]**

Service law – Appointment, to the post of High School Assistant (Physical Science) – Eligibility – Invitation of applications for the posts – Qualification prescribed as per the Rules, Physics or Chemistry as main subject for graduation – Appellants-applicants, Graduates in Chemistry as main subject and some of them post graduate in Chemistry – Appellants also acquired B.Ed. qualification in Physical Sciences – Appellants having fully qualified as per the Rules, names included in the Ranking List – Subsequently, their names deleted from the list though identically qualified candidates, placed in the list and appointed – Challenge to – Tribunal as also Division Bench of the High Court rejected the claim of the appellants holding that appellants who were qualified Chemistry/Physics Graduates/Post Graduates who did not have either Physics or Chemistry as an ancillary subject were ineligible – On appeal, held: Qualification acquired by the appellants should enure to their benefit for the selection to the post – As per the Rule prescribed, the second respondent-Service Commission having considered their merits, included their names in the Ranking List, they are entitled to be considered for appointments based on their merit in the Ranking List – Further the said benefit was extended to those candidates in the Ranking List whose names appeared in the beginning part of the same Ranking List – Therefore, the deletion made by the second respondent of the appellants in the Ranking List set aside – Names of

A *the appellants in the Ranking List restored – Respondents directed to operate the said Ranking List on its own merit and wherever the appellants are found suitable and vacancies remain, appointment order to be issued expeditiously.*

B CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 226-227 of 2015.

From the Judgment & Order dated 18.06.2013 of the High Court of Kerala at Ernakulam in OP(KAT) Nos. 1643 and 1861 of 2013.

C WITH

C.A. Nos. 228, 229, 230, 232, 236, 237, 238, 239 & 240-243 of 2015.

D V. Giri, C.S. Rajan, R. Basant, K. Rajeev, Shinoj K. Narayanan, E.M.S. Anam, P.A. Noor Muhammed, Giffara S., A. Raghunath, Sajith P. Warriar, Dinesh Kothari, Raghenth Basant, Hardeep Singh, Aditi Mishra, Senthil Jagadeesan, Roy Abraham, Reena Roy, Seema Jain, Himinder Lal, Prasanth P., E V. Shyamohan, C.Y. Dhinoja, Liz Mathew, Vipin Nair, Mayank Shrisagar (for Temple Law Firm) Ranjith K.C. for the appearing parties.

The following Order of the Court was delivered

F **ORDER**

1. Leave granted.

2. Heard all the learned counsel for the parties.

G 3. By the impugned order, the Division Bench of the High Court while confirming the order of the Tribunal held that in order to be eligible to get appointed to the post of High School Assistant(Physical Sciences), the selection of candidates pursuant to the Notification dated 30th April, 2008 can be made

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only if the candidates had qualified the Graduation/Post Graduation either in Physics or if the concerned candidate is a Chemistry Graduate, Physics as an ancillary subject. All the appellants before this Court are stated to be Graduates in Chemistry as main subject and some of them have also acquired Post Graduation in Chemistry. It is also not in dispute that all the appellants have, however, acquired B.Ed. Qualification in Physical Sciences. Keeping in mind the above factor we have to examine the issue which has cropped up before us.

4. By the Notification dated 30th April, 2008, applications were called for, for the post of High School Assistant(Physical Sciences) by way of District-wise selection. The required qualification prescribed as per the Rule reads : "Physics or Chemistry as main subject for graduation". [Emphasis added]

5. It is to be noted that apart from Physics or Chemistry, Degree in Home Science was also prescribed as a qualification for the post of High School Assistant(Physical Sciences). It is, however, stated that by a Notification issued on 25th November, 2009 Home Science was deleted as one of the qualifications for a candidate to be eligible to apply for High School Assistant(Physical Sciences). The appellants having been fully qualified as per the Rule, which was prevailing at the time of the Notification dated 30th April, 2008, their candidature was considered and it is common ground that in the Ranking List published on 14th June, 2011, 18th October, 2011, 28th November, 2012, 28th December, 2011, 4th January, 2012, 2nd February, 2012, 6th February, 2012, 15th February, 2012, 21st February, 2012, and 12th March, 2012, their names were included in the said Ranking List.

6. Subsequently, when the names of the appellants were deleted from the Ranking List, though some of the candidates who were identically qualified and placed in the beginning part of the same Ranking List, came to be appointed. The appellants approached the Tribunal challenging the deletion.

A The Tribunal having declined to grant any relief approached the High Court and by the impugned order the Division Bench also declined to grant any relief.

B 7. While rejecting the claim of the appellants what weighed with the Division Bench of the High Court was the content of the reasoning mentioned in the Notification dated 25th November, 2009 in G.O.M.S. No. 2007 of 2009. In paragraph 2 of the said Notification it was stated as under:-

C *"2. Physics is one of the basic subjects of Engineering and Technology. For teaching Physics in High School Classes, a thorough knowledge of the subjects Physics and Mathematics is absolutely essential. For B.Sc. Home Science (main), Zoology/Botany and Chemistry are the subsidiaries. Therefore, teaching of Physics in High School Classes by a teacher with B.Sc. Home Science (main), who has not studied in Physics at graduate level is not desirable. It will adversely affect the quality of teaching Physics in High School classes."[Emphasis added]*

E 8. The Tribunal as well as the Division Bench was, therefore, persuaded to hold that the appellants who were qualified Chemistry/Physics Graduates/Post Graduates who did not have either Physics or Chemistry as ancillary subjects were ineligible. Apart from the above referred to G.O., there was no other substantive objection which was placed either before the Tribunal or before the High Court in order to disentitle the appellants from challenging the order of deletion of their names from the Ranking List.

G 9. When we heard learned counsel for the appellants, we find that as on the date when Notification dated 30th April, 2008 was issued, the qualification as prescribed was Graduation in Physics or Chemistry as main subject along with Bachelor's Degree in Physical Sciences as a basic subject. Therefore going by the Rule which prevailed as on the date of the issuance

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of the Notification calling for applications, it is not in dispute that all the appellants were duly qualified to apply for the post and the second respondent Public Service Commission also duly considered their applications and all their names were ultimately included in the Ranking List prepared by the second respondent. Even, as on date, it is stated that the said qualification continued to remain for the post of High School Assistant(Physical Sciences).

10. Therefore, when we examine the relevant Rule, it will have to be stated that the appellants were fully qualified and, were therefore, fully eligible to apply for the post and the second respondent, therefore, was justified in having accepted their applications and including their names in the Ranking List. Even otherwise, in all the present cases, qualification of Physics or Chemistry as ancillary subject which was required to be considered as a relevant qualification, though the same was not strictly prescribed under the Rule, it is not in dispute that all the appellants were all B.Ed. qualified candidates in Physical Sciences. Therefore, such a qualification acquired by the appellants should enure to their benefit for the present selection. We, therefore, find that deletion of the names of the appellants in the Ranking List was effected solely on the ground that they did not possess Physics or Chemistry as ancillary subject along with their main Degree/Post Graduate Degree in Chemistry or Physics.

11. Therefore, without setting up as a precedent, in future selections, the second respondent-Public Service Commission can be directed to carry out the exercise of making the present recruitment and appointment pursuant to the Notification dated 30th April, 2008 considering the Rank List by strictly applying the Rules as it existed on the date of that Notification which prescribed the qualifications. When the second respondent and the State extended the said benefit to those candidates in the Ranking List who were fortunate to have their names appear

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A in the beginning part of the same Ranking List, there is no reason to deny the said benefit to those whose names appeared in the bottom of the list.

B 12. We are convinced that the appellants should not be deprived of their consideration for being appointed based on the Ranking List already prepared by the second respondent-Commission. In this respect it will also be relevant to note the stand of the first respondent in the additional affidavit filed before this Court on 4th September, 2014. Realising the strenuous exercise carried out by the second respondent-Commission, the need for appointment of High School Assistants which arose right from the year 2008 in the districts, apparently the first respondent thought it fit to file the above said additional affidavit taking the stand that the candidates included in the Ranking List, in question, can be exempted from the purview of its own decision which it took with reference to the Home Science candidates which was deleted from the Rule providing for prescription of qualification for the post of High School Assistants (Physical Sciences). While appreciating the above-said stand, in the present juncture, we hold that going by the Rule prescribed by which the appellants were entitled to apply for the post of High School Assistant (Physical Sciences), the second respondent - Service Commission having considered their merits, included their names in the Ranking List, they are entitled to be considered for appointments based on their merit in the Ranking List. We are, therefore, of the view that the deletion made by the second respondent -Commission of the names of the appellants in the Ranking List cannot be allowed to stand.

G 13. The orders of the second respondent - Commission i.e. the Show Cause notices referred to in the Statement hereunder pursuant to which the deletion of the names of the appellants from the Ranking List mentioned against them came to be deleted are set aside.

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S. No.	Name of the Appellant	Date of Show Cause Notice	Date of Ranking List
1.	Swapna Sukumar	06.11.2012	12.03.2012
2.	Naseera P.K.	13.03.2013	06.02.2012
3.	Vinod Kumar	13.03.2013	06.02.2012
4.	Jamsheena K.	13.03.2013	06.02.2012
5.	Sheharban K.	13.03.2013	06.02.2012
6.	Sumeera K.	13.03.2013	06.02.2012
7.	Seenamol C.A.	30.04.2013	28.11.2012
8.	Preetha G. Das	25.03.2013	18.10.2011
9.	Rincy George	20.04.2013	12.03.2012
10.	Anish Kumar C.A.	20.04.2013	12.03.2012
11.	Mumtaz K.	13.03.2013	21.02.2012
12.	Ambily B.	27.03.2013	02.02.2012
13.	Supreetha B.	07.06.2013	04.01.2012
14.	Jisha B.	07.06.2013	04.01.2012
15.	Jamna C.	07.06.2013	04.01.2012
16.	Chitra M.	15.04.2013	15.02.2012
17.	Gireesh K.M.	15.04.2013	15.02.2012
18.	Sajira Beegum A.	15.04.2013	15.02.2012

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A	19. Soudath T.	15.04.2013	15.02.2012
	20. Jessy M.D.	09/09/2013	28/12/2011
	21. Udaya K.	20/10/2011	14/06/2011
B	22. Prameela T.	20/10/2011	14/06/2011
	23. Pushpaveni P.R.	20/10/2011	14/06/2011
C	24. Prasanth Kumar	20/10/2011	14/06/2011
	25. Rajesh Kumar S.	20/10/2011	14/06/2011
	26. Sheenappa B.	20/10/2011	14/06/2011
D	27. Archana T.	20/01/2014	28/12/2011

14. The names of the appellants in the Ranking List dated 14th June, 2011, 18th October, 2011, 28th November, 2012, 28th December, 2011, 4th January, 2012, 2nd February, 2012, 6th February, 2012, 15th February, 2012, 21st February, 2012, and 12th March, 2012, shall stand restored and the respondents are directed to operate the said Ranking List on its own merits and wherever it finds the appellants suitable and vacancies remain, appointment order shall be issued expeditiously. The first respondent and the second respondent-Commission shall carry out the above-said exercise in accordance with the procedure prescribed expeditiously preferably within a period of two months.

15. We make it clear that we pass the above said order in the peculiar facts of these cases. This cannot be, however, quoted as a precedent in future recruitments. Since the appellants were fighting this litigation by approaching the Tribunal at the earliest point of time and have come up to this Court, it is needless to state that the expiry of the Ranking List

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should not stand in the way for considering the names of the appellants for issuing the appointment orders in accordance with the procedure prescribed as directed in this order. A

16. IA 4 in appeal arising out SLP 14583/2014 is dismissed with liberty to work out the remedy if any in accordance with law before an appropriate forum. B

17. IA 5 in appeals arising out of SLP(C) Nos. 25636-25637 is an application for impleadment as party respondents and the same is allowed. Cause title be amended accordingly. The newly added respondent shall also be entitled to the same benefit which has now been granted to the appellants in these appeals. C

17. The appeals are allowed on the above terms with no order as to costs. D

Nidhi Jain

Appeals allowed.