

DR. M.S. MUDHOL AND ANR.  
v.  
SHRI S.D. HALEGKAR AND ORS.

JULY 13, 1993

[P.B. SAWANT AND YOGESHWAR DAYAL, JJ.]

*Laches—Principal appointed in a private aided school not fulfilling essential qualifications—Lapse of 9 years before moving court—Held, 13 years have elapsed, and infraction of statutory rule not grave enough to warrant interference—Quo warranto.*

Respondent 1 was appointed as Principal of the Delhi Kannada Senior Secondary School in 1981. In 1990, petitioners who are members of the teaching staff of the school moved the High Court for a writ of *quo warranto* against respondent 1 which was dismissed *inter alia* on the ground of laches.

For respondent 1, it was contended that no writ of *quo warranto* could be issued against the school which was managed by a private organisation, nor respondent 1 who was its employee; and that there had been a delay of 9 years. Further, respondent 1 was duly qualified since he had an M.Ed with a II division, even if he had a third class degree in M.A. - the essential qualification being a II division in a post-graduate degree course.

Dismissing the appeal, this Court

**HELD :** 1. The post of the Principal in a private school though aided, is not of such sensitive public importance that the Court should find itself impelled to interfere with the appointment by a writ of *quo warranto* even assuming that such a writ is maintainable. This is particularly so when the incumbent has been discharging his functions continuously for over a long period of 9 years when the court was moved and today about 13 years have elapsed. The infraction of the statutory rule regarding the qualifications of the incumbent pointed out in the present case is also not that grave taking into consideration all other relevant facts. [119-H; 120-A-B]

2. M.Ed II division is not equivalent to M.A. II division. The latter is an academic qualification with wholetime course, spread over 2 years

- A while the former is a professional qualification, part-time course spread over one year. [118-D]

The statutory rule requires a II division in the academic Master's Degree, and the Teaching Degree is no substitute for it. [118-E]

- B The Director of Education had committed a clear error of law in approving the academic qualifications when he was not so qualified. [120-C]

3. As regards teaching experience, at least on date, when his removal from the post of Principal was sought, he had the requisite experience.

- C [119-D]

4. There is nothing on record to show that he had projected his qualifications to be other than what he possessed. Illegality, if any, was committed by the Selection Committee and the Director of Education. It would be inadvisable to disturb respondent 1 from his post at this late stage particularly when he was not at fault when his selection was made.

- D [119-E-G]

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No.16256 of 1992.

- E From the Judgment and Order dated 12.12.1991 of the Delhi High Court in C.W. No. 2246 of 1990.

G.L. Sanghi and Surya Kant for the Appellant.

- F Altaf Ahmed, Addl. Solicitor General, A.K. Sen and R.N. Narasimhamurthy, S.S. Javeli, Ms. Indira Sahney and M.T. George for the Respondents.

The following Order of the Court was delivered :

- G The controversy in the present petition relates to the eligibility of the Ist respondent to occupy the post of the Principal of the Delhi Kannada Senior Secondary School which is being run in New Delhi. The Ist respondent was appointed as the Principal of the school in the year 1981. The statutory rules prevalent at the relevant time prescribed the essential qualification for the said post as follows:

- H (i) Master's Degree with at least IInd Division from a recognised

university or equivalent.

A

(ii) A Degree in Teaching from a recognised university or equivalent.

(iii) Experience of 10 years' teaching as a Vice-Principal/P.G.T. (Post-graduate Teacher) in a Higher Secondary School or Inter-College.

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The condition with regard to the IInd Division was relaxable in the case of the candidates belonging to the same school and also in the case of the Schedule Caste and Schedule Tribe candidates. The desirable qualifications were:

C

(i) Experience in administrative charge of a recognised Higher Secondary School/Inter-College.

(ii) Doctorate Degree.

D

(iii) M.Ed. Degree from a recognised university.

Admittedly, the Ist respondent who did not belong to the same school had M.A. Degree in Political Science with third class with 41.1% aggregate marks, although he had his M.Ed. in second class. Respondent No.1, according to the petitioners, however, did not also have the required experience of 10 years' teaching, since he was working as an Inspector of Schools prior to his selection as the Principal. The schools which he was inspecting had also classes only upto the 8th standard. Thus, except the degree of M.Ed. which he possessed, he did not have the other two statutory essential qualifications at the time of his appointment as the Principal. According to the petitioners, who are the members of the teaching staff of the same school but not aspirants for the post of Principal, the fact that the Ist respondent lacked the two essential qualifications came to their light for the first time in 1990 and, therefore, they moved the High Court by a writ of *quo warranto* against the Ist respondent. The High Court, however, dismissed the petition on the ground of laches and also on the ground that the petitioners had not asserted in the writ petition that the advertisement inviting the applications for the post of the Principal was published before the Ist respondent was selected as the Principal.

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Learned counsel appearing for the Ist respondent contended that no

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- A writ of *quo warranto* could be issued against the school which was admittedly managed by a private organisation or against the Ist respondent who was an employee of such organisation. It was also contended that the Ist respondent had been holding office of the Principal from 1981 and it was for the first time that his appointment was challenged in 1990, i.e., after a lapse of about 9 years. The writ jurisdiction being discretionary, the High Court was right in refusing the relief. Lastly, it was contended that the Ist respondent was duly qualified according to the statutory rules. While not disputing that the Ist respondent had only a third class Degree in M.A., it was urged that since he had M.Ed. in IInd Division, he should be deemed to have satisfied the requirement of IInd Division in the Post-graduate Degree as M.Ed. was equivalent to M.A. As regards his teaching experience, it was contended that every teacher in a High School was teaching upto 11th Standard and since all High Schools had 11 standards, all Assistant Masters/teachers like him were teaching upto the 11th standard. It was also contended that when he was acting as Education Officer and Inspector of Schools, he was also teaching.

- The contention of the respondents that M.Ed. IInd Division was equivalent to M.A. IInd Division is obviously fallacious. The latter is the academic qualification while the former a professional qualification. Secondly, the course of the former is whole-time spread over no less than two years while the course of the latter is part-time and is spread over one year. In any case, the statutory rule with regard to the essential qualifications is very clear inasmuch as it requires both academic Master's Degree and the Teaching Degree, the latter being not the substitute for the former. What is further, while laying down the qualifications with regard to the academic degree viz. the Master's Degree, the rule insists upon IInd Division for such degree. It does not insist upon a IInd Division Degree in teaching. A pass degree is sufficient in its eyes. It would, therefore, amount to distorting the requisite qualifications under the rules, to attempt to substitute the teaching qualification for the academic qualification and exchanging the divisions of the two. In fact, it appears that the Director of Education had himself at one time not approved the qualifications of the Ist respondent for the post of the Principal since he did not have the IInd Division Degree in M.A. However, it is not known what transpired subsequently. After a lapse of few months, he acquiesced in the qualifications of the Ist respondent to hold the said post. It is for this reason that we had issued notice to the Director of Education who is the 2nd respondent to

the petition. An affidavit has been filed on his behalf but except for the rigmarole, we do not find anything in the affidavit to enlighten us either on the interpretation of the said rule or on the reasons which led him to change his earlier decision in the matter. We have, therefore, no doubt that the 1st respondent did not have the requisite educational qualifications to be selected for the post of the Principal.

As regards the teaching experience, the 1st respondent's contention is that he had worked as a teacher for 9 years in a High School and Higher Secondary School which had upto 11 standards. According to him, he also worked as Lecturer in History. His further contention is that the post of the School Inspector in Karnataka where he was working as such and that of the teacher were interchangeable. Hence the selection committee had taken into consideration his experience in both the capacities. These facts are not controverted before us and in any case today, he has the requisite experience of teaching as he has been teaching the 11th and the 12th class continuously for 12 years now, since 1981. It can, therefore, be said that at least as on date when his removal from the post of Principal is sought, he cannot be said to be disqualified on account of the lack of required teaching experience.

Since we find that it was the default on the part of the 2nd respondent, Director of Education in illegally approving the appointment of the first respondent in 1981 although he did not have the requisite academic qualifications as a result of which the 1st respondent has continued to hold the said post for the last 12 years now, it would be inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. There is nothing on record to show that he had at that time projected his qualifications other than what he possessed. It, therefore, in spite of placing all his cards before the selection committee, the selection committee for some reason or the other had thought it fit to choose him for the post and the 2nd respondent had chosen to acquiesce in the appointment, it would be inequitable to make him suffer for the same now. Illegality, if any, was committed by the selection committee and the 2nd respondent. They are alone to be blamed for the same.

Whatever may be the reasons which were responsible for the non-discovery of the want of qualifications of the 1st respondent for a long time, the fact remains that the Court was moved in the matter after a long lapse

- A of about 9 years. The post of the Principal in a private school though aided, is not of such sensitive public importance that the Court should find itself impelled to interfere with the appointment by a writ of *quo warranto* even assuming that such a writ is maintainable. This is particularly so when the incumbent has been discharging his functions continuously for over a long period of 9 years when the court was moved and today about 13 years have elapsed.
- B The infraction of the statutory rule regarding the qualification of the incumbent pointed out in the present case is also not that grave taking into consideration all other relevant facts. In the circumstances, we deem it unnecessary to go into the question as to whether a writ of *quo warranto* would lie in the present case or not, and further whether mere laches would disentitle the petitioners to such a writ.
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- However, we must make it clear that in the present case the 2nd respondent, Director of Education had committed a clear error of law in approving the academic qualifications of the 1st respondent when he was not so qualified. As pointed out above, the interpretation placed by him
- D and the other respondents on the requisite educational qualifications was not correct and the appointments made on the basis of such misinterpretation are liable to be quashed as being illegal. Let this be noted for future guidance.

- E In the circumstances, we decline to interfere with the appointment of the 1st respondent and dismiss the petition. There will be no order as to costs.

U.R.

Appeal dismissed.