
(2009) 10 CHH CK 0034
In the Chhattisgarh High Court
Case No : Writ Petition No. 4725 of 2004

Allauddin Siddiqui and Others

APPELLANT

Vs

South eastern coalfields Limited and Others

RESPONDENT

Date of Decision : 23-10-2009

Acts Referred:

Citation : (2009) 4 CGLJ 585

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Anurag Dayal Shrivastava, for the Appellant; P.S. Koshy, for the Respondent

Judgement

Satish K. Agnihotri, J.—By this petition, the Petitioners seek the following reliefs:

(1) The Hon''ble Court may kindly be pleased to call the concerning records from the Respondents.

(2) The Hon''ble Court may kindly be pleased to direct the Respondent 1 by writ of mandamus to declare the result of the departmental promotion examination having been conducted for the selection of the Junior Data Entry Operator (Trainee), Grade "E".

(3) The Hon''ble Court may kindly be pleased to direct the Respondent 1 to act according to the intention of the Annexure - P/4 and by further holding that the decision of the Functional Directors relating to the subject matter, as has been arrived at their 228th meet and having been quoted by the Dy CPM Respondent 3 in his letter dated 13.11.2004 Annexure-P/12 is inoperative in the circumstances of the case.

(4) And, consequently, the Respondent 1 may kindly further be directed to promote/select the Petitioners, in case they stand selected in compliance of their own policy Annexure - P/4.

(5) The Hon''ble Court may kindly be pleased to direct the Respondents not to

take any further action in compliance of the circular dated 25.1.2007 Annexure - P/14 till declaring the result of the earlier advertisement issued by circular Annexure - P/1, P/2 and P/3.

(6) Any other relief(s) which the Hon''ble Court considers proper, may kindly be awarded, in fitness of the things and in the interest of justice.

2. The indisputable facts, in nutshell, as projected by the Petitioners, are that the Respondent authorities had invited applications from the suitable and eligible candidates for selection to the post of Data Entry Operator. Pursuant to the above, the Petitioners along with other candidates submitted their applications, and thereafter appeared in the written examination. The Petitioners were declared successful in the written examination. Thereafter, the typing test was conducted. The Petitioners could not clear the typing test, therefore, they were again afforded an opportunity to appear in the typing test, but the result of the Petitioners has not been declared.

3. Being aggrieved by the aforesaid action, the Petitioners submitted a representation before the Respondent authorities, but no reply has been received by them. Therefore, the Petitioners sent a legal notice for demand of justice. After receipt of the notice, the Respondent authorities vide letter dated 13-11-2004 (Annexure - P/12) informed the Petitioners that the Functional Directors decided that the empanelled list of candidates selected for the post of Data Entry Operators be cancelled forthwith and in future induction of Data Entry Operator shall be done on selection basis from amongst clerical staff. However, if in the empanelled list, some clerical staff is already selected, the same could be considered by the Functional Directors. Thus, this petition.

4. Shri Shrivastava, learned Counsel appearing for the Petitioners, would submit that the Respondent-authorities have changed the selection criteria after completion of the selection process and decided on 19-4-2004 in 228th meeting of the Functional Directors to select the persons only amongst the clerical staff and, as such, the entire select list was cancelled and six persons from the clerical staff were declared as selected by order dated 27-1-2005 (Annexure - P/13).

5. Learned Counsel appearing for the Petitioners would further submit that during pendency of this petition, the Respondents issued a circular dated 25-1-2007 (Annexure - P/14) inviting applications again for selection to the post of Jr. Data Entry Operator (Trainee) in T and S Gr. "E" having the same eligibility criteria, as stated in the earlier notification (Annexure - P/4). Thus, the order dated 13-11-2004 (Annexure - P/12) issued on the basis of 228th meeting of Functional Directors held on 19-4-2004 to provide selection for the post of Data Entry Operator from amongst clerical staff alone is unreasonable, unconstitutional and bad in law. Learned Counsel would next submit that the Respondents have altered the criteria for selection to the post of Data Entry Operator, which cannot be done subsequently during the selection process.

6. On the other hand, Shri Koshy, learned Counsel appearing for the

Respondents, would submit that the selection list of the candidates for appointment on the post of Jr. Data Entry Operator (Trainee) was cancelled by the Functional Directors in their meeting held on 19-4-2004. Since the selection list was not published, the Petitioners have not acquired any right, which is enforceable by a Court of law for appointment on the post of Jr. Data Entry Operator (Trainee). Shri Koshy would further submit that the persons selected from the selection list have not been arrayed as party-Respondents in this writ petition. The Functional Directors are fully competent to cancel the selection process before issuance of the appointment order.

7. I have heard learned Counsel appearing for the parties, perused the pleadings and the documents appended thereto.

8. It is evident that the Petitioners along with others applied for selection to the post of Jr. Data Entry Operator (Trainee) in (T and S) Gr. "E", wherein the eligibility criteria was provided i.e. "any permanent employee having matriculate or equivalent certificate with 3 years service in the Company." The Petitioners applied and thereafter they successfully qualified in the written test and passed the typing test also after some time.

9. The Functional Directors in their 228th meeting held on 19-4-2004 decided to cancel the select list. Accordingly, by letter dated 13-11-2004 (Annexure - P/12), the Area Personnel Managers of all areas of SECL were directed as under:

No. SECL/BSP/ADMN Prom/Jr. DEO(T)/04/1739 Dt.13.11.2004 To

Area Personnel Managers, All Areas of SECL

Sub: Selection of Data Entry Operators. Dear Sir,

We are receiving regular representations from different Areas, employees as well as from Unions regarding selection to the post of Data Entry Operator. The matter has been placed before 228th Meet of F Ds held on 19th April, 2004 and the decision of F Ds is reproduced below:

Functional Directors decided that the empanelled list of candidates selected for the post of Data Entry Operators be cancelled forthwith and in future induction of Data Entry Operators shall be done on selection basis from amongst clerical staff. However, if in the empanelled list, some clerical staff is already selected, the same could be considered by the F Ds.

This is for your kind information with a request to inform the persons concerned accordingly.

Yours faithfully Sd/-Dy. CPM

Copy to

1. GM (P and A), SECL, BSP. 2. GM (System), SECL, BSP. 3. Dy. CPM (IR), SECL, BSP.

10. On the basis of letter dated 13-11-2004, six persons from the clerical staff were selected to the post of Jr. Data Entry Operator (Trainee) in (T and S) Gr. "E" by order dated 27-1-2005 (Annexure-P/13). The contention of the Petitioner that once the selection process has been initiated on the basis of eligibility criteria as prescribed in Annexure - P/4, the same cannot be challenged during the selection process.

11. It is evident from the fact that six persons from clerical staff were selected from the same selection process wherein the Petitioners also participated on the basis of eligibility criteria as afore-stated. The said eligibility criteria was again restored in the subsequent selection process vide Annexure - P/14 dated 25-1-2007. It is true that the Government can change the selection criteria any time, but the same cannot be done during the selection process as on the basis of eligibility criteria i.e. any permanent employee having matriculate or equivalent certificate with 3 years service in the Company, the Petitioners applied for the selection to the post of Jr. Data Entry Operator (Trainee), in T and S Gr. "E" The criteria was changed during selection and from the said select list only six persons coming from clerical staff were appointed. Thus, the selection process is vitiated.

12. I have gone through the decisions cited by learned Counsel appearing for the respective parties, however, I am referring only those decisions, which are relevant to the controversy involved in the facts of the case.

13. The Supreme Court in P. Mohanan Pillai Vs. State of Kerala and Others, observed as under:

11. It is now well settled that ordinarily rules which were prevailing at the time, when the vacancies arose would be adhered to. The qualification must be fixed at that time. The eligibility criteria as also the procedures as were prevailing on the date of vacancy should ordinarily be followed.

14. The Supreme Court in Maharashtra State Road Transport Corporation and Others Vs. Rajendra Bhimrao Mandve and Others, observed that "it has been repeatedly held by this Court that the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced."

15. In K. Manjusree Vs. State of A.P. and Another, , the Supreme Court observed that "changing the rules of the game after the game was played is not permissible" (Also see P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, , Umesh Chandra Shukla Vs. Union of India (UOI) and Others, and Durgacharan Misra Vs. State of Orissa and Others, .

16. In Madan Mohan Sharma and Another Vs. State of Rajasthan and Others, , the Supreme Court observed that "once the advertisement had been issued on the basis of the circular obtaining at that particular time, the effect would be that the selection process should continue on the basis of the criteria which were laid

down and it cannot be on the basis of the criteria which has been made subsequently."

17. In Mohd. Sohrab Khan Vs. Aligarh Muslim University and Others, , the Supreme Court observed as under:

27. The Selection Committee during the stage of selection, which is midway could not have changed the essential qualification laid down in the advertisement and at that stage held that a Master's degree-holder in Industrial Chemistry would be better suited for manning the said post without there being any specific advertisement in that regard. The very fact that the University is now manning the said post by having a person from the discipline of Pure Chemistry also leads to the conclusion that the said post at that stage when it was advertised was meant to be filled up by a person belonging to Pure Chemistry stream.

18. The decision of Supreme Court rendered in Union of India (UOI) and Others Vs. Kali Dass Batish and Another, , cited by the learned Counsel appearing for the Respondents, is not applicable to the facts of the present case, as in the present case the eligibility and qualification has been changed in the midway of the selection process, which is not permissible in law. Even otherwise, the Supreme Court in Shankarsan Dash Vs. Union of India, , it has made clear that it does not mean that the State has the licence of acting in an arbitrary manner, which has been referred in Punjab State Electricity Board and Others Vs. Malkiat Singh, , and in Union of India (UOI) and Others Vs. Kali Dass Batish and Another, .

19. Applying the well settled principles of law to the facts of the case on hand, wherein when the applications made by the Petitioners, on the basis of the eligibility prevalent at that time, the same was changed in midway of selection process and only six persons from clerical staff were found eligible for consideration to appointment on the post of Jr. Data Entry Operator (Trainee) in (T and S) Gr. "E" the change in criteria is impermissible in law.

20. The Petitioners have not impleaded the selected six persons from the clerical staff as party-Respondents and, as such, their appointment and selection process cannot be quashed. However, having regard to the facts and circumstances of the case, the Respondent-authorities are directed to consider the case of the Petitioners in the light of select list prepared on the basis of original eligibility criteria i.e. Annexure - P/4 and pass appropriate orders, in accordance with law and on its own merits.

21. With the aforesaid observations and directions the writ petition is disposed of. No order as to costs.