
(1986) 03 MP CK 0014
In the Madhya Pradesh High Court

Alok Gupta

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 14-03-1986

Acts Referred:

Constitution of India, 1950 — Article 16, 19, 51A
Criminal Procedure Code, 1973 (CrPC) — Section 313

Citation : (1988) 1 LLJ 401

Hon'ble Judges : T.N. Singh, J

Bench : Single Bench

Judgement

T.N. singh, J.—Can a dutiful citizen be discriminated in the matter of employment or appointment to any public post or office under the State? This short but constitutionally potent question has arisen for decision in this case.

2. The facts are few and admitted and indeed I have merely to refer to the return of the State to tell the story. With the return is annexed a copy of the order dated 1st May 1976 rendered by the Chief Judicial Magistrate, Jhansi in Criminal Case No. 23/76, to meet the challenge made in this case to the action of the State, denying to petitioner equal opportunity in the matter of public employment. Alok Gupta, the petitioner, figures at item No. 5 of the Select List (Annexure F-3) which contains in all names. The list was prepared for appointments to be made to the post of Assistant Public Prosecutor under Government of Madhya Pradesh. This list is dated 4th July 1984. Except the petitioner and Anr., Kamal Kishore, it is admitted, others have got appointment.

3. In the return only, State has given the reason to deny appointment to the petitioner relying on the order above referred (Annexure R-1 of the return). It is necessary, therefore, to read the order. The petitioner was charge-sheeted along with three others on being apprehended by the police for attempting to distribute pamphlets of Lok Sangharsh Samiti on 5th December 1975. They were raising slogans against the Government in the state of emergency. In their statements u/s 313 Cr. P.C. all the accused persons, including petitioner Alok, pleaded guilty

and they were convicted under Rule 33(5), 43(5) and 46(5) of the D.I. Rules, 1971. Each of them was sentenced to undergo rigorous imprisonment for four months on each count and the sentences were made to run concurrently in each case. In the return, at page 4, in the parawise reply to the grounds, it is stated that petitioner's selection was cancelled and no letter of appointment was issued to him because in the course of police verification it transpired that the petitioner was a convict and this fact was projected in Annexure R-1.

4. State Counsel is asked to place statutory rules, if there are any, to support the actions of the State. He submits that a "convict" because of his conviction, lost right to public employment under the State. To say so, Shri Qureshi has drawn my attention to Annexure P-1, the advertisement, by which applications were invited for the concerned post. Clause 5(2) thereof relied on by the counsel is extracted in extenso: (Matter in Vernacular hence omitted.... Ed.).

Shri Qureshi has also placed reliance on Clause (6) which is to the effect that suppression of necessary particulars in the application shall be deemed to be a disqualification. The contention of Shri Lahoti that no recruitment rules have been framed for the post of Assistant Public Prosecutor, created after enactment of the new Code of Criminal Procedure in the year 1974, remains uncontroverted because Shri Qureshi could not place any such rules.

5. Now the question is, what is the purport of the above Clause 5(2)? True, it refers to disqualification but it is necessary to analyse the provision and find out what past activity or antecedent of a candidate has to be considered disqualification. Is it that mere registration of a criminal case against him or his being tried for a criminal offence per se would constitute sufficient ground for his disqualification? I think, not. Because, the crucial expression or controlling, clauses are: (Matter in Vernacular hence omitted.... Ed.).

These are vital expressions and contain indeed the heart of the matter. The only activities or past conduct of a candidate which disqualifies him, according to me, is the question whether he was tried or was convicted for an offence involving moral turpitude. Such conduct, if it is indication of lack of discipline as a trait of his character would also be deemed disqualification. Nothing more; and nothing beyond that. Mere registration or pendency of a criminal case against him, or even his trial and conviction for a criminal offence, would not per se be deemed disqualification.

6. The short question, therefore, is what is to be found projected in Annexure R-1? Does it show that petitioner was tried for the case IS which was registered against him for any activity in which his moral turpitude was involved? Does it show conclusively that he was a person whose conduct and character manifested propensities inherent in an undisciplined person? The only facts which are disclosed by Annexure R-1 are that he was exercising his Fundamental Right to make a peaceful demonstration against certain policy of the Government of the day. He is not shown to have been involved in any violent act or any anti-social

or anti-State activities. True, there is a reference in the order that he was raising slogans praising "R.S.S." which according to Shri Qureshi, was a banned "association" during the period of emergency. However, what would that indicate? It would merely indicate some kind of illegal activity or at the most some political activity, but not antisocial or anti-State activity. Nothing beyond that. If I have to remember what was said long ago in Kameshar Prasad (1962-I-L.L.J.-294 Ram Manohar Lohia (AIR) 1966. SC. 740 and Ramashankar Raghuvanshi (1983-I-L.L.J.-299 I cannot but refute Shri Qureshi's contention as misconceived.

7. It is necessary to bear in mind the difference between "State" and "Government" (of the day) as vocally projected in Ram Monohar Lohia (supra). Indeed, it is not a question of praising or upgrading any organisation that can be said to constitute anti-social or anti-State activity on the part of any person. A citizen has a fundamental duty to the State and the Constitution to eschew violence but not to refrain from engaging in any political activity. This is what I read in Article 51A(f) and 19(1) Clauses (a), (b) and (c); and that is also what I find reading Ramashankar Raghuvanshi (supra) wherein the action of the State by which petitioner's connection with R.S.S. was made capital to deny him similarly the right to enter Government service was decried and held unconstitutional. Indeed, right therein also was denied on the basis of police verification. There was a police report in that case which divulged Ramashankar's association with R.S.S. But, I cannot do better than to recall what their Lordships said projecting forcefully the constitutional ethos of the republican era: 1983-I-L.L.J.-299 at 300:

There are no barriers. Our Constitution guarantees that. In fact members of these organisations continue to be members of Parliament and State Legislatures. They are heard, often with respect, inside and outside the Parliament. What then was the sin that the respondent committed in participating in some political activity before his absorption into Government service? What was wrong in his being a member of an organisation which is not even alleged to be devoted to subversive or illegal activities? The whole idea of seeking police report on the political faith and the past political activity of a candidate for public employment appear to our mind to cut at the very root of the Fundamental Rights of equality of opportunity in the matter of employment, freedom of expression and freedom of association.

8. In Kameswar Prasad (supra) the Apex court upheld Government servant's right to make peaceful demonstration as respects his service conditions because by doing so a Government servant was said to be exercising his fundamental right which could not be denied to him as citizen of this country. Shri Lahoti has also drawn my attention to a decision of this Court in Jai Gopal, (1986) Jab LJ 15 wherein Kameswar Prasad (supra) was considered and it was held that arrest of the petitioner in connection with a criminal case did not per se make him unsuitable for public employment though he had been arrested in connection

with political activity.

9. What I would like to say emphatically in the context of this case is that a dutiful citizen cannot be discriminated and he cannot be disqualified merely because he had vocally exercised some-time in his life his fundamental right of holding peaceful public demonstration. It is the fundamental duty of every citizen in this country to abide by the Constitution and respect its ideals and institutions. It is also fundamental duty of every citizen of this country to uphold sovereignty and integrity of the country and to abjure violence. It is only when any person has done any contra-constitutional act or is involved in any anti-State activity by resorting to violence the sovereignty and integrity of the country, (sic) then he shall be deemed to have lost the right to be considered for public employment. Any other view, in my opinion, would be contraconstitutional and violative of the judicial mandate inscribed in Kameshwar Prasad (supra) and Ramashankar (supra). Clause 5(2) of the advertisement afore quoted must also be construed in the same light and the requirement of good conduct must be understood to mean that the candidate abides by the constitutional provisions and is not involved in any contra-constitutional activity.

10. However, in the course of the judgment being dictated, Shri Qureshi has tried to press what should have been a preliminary objection in this case. Even so, I have considered it but I find it to be meritless. He has contended that because of the pendency of the writ petition in a connected matter, no decision can be rendered in the instant petition. The scope of the two petitions being entirely different, it would be evidently inexpedient for me to refuse him relief when petitioner's fundamental right under Article 16 is grossly infringed by the State. In the pending matter what was agitated was not a contest against the petitioner but against appointments made by the State in excess of the number of posts advertised for appointment.

11. For the foregoing reasons, this petition must be, and is, allowed. The action of the State is held to be unconstitutional and void. The refusal of the State to deny appointment to the petitioner and the action of the State cancelling petitioner's selection are held void and unconstitutional. I hold the petitioner to be entitled to employment under the State in virtue of the right accrued to him as a result of the selection held to the post and as per binding nature of the advertisement which binds equally the State and the candidate. As the petitioner has not incurred any disqualification as per advertisement he cannot be denied the right of appointment in accordance with advertisement. This has to be done in the absence of statutory rules and I say this on the authority of Dr. Amarjit Singh Ahluwalia Vs. The State of Punjab and Others, ; Sant Ram Sharma Vs. State of Rajasthan and Another, , Union of India (UOI) Vs. K.P. Joseph and Others, , and Dr. Satyabrata Dutta Choudhury Vs. State of Assam and Others, ;

12. In the result, the petition succeeds and is allowed. Respondents are directed to cancel the "cancellation" and restore the petitioner's name on the Select List. They are also directed to issue appointment letter to the petitioner which had

been admittedly withheld on account merely of adverse police report and on grounds of assumed disqualification. Two months time is allowed to the State to ensure compliance of this order but in the facts and circumstances of the case, I make no order as to costs.

13. Out-standing amount of security, if 40 any, be refunded to the petitioner.