
(2002) 07 JH CK 0103
In the Jharkhand High Court
Case No : L.P.A. No. 430 of 1997

Andhra Dramatic and Literary Society and Another	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 10-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 JCR 256

Hon'ble Judges : S.J. Mukhopadhaya, J;Lakshman Uraon, J

Bench : Division Bench

Advocate : P.K. Sinha and S. Bose, for the Appellant; S. Prasad and T.N. Verma for respondent No. 5, Anik Lr. Sinha and R. Krishna, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The appellants-Andhra Dramatic and Literary Society (A.D.L. School for short) and its Managing Committee being not satisfied with the judgment and order dated 28.8.1997 passed by the learned single Judge in CWJC No. 4239 of 1997 (R), has challenged the same by the impugned judgment, learned single Judge held the appointment of respondent-Mrs. P. Naidu as Headmistress of the A.D.L. School illegal having made contrary to the settled principles of law and set aside her appointment.

2. According to writ petitioner-respondent, Mrs. P. Ratna she held qualification of M.A., B.Ed, since 1983 and was working as Assistant Teacher in the LA. trained scale since 15th March, 1983, as was approved by the District Superintendent of Education, Jamshedpur (D.S.E. for short). She being eligible applied for appointment to the post of Headmaster (Headmistress) published by A.D.L. School on 22.12.1992 in newspaper "UDTT VANI". The respondent. Mrs. P. Naidu is a matric trained teacher and appointed on 24.1.1993. Though she was in matric trained scale, applied in pursuance of advertisement aforesaid and appointed as Headmaster of A.D.L. School in pursuance of decision of the Managing Committee dated 28.2.1993, as approved by the D.S.E. Jamshedpur

vide Memo No. 3390-3418 dated 7.6.1993.

The writ petitioner-respondent, Mrs. P. Ratna took plea that the selection of contesting respondent, Mrs. P. Naidu was illegal and unconstitutional as the selection was made mainly giving weightage on the marks obtained in the interview.

Learned single Judge taking into consideration the fact that the contesting respondent, Mrs. P. Naidu obtained 63 marks in written test and 113 marks in the interview whereas Mrs. P. Ratna (writ petitioner) got 34 marks in written test and 73 marks in the interview, held the appointment illegal and unconstitutional, giving reference of certain decisions of the Supreme Court such as Mohinder Sain Garg Ors. Vs. State of Punjab and Others, Vikram Singh and another Vs. The Subordinate Services Selection Board, Haryana and others, Ashok alias Somanna Gowda and Another Vs. State of Karnataka by its Chief Secretary and Others, and Madhuka Bakru Pin-gal v. Sri Rajendra D. Gaiwad and Ors., reported in (1996) 1 UJ (SC) 16.

3. The appellants have justified the marking. According to them, the Managing Committee decided to allow 125 marks in the written test and 30 marks in the interview. There were five members in the selection committee, who individually marked out of 30 marks. They were added together instead of working out the average.

4. Counsel for the writ petitioner-respondent, Mrs. P. Ratna while took similar plea that the selection has been made on the basis of excess mark in the interview, also took plea that Mrs. P. Naidu was not qualified being a teacher in the matric trained scale of pay and not in the B.A. trained scale. He placed reliance on advertisement dated 22.12.1992.

However, if the aforesaid submission of writ petitioner, Mrs. P. Ratna that only the teachers in the graduate trained scale are eligible is accepted, the writ petitioner, Mrs. P. Ratna being a teacher in the I.A. trained scale, is to be held not eligible and the writ petition being not maintainable at her instance to be dismissed.

5. The qualification and experience as was laid down was "graduate trained teachers with minimum five years experience in a recognised Middle/High School need apply. Preference will be given to post graduate trained teachers".

From the original records of selection produced by the appellants and enclosures, it will be evident that the respondent, Mrs. P. Naidu obtained B.Sc. degree in the year 1969, M.Sc. In the year 1972, M.A. In the year 1973 and B.Ed. in the years 1974. She had 12-1/2 years of experience as on the date of interview. Thus, it is apparent that she was a post-graduate trained teacher as on the date of interview.

Similarly, writ petitioner, Mrs. P. Ratna having obtained B.A. degree in the year 1976 and B.Ed, in the year 1980 and having 11 years of experience as on the date of interview, she claimed herself a graduate trained teacher and applied for

appointment to the post of Headmistress.

6. In the aforesaid background, the respondent, Mrs. P. Naidu cannot be held to be ineligible.

The rules for appointment in taken over Government Middle Schools notified on 15th September, 1981, as cited by the counsel for the writ petitioner-respondent. Mrs. P. Ratna cannot be relied upon at the aforesaid rule is not applicable to the school in question, a private minority school.

Further, in the advertisement, the specific qualification and experience having been laid down, both the respondent, Mrs. P. Naidu and writ petitioner, Mrs. P. Ratna having applied, they cannot challenge the qualification as laid down in the advertisement.

7. Now, the question arises as to whether the selection of respondent, Mrs. P. Naidu is arbitrary and illegal or not having allowed more marks in the interview; it appears that the matter was not properly placed by the appellant, nor discussed by the learned single Judge.

It is not in dispute that the Managing Committee decided that 125 should be the total marks in the written test and 30 marks in the interview. This ratio of marking cannot be held to be arbitrary.

It is not in dispute that the respondent, Mrs. P. Naidu obtained 63 marks out of 125 marks in the written test whereas writ petitioner-respondent, Mrs. P. Ratna only obtained 34 marks out of 125 marks. Thus, the writ petitioner, Mrs. P. Ratna can be stated to be less meritorious than respondent Mrs. P. Naidu, who was selected.

So far as oral test is concerned, admittedly, total 30 marks was only allotted for interview. 10 marks towards personality, 10 marks towards ability and 10 marks towards voice test (total 30 marks), as evident from the original records produced before this Court. In fact, the individual five members of the Selection Board marked separately and the following marks were provided to the writ petitioner, Mrs. P. Ratna and respondent, Mrs. P. Naidu :

Member No.	Writ petitioner (Mrs. P. Ratna)	Respondent (Mrs. P. Naidu)
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M 1.	18	23
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M 2.	12	26
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M 3.	16	21
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M 4.	11	20
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M 5.	16	20
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Aforesaid individual marking having given by members out of 30 marks, the office for the purpose of calculation should have divided the total marks by 5

(five) to find out the min. marks obtained by the candidate out of total 30 marks in interview. Unfortunately, the office reflected the total marks granted by five members but that will not render the selection illegal, as the maximum mark allotted for interview being 30. If average of the marking given by five members is made, it will be evident that the respondent, Mrs. P. Naidu obtained 22.3 marks out of 30 marks in interview, apart from 63 marks out of 125 marks in the written test.

From the fact aforesaid, it will be evident that the respondent, Mrs. P. Naidu was not only eligible for appointment to the post of Headmistress but having higher merit than the writ petitioner, was rightly appointed and the D.S.E., Jamshedpur rightly approved such appointment.

8. Learned single Judge having failed to take into consideration the aforesaid fact though it was brought to the notice to the Court, the impugned judgment dated 28.8.1997 passed in C.W.J.C. No. 4239 of 1996 (R) cannot be upheld. It is, accordingly, set aside.

9. The appeal is allowed. However, in the facts and circumstances, there shall be no order as to costs.

Lakshman Uraon, J.

10. I agree.