
(2009) 03 GAU CK 0032
In the Gauhati High Court

Anupam Chowdhury

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 26-03-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2009) 5 GLR 781 : (2009) 3 GLT 60 : (2009) 5 SLR 332

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hrishikesh Roy, J.—Heard Mr. Somik Deb, learned Counsel appearing for the petitioner. Also heard Mr. P. Roy Barman, learned Counsel representing the respondent No. 5. Mr. P. Datta appears for the respondent No. 2, the Secretary, Tripura Public Service Commission (T.P.S.C) and Mr. D.C Nath, learned Government Advocate represents the respondents 1, 3 and 4.

2. Though this petition, the selection of the respondent No. 5 for the post of lecturer in Pharmacy (Pharmaceutics) is put to challenge by the petitioner. The selection has been made by the T.P.S.C, in pursuant to the advertisement issued on 1.2.2005 (Annexure-B). The qualification prescribed for the post in question was "M. Pharma (Pharmaceutics)", failing which "B. Pharma" with one year teaching experience in "Pharmaceutics, failing which "B. Pharma" with 3 years teaching experience in "Pharmaceutics". It was also notified in paragraph 5 as instructions to the candidates in the advertisement that experience gained in full time employment after acquiring minimum academic qualification, would only be counted as experience, as the required qualification to offer a valid candidature.

The last date for receipt of application was prescribed in the advertisement as 15.3.2005.

3. Insofar as respondent No. 5 is concerned, on the date of issue of the advertisement on 1.2.2005, he did not have the "B. Pharma" degree as he

obtained the "B. Pharma" qualification only on 28.2.2005 - after the advertisement was published on 1.2.2005.

4. Before that in the year 1993, the respondent No. 5 obtained diploma in the Pharmacy and was working as a pharmacist in the Regional Institute of Pharmaceutical Science and Technology (RIPSAT) w.e.f. 1997 to September 2008. While working as a pharmacist, the respondent No. 5 was engaged in the laboratory of RIPSAT and was also engaged for invigilation duties in the year 1998-1999 by the Principal of RIPSAT. But the respondent No. 5 was never appointed as a teacher and had no teaching experience either on full time or part time basis.

5. In pursuance to the advertisement dated 1.2.2005 issued by the TPSC inviting applications for the Post of Lecturer in Pharmacy, the respondent No. 5 offered his candidature along with several other candidates. But the TPSC after scrutinizing the qualifications found that, the respondent No. 5 has got no teaching experience and was therefore not eligible for recruitment to the post in question as per the Recruitment Rules. It may be appropriate now to take note of the qualification prescribed in Recruitment Rules for the post of Lecturer.

Under "clause-7" of the Schedule to the Recruitment Rules, the qualification for the post of lecturer Is prescribed as follows:

7. Educational and other: M. Pharm (Pharm.) Chemistry failing qualifications required for which M. Pharma with two years teaching direct recruits, experience in Pharm. Chemistry falling which B. Pharm. with three years teaching experience in Pharma. Chemistry.

6. As some other candidates were also considered by the T.P.S.C., to be not eligible for being considered (or the post of lecturer, WP(C) 414/2005 was filed by Partha Sarathi Datta and WP(C) 277/2006 was filed by Rupak Majumder, alleging that they have been wrongfully considered by the T.P.S.C., to be ineligible for the post of lecturer. The disability of the two writ petitioners was found on the ground that these two candidates had teaching experience, only as part time lecturers, and did not have teaching experience gained through full time employment, after acquiring the minimum academic qualification.

The learned Single Judge of this Court by judgment delivered on 9.1.2008, allowed the 2 writ petitions and ordered fresh selection, with liberty to the T.P.S.C., to prescribe the actual meaning of the word "experience" mentioned as qualification of candidates.

7. The judgment dated 9.1.2008 of the learned Single Judge was put to challenge by the T.P.S.C., which filed two Writ Appeals being WA Nos. 9/08 and 10/08 respectively. A Division Bench of this Court, by the judgment and order dated 4.6.2008 while disposing off the T.P.S.C.'s., appeals, took the view that T.P.S.C., cannot prescribe the requirement of experience, by confining experience gathered, only through full time employment by ignoring experience gathered,

through part time employment and accordingly held that the requirement of experience gained only through full time employment, prescribed by the T.P.S.C., was not justified. Accordingly the learned Division Bench directed the Commission to proceed with the recruitment process by issuing call letters to the two writ petitioners Partha Sarathi Datta, Rupak Majumder and also to 3 others, including the present respondent No. 5, Bikash Debbarma, whose name incidentally appeared in the request communication of the Government dated 23.9.2005 made to the Secretary of the T.P.S.C., where the 5 persons named therein were certified to be working as part time Lecturer/Pharmacist at RIPSAT.

8. By the said communication dated 23.9.2005, the Government indicated that the named 5 candidates are working as part time lecturer/pharmacist at RIPSAT, and they may also be called for the interview. But there was no indication as to who amongst the five were working as Pharmacist or as Lecturers.

9. On the basis of the direction given by the Division Bench on 4.6.2008, disposing of the two writ appeals, a fresh selection was held and by communication dated 17.9.2008 the respondent No. 5 was recommended by T.P.S.C, for appointment to the post of lecturer. Eventually appointment letter dated 29.10.2008 was issued and the respondent No. 5 joined in the said post on the same date, i.e., on 29.10.2008.

10. Assailing the appointment of the respondent No. 5, Mr. Somik Deb, learned Counsel appearing for the petitioner argues that the respondent No. 5 was never engaged as a part time lecturer and was working only as a pharmacist in RIPSAT. It is also pointed out that the respondent No. 5 obtained his "B. Pharma" degree on 28.2.2005, after the advertisement dated 1.2.2005 was issued prescribing "B. Pharma" as the minimum educational qualification. The learned Counsel accordingly contends that as per the advertisement, only such teaching experience gained after acquiring the academic qualification, can be taken into account and since the respondent. No. 5 did not have any teaching experience, be it part time or full time, the said respondent could not have been considered eligible for the post in question.

11. It is also contended on behalf of the petitioner that the issue before the Division Bench in the Writ Appeal Nos. 9/08 and 10/08 was whether the experience gained through part time employment after "B. Pharma" qualification, should be construed to fulfill the requirement of qualification prescribed in the Recruitment Rules and the advertisement and neither in the writ proceedings nor in the writ appellate proceedings, the courts had any occasion to specifically examine the eligibility of respondent No. 5, to offer a valid candidature, for the post of lecturer advertised by the T.P.S.C.

Accordingly Mr. Deb contends that while the T.P.S.C, on the basis of the judgment dated 9.1.2008 in the Writ Appeals may be bound to consider the candidature of the respondent No. 5 along with 4 other candidates named in the communication dated 28.3.2005, the court order did not circumscribe the selecting Authority's

right to examine as to whether, respondent No. 5 fulfills the qualification, before recommending him for being appointed as lecturer.

12. Representing the respondent No. 5 Mr. P. Roy Barman, learned Counsel argues that the lone post of lecturer advertised by T.P.S.C, was meant exclusively for S.T. category candidates and the writ petitioner being a general category candidate, does not have any locus to challenge the selection of respondent No. 5 and also the appointment offered to him. It is also contended that the judgment of the Division Bench rendered on 4.6.2008, directing the T.P.S.C., to call 5 more candidates including respondent No. 5 for the selection, has attained finality as none including the writ petitioner has challenged the said decision and accordingly the issue as to whether respondent No. 5 possess valid qualification is not an issue, which can again be re-agitated by the writ petitioner through the instant proceeding.

13. Mr. P. Roy Barman refers to the State's counter affidavit and contends that respondent No. 5 was considered by the State authorities to be in possession of the requisite teaching experience, by virtue of the duties rendered by him in the laboratory of the RIPSAT and the invigilation duties undertaken by him, prior to his acquisition of the "B. Pharma degree" and since the said view of the State authorities have been ratified by the judgment of the Division Bench rendered on 4.6.2008, the issue of qualification of respondent No. 5, cannot be reopened now in the present proceeding.

14. Mr. P. Datta, learned Counsel appearing for the T.P.S.C., (respondent No. 2) on the other hand submits that although initially the T.P.S.C., considered the candidature of respondent No. 5 and 4 other persons to be invalid as is indicated in T.P.S.C's., communication dated 3.9.2005, in view of the subsequent request communication of the Government dated 23.9.2005, which has also been considered by the Division Bench of this Court, the T.P.S.C., was duty bound to change its views and consider the respondent No. 5 to be eligible for being considered for selection and accordingly it is submitted that no illegality is committed by the T.P.S.C., for recommending the respondent No. 5 for appointment, to the post of lecturer.

15. Since the arguments of the counsels hinges on the judgment dated 4.6.2008 in the T.P.S.C's Writ Appeals the said judgment deserves careful scrutiny. On reading the judgment it becomes clear that the court's scrutiny in the cases was confined to the issue of experience gathered through part time engagement and whether such experience could make a candidate eligible, in terms of the Recruitment Rules in force. In that context the Division Bench examined the eligibility conditions incorporated in Clause 7 of the Schedule to the Rules (extracted hereinabove) and found that the three years teaching experience prescribed under the Recruitment Rules, did not make a distinction between experience gathered through part time or full time employment. Accordingly the appellate court found that the T.P.S.C., had no authority to prescribe the requirement of experience to be gained only through full time employment and

on that basis, considered the communication dated 23.9.2005 of the Government which indicated the named persons to be in part time employment, to be enough justification for directing the T.P.S.C., to consider the candidature of respondent Nos. 5 and the 4 others.

16. If we carefully read the request communication dated 23.9.2005 from the Government to the T.P.S.C, it is seen that the Government had not specifically indicated that the respondent No. 5 is in possession of the 3 years teaching experience. Thus there was no specific decision either by the employer or even by the court that the respondent No. 5, by virtue of being posted as a pharmacist at RIPSAT and the experience gathered by him in the laboratory and by carrying out invigoration duties in the Institute, should be considered to satisfy the prescribed qualification of 3 years teaching experience in pharmaceuticals. Therefore, this issue according to me, remained open to subsequent scrutiny by this Court or even by the T.P.S.C.

17. Having held that the issue of respondent No. 5 possessing the due qualification is an open issue, notwithstanding the judgment of the Division Bench and the communication dated 23.9.2005 of the Government, it may now be necessary to examine as to whether respondent No. 5 possesses the requisite teaching experience, prescribed by the Recruitment Rules and the advertisement, to be considered qualified for appointment to the post of lecturer. For examination of this issue the following decisions may usefully be referred to:

(i) Sheshrao Jangluji Bagde Vs. Bhaiyya and others, In this case the Supreme Court held as follows:

...Normally when we talk of an experience, unless the context otherwise demands, it should be taken as experience after acquiring the minimum qualifications required and, therefore, necessarily will have to be posterior to the acquisition of the qualification.

(ii) In N. Suresh Nathan and another Vs. Union of India and others, , the Supreme court held that in case of diploma holder Junior Engineers who obtained the degree during service, the period of 3 years service in the Grade for eligibility for promotion as degree holders commenced from the date of obtaining the degree and the earlier period of service as diploma holders was not counted for this purpose.

(iii) In Indian Airlines Ltd. v. S. Gopalkrishnan (2001) 2 SCC 362, the Supreme Court held that experience would be computed only after the date of acquiring the necessary educational qualification and the experience gained prior to acquiring of the educational qualification cannot be counted for calculating the experience of a candidate.

(iv) In Shailendra Dania and Others Vs. S.P. Dubey and Others, the Supreme Court recorded as follows:

As a necessary corollary, we are of the view that the diploma-holder Junior

Engineers who have obtained a degree in Engineering during the tenure of service, would be required to complete three years' service on the post after having obtained a degree to become eligible for promotion to the higher post if they claim the promotion in the channel of degree-holder Junior Engineer, there being a quota fixed for graduate Junior Engineers and diploma-holder Junior Engineers for promotion to the post of Assistant Engineers.

18. Having regard to the ratio in above decisions of the Supreme Court, it is clear that the experience gathered by the respondent No. 5, (even if we assume them to be teaching experience), prior to the securing of the "B. Pharma" qualification on 28.2.2005, cannot be reckoned to make him eligible for being considered for the post of lecturer, as per the Recruitment Rules and also the qualification condition incorporated in the advertisement. Therefore since he did not have any teaching experience posterior to 28.2.2005, the respondent No. 5 did not obviously have the requisite teaching experience of 3 years, to be eligible for Appointment.

19. The next issue is whether on a writ petition filed by a general category person, who could not have offered his candidature for the lone post of lecturer reserved for S.T. category candidates, this Court should adjudicate on the validity of the respondent No. 5's candidature. It must also be kept in mind that the writ petitioner did not also apply to any of the general category post, on the understanding that since he did not have the requisite teaching experience, he cannot make such application.

20. In a case where the writ petitioner himself is not a candidate in a recruitment process and is also not eligible to participate in the recruitment process for a post open only for S.T. category candidates, entertainment of a challenge by a general category person may not normally be justified. But in the instant case we are confronted with a situation, where the respondent No. 5 did not even have the basic educational qualification of "B. Pharma" on the date when the advertisement was issued. He subsequently obtained his "B. Pharma" degree on 28.2.2005, just before the last date prescribed for receipt of application, i.e., on 15.3.2005.

20.1 The teaching experience of the respondent No. 5, if any, has to be counted only w.e.f. 28.2.2005 when he obtained the "B. Pharma" degree and the experience, prior to his "B. Pharma" has to be ignored, vis-a-vis the 3 years teaching experience prescribed, by the Recruitment Rules.

20.2. Significantly it is the higher educational qualification of "M. Pharma (Pharmaceutics)" which is prescribed for appointment as lecturer but as an alternative qualification "B. Pharma" with 3 years teaching experience in "Pharmaceutics" is prescribed as an alternate criteria. In the context of the advertisement and the Recruitment Rules, if a person with only "B. Pharma" degree is to be considered for appointment rather than an "M. Pharma", the requirement of having 3 years teaching experience in "Pharmaceutics", in my

view is absolutely essential and since the respondent No. 5 does not have the requisite teaching experience in "Pharmaceutics", it is apparent that he should not have been considered as eligible, for being appointed to the post lecturer. Therefore respondent No. 5 secured an undeserved appointment.

21. Now the question is whether, at the instance of a person who himself is not qualified for offering his candidature, the interference with selection of respondent No. 5 and his appointment should be made by the court.

22. To persuade this Court to make an interference in such a situation at the instance of such a writ petitioner, Mr. Somik Deb, learned Counsel has referred to the following decisions of the Supreme Court on the issue of locus standi:

(i) In *Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar and Others*, where on the issue of Locus standi the Supreme Court held that the court is always competent to take in to account the broader aspect of the matter although the proceeding may have been initiated at the instance of a person having a private interest. If the inquiry deserves greater public interest, the court can always examine the validity of an appointment.

(ii) The decision of the Supreme Court in *Sai Chalchitra v. Commissioner, Meerut Mandal* (2005)3 SCC 683, have also been cited to contend that the appellant in the case before the Supreme Court being in the same trade as respondent No. 3 is allowed to seek cancellation of the licence granted to respondent No. 3, as licence was issued in violation of the Acts, and the rules.

23. It is already concluded that respondent No. 5 was not qualified and his selection and appointment was undeserved. I also find that there was no affirmation of the candidature of respondent No. 5 by this Court, as the particulars of respondent No. 5 was not at all available before the court, during the proceedings of WP(C) 414/05, WP(C) 277/06, Writ Appeal No. 09/08 and Writ Appeal No. 10/08 and the court had no occasion to examine the validity of his candidature. Therefore, it is a case where a public post has been usurped by an undeserving person and a deserving and qualified person have been deprived of the said post. This would certainly violate the rights of deserving candidates guaranteed under Articles 14 and 16 of the Constitution.

If the court does not interfere in such a matter, by rejecting the writ petition on the ground of absence of locus standi of the writ petitioner, a glaring wrong will gain a seal of approval from the court and the respondent No. 5, without being qualified, would be permitted to enjoy employment at the cost of others, who being in the same position as respondent No. 5 (i.e., lacking the requisite 3 years teaching experience in pharmaceutics), in bona fide belief and understanding, did not offer their candidature. This would be contrary to public interest and cause of justice will suffer if the court does not intervene in the matter.

The decision of the Supreme Court in *Pramod Kumar Vs. U.P. Secondary Education Services Commission and Others*, can also be usefully referred to,

where the Supreme Court held that any appointment made in violation of the qualifications for holding the position would be a nullity.

24. Having regard to the above discussion, I am of the considered opinion that this writ petition should not be thrown out on the ground of absence of locus standi of the writ petitioner. The allegations brought before the court by the writ petitioner have been found true and in my view, are serious enough to deserves consideration on merit by the writ court.

25. Accordingly for the reasoning recorded, I allow this writ petition and set aside the selection and the appointment of respondent No. 5 to the post of Lecturer in Pharmacy (Pharmaceutics) and interfere with the appointment offered to him on 29.10.2008. It is ordered accordingly.