
(2002) 03 MP CK 0004

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 3004 and 3459 of 2000

Asma Nasir

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 26-03-2002

Acts Referred:

Citation : (2002) 4 MPLJ 55

Hon'ble Judges : Uma Nath Singh, J; Dipak Misra, J

Bench : Division Bench

Advocate : Ajay Mishra, P. Dharmadhikari, N.S. Ruprah and Sanjay Yadav, for the Appellant; Sanjay Yadav, Rakesh Shrotri, Rakesh Shrotri and K.K. Trivedi, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

In both these writ petitions as a singular order of M.P. Administrative Tribunal, Bhopal (herein after referred to as the Tribunal) passed in O.A. No. 71/94 on 3-5-2000 has been called in question by the State of M.P. as well as by the private party and the grounds are raised being common, they were heard analogously and are disposed of by this common order. As the pleadings are complete in all aspects and certain documents have been brought on record by rejoinder affidavit in W.P. 3004/2000 the facts in the said case need adumbration.

The facts as have been depicted in the writ petitions and perceptible from the order passed by the Tribunal are that the petitioner as well as the respondent No. 3 (who was the applicant before the Tribunal) were directly recruited to the post of Assistant Statistical Officer vide order dated 17-5-1980. The name of the petitioner was placed at serial No. 19. The respondent No. 3 was posted in the office of Distt. Education Office, Raisen whereas the petitioner was posted in the Distt. Education Office, Hoshangabad. Both of them were given ad hoc promotion by the Education Department. Later on the said promotion was regularized on

the basis of the recommendations given by the Commission on 15-6-1989. It is not disputed that both are governed by the provisions of M.P. Education Service (School Branch) Recruitment and Promotion Rules 1982 (for brevity "the Rules").

It is set forth in the writ petitions that the post of Deputy Director Public Instructions is a post which is filled up by direct recruitment as well as by promotion, it is conceded by the learned counsel for all parties that the present case is concerned with direct recruitment and not with promotion. We may profitably produce the eligibility criteria for the said recruitment:

Post Graduate Degree (Minimum II Division) Arts, Commerce, Science or equivalent qualification, 10 years experience in administration and teaching at the higher secondary School level of which at least 3 years must be on the administrative side.

As an advertisement was issued indicating the eligibility criteria, the petitioner as well as the respondent No. 3 applied. Initially the M.P.P.S.C. refused to accept the application of the petitioner on the ground that she did not have requisite administrative experience, she produced the certificate contained in R-2/c which was accepted by the Commission. It is apposite to mention here that the respondent No. 3 before the Tribunal had also given certificates but the same did not find favour with the commission but eventually she produced necessary certificates which were accepted by the Commissioner. Thereafter the Commission found her more suitable than the respondent No. 3 herein. She was placed at serial No. 5 in the select list and the contesting respondent was placed at serial No. 1 of the waiting list and on the basis of recommendations of the commission the State Government issued the letter of appointment for the post of Deputy Director Public Instructions. Being aggrieved, the Respondent No. 3 herein preferred O.A. No. 71/94 before the Tribunal.

The applicant before the Tribunal contended that the writ petitioner who was the respondent No. 3 therein lacked experience and she was not eligible for the post in question in view of the certificate produced by her. The Tribunal referred to the certificate in question and came to hold that the petitioner did never have any administrative experience. Apart from that the Tribunal also opined that the petitioner did not have the teaching experience. In this factual back-drop the Tribunal recorded a finding that the certificate is bogus and false. The Tribunal quashed the appointment of the petitioner and directed the applicant before the Tribunal to be appointed as Dy. Director. Being dissatisfied by the said order the petitioner has visited this Court.

Mr. Ajay Mishra, Mr. N.S. Ruprah, Mr. Piyush Dharmadhikari, learned counsel who have appeared for the petitioner have argued at length. They have submitted that the singular question that arises for consideration whether the petitioner was eligible to appear in the examination or not and whether the certificate issued by the State Government Annexure R-2/C, could have been set at naught by the Tribunal. It is set forth by them that there is ample material on record to

prove she had worked in the administrative post, and the Tribunal could not have in a fanciful manner returned a finding that though she was posted in the post, she was only performing clerical work. It is also contended by them that the experience was scrutinized by an expert body and it was found to be satisfactory by it and hence, the Tribunal should not have substituted its view as if it was sitting in appeal. As far as the experience part is concerned we may hasten to add that Mr. R.S. Jha, learned Deputy Advocate General for the State who has also assailed the order has impressed upon this Court that the jurisdiction of the Commission as an expert body could not have been marginalized by the Tribunal in this manner and as the same has been done it deserves to be axed.

The learned counsel for the petitioner as well as the learned Deputy Advocate General has placed reliance on the decisions rendered in the cases of the the Chancellor and Anr. v. Dr. Bijayananda Kar and others, 1994 SLR 17 and Secy. (Health) Deptt. of Health and F.W. and Another Vs. Dr. Anita Puri and Others,

Resisting the aforesaid submissions it is putforth by Mr. K.K. Trivedi the learned counsel for respondent No. 3 herein that the Tribunal has been constituted under a special statute and it has the jurisdiction to scan and scrutinise the documents and when the Tribunal has arrived at the conclusion after so doing and opined that certificate produced by the petitioner was bogus and false, this Court should be slow to interfere. It is also canvassed by them that the Tribunal has rightly come to the conclusion that the petitioner was doing clerical duty and same cannot be equated with administrative experience. The certificate produced by the petitioner was an adroit attempt to mislead the Tribunal to show that she had the necessary eligibility criteria.

To appreciate the rival submissions raised at the Bar we have carefully gone through the eligibility criteria which has been reproduced hereinabove. On a perusal of the same it rings as a bell that the eligibility criteria can be segregated into two compartments, first candidate must have Post Graduate degree in Arts, Commerce, Science (minimum II division) or equivalent qualification and secondly 10 years experience of administration and teaching at the Higher Secondary School level of which at least three years must be on the administrative side. As far as the first limb of eligibility criteria is concerned there is no quarrel in regard to the same. Both possess of the said qualification. As far as the second facet is concerned, the same has to be classified into two aspects; the first one is that a person must have the teaching experience and second one is that he must have administrative experience. As far as the administrative experience is concerned minimum years of experience has been provided i.e. 3 years. One may have more but less is impermissible. As far as teaching experience is concerned no minimum experience has been provided for. In view of the aforesaid Rule we have to scan whether the approach of the Tribunal is sound or not. The Tribunal after referring to the various stand of the parties referred to Annexure R-2/C, the certificate produced by the present Petitioner before the Tribunal and came to hold it was bogus. The said document reads as

under:

The said document has not been given credence to by the Tribunal and the Tribunal has commented to the effect that, the purpose of such posting was only for drawing the salary of the applicant. The Tribunal has referred to Annexure R/I which reads as under:

The tribunal has expressed the view that the respondent No. 3 was holding the post of Planning Officer but posted against the vacant post of Lecturer in English Language Training Institute, Bhopal. Thereafter the Tribunal has commented on work done by the petitioner and has expressed the view that she was performing clerical work. Being of this view the Tribunal expressed the opinion that Annexure R-2/C is completely a bogus certificate.

The aforesaid analysis of the Tribunal is absolutely erroneous. We fail to fathom how the Tribunal could come to such a finding on the certificate granted by the State Government when there are documents on record to show that the present petitioner was working in various administrative posts. The learned counsel for the petitioner as well as Mr. R.S. Jha who has argued for the State has brought to our notice the order dated 10-2-88 whereby the petitioner was given the post of Assistant Director (Planning). She was also allotted the work of Operation of Black Board, though the nature of work is not disclosed. She was given such a charge while she was posted as Assistant Director (Planning). That apart another document which has been brought on record is dated 16-4-1994. It is not disputed at the Bar that the said document was produced before the Tribunal. That apart, documents have been brought on record to show that the petitioner was posted as a Lecturer in English Language Training Institute, Bhopal. Mr. Divedi learned counsel for the respondent No. 3 submitted that the documents have only been brought on record to satisfy the eligibility criteria but the petitioner as an actual fact, did not have the requisite experience. It needs no special emphasis to state that the petitioner had worked as a teacher for 10 months in view of the ample documents brought on record. We are of the considered view that the Tribunal has jumped to the conclusion that the petitioner did not have the eligibility to compete for the post. The Tribunal, in our considered opinion, has grossly erred by commenting on the certificate as bogus and false. The State Government, the employer, had given the certificate with fullest responsibility. It is apposite to mention here that the petitioner was initially selected as a Lecturer and she was given the additional responsibility of the post of Assistant Director (Planning). We may hasten to add that the Rule does not prescribe for minimum period of teaching experience. In that case it cannot be said that the petitioner did not have the requisite teaching experience. In the case of Dr. Bijayananda (supra) their Lordships ruled thus:

"This Court has repeatedly held that the decisions of the academic authorities should not ordinarily, be interfered with by the Courts. Whether a candidate fulfils the requisite qualifications or not is a matter which should be entirely left to be decided by the academic bodies and the concerned selection committees

which invariably consists of experts on the subjects relevant to the selection. In the present case Dr. Kar in his representation before the Chancellor specifically raised the issue that Dr. Mohapatra did not possess the specialization in the "Philosophical Analysis of values" as one of the qualifications. The representation was rejected by the Chancellor. We have no doubt that the Chancellor must have looked into the question of eligibility of Dr. Mohapatra and got the same examined from the experts before rejecting the representation of Dr. Kar."

10-11. We are conscious that the said decision was delivered in a different context, but we have referred to the same only to highlight that when the M.P.P.S.C. was satisfied with regard to the experience of the petitioner, the Tribunal could not have overturned the same. In the case of Dr. Anita Puri and others (supra), the Apex Court in paragraph 9 held as under:

"It is too well settled that when a selection is made by an expert body like the Public Service Commission which is also advised by experts having technical experience and high academic qualification in the field for which the selection is to be made, the courts should be slow to interfere with the opinion expressed by experts unless allegations of mala fide are made and established. It would be prudent and safe for the courts to leave the decisions on such matters to the experts who are more familiar with the problems they face than the courts. If the expert body considers suitability of a candidate for a specified post after giving due consideration to all the relevant factors, then the court should not ordinarily interfere with such selection and evaluation."

It is also not disputed at the Bar that the petitioner was drawing the salary for the post of APO but was not getting the salary of the Planning Officer. It is quite clear that she was posted as against the post of Assistant Director (Planning). She might not be drawing the salary for that post or she might not have been substantially holding the said post but the experience gathered in that post cannot be ignored for the purpose of determining the eligibility criteria. That apart the experience of the Planning Officer which is also administrative in nature meets the requisite criteria as per the rules. It is not disputed that the respondent No. 3 was also considered while holding the post of Planning Officer. The allegation made by the respondent No. 3 before the Tribunal that the petitioner was not working as Planning Officer but was performing clerical job appears to be a figment of fertile imagination and the Tribunal has magnified the said imagination and concretised it as a whole without any proper foundation and we do not approve the same.

In view of the aforesaid premises stamp of approval cannot be given to the order passed by the Tribunal. In our considered view it deserves to be lanced and accordingly we do dislodge the same.

Consequently both the writ petitions are allowed. There shall be no order as to costs.

Writ petitions allowed.