

(2008) 09 GAU CK 0024

In the Gauhati High Court

Case No : Writ Petition (C) No. 63 (AP) of 2008

Bapok Borang

APPELLANT

Vs

Arunachal Pradesh Public Service Commission and Others

RESPONDENT

Date of Decision : 11-09-2008

Acts Referred:

Citation : (2008) GLT 721 Supp

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : P.K. Tiwari, T. Pertin, A.K. Singh, S. Tapin, N. Achung, P. Bui, T. Taba and K. Tayeng, for the Appellant; N. Tagia, for the Respondent

Final Decision : Allowed

Judgement

P.K. Musahary, J.—Heard Mr. P.K. Tiwari, learned Counsel appearing for the Petitioner. Also heard Mr. N. Tagia, learned standing counsel for Respondent-Commission.

2. The Petitioner is a graduate in Civil Engineering and he appeared in the Written Test/Examination conducted by the Arunachal Pradesh Public Service Commission ("Commission" in short) for recruitment of the post of U.D.C. held on 14th & 15th July, 2007. The Petitioner did not appear in the First Paper of General English/General Knowledge but on 15th July, 2007, he appeared in the Mathematics Paper. On his appearance in the said examination, the Commission brought an allegation of impersonation against the Petitioner and a decision was taken by the Commission to proceed against him. Accordingly, a show-cause notice was issued vide PSC-R/23/2008 dated 03.08.2007 (Annexure-P/1 to the writ petition) and the Petitioner replied to the said show-cause notice by his letter 23.08.2007(Annexure-P/2 to the writ petition) denying the allegation of impersonation. The Commission in its meeting held on 06.09.2007 considered the show-cause reply submitted by the Petitioner and gave a finding that he was found solving the Mathematics problems on the back page of his call-letter with clear intention to help someone. It was further held that the show-cause notice

issued to the Petitioner was not replied as per the report submitted by the Officiating Principal/Centre Superintendent.

3. Thereafter, the Commission issued another advertisement inviting applications from eligible candidates for the Combined Recruitment Examination of Assistant Engineer (Civil) under the Departments of Hydro Power Development, Rural Works, Public Works, Public Health Engineering and Water Resources. In response to the said advertisement issued in the last part of 2007, the Petitioner submitted his application form to the Commission and the said Commission issued a call-letter dated 25.01.2008 to the Petitioner for written examination alongwith the programme of examination. The Petitioner was allotted Roll No. 00091 for the examination scheduled to be held on 1st & 2nd March, 2008 (Annexure-P/3 to the writ petition). After issuing the aforesaid call-letter, the Commission issued a corrigendum dated 12.02.2008 under Cover of Letter No. PSC-R/21/2007 cancelling the aforesaid call-letter and debarring him for a period of 3 years from appearing in the examinations of other State Public Service Commissions & Union Public Service Commission on the ground of impersonation committed by him in the earlier examination conducted by the Commission for recruitment to the post of UDC. The said corrigendum was issued on the basis of findings and decision taken by the Commission in its meeting held on 06.09.2007 aforementioned in regard to allegation of impersonation levelled against the Petitioner while he was appearing in the examination for recruitment to the post of UDC. The Petitioner herein has challenged this corrigendum dated 12.02.2008. On receipt of the impugned corrigendum, the Petitioner by his letter dated 14.02.2008(Annexure-P/5 to the writ petition) requested the Secretary, APPSC, to reconsider and allow him to appear in the Combined Recruitment Examination of Assistant Engineer (Civil) to be conducted by the Commission on 1st & 2nd March, 2008, followed by another representation dated 19.02.2008. The Petitioner also requested Secretary to the Commission to issue a copy of the decision taken by it debarring him from appearing in the examination on the ground of alleged impersonation but the same was not provided to him.

4. Mr. P.K. Tiwari, learned Counsel appearing for the Petitioner submits that the Petitioner was admittedly found physically present in the examination hall but he was allegedly found writing something on the back page of the interview call letter. This being the position, the Commission cannot proceed against the Petitioner on the charge of impersonation. The next submission of Mr. P.K. Tiwari, learned Counsel for the Petitioner is that the impugned corrigendum dated 12.02.2008 cancelling the call-letter for appearing in the aforesaid Combined Recruitment Examination of Assistant Engineer (Civil) and also debarring him from examination for a period of 3 years in other State Public Service Commissions & Union Public Service Commission is arbitrary, illegal and unreasonable inasmuch as the Petitioner was not given the opportunity to show-cause and the same being contrary to the basic principles of natural justice, is liable to be set-aside. The learned Counsel for the Petitioner has relied upon the following case laws in support of his aforesaid submissions: (1) S.L. Kapoor Vs.

Jagmohan and Others, (2) Board of Technical Education, U.P. and others Vs. Dhanwantri Kumar and others, (3) An Advocate Vs. Bar Council of India and Another, (4) Vibhu Kapoor Vs. Council of Indian School Certificate Examination and Another, and, (5) Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others,

5. Countering the submissions made by the learned Counsel for the Petitioner, Mr. N. Tagia, learned standing counsel for the Commission, submits that the action against the Petitioner was initiated on the basis of report of the Officiating Principal/Centre Superintendent, vide his letter No. F-98/KVI-2/2007-08 dated 15.07.2007 reporting therein that the Petitioner was caught red-handed while writing solved questions of Mathematics Paper in his own call-letter and while seizing his call-letter, he dismantled/torn the answer scripts threatening the invigilator. On the basis of such report, the Commission issued a corrigendum dated 25.02.2008(Annexure-E to the writ petition) clarifying that the Petitioner was penalized not for impersonation but for adopting unfair means, misbehaviour and doubtful intention. The learned standing counsel further submits that the Commission has the power to impose such penalty/punishment on the person like the Petitioner who has been adopting unfair means, showing misconduct and doubtful intention in the examination hall. In support of his submission, the learned standing counsel has cited the case of Karnataka Public Service Commission and others Vs. B.M. Vijaya Shankar and others, He has particularly relied upon the observations made in paragraph-5 of the said case which is quoted below:

5. Competitive examinations are required to be conducted by the Commission for public service in strict secrecy to get the best brain. Public interest requires no compromise on it. Any violation of it should be visited strictly. Absence of any expectation of hearing in matters which do not effect any interest and call for immediate action, such as the present one, where it would have delayed declaration of list of other candidate which would have been more unfair and unjust are rare but well recognized exceptions to the rule of natural justice. It cannot be equated with where a student is found copying in the examination or an inference arises against him for copying due to similarity in answers of number of other candidates or he is charged with misconduct or misbehaviour. Direction not to write roll number was clear and explicit. It was printed on the first page of every answer book. Once it was violated the issue of bonafide and honest mistake did not arise. Its consequences, even, if not provided did not make any difference in law. The action could not be characterized as arbitrary. It was not denial of equal of equal opportunity. The reverse may be true. The Tribunal appears to have been swayed by principles applied by this Court where an examinee is found copying or using unfair means in the examination. But in doing so the Tribunal ignored a vital distinction that there may be cases where the right of hearing may be excluded by the very nature of the power or absence of any expectation that the hearing shall be afforded. Rule of hearing has been construed strictly in academic disciplines. It should be construed more strictly in

such cases where an examinee is competing for Civil Service post. The very nature of the competition requires that it should be fair, above board and must infuse confidence. If this is ignored then, as stated earlier, it is not only against public interest but it also erodes the social sense of equality. The Tribunal is issuing directions approached the matter technically and has attempted to make out much where it would have been better part of descretion to refuse to interfere. The Tribunal completely misdirected itself in this regard. In our opinion, its order cannot be maintained.

According to the learned standing counsel for the Commission, the Karnataka Public Service Commission took decision not to evaluate the answer-scripts of the Respondent candidate simply because he wrote his Roll No. on the space not provided for inserting the same on the answer-script and the said decision was taken without affording any opportunity to explain by the Respondent candidate. The Petitioner in the present case too is found to have committed serious unfair means, misbehaviour and doubtful intentions and as such, he is also not entitled to have the opportunity of being heard and the question of violation of principles of natural justice does not arise. This find supports in the Ruling rendered by the Apex Court in paragraph-4 of the said judgment in which it is stated that the natural justice is a concept which has succeeded in keeping the arbitrary action within the limits and preserving the rule of law but with all the religious rigidity with which it should be observed, since it is ultimately weighed in balance of fairness, the Courts have been circumspect in extending to its situations where it would cause more justice than injustice. In one sense, it can be said that opportunity of hearing to the candidate in such cases is not at all a must and it is also not necessary in all cases.

6. Having heard the learned Counsel appearing for the parties and also on perusal of the materials made available in the pleadings of the parties, I find that the Petitioner appeared in a particular examination for recruitment to the post of UDC conducted by the Commission and on that particular day, he was found present and allegedly found to have been writing on the back page of the interview call-letter. The Commission have brought the allegation of impersonation and issued show-cause notice on him which was duly replied to by him. But no communication was made or information was furnished to the Petitioner as to what decision was taken by the Commission on the reply to the show-cause notice submitted by him. The Commission, admittedly issued a call-letter to the Petitioner for allowing him to appear in the subsequent interview conducted by it for recruitment to the post of Assistant Engineer (Civil) and thereafter, the said interview call-letter was cancelled by issuing the impugned corrigendum dated 12.02.2008 and on receipt of the said corrigendum only, the Petitioner came to know about the punishment imposed barring him for a period of 3 years from appearing in examinations conducted by the other State Public Service Commissions and Union Public Service Commission.

From the record, it is also evident that the punishment of impersonation has

been replaced by the charge of adopting unfair means and misbehaviour without issuing any show-cause notice upon the Petitioner on these allegations and without cancelling the punishment order.

7. At this stage, a submission has been made by Mr. N. Tagia, learned standing counsel, that the Commission has no objection to granting the relief to the Petitioner as prayed for by him for setting aside the impugned corrigendum No. PSC-R/21/2007 dated 12.02.2008 without interfering with the other corrigendum dated 25.02.2008 which is not under challenge in this writ proceeding.

8. On reading the prayer made in the writ petition, I find that the Petitioner has confined his challenge only to the impugned corrigendum dated 12.02.2008 and no relief has been claimed against the 2nd corrigendum dated 25.02.2008. There are no averments in the petition questioning the legality or validity of the corrigendum dated 25.02.2008. In my considered view, this Court, considering the fact that there is no pleading and prayer in the petition for setting aside the said corrigendum, would refrain itself from discussing the merit of the case in respect of the 2nd corrigendum dated 25.02.2008 and would confine strictly to the relief claimed in the petition. From the case record, it is found that this petition was filed on 27.02.2008 i.e. after 2 days of issuance of the 2nd corrigendum and no prayer has been made by the Petitioner for amendment of the petition extending his challenge to the 2nd corrigendum. Therefore, a presumption may be made that the Petitioner has no grievance against the said corrigendum dated 25.02.2008 and under such situation, it would not be proper on the part of this Court to travel beyond the pleadings and grant any relief not sought for in the writ petition.

9. Having found that the Petitioner has sought relief against the 1st Corrigendum dated 12.02.2008 only and the learned Counsel for the Respondent Commission has consented to granting the said relief, without discussing about and making any comments/observations on the 2nd Corrigendum dated 25.02.2008, I quash the impugned corrigendum dated 12.02.2008.

10. The impugned corrigendum dated 12.02.2008, therefore, stands quashed and the petition stands allowed to the extent as indicated above.