
(2019) 09 GAU CK 0075

In the Gauhati High Court

Case No : Writ Petition (C) No. 7188, 7360 Of 2018

Bhupen Nath

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 26-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 09 GAU CK 0075

Hon'ble Judges : N. Kotiswar Singh, J

Bench : Single Bench

Advocate : N. J. Gogoi, S Saikia, B. Deuri, M. K. Choudhury, P. Bhardwaj

Final Decision : Dismissed

Judgement

1. Heard Mr. S. Saikia, learned counsel, assisted by Mr. N. J. Gogoi, learned counsel for the petitioners in WP(C) No. 7360/2018 & WP(C) No. 7188/2018 and Mr. M.K. Choudhury, learned senior counsel assisted by Mr. P. Bhardwaj, learned counsel for respondent No. 5 in WP(C) No. 7360/2018 & WP(C) No. 7188/2018 and Mr. B. Deuri, learned Govt. Advocate for respondent Nos. 1 to 4.

2. These two petitions, WP(C) No. 7360/2018 and WP(C) No. 7188/2018 are tagged and heard together considering the common issues running through both these petitions and accordingly, disposed of by this common judgment.

Both the petitioners and the private respondent No. 5 in these two petitions were candidates for appointment to the post of Demonstrator of Vocal Music in Luit Konwar Rudra Baruah State College of Music.

3. WP(C) No. 7360/2018 has been filed challenging the Selection List dated 30.09.2018 for appointment to various posts, of which the petitioner is concerned with the post of Demonstrator of Vocal Music only for which the respondent No. 5 has been selected.

In WP(C) No. 7188/2018, also the same Select List dated 30.09.2018 has been

challenged as regards the post of Demonstrator of Vocal Music.

4. The common ground in both these two petitions is that the private respondent No. 5 does not possess the essential qualification for the said post.

5. The Directorate of Cultural Affairs, Govt. of Assam issued an advertisement for appointment to various posts on 30.03.2017, including the post of Demonstrator of Vocal Music for Luit Konwar Rudra Baruah State College of Music, the only Government College in the State.

As per the said Advertisement, the education and requisite qualifications for the post of Demonstrator of Vocal Music have been mentioned as below:

"(a) Must have passed H.S.S.L.C. Examination from recognized Board/Council.

(b) B. Music Degree from recognized University or its equivalent.

(c) Teaching experience of at least 3 (three) years in any recognized School or College.

(d) Traditional or professional artist with highly commendable professional achievement in the subject concerned and knowledge of indigenous

(e) Candidates should have good knowledge of Assamese."

6. Though the said post is reserved for OBC/MOBC there is no issue before this Court regarding reservation.

The only issue to be decided in these two petitions is as to whether the respondent No. 5, who has been selected by the Selection Committee possesses Bachelor Degree in Music from a recognized University or its equivalent or not as mentioned in the advertisement.

Since the respondent No. 5 has not questioned the qualifications of the petitioners, this Court has to decide only as regards the qualifications of the private respondent No. 5.

7. As far as the respondent No. 5 is concerned, she obtained Sangeet Visharad from Bhatkhande Sangit Vidyapith, Lucknow in the year 1994 securing first class.

Thereafter, she obtained the qualification of Gayan Nipun from the same Institute in the year 1998.

Though the Selection Committee had considered the respondent No. 5 to be eligible, by treating the qualification of Sangeet Visharad to be equivalent to Bachelor of Music Degree from a recognized University, the petitioner had asserted to the contrary.

It may be mentioned that there is no issue raised about the status of the Bhatkhande Sangit Vidyapith as a recognized Institute. The only issue to be decided is whether Sangit Visharad from Bhatkhande Sangit Vidyapith, Lucknow is equivalent to Bachelor in Music degree from a recognized University or not, as

considered by the Selection Committee.

8. The State respondents have justified the selection treating the said qualification to be equivalent to Bachelor degree in Music on the basis of certain letter issued by the Board of Secondary Education, Assam, dated 25.09.1991, which prescribes the minimum qualification required for teaching music at Secondary school level.

As per the said letter dated 25.09.1991 of the Board of Secondary Education, Assam, a person having passed HSLC examination with 'Visharad' from Bhatkhande, Prayag Vishwabharati or Gandharba Mahavidyalay is to be treated as having equivalent qualification as Bachelor of Music from Gauhati University for the purpose of teaching Music at the Secondary stage.

Thus, the State Government by relying on the aforesaid letter of the Board of Secondary Education, Assam has treated Visharad obtained by the respondent No. 5 from Bhatkhande Sangit Vidyapith, Lucknow to be equivalent to the Degree of Bachelor of Music in the present case, as the respondent No. 5 had passed HSLC examination.

9. As regards the aforesaid stand of the State Government in recognizing the education qualification of Visharad from Bhatkhande Sangit Vidyapith to be equivalent to the Degree of Bachelor of Music, it has been submitted on behalf of the petitioners that the Board of Secondary Education, Assam had also informed the State Government subsequently vide letter dated 20.12.2011 that as regards qualification of Degree in Music for appointment in High Schools of the State, the Board of Secondary Education had taken a resolution on 05.07.2011 and fixed the equivalence of Degree in Music as follows:

"(1) B. Music from Gauhati University or Degree of Music (BA in Music/ B. Music) from any recognized university.

(2) Degree (BA/B.SC/B.Com) from any recognized university with Diploma in Music equivalent to B. Music from any Board/Institution recognized by the Government of Assam.

However, it would be desirable that, first preference will be given to candidates with Degrees in Music from Gauhati University as stated above Knowledge of local forms of Music is essential qualification in both cases."

10. Accordingly, it has been submitted on behalf of the petitioners that even if the said qualification of Visharad from Bhatkhande Vidyapeeth is recognized to be equivalent to be a Degree in Music, yet persons who had obtained B. Music Degree from Gauhati University are to be given preference at the time of appointment.

It has been submitted that in the present case, the petitioners have obtained Bachelor of Music Degree from the Gauhati University and as such, by virtue of the subsequent decision of the Board of Secondary Education, Assam, they are to

be given preference over the respondent No. 5.

11. The Selection Committee, however, by relying on the letter dated 25.09.1991 of the Board of Secondary Education, Assam addressed to the Principal of the State College of Music, Assam, treated the respondent No. 5 to be having equivalent qualification of B. Music from a recognized University and accordingly, by considering the respondent No. 5 to be eligible for the said post recommended her for appointment to the post of Demonstrator in Vocal under Luitkonwar Rudra Barua State College of Music which was notified on 30.09.2018.

12. The aforesaid recommendation of the respondent No. 5 for appointment to the said post as notified has been put to challenge in this petition and in terms of the interim order passed by this Court on 10.10.2018, no appointment has been made in favour of the respondent No. 5.

13. The case of the petitioners is that the Selection Committee had no authority to decide the equivalence of the academic qualification attained by the respondent No. 5, viz., Visharad from Bhatkhande Institute to be equivalent to B. Music Degree from a recognized University.

In connection with this submission, learned counsel for the petitioners has relied on the decision of the Hon'ble Supreme Court in Krishna Chandra Sahoo Vs. State of Orissa, 1995 6 SCC 1. It was held in para Nos. 33 and 35 as follows:

"33. Now, power to make rules regulating the conditions of service of persons appointed on Govt. Posts is available to the Governor of the State under the Proviso to Article 309 and it was in exercise of this power that the present rules were made. If the statutory Rules, in a given case, have not been made, either by the Parliament or the State Legislature, or, for that matter, by the Governor of the State, it would be open to the appropriate Government (the Central Government) under Article 73 and the State Government under Article 162) to issue executive instructions. However, if the Rules have been made but they are silent on any subject or point in issue, the omission can be supplied and the rules can be supplemented by executive instructions. See" Sant Ram v. State of Rajasthan,:(1967) SC 1910.

35. The members of the Selection Board or for that matter, any other Selection Committee, do not have the jurisdiction to lay down the criteria for selection unless they are authorised specifically in that regard by the rules made under Article 309. It is basically the function of the Rule making authority to provide the basis for selection. this Court in State of Andhra Pradesh and Anr. v. V. Sadanandam and Ors. : [1989]3SCR342 , observed as under :

We are now only left with the reasoning of the Tribunal that there is no justification for the continuance of the old rule and for personnel belonging to either zones being transferred on promotion to offices in other zones. In drawing such conclusion, the Tribunal has travelled beyond the limits of its jurisdiction. We need only point out that the mode of recruitment and the category from

which the recruitment to a service should be made are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment of the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the executive. (Emphasis supplied)

14. That apart, it has been submitted by the learned counsel for the petitioners that the aforesaid letter dated 21.12.2011 of the SEBA, on which the Selection Committee had relied for selecting the respondent No.5 was subsequently superseded. It has been accordingly submitted that apart from the fact that the Selection Committee had no authority or competency to determine the equivalence of the academic qualification of the respondent No. 5, the Selection Committee also relied on a document which was subsequently superseded and as such, the recommendation made by the Selection Committee is illegal and on that score only, the recommendation of respondent No. 5 is liable to be recalled or interfered with.

15. In response to the aforesaid contention of the petitioners, learned senior counsel for the respondent No. 5 has submitted that it is a fact that most of the teaching staff in Luit Konwar Rudra Baruah State College of Music have obtained Sangeet Visharad from same Institute i.e. Bhatkhande Sangit Vidyapeeth, including the persons appointed in other disciplines, viz., Demonstrator of Sitar, Demonstrator in Kathak Dance and Accompanist of Flute in terms of the same advertisement.

The said selected candidates have also obtained the same degree from the same Institute i.e., Bhatkhande Sangit Vidyapeeth and the qualifications for the said posts as mentioned in the Advertisement are also similar, with the requirement of B. Music degree from a recognized University or equivalent as one of the essential qualifications.

As such, since the Selection Committee which also has experts in the field as members, had considered this qualification of Sangeet Visharad from Bhatkhande Sangit Vidyapeeth as equivalent to Degree in Music, the decision of the Selection Committee cannot be said to be arbitrary, unreasonable or illegal. Accordingly, the recommendation made by the Selection Committee having experts as its members ought not to be interfered by this Court.

16. Learned senior counsel for the respondent No. 5 in support of his contention has referred to the decision rendered by Allahabad High Court in Manjula Pant Vs. Bhatkhande Music Institute, (a deemed University) 1, Kaisarbagh, Lucknow through its Registrar and Ors., [Writ Petition No. 1377(S/B)/2005, 2009 SCC Online ALL 436].

In the aforesaid case, the Hon'ble Allahabad High Court had observed that the Bhatkhande Music Institute is a recognized institute and deemed University.

In the said case, which actually related to transfer and posting, there is also a reference to treating Visharad conferred by the aforesaid Institute to be equivalent to Bachelor Degree in Music.

It has been accordingly, submitted that since Visharad Degree obtained by the respondent No. 5 has been treated to be equivalent to Bachelor Degree in Music in other State like Uttar Pradesh by the State Public Service Commission, there is no reason why the similar yardstick cannot be applied in the State also.

17. It has been submitted by Mr. Choudhury, learned senior counsel for the respondent No. 5 that there was nothing wrong on the part of the Selection Committee to have made the decision about the equivalence of the academic qualification of the respondent No. 5 to hold that the respondent No. 5 possesses the equivalent academic qualification, since the rules were silent about it.

Further, relying on the decision of the Hon'ble Allahabad High Court rendered in *Manjula Pant* (supra), it has been submitted that it is now well recognized that Visharad from Bhatkhande Sangeet Mahavidyala is treated to be equivalent to Bachelor's Degree in Music.

Accordingly, it has been submitted that the Selection Committee did not commit any error in the procedure and method so adopted in treating the respondent No. 5 to be possessing a qualification equivalent to Degree in Music and as such, the recommendation of the respondent No. 5 cannot be faulted on any count.

18. Learned senior counsel for the respondent No. 5 also has questioned the locus standi of the petitioners on the ground that they themselves were not eligible for appointment to the advertised post as ineligible candidates cannot challenge the selection process.

It has been submitted that the petitioner in WP(C) No. 7360/2018 was already age barred when he submitted his application. As per the advertisement, an applicant must not be more than 43 years as on 01.01.2017. However, the petitioner, namely, Bhupen Nath had crossed 43 years on 01.01.2017 as his date of birth is 24.05.1971. Further, the petitioners do not have HSLC certificate from a recognized Board which is an essential qualification and on that count, it can be said none of the petitioners was eligible for appointment to the said post.

19. These submissions of the learned senior counsel for the respondent No. 5 has been vehemently opposed by Mr. Saikia, learned counsel for the petitioners contending that as far as the issue of age bar is concerned, the Government of Assam had issued an Office Memorandum on 25.04.2019 which had provided for relaxation of age of OBC candidates by 3 years and, as such, it cannot be said the aforesaid Bhupen Nath is age barred.

20. It has been submitted that both the petitioners graduated in Music from the State College of Music under Gauhati University which is a 5 years Course, which the petitioners underwent after completing 10th Examination and as such, it cannot be said that they do not possess H.S.LC Certificate as it would be deemed

that the five years course completed by the petitioners would be deemed to have also HSLC equivalent examination.

21. Having heard the learned counsel for the parties, it is evident that the main issue which is required to be decided in these two petitions is whether the qualification obtained by the respondent No. 5 i.e. Visharad from Bhatkhande Sangeet Vidyapeeth, Lucknow is equivalent to the B.Music Degree from a recognized University for appointment to the post of Demonstrator of Vocal Music in Luitkonwar Rudra Baruah State College of Music.

22. The other issue as contended by the learned counsel for the respondent No. 5 is as to whether the petitioner in WP(C) No. 7360 of 2018 is overaged or not.

Mr. B. Deuri, learned Govt. Advocate, based on the official records submits that the petitioner is indeed over aged. Mr. Deuri, on the basis of records submits that the maximum age prescribed is 43 years. However, the petitioner had already crossed the said age and he was 46 years 4 months and 23 days on the last day of application.

However, as the said petitioner had been allowed to take part in the recruitment process, this Court will not make any observation as regards this issue as the said petitioner had not been recommended. However, this Court will proceed to examine the other issue as to whether the educational qualification obtained by the respondent No. 5 can be said to be equivalent to Degree in Music.

23. As mentioned above, the Selection Committee after applying their mind on the basis of certain Circular issued by the Board of Secondary Education, Assam (SEBA) on 25.09.1991, though it was related to appointment of Music Teachers in Secondary Stage, took the view that Visharad from Bhatkhande Sangit Vidyapeeth, Lucknow can be treated to be equivalent to Bachelor of Music.

This Court is of the opinion the Selection Committee consisting of experts would be entitled to have its view based on relevant considerations as to which qualification can be considered to be equivalent to B. Music.

24. It may be noted that this Court while exercising the power of judicial review under Article 226 of the Constitution, would essentially be confined to the aspect as to whether the authorities while exercising its administrative power had acted in a non arbitrary, non discriminatory manner and it was within the confines of law. If such exercise for power is not demonstrated to be arbitrary or discriminatory and does not involve violation of specific rules in that regards, perhaps interference of this Court may not be called for. This Court, accordingly, has to examine as to whether the Selection Committee had acted in an arbitrary manner by acting on the clarification issued by the Board of Secondary Education, Assam (SEBA) on 25.09.1991 while recommending the respondent No. 5.

25. As mentioned above, the matter pertains to selection of a Demonstrator in Music and the Selection Committee consisting of experts in that field would be

the best authority to ascertain whether the selected candidate possesses the essential qualification.

This Court is of the view that any reference by the Selection Committee to the clarification made by the Board of Secondary Education, Assam (SEBA) to ascertain the equivalence of Bachelor in Music cannot be said to be an arbitrary exercise of power. It also cannot be said that such reference is against the rules. It cannot be said that the rules prohibit any reference to any other authorities to ascertain the equivalence of degrees.

It cannot be denied that the Selection Committee as an expert body would be within its wisdom to ascertain the equivalence of any qualification and in the present case as to whether Visharad from Bhatkhande Sangit Vidyapith, Lucknow would be equivalent to Degree in Music or not.

26. In the present case, this Court has noted that while ascertaining equivalence of a qualification to Degree of Bachelor in Music, the Selection Committee referred to a clarification made by the Board of Secondary Education, Assam and as mentioned above, this Court does not consider it to be an arbitrary or unreasonable act.

After all, the Board of Secondary Education, Assam is an institution dealing with academic issues and if the Board had considered Visharad from Bhatkhande Sangit Vidyapith, Lucknow with HSLC passed as equivalent to B. Music from Gauhati University, the Selection Committee did consider this aspect which was relevant to the issue. Merely because the said clarification by the Board related to teaching Music at the Secondary stage will not make it less relevant to decide the issue of equivalence of the qualification.

27. Learned counsel for the petitioners, however, mentioned that there is another subsequent clarification issued by the SEBA on 20.12.2011 which provides that while considering selection, it will be desirable that the first preference be given to the candidates having obtained Degree in Music from Gauhati University.

As regards this contention, while there cannot be any issue about giving of preference, but in the present case, in absence of any specific provision under recruitment rules for giving preference, this Court is of the view that reference to such clarification of Board of Secondary Education, Assam may not be appropriate.

Nothing has been mentioned in the advertisement that preference can be given to such candidate having obtained Degree in Music from Gauhati University. As such, the said clarification given by the Board of Secondary Education for giving preference will not be applicable in the present case.

28. It may be noted that finding on the equivalence of degrees is one thing and giving preference to a particular degree is another thing. Giving preference is a matter of policy which has nothing to do as regards deciding the issue of equivalence of academic qualifications. As mentioned above, there is no provision

under the relevant recruitment rules for giving preference to any particular degree obtained from a particular University.

The issue as mentioned above, is only to ascertain the equivalence of the qualification of Visharad obtained by the respondent No. 5 as to whether it can be said to be equivalent to B. Music Degree for the purpose of appointment to the said post of Demonstrator in Vocal Music.

29. Mr. N. J. Gogoi, learned counsel for the petitioners submits that since there is no specific set of norms governing the Selection Committee, it ought to have taken into considering the said Circular issued by the SEBA on 20.12.2011. However, as mentioned above, in absence of specific service rules which gives preference to any particular degree obtained from a particular University, the question of giving preference to candidates obtaining B. Music Degree from Gauhati University does not arise.

30. This Court has also taken into consideration aforesaid position while arriving at the conclusion that the aforesaid act of the Selection Committee and the State Government in selecting and recommending the name of the respondent No. 5 for appointment does not suffer from any irregularity.

31. This Court has also taken note of the submission made by the learned counsel for the State that in the aforesaid Institute, namely, Luitkonwar Rudra Baruah State College of Music, most of the teachers therein have obtained the aforesaid qualification of Sangeet Visharad from Bhatkhande Sangit Vidyapeeth, Lucknow. From this fact also, it can be ascertained that the said qualification is duly recognized as equivalent to B. Music for the purpose of appointment in the said Institute.

32. Mr. Gogoi, learned counsel for the petitioners, relying on decision of Hon'ble Supreme Court in *Krushna Chandra Sahu and Ors. Vs. State of Orissa and Ors.*, 1995 6 SCC, has submitted that the Selection Committee has no jurisdiction to lay down the criteria for selection unless they are authorized specifically in that regard by the Rules. In *Krusha Chandra Sahu* (supra) it has held as follows:

"33. Now, power to make rules regulating the conditions of service of persons appointed on Govt. Posts is available to the Governor of the State under the Proviso to Article 309 and it was in exercise of this power that the present rules were made. If the statutory Rules, in a given case, have not been made, either by the Parliament or the State Legislature, or, for that matter, by the Governor of the State, it would be open to the appropriate Government (the Central Government) under Article 73 and the State Government under Article 162) to issue executive instructions. However, if the Rules have been made but they are silent on any subject or point in issue, the omission can be supplied and the rules can be supplemented by executive instructions. See: *Sant Ram v. State of Rajasthan*,:(1967) SC 1910.

33. It may be noted that in this case, it is not a case of laying down of any new

norm by the Selection Committee. The Selection Committee was merely finding out the equivalence of the qualification obtained by the respondent No. 5 by referring to a clarification made by the Board of Secondary Education, Assam as to Visharad from Bhatkhande Sangit Vidyapeeth, Lucknow whether is equivalent to Bachelor's Degree in Music. As such, this Court is of the view that the said decision may not be applicable in the present case.

34. Learned counsel for the petitioner, Mr. Gogoi further relying on the decision of the Hon'ble Supreme Court in *Renu and Ors. Vs. District and Sessions Judge, TIS Hazari Courts, Delhi and Anr.*, 2014 (14) SCC 50 submits that the qualifications and eligibility criteria for the post should be expressly provided in the advertisement, in the absence of which, such recruitment would be vitiated. The relevant portion of the aforesaid decision reads as follows:

"16. Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others."

35. As regards this contention, it may be noted that there is no ambiguity about the qualification required for appointment to the post of Demonstrator in Vocal Music. The advertisement specifically prescribed the qualifications required i.e. B. Music from a recognized University or its equivalent.

The expression "equivalent" is often used in service rules, as there could be different qualifications obtained by candidates from different institutions applying for a post. As to what amounts to equivalent qualifications is left to be decided by the competent authority. Merely because the expression "equivalent" is used in the rules/advertisement, it does not render the qualifications prescribed for the post vague as contended by the petitioners.

Accordingly, this Court is of the view that the aforesaid decision may not be also applicable in this case.

36. For the reasons discussed above, this Court is of the view that there is no merit in these petitions and accordingly, these are dismissed.

The respondent No. 5 will be entitled to be appointed to post of Demonstrator of Vocal Music in Luit Konwar Rudra Baruah State College of Music in terms of the recommendation made by the Selection Committee as notified on 30.09.2018.

Earlier interim order, if any, stands merged with this order.