
(2002) 12 RAJ CK 0023
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1142 of 1993

Brij Ratan Swami

APPELLANT

Vs

The Distt. Establishment Committee and Another

RESPONDENT

Date of Decision : 02-12-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2003) 2 WLC 612 : (2003) 1 WLN 189

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Kumar Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner against the respondents on 22.2.1993 with a prayer that by an appropriate writ, order or direction, the respondents be directed to award 3 bonus marks for Sangeet certificate to the petitioner and thereafter provide appointment to the petitioner on the post of Primary School Teacher with effect from 9.9.1992 when the person lower in merit was provided appointment with all consequential benefits.

2. The facts as put forward by the petitioner are as under:

(i) That the petitioner has to his credit qualification of Higher Secondary Examination as well as he has also qualified BSTC (known as STC) which is the requisite qualification of training for appointment being given on the post of Primary School Teacher in Panchayat Samitis.

(ii) That an advertisement No. 92/1 (Annex. P/1) was issued on 6.6.1992 whereby the applications were invited from the eligible candidates for appointment against 386 posts of teachers.

(iii) That in pursuance of the advertisement No. 92/1 (Annex. P/1), the petitioner submitted an application form along with the requisite documents as well as he

also submitted the documents which were requisite for award of bonus marks. The petitioner submitted copies of the certificates of Higher Secondary Examination, NCC Part-A, 1st an IInd Scouting and the State Level Certificate in Wrestling and a bonafide resident certificate of Bikaner District. Besides this, the State Level Sangeet Certificate was also submitted by the petitioner. A copy of the certificate dated 24.2.1980 issued by the National Theatre, Bikaner is marked an Annex. P/2.

(iv) That when the petitioner came to know that his State Level Sangeet certificate dtd. 24.2.1980 (Annex. P/2) was not being treated as equivalent to the certificate issued by the Rajasthan Sangeet Natak Academy, Jodhpur, then a certificate dtd. 11.9.1992 (Annex. P/3) issued by Vice President, National Theatre, Bikaner was submitted which shows that the National Theatre, Bikaner was recognized by Rajasthan Sangeet Natak Academy, Jodhpur vide its letter dtd. 13.9.1969. Apart from this, certificate dtd. 19.9.1992 (Annex. P/4) issued by Rajasthan Sangeet Natak Academy, Jodhpur was also submitted by the petitioner wherein it was made clear that the National Theatre, Bikaner was affiliated with Rajasthan Sangeet Natak Academy, Jodhpur.

(v) That the further case of the petitioner is that despite presentation of above certificates, the petitioner was not awarded 3 bonus marks for State Level Sangeet Certificate.

(vi) That the merit list was prepared by the respondents on the basis of criteria laid down in pursuance of notification dtd. 22.2.1991 as well as the order dtd. 26.2.1991 issued by the State Government. Interviews were held with effect from 9.9.1991. The last candidates who had secured 42.9% marks was provided appointment, but the petitioner was not provided appointment.

(vii) That when the marks for Sangeet were not added by the respondents, then he submitted a representation (Annex. P/5) in month of September, 1992 wherein he stated that he was entitled for allocation of 3 marks for Sangeet and in case 3 marks were added, then his total marks would come to 45.75% and he would come in the merit list of the candidates and when the petitioner was not given appointment, he has filed the present writ petition with the prayer as stated above.

3. That the main contention raised by the learned Counsel for the petitioner in this writ petition is that the action of the respondents in not awarding 3 marks to the petitioner for his State Level Certificate in Sangeet is arbitrary exercise of power which is anti-thesis of Articles 14 and 16 of the Constitution of India and it is submitted by the petitioner that in view of certificate dtd. 24.2.1980 (Annex. P/2), certificate dtd. 11.9.1992 (Annex. P/3) and certificate dtd. 19.9.1992 (Annex. P/4), the petitioner is entitled to get 3 marks for his State Level Sangeet Certificate (Annex. P/2) and hence the writ petition be allowed.

4. Reply to the writ petition was filed by the respondents and it is submitted by the respondents that no doubt the petitioner had submitted State Level Sangeet

Certificate dtd. 24.2.1980 (Annex. P/2), but the same could not be treated as State Level Certificate as it was not issued by the competent authority and the competent authority is Rajasthan Sangeet Natak Academy. It has been further submitted that so far as certificates (Annex. P/3 and P/4) are concerned, in these certificates, it was nowhere mentioned that the National Theatre, Bikaner was authorised to organise State Level Competition in Music by Rajasthan Sangeet Natak Academy. However, it has further been submitted by the respondents that a conversation with Rajasthan Sangeet Natak Academy, Jodhpur in this regard, was going on but the matter of the petitioner could be decided only after getting reply from Rajasthan Sangeet Natak Academy, however the reply has not been received so far. Hence, the writ petition be dismissed.

5. During the course of arguments, apart from above pleas, it has been submitted by the learned Counsel for the respondents that since select list prepared in pursuance of advertisement (Annex. 1) had expired on 30.6.1993 and about 470 candidates have already been given appointment, therefore, now it is not possible in any case to give appointment to the petitioner and this contention has been raised by the learned Counsel for the respondents on the basis of an affidavit of Shri S.L. Bunkar, Chief Executive Officer, Zila Parishad, Bikaner filed on 22.4.1998 and, therefore, from this point of view also, the petitioner is not entitled to get the relief sought for.

6. Rejoinder to the reply was filed by the petitioner. In this rejoinder, the main contention of the learned Counsel for the petitioner is that the conversations which had taken place between the respondents are Rajasthan Sangeet Natak Academy, Jodhpur have been suppressed by the respondents as Rajasthan Sangeet Natak Academy, Jodhpur has given reply to the letter issued by the respondents through letter dtd. 12.10.1992 (Annex. P/7) in which there is clear reference of letter of the respondents dtd. 28.9.1992 and through letter dtd. 12.10.1992 (Annex. P/7), Rajasthan Sangeet Natak Academy had made the point clear that the National Theatre, Bikaner was competent to organize the State Level Competition and further a list of the Institutes attached with Rajasthan Sangeet Natak Academy, Jodhpur was also annexed with the letter dtd. 12.10.1992 (Annex. P/7) and in that list National Theatre, Bikaner stood at serial No. 6. Therefore, to say now that on the basis of Certificate dtd. 24.2.1980 (Annex. P/2) issued by the National Theatre, Bikaner, 3 bonus marks could not be awarded is not correct and hence, the respondents should have awarded 3 bonus marks to the petitioner.

7. I have heard the learned Counsel for the parties and perused the record.

8. That from the printed proforma (Annex. P/6) wherein allocation of marks had been provided under the various heads, there is no dispute on the point that three marks were to be awarded for State Level Sangeet Certificate. There is also no dispute on the point that 3 marks for State Level Sangeet Certificate were not awarded to the petitioner. There is also no dispute on the point that in case three marks for State Level Sangeet Certificate would have been awarded to the

petitioner, he would have come in the merit. There is also no dispute on the point that the certificate dtd. 24.2.1980 (Annex. P/2) was issued by the National Theatre, Bikaner, which shows that the petitioner stood second in State Level Competition of Sangeet. From the certificate dtd. 11.9.1992 (Annex. P/3) issued by the National Theatre, Bikaner, it is further clear that the National Theatre, Bikaner was recognized by Rajasthan Sangeet Natak Academy through its letter dtd. 13.9.1969. From certificate dtd. 19.9.1992 (Annex. P/4) issued by the Rajasthan Sangeet Natak Academy, Jodhpur, it is also very much clear that National Theatre, Bikaner is an affiliated organization with Rajasthan Sangeet Natak Academy, Jodhpur.

9. From the reply of the respondents, it appears that they did not give final reply and they only took the plea that the conversation was going on between the National Theatre, Academy and the respondents and after getting final reply, the final position would be made clear, but surprisingly, along with the rejoinder, a letter dtd. 12.10.1992 (Annex. P/7) was produced by the petitioner, in which it was made clear that National Theatre, Bikaner was authorised to hold Sangeet Competition at State Level and its name stood at serial No. 6 in the list attached with the letter dtd. 12.10.1992 (Annex. P/7).

10. Thus, from perusal of certificate dtd. 24.2.1980 (Annex. P/2), certificate dtd. 11.9.1992 (Annex. P/3) certificate dtd. 19.9.1992 (Annex. P/4) and letter dtd. 12.10.1992 (Annex. P/7), it is clear that petitioner had qualified the criteria of getting 3 bonus marks for State Level Sangeet Certificate as provided in proforma Annex. P/6 and when this being the position, the petitioner should have been awarded 3 bonus marks for State Level Sangeet Certificate and the action of the respondents in not awarding three bonus marks for State Level Sangeet Certificate amounts to hostile discrimination besides being arbitrary and unreasonable and denial of equality and equal protection of law as enshrined under Articles 14 and 16 of the Constitution of India. Had 3 bonus marks for State Level Sangeet Certificate been given to the petitioner, then he would have secured 45.75% marks and would have come in the merit also and have been placed above the candidate who secured 42.9% marks and was selected.

ON BONUS MARKS

11. this Court in the case of State of Rajasthan v. Umesh Jangid reported in 1998(1) WLC 287 has observed as under:

Provision for giving bonus marks in the case of appointments to the Physical Education Teachers has been made for promotion of the sports and in order to give incentive to various sportsmen. The grant of bonus marks to the participants in the District Level, State Level or National Level Tournaments, therefore, cannot be restricted to the tournaments held by the Educational Department alone, but it is applicable to all District Level, State Level or National Level tournaments organised by a University or Sports Board/Authority or by any other Authority recognised in this regard because restricting the bonus marks only to

the tournaments organised by the Education Department is against the object of the provision itself.

12. The above observations made by this Court in the case of State v. Umesh Jangid (supra) would be fully applicable in the facts and circumstances of the present case and from this point of view also, the petitioner is entitled to 3 bonus marks for State Level Sangeet Certificate.

ON SELECT LIST

13. So far as argument that the select list has expired is concerned, it may be stated that this Court in a case report in 2001 (2) RLR 580 (Anita Chopra v. State of Rajasthan) has observed that in case a person ranked below the petitioner in order of merit had been given appointment, but the petitioner had not been offered appointment wrongly, in such case, the petitioner is entitled to seek mandamus to be treated at par with those who had been given appointment and his appointment could not be withheld merely because the select list had expired during pendency of writ petition. The Hon''ble Supreme Court in Purushottam Vs. Chairman, M.S.E.B. and Another, has observed that duly selected candidate could not be denied appointment on the pretext that penal's term had expired and the post had been filled up by someone else.

14. Thus, from the above two authorities (Anita Chopra and Purushottam (Supra), the argument of the learned Counsel for the respondents that the select list had expired does not carry any weight and the same is rejected.

15. Thus, by denying appointment to the petitioner on the post of Primary School Teacher, the legal right of the petitioner has been infringed and hence, the petitioner is entitled to the relief sought for and this writ petition deserves to be allowed.

16. For the reasons mentioned above, the present writ petition is allowed and the respondents are directed to first award 3 marks to the petitioner for State Level Sangeet Certificate and thereafter provide appointment to the petitioner on the post of Primary School Teacher in pursuance of advertisement No. 92/1 dated 6.6.1992 (Annex. P/1) within a period of 3 months from today. On his appointment, the petitioner shall not be entitled for emoluments of the post for the past. However, he will be entitled to claim seniority over the persons who were lower in merit, but have been offered appointment prior to him.

17. Cost made easy.