

(2002) 06 GAU CK 0053

In the Gauhati High Court

Case No : Writ Petition (C) No. 187 (K) of 2001

Dr. Atsase Thongtsar

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 06-06-2002

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2003) 96 FLR 489

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : C.T. Jamir and L.T. Sangtam, for the Appellant; I. Jamir, Addl. AG and R. Iralu, for the Respondent

Final Decision : Dismissed

Judgement

B. Lamare, J.—Heard Mr. C.T. Jamir, learned counsel for the petitioner, Mr. I. Jamir, learned Addl. Advocate General for respondent No. 5 and Mr. R. Iralu, learned counsel for respondent No. 4.

2. By Advertisement No.2/2000-2001 dated 27th September, 2000 (Annexure-G to the writ petition), applications were invited by the Nagaland Public Service Commission (in short NPSC) for 6(six) posts of Extra Assistant Commissioner (Class-I) Senior grade, 4(four) posts of Deputy Superintendent, of Police (Class-I Gazetted) Junior grade, and 5 (three) posts of District Relation Officer/ Information Officer, (Class-11 Gazetted) amongst other posts made in the advertisement. The qualifications required for item Nos. 1, 2 and 6 are as follows :-

"Item Nos. 1 and 2 : Degree in Arts/Science/ Commerce/Agriculture/ Engineering /Medicine/Home Science/Physical Education/Vety. Science/ Divinity/ Agriculture Engineering/Applied Geology and Applied Geophysics or its equivalent qualification of a recognised University.

Item No. 6 : Bachelor degree in Arts/Science/ Commerce/Engineering /Medical,

Preference was to be given to those candidates who possess a degree in Journalism/Information Technology/Training in Information and Mass Communication."

3. The petitioner applied for the said post at item Nos. 1, 2 and 6 and qualified in the written test and was also called for Interview, but he was not selected. On coming to know that in the selection made by the NPSC the petitioner was not selected, he made a representation to the Secretary, NPSC. On receipt of the representation, the Secretary, NPSC by his letter dated 28.9.2001 intimated the petitioner that, although he secured higher marks he was not selected as he was having a degree in Veterinary Science which is not included in the prescribed educational qualification for the post in item No. 6. The said letter (Annexure-P to the writ petition) reads as follows :-

"NO. NPSC/C-5/2001: NAGALAND PUBLIC SERVICE COMMISSION

Kohima

Dated Kohima, the 26th Sept.2001

To

Dr. Atsase Thongtsar, C/o: S. Thongtsar, Research Officer, Finance Department, Nagaland Civil Secretariat, Kohima.

In inviting a reference to your letter No. dated 10.9.2001, the Commission have examined your representation and regretted to say that you have a degree in Veterinary Science only which is not included in the prescribed educational qualification for appointment to the post of DPRO/IO, as advertised. As such you are not eligible for appointment to this post.

In view of the above reasons your name could not be recommended though you did secure higher marks.

Yours faithfully,

(L. TEMSUWATI AO) Secretary, Nagaland Public Service Commission."

4. Being aggrieved by the said letter of the Secretary, NPSC, the petitioner has approached this Court by this writ petition and made the following prayers :-

"(a) Quash and set aside the impugned Notification dated 25.8.2001 with regard to the recommendation and appointment of respondent No. 4 to the post of DRO/IO as illegal;

(b) Direct the respondents to declare that the petitioner is eligible for the post of DRO/IO and/or any other post in item Nos. 1, 2 and 6 in terms of the advertisement dated 27.9.2000 and further direct to recommend for appointment in accordance with law."

5. Mr. C.T. Jamir, learned counsel for the petitioner submitted, that according to

the Office Memorandum No. AR-8/10/85 dated 18.7.1985, the qualifications for recruitment to the post of NCS Class-11, Nagaland Police Service Class-II and other administrative and nontechnical posts of other service is a degree in Arts, Science or Commerce of a recognised University, Graduate in Agriculture, Engineering, Medicine, Home Science or Physical Education. The counsel further submits that, the Office Memorandum was modified by Addendum No. AR : 8/10/85 dated 29.8.1985, whereby the qualifications namely; Degree in Agriculture, Veterinary Science, Divinity, Agriculture Engineering, Applied Geology and Applied Geophysics were added to the said Office Memorandum. In the said Addendum, it is also provided that the above qualifications be inserted in the relevant Service Rules by all the departments.

6. It is further contended that, in spite of the Addendum, the Service Rules published on 6.9.1983 did not include the said qualifications for the post of District Relation Officer, but instead, in the advertisement, the qualification of degree in Medicine is added which is not provided in the Service Rules.

7. The petitioner having qualified in both written and Oral interview cannot be disqualified only on the ground that he has a qualification of a degree in Veterinary Science, contends the learned counsel, He also contended that adding of a degree of Medicine in the advertisement is outside the provisions of the Service Rules.

8. Mr. I, Jamir, learned Addl. Advocate General appearing for NPSC respondent No. 5 contended that service rules which was published became effective from 6.0.1983 was made under Article 509 of the Constitution, and whatever provision is made in the said office Memorandum and Addendum cannot supersede the rules issued by the Governor under Article 509.

9. The learned counsel also contended that the petitioner was not selected for the post in items 1 & 2, and that his case can only be considered in item No. 6, but consideration of the name of the petitioner for item No. 6 does not arise as he does not have the qualifications as prescribed in the Service Rules as well as in the advertisement. Therefore, according to learned counsel, even if the petitioner secured higher marks his case cannot be recommended as he has a degree in Veterinary Science.

10. On perusal of the records, it shows that the qualifications prescribed for the post in item No. 6 does not include degree in Veterinary Science. The qualification for medicine was added by the NPSC in the advertisement contrary to the provision made in the Service Rules of the Nagaland Information and Publicity Service Rules, 1985 (in short the rules).

11. Be that as it may, we are concerned in this case is a degree of Veterinary Science which the petitioner possess. It is no doubt that the advertisement has included the medicine also as one of the qualification, but by addition of the medicine does not meant that the advertisement was made under the said Office Memorandum and Addendum as other qualifications prescribed therein were not

added in the advertisement.

12. It is also not the case of the petitioner that he is prejudiced by adding the qualification, of medicine in the advertisement. It is nobody's case that by adding medicine as qualification, the claim of the petitioner is effected.

13. The respondent NPSC resisted the claim of the petitioner by stating in their Affidavit that the petitioner was allowed to appear in the Interview for the post of Extra Assistant Commissioner, Deputy Superintendent of Police and District Relation Officer/Information Officer as this was a combined competitive examination and no separate interview was conducted for each post. The petitioner cannot be selected for the post of EAC, and Dy. SP, as these posts were reserved for other backward tribes like ; Chakhesang and Chang for EAC, and Konyak and Phora for Dy. SP, as per revised reservation policy of the Government.

14. The respondents also states that the Commission has to follow the educational qualification prescribed in the service rules, and since the petitioner does not have the prescribed qualification, he was not selected by the NPSC.

15. On perusal of the materials available on record and the facts and circumstances as discussed above, it is undoubtedly clear that the selection of the candidates for the post of item No. 6 is governed by 1985 Rules. It is also a settled position of law that when there is Service Rules framed under the provisions of Article 509 of the Constitution, the rules held the field in respect of selection, promotion etc. In this case a provision is made under the rules for the post in item No. 6 the qualification for Bachelor of Arts, Commerce, Science, Agriculture, Engineering. The above rules cannot be relaxed by any administrative order nor the said Office Memorandum and Addendum can supersede the rules. Therefore, the only conclusion that can be arrived at is that, the petitioner having a degree in Veterinary Science is not qualified to be selected under the Rules.

The petition is therefore devoid of merits and accordingly it is dismissed. No costs.