
(2008) 09 JH CK 0041
In the Jharkhand High Court

Dr. Shamma Begum

APPELLANT

Vs

The Bihar College Service Commission and Others

RESPONDENT

Date of Decision : 23-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 1 JCR 417

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajit Kumar Sinha, J.—Heard learned Counsel for the parties.

2. In the present writ petition, the petitioner has prayed for the following reliefs:

a) to quash the recommendation of the Bihar College Service Commission for the post of Lecturer in Philosophy in J.M. College, Bhurkunda, District -Hazaribagh, communicated through letter No. 1636 dated 28.2.2000, as contained in Annexure-4 of the writ application;

b) to direct respondent No. 3 not to make any appointment of respondent Nos. 4 and 5 on the basis of recommendation of the College Service Commission (Annexure-4) on the post of Lecturer in Philosophy in J.M. College, Bhurkunda and a direction to the respondent No. 2 not to approve such appointment.

c) to direct respondent No. 1 (College Service Commission) to re-advertise the post in accordance with law and make fresh recommendation for appointment on the post of Lecturer in Philosophy in J.M. College, Bhurkunda.

d) to grant any other relief(s) to which the petitioner is found entitled to and/or for any other writ/order/direction, for doing conscionable justice to the petitioner.

3. The case of the petitioner, in brief, is set out as under:

The petitioner was initially appointed as a temporary lecturer in the Department

of Philosophy on 5th July, 1989 in J.M. College, Bhurkunda, District - Hazaribagh which is affiliated to Vinoba Bhave University, Hazaribagh. According to the petitioner, the first post of lecturer was sanctioned sometime prior to the year 1990 and one Mr. L.L. Modi was working against the said sanctioned post on substantive basis. The College Service Commission recommended/concurred his appointment and the same was approved by the State Government. It is further submitted that the second post of Lecturer in Philosophy was approved by the State Government for the Intermediate Arts Section of the College and communicated vide State Government's letter No. 33 dated 9.1.1990 and in this letter it was specifically mentioned that the post is sanctioned for the Intermediate Section. An advertisement was published in September/October, 1994 for several posts, including one post of Lecturer in Philosophy, vide advertisement No. 26/1994. The petitioner alongwith others applied for the same. It appears that during the process of selection a third post of Lecturer in Philosophy for J.M. College, Bhurkunda, was sanctioned/approved by the State Government vide its letter No. 1696 dated 21.10.1998, which clearly indicated that there were two posts already sanctioned and one additional post was approved through this letter.

4. In the year 1999 the interview took place and finally on 28.2.2000 the Commission recommended two candidates each against the second and third post and the same was communicated through memo No. 1636 dated 28.2.2000. As per the recommendation it will be evident that on the second post private respondent Nos. 4 & 5 have been recommended at serial Nos. 1 & 2 whereas the petitioner has been recommended against the third post at serial No. 2.

5. The petitioner being aggrieved has challenged the recommendation of the Bihar College Service Commission dated 28.2.2000 and has further prayed for issuance of a direction against respondent No. 3 not to make any appointment on the basis of recommendation of the College Service Commission on the post of Lecturer in Philosophy in J.M. College, Bhurkunda. The main contention raised by the petitioner is that the respondent No. 1 erred in making the recommendation for the third post which was neither advertised nor in existence in the year, 1994 and could the recommendation against the third post be made which has been sanctioned subsequent to the advertisement in the Year 1998.

6. It has further been contended that the respondent cannot make appointment on an illegal/invalid recommendation and it is a colourable exercise of power. The counsel for the petitioner further submits that he was entitled to be, recommended against the second post and was qualified since the second post advertised was for Intermediate level. It has further challenged the process of selection and recommendation being arbitrary, illegal and malafide.

7. The counsel for respondent Nos. 4 & 5 has opposed the plea and prayer of the petitioner. The main contention raised by the private respondent No. 4 is that the petitioner . was not qualified and she had secured less than 55% marks in masters degree which was a mandatory qualification required for the post of

Lecturer. It has been further contended that this fact has not been denied in the rejoinder to the counter affidavit filed by the petitioner. The counsel for respondent No. 3 further submitted that in any event the impugned order was passed on 28th February 2000 and even the third post was duly created and sanctioned in 1998 itself. According to him the interview took place after the sanction of the third post of Lecturer (Philosophy) and the final selection and recommendation was made vide impugned order dated 28th February, 2000 which were both subsequent.

8. The counsel for the private respondent No. 5 has submitted that two persons were duly recommended against second and third post each after due process of selection. He has also submitted that the commission was duly authorized to recommend selected candidates against the third post which was created at least two years before. In this context he has referred to and relied upon *Suvidya Yadav vs. State of Haryana*, (2002) 10 SCC 269 wherein, in a similar case the Hon'ble Supreme Court held that against the post which was created and sanctioned subsequently during the process of selection, the eligible and qualified candidates could always be recommended against such posts based on merits. The counsel for respondent No. 5 has also relied upon the "judgment reported in *Utkal University Vs. Dr. Nrusingha Charan Sarangi and Others*, wherein at paragraph 9, it has been held as under:

9. The last contention of the first respondent which has been accepted by the High Court is that of bias on the part of one of the members of the Selection Committee. The so-called bias, as set out in the original petition, is that one of the experts was a member of an organization which brought out a magazine of which the selected candidate was the Editor while one of the members of the Selection Committee was on the Editorial Board. Both the University as well as the selected candidate have pointed out that this fact was known to the first respondent throughout. He did not, at any time, object to the composition of the Selection Committee. He objected only after the selection was over and he was not selected. This would amount to waiver of such objection on the part of the first respondent. Reliance is placed on a decision of this Court in *G. Sarana (Dr.) v. University of Lucknow* in which this Court found that despite the fact that the appellant knew all the relevant facts, he had voluntarily appeared before the Committee and taken a chance of having a favourable recommendation from it. Having done so, it was not open to him to turn round and question the constitution of the Committee. A similar view has been taken by this Court in the case of *U.D. Lama v. State of Sikkim* 1997 (1) SCC 119.

9. The counsel for the Commission has submitted that they have made the selection based on merits and the petitioner was placed at serial No. 2 against third post purely on merits. He has categorically admitted that it is not a case of disqualification on the ground of eligibility but instead it was a case which was decided on merits since it was a selection post. The contention raised by private respondent Nos. 4 and 5 of ineligibility on the ground that the petitioner does not

possess 55% marks is of no consequence.

10. A Constitution Bench of the Hon^{ble} Supreme Court in the case of Shankarsan Dash Vs. Union of India, clearly held that a candidate even though included in the merit list has no indefeasible right of appointment against the existing vacancies and upon their selection they do not acquire any right to the post. In the instant case even in the notification the petitioner has been recommended at serial No. 2 against the third post and the candidate put in serial No. 1 against third post was rightly recommended/appointed as there was only one post available.

11. In a recent judgment, the Hon^{ble} Apex Court in the case of Dhananjay Malik v. State of Uttaranchal as reported in 2008(2) SCC 328 held as under.

7. It is not disputed (hat (he writ petitioners-respondents herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as B.P.E. or graduate with diploma in physical education. Having unsuccessfully participated in the process of selection without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules.

8. In Madan Lal and Others Vs. State of Jammu and Kashmir and Others, , this Court pointed out that when the petitioners appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned, the petitioners took a chance to get themselves selected at the said oral interview. Therefore, only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed writ petitions. This Court further pointed out that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the present case, as already pointed out, the writ petitioners-respondents herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done.

12. In the aforesaid background, there is no illegality or infirmity in including the third post for the purposes of selection and recommendation of eligible candidates on merits in view of the fact that the vacancy had occurred and the post was sanctioned two years before the final recommendation. The second contention of the petitioner challenging the rules and procedures and the process of selection cannot be sustained in the eyes of law for the sole reason that

without even a protest she participated in the selection process and was even recommended and placed at serial No. 2 against the third post and thus rule of estoppel by conduct will apply against her and this issue is no more res-integra.

13. The petitioner's argument that only one post was advertised i.e. the second post and thus no recommendation could be made for third post goes against her for the reason that her name in any case has not been recommended against second post. There is no legal, accrued or vested right in favour of the petitioner which can be enforced by way of mandamus under Article 226 of the Constitution.

14. In view of the settled law as discussed hereinabove once a candidate has participated in a selection process and could not be selected and/or is aggrieved by his placement cannot turn around and challenge the procedure and rules and the selection process.

15. In the aforesaid background the present writ petition is devoid of any merit and is accordingly dismissed without any order as to costs.