
(1997) 07 MP CK 0098
In the Madhya Pradesh High Court
Case No : W. P. No. 1174 of 1996 (J)

Dr. Subhash Chandrakar

APPELLANT

Vs

State of M. P.

RESPONDENT

Date of Decision : 03-07-1997

Acts Referred:

Citation : (1998) 2 MPJR 196

Hon'ble Judges : D. M. Dharmadhikari, J

Bench : Single Bench

Advocate : Rajendra Tiwari, for the Appellant; Alok Aradhe and Mr. S. P. Sanghi, for the Respondent

Final Decision : Allowed

Judgement

D. M. Dharmadhikari, J.

A common order is being passed in this petition and W. P. No. 1164/96 (Dr. Smt. Ranjana Sharma v. State of M. P. and others) and W. P. No. 1750/96 (Dr. Ku. Gayatri Sharma v. State of M. P. and others). All the petitions arise out of common selection proceedings recommending appointments to the teaching posts of Assistant Professor in the subjects of Political Science and Philosophy in Durga Mahavidyalaya which is an educational institution governed by the provisions of Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Any Karmachariyon Ke Vetano Ka Sandaya Adhiniyam, 1978 (for short "Act No. 20 of 1978").

Recruitments to teaching posts in an institution aided by the State are regulated by Madhya Pradesh Ashashkiya Shikishan Sanatha (Adhyapakon Tatha Any a Karamchariya Ke Bhariti) Niyam, 1979 (for short "the Rules") framed under the Act. In accordance with the above rules, an advertisement for recruitment to the teaching posts was issued. Consequent there upon, Dr Subhash Chandrakar applied for the post of Assistant Professor in Philosophy and other petitioners Dr. (Smt.) Ranjana Sharma and Dr. (Ku.) Gayatri Sharma applied for the post of

Assistant Professor in Political Science. The Departmental Promotion Committee made its recommendation of the Governing Body for appointment by preparing a selection Panel for the post of Assistant Professor in Philosophy. The petitioner Dr. Subhash Chandrakar was placed at the top. In the selection panel for the post of Asstt. Professor in political Science, Dr. Gayatri Sharma was placed at Serial No. 1 and Dr. Ranjana Sharma was placed at No. 2.

On the recommendations made by the Selection Committee, the governing body issued orders of appointment on 2.3.1996 in favour of Dr. Subhash Chandrakar in the Subject of Philosophy and Dr. (Smt.) Ranjana Sharma in the subject of Political Science.

After the appointees had assumed charge of office and started functioning, the Governing Body through its Chairman issued the impugned order dated 7.3.1996 (Annexure - P.18) only few days after their appointments which is challenged in this petition. By the impugned communication, petitioners Dr. Subhash Chandrakar and Dr. Ranjana Sharma were informed that appointment orders came to be issued in their favour by the mistake as the Governing Body had found some legal lacuna in the selection panel and had not taken any decision to appoint anyone from the panel. They were given an option to apply as and when the posts are re-advertised.

By W. P. No. 1174/96 and 1164/96, Dr. Subhash Chandrakar and Dr. (Smt.) Ranjana Sharma have assailed the orders cancelling their appointments. Dr. (Ku.) Gayatri Sharma who was in the selection Panel at the top for the subject of Political Science has filed writ petition No. 1158 /96 as she felt aggrieved by her non-selection to the post of Assistant Professor in Political Science.

Shri Rajendra Tiwari, learned counsel who appears for Dr. Subhash Chandrakar and Dr. (Smt.) Ranjana Sharma assails the order of cancellation of their appointments firmly on the ground that the action is in flagrant breach of the principles of natural justice. It is contended that before annulment of their appointments, neither they were heard nor the members of the selection committee. Such action, it is said, deserves to be quashed on the short ground of denial opportunity of hearing. Reliance is placed on *Shrawan Kumar Jha and others Vs. State of Bihar and others*, .

In response to the notice served of these petitions, Shri Alok Aradhe who appears for the Governing Body of the Institution and the Principal (respondent Nos 3 and 4) has filed a return annexing with it the copy of the proceedings of the selection committee. It is pointed out that when the recommendation contained in the Selection Panel was placed before the Governing Body, it found that minimum five candidates for each post which should have been included in the panel in accordance with the rules were, not there. It was also found that the two petitioners who were selected and appointed did not have requisite percentage of mark at M. A. Level. Because of these legal infirmities in the recommendation of the selection committee , the Governing Body expressly

recorded its decision not to operate the Panel and to re-advertise the post for fresh selection. It is stated that because of some confusion between the Chairman and the Principal, by mistake, appointment orders came to be issued on the basis of such unapproved selection panel. By cancellation of the appointment orders, the said mistake has been corrected and the question of grant of opportunity of hearing to anyone was not at all necessitated.

Shri Rajendra Tiwari, learned counsel appearing for the petitioners, after the selection proceedings were filed in the case, assailed them to support the relief claimed in the petition. It is contended that the Governing Body totally misconstrued the rule to hold that the selection panel must have contained minimum five names for one available post. It is submitted that the rule in that behalf has only to be read as directory and not mandatory because if there are insufficient number of suitable candidates, it was open to the selection committee to recommend less than five candidates. Reliance is placed on Single Bench decision of this Court in *Zaheer Ahmed, Bhopal and Another Vs. Hon'ble Kuladhipati, Bhopal University, Bhopal and Another*, and *Ram Singh v. University of Sagar* 1973 M. P. L. J. 561. Relying on the above decisions, it is contended that similar provisions contained in the M. P. Vishwavidyalaya Adhiniyam and University of Sagar Act, in the matter of inclusion of names of eligible candidates in selection panel, have been construed to be only directory and not mandatory.

So far as the other ground mentioned in the proceedings of the Governing Body that the candidates recommended did not have requisite percentage of marks at M. A. Level is concerned, Shri Rajendra Tiwari and Shri Ajit Singh appearing for Dr. Gayatri Sharma contended that there is a power of relaxation contained in the rules themselves and where such candidates were included in the Panel relaxation of minimum required percentage of marks at M. A. level may be inferred. Reliance is placed on my decision rendered at Gwalior in *Dr. Subhash Chand Jain v. State of M. P.* (M. P. No. 1255 of 1991) decided on 9.11.1995 (1996(1) (1996)).

Shri Ajit Singh, on behalf of his client Dr. (Ku.) Gayatri Sharma, also contended that once the selection committee has placed his client at number 1 in the list, the rules left on direction with the Governing Body to select and appoint Dr. Ranjana Sharma (i. e. writ petitioner in W. P. No. 1164/96) to the post of Assistant Professor in Political Science.

For deciding the rival contentions advanced by the learned counsel appearing for the three candidates before as in the three petitions, it would be necessary to examine the relevant provisions of the Recruitment Rules. The minimum qualifications for recruitment for the teaching posts in the institution are contained in Schedule appended below the rules. For Lecturers in Colleges, the basic qualification are a doctors" degree or published research work of equivalent High standard and II Class Masters" degree with minimum 50% marks. The candidate is also required to possess minimum 50% marks at ail levels in his educational career from Higher Secondary to Bachelor"s degree. The Schedule

which has laid down qualifications however, contains a proviso permitting the selection committee to relax the laid down qualification of minimum 50 marks at all levels in educational career from High Secondary to Masters "Degree" if in the opinion of the selection committee the research work of a candidate from his thesis or published work is of a very high standard." The exact language of the provision is as under:-

Provided that if the Selection Committee is of the view that the research work of a candidate as evident either from his thesis or from his published work is of very high standard it may relax any of the qualifications prescribed in (b) above.

It is on the above laid down qualifications, with the power of relaxation, in the circumstances mentioned above, the selection committee has to prepare a selection panel in order of merit. The appointing authority is then duty bound to make appointment in order of merit from the select list prepared. Rule 15 on the subject of selection and appointment is worth reproduction :-

15. (1) The Committee shall, having regard to the nature of duty of the post, select candidates by any one of the methods prescribed under the said rule and shall prepare a list of such candidates.

(2) The candidates shall be selected on the basis of merit and the panel as well as the order of the names in the panel recommended by the selection committee should have the full concurrence of at least one expert.

(3) The list prepared under Sub-rule (1) shall contain the names of candidates five times the number of posts proposed to be filled up.

(4) The list prepared under sub-rule (1) shall be submitted to the institution.

(5) Appointment to any post of a teacher or other employee shall be made in order of merit from the list prepared under sub-rule (1).

The proceedings of the Governing Body as recorded and disclosed to this Court, no doubt, show that the Governing Body had found the serious infirmities in the recommendations of the selection committee and, therefore, had taken a decision not to appoint any candidate but to re-advertise all the vacancies. It would be fitting to reproduce the relevant contents of the proceedings of the Governing body dated 18th July, 1991 containing the reasons for rejecting the recommendations of the selection committee.

AGENDA No. 2. Sealed envelope of the selection committee for the post of Asstt. Professor in Philosophy is opened. Seal is found intact. Envelope is opened. Envelope is signed by all the members of the Governing Body.

Thereafter the names recommended for appointment by the selection committee was discussed at length and the testimonials were also examined and discussed. According to rule 15 (3) framed under M. P. Ashaskiya Shikshan Sanstha Adhiniyam, 1978 the Governing Body is under obligation under rules to make selection from the list in order of merit. Mere name of Ku. Dr. Gayatri Sharma is

first in order of merit, therefore, in normal course who deserves appointment according to selection committee. With due respect to the selection committee, the minimum qualification as prescribed in the Schedule for appointment as Asstt. Professor in "Philosophy", there is a short fall of marks than 50% in Bachelor Degree and as such the minimum qualification is not fulfilled. However, the members of the Governing Body did not lose sight of the proviso clause prescribed in the rules, all the same the selection committee has not given out any reasons for relaxing the minimum qualification therefore, it appears to be incongruous with the rules touching qualification. Furthermore, the rules prescribe that the list should contain five times names of the post vacant. Here there being only one post, there should have been list of five candidates.

Therefore, the majority members feel that the list being not complete, appointment should not be made.

However, Dr. S. R. Das Gupta and Dr. Ashok Parekh feel that the first name should be accepted and infirmities be pointed out and sent the recommendation to Commissioner, Higher Education, Bhopal for approval. It is also pointed out that the list is complete.

Since the majority feels that the panel be not accepted and the post be advertised, papers be sent to Commissioner, Higher Education for information.

(b) Envelope of the selection committee for the post of Asstt. Professor in Political Science is found. In this list the candidate recommended in second position has not scored the minimum marks in B. A. List of five persons is also not recommended. Hence the members feel that the panel recommended by selection be not approved and the post be re-advertised.

Papers of this post be also forwarded to Commissioner Higher Education, Bhopal for information.

From the above minutes of the meeting of the Governing Body, it is clear that the selection panel was rejected on the two grounds firstly that required by Rule 15 (3) of the Recruitment Rules the panel did not contain names of minimum five candidates for one post, and secondly, the proceedings of the selection committee do not disclose why it recommended the name of Dr. Gayatri Sharma by including her in the panel at the top and why the requirement of minimum 50% marks at S. A. Level in her case had been relaxed.

Shri Alok Aradhe, learned counsel, is right in his submission that appointment orders came to be issued from the panel regardless of the decision taken by the Governing Body not to operate the panel for the infirmities mentioned above.

The second question, however, urged on behalf of the candidates who are petitioners before this Court in these cases challenging the decision of the Governing Body, cannot outrightly be rejected. It is open to this Court to examine whether the reasons assigned by the Governing Body in rejecting the panel recommended by the selection committee are sound in law.

Taking up the First reason assigned by the Governing Body for refusing to implement the panel that it did not contain minimum five names for one vacancy as required by Rule 15 (3) of the Recruitment Rules, this Court finds no difficulty in upholding the contention advanced on behalf of the candidates that the said provision is only directory and not mandatory. Similar provisions contained in Madhya Pradesh Vishwavidyalaya Adhiniyam and University of Sagar Act in the matter of preparation of Panel were considered by this Court in Zahir Ahmad's case (supra) and Dr. Ramsingh's case (supra). It has been held that where the available suitable candidates are less than five, the selection committee can recommend candidates less in number than five and even one candidate can be recommended. Although in the relevant rule the expression used is "shall", in the context and looking to object of the rules aimed at filling of the post on the basis of merit and selection, the provision has to be read as merely directory and not mandatory. The Governing body was, therefore, in error in not acting upon the selection Panel on the ground that less than 5 candidates were recommended for each available posts by the selection committee.

The Second reason assigned by the Governing body for rejecting the Panel recommended by the Selection Committee is that Dr. Gayatri Sharma had less than 50% marks of B. A. level and she could not be put at the top in the panel for the post of Assistant Professor in Political Science. It is true that sitting singly in Gwalior Bench, in the case of Dr. Subhash Jain (W. P. No. 1255/91 decided on 9.11.95) reported in 1996 (1) M. P. W. N. 174, I had taken a view that inclusion of name of candidate in the panel by the selection committee raises an inference that the want of minimum prescribed percentage of marks at post-graduate level or higher secondary level had been relaxed by the selection committee. The aforesaid judgment was subject of L. P. A. No. 175 of 1995 before the Division Bench decided on 4.9.1996. My decision has not received full approval in the L. P. A. The contention of Shri Ajit, Singh, therefore, that inference of relaxation in the matter of minimum prescribed percentage of marks at B. A. level in the case of Dr. Gayatri Sharma cannot be accepted. In the case of R. B. Sharma v. M. P. Uchcha Siksha Anudan Ayog and another 1993 J. L. J. 73. I sitting in D. B. with Tamaskar, J., had taken a view that although it may not be necessary for the selection committee to record reasons for including a candidate or candidates in the selection panel, but its proceedings should disclose due application of mind particularly in the matter of relaxation of minimum prescribed percentage of marks as required by the proviso below Clause - A of the Rules quoted above. In the case of R. S. Sharma (supra), on the facts and controversy involved therein, the Division Bench observed as under:

.....In our opinion, the committee constituted for making selection of teacher or lecturers is not required to state reasons for selection or non-selection of candidates, but it is necessary that its proceedings should disclose due application of mind. The minutes of the selection committee do not disclose due application of mind. The minutes of the selection committee do not disclose that its members were alive to the requirement of the rule in the schedule that if Ph.

D. candidates are available, they can be rejected only if found unsuitable and non - Ph. D. could be considered only in such eventuality. The proceedings of the selection committee should have also disclosed from its minutes that the committee was conscious of the requirement of the rule that although a candidate does not possess degree of research work of equivalent standard, he must at least possess two years research experience. The proceedings of the selection committee in placing list did not at all mention in the action of the selection committee, the petitioner's work after registration for Ph. D. was of a nature which could be considered as fulfilling the minimum prescribed qualifications of his possessing "two years research experience.

The last question remains is whether on the second infirmity pointed out above, that the proceedings of selection committee do not reflect due application of mind with regard to relaxation of minimum prescribed 50% of marks, the entire selections and appointments deserve to be set aside or not.

The infirmity of non-recording of reasons by selection committee in the matter of relaxation of required minimum percentage of marks at graduate level, was not a so vital as to vitiate the whole proceedings of selection. The Governing Body, instead of rejecting the whole panel and directing re-advertisement of posts, had definitely on option, to refer back the matter to the selection committee for recording reasons in its minutes on the question of relaxation of minimum prescribed percentage of marks and then submit a fresh panel concerning the candidates under consideration on the relevant date. The Governing Body acted under a mis-conception of law that for non-recording of reasons by the selection committee in the matter of relaxation of minimum prescribed percentage of marks, it had no option but to reject the whole panel. This Court, therefore, considers it expedient in law to partly allow this petition by directing the Governing Body to refer back the matter to the Selection Committee for reconsideration of the candidates within the zone of consideration on the relevant date and submit a fresh panel.

In view of the discussion aforesaid, this Court grants the following reliefs to the petitioners in the three petitions :

(i) W. P. No. 1174 / 96 (Dr. Subhash Chandrakar Vs. State of M. P. & others)

The petition partly succeeds. The impugned order dated 7.3.1996 (Annexure - P/18) whereby the petitioners appointment to the post of Assistant Professor in Philosophy was cancelled is hereby quashed. Consequently, the petitioner shall be allowed to continue in service and discharge her duties and draw salary on the post in terms of the appointment order issued on 8.3.1996 (Annexure - P/13). The respondents Nos 3 and 4 i. e. the Chairman of the Governing Body of the institution and the Principal of the College are directed to reconvene a meeting of the selection committee for recommending a fresh panel in accordance with Rule 15 of the Recruitment Rules in the light of the observations made above by this Court. On submission of such a fresh panel of the candidates as on 18.7.95, the

Chairman of the Governing Body shall convene a meeting of the Governing Body for making appointments under Rule 15 on the basis of the fresh selection panel to be submitted by the selection committee. It is directed that the petitioner shall continue in service under order of appointment issued in her favour subject to the submission of fresh panel by the selection committee and the decision of the Governing Body thereon in accordance with the directions made above.

(ii) W. P. No. 1164 / 96 - (Dr. (Smt.) Ranjana Sharma v. State of M. P. and others)

The petition is partly allowed. The impugned order of the Chairman of the Governing Body dated 7.3.1996 (Annexure - P.70) whereby the petitioners appointment as Assistant Professor in the subject of Political Science made on 2.3.1996 (Annexure - P/15) was set aside, is hereby quashed. Consequently, the petitioner shall be allowed to continue In service on the post of Assistant Professor in Political Science under the order of appointment in her favour dated 2.3.1996. The respondent Nos. 3 and 4 i. e. the Chairman of the Governing Body and the Principal of the College are directed to re-convene a meeting of the selection committee for recommending a fresh panel in accordance with Rule 15 of the Recruitment Rules in the light of the observations made above by this Court. On submission of such a fresh panel of the candidates on 18.7.1995, the Chairman of the Governing Body shall convene a meeting of the Governing Body for making appointment, under Rule 15 of the Rules on the basis of the fresh selection panel to be submitted by the selection committee. It is directed that the petitioner shall continue in the service under order of appointment issued in his favour subject to the submission of fresh panel by the selection committee and the decision of the Governing Body thereon in accordance with the directions made above.

(iii) W. P. No. 1789 / 96 : (Dr. (Ku.) Gayatri Sharma v. State of M. P. & others)

The petition partly succeeds. The respondents Nos. 3 and 4 i. e. the Chairman of the Governing Body of the institution and the Principal of the College are directed to re-convene a meeting of the Selection Committee for recommending a fresh panel for the post of Assistant Professor in Political Science in accordance with Rule 15 of the Recruitment Rules in the light of the observations made above by this Court. On submission of such a fresh panel of the candidates as on 18.7.1995, the Chairman of the Governing Body shall convene a meeting of the Governing Body for making appointment under Rule 15 on the basis of the fresh selection panel to be submitted by the selection committee.

In view of the partial success of the petition, the parties are directed to bear their own costs of those petitions.