
(2014) 05 GAU CK 0059
In the Gauhati High Court
Case No : W.P. (C) No. 97 of 2013

H. Lalropianga

APPELLANT

Vs

Mizoram University

RESPONDENT

Date of Decision : 23-05-2014

Acts Referred:

Citation : (2014) 2 GLD 1 : (2014) LabIC 3164

Hon'ble Judges : Lanusungkum Jamir, J

Bench : Single Bench

Advocate : C. Lalramzauva, Sr. Adv., A.R. Malhotra, K. Laldinliana, Lalramsangzuali, Zoramchhana, Ruth Lalrinlianai, C. Lalhruaitluangi Chhangte and Johny L. Tochhawng, Advocate for the Appellant; N. Sailo, Sr. Advocate and Dinari T. Azyu, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Lanusungkum Jamir, J.—The respondents i.e. Mizoram University advertised for filling up of 13 posts of Lower Division Clerks by Employment Notice dated 21st December, 2012 amongst other posts. Pursuant to the Employment Notice, the petitioners applied for the post of LDCs and they were provisionally admitted to the written examination. The written examination for the post of Lower Division Clerk was held on 11.5.2013 and by Notification dated 29.5.2013 the respondents declared 163 candidates to have qualified for the Typing Test and Computer Proficiency Test. Amongst the 163 candidates, the names of the petitioners figured therein. The Typing Test and Computer Proficiency Test was conducted by the respondents on 4.6.2013 and by Notification dated 6.6.2013 declared 46 candidates to have qualified for Personal Interview for the vacant post in Mizoram University. Amongst the 46 candidates, the names of the petitioners were also shown to have qualified for the said Personal Interview to the post of Lower Division Clerk. Personal Interview was conducted by the Selection Committee on 12.6.2013 and on the recommendation of the Mizoram University Selection Committee (Groups "B" & "C") the respondents by

Notification dated 24.6.2013 selected the petitioners against the post of Lower Division Clerks in Mizoram University. By the said Notification dated 24.6.2013, the selected candidates were requested to submit joining report within 1(one) month from the date of publication of the result and to take necessary action in accordance with the stipulations listed out in the offer of appointments. Thereafter, the respondents had issued offer of appointment to each of the petitioners to the post of Lower Division Clerk in the Ministerial Service of Mizoram University, Aizawl by offer letter dated 26.6.2013. All the petitioners accordingly submitted their acceptance letter to the offer of appointment made by the respondents. However, by letter dated 15.7.2013, the petitioners were informed that the appointment to the post of LDC in Mizoram University was being kept on hold till further orders. The petitioners thereafter came to learn from the local media that the appointments have been cancelled and had therefore, submitted representations on 7.8.2013 requesting the respondents for information as to why the post offered to them was being cancelled. In reply, the respondent No. 2 informed the petitioners by letter dated 21.08.2013 that the recruitment to the post of LDC advertised on 21.12.2013 has been cancelled by the 35th Meeting of the Mizoram University Executive Council held on 26th July, 2013. Again by another letter dated 23-08-2013, the respondents had informed the petitioners that the matter on LDC recruitment was deliberated by the 35th Executive Council Meeting on 26.7.2013 and the Executive Council vide EC : 35 : 5(8) was of the view that certain aberrations had occurred during the selection process of the LDC in view of which the Council resolved to cancel the recommendation for the appointment of LDCs. Being aggrieved with the actions of the respondents in cancelling their recommendation for appointment to the post of LDC in the Mizoram University, the petitioners have filed the present writ petition. Heard Mr. A.R. Malhotra, learned counsel appearing for the petitioners as well as Mr. N. Sailo, learned senior counsel assisted by Mrs. Dinah T. Azyu, learned counsel appearing for the respondents.

2. Mr. A.R. Malhotra, the learned counsel appearing for the petitioners submits that the only reason given by the respondents for cancelling the recommendation for appointment of the petitioners to the post of LDC was that the 35th Executive Council vide EC : 35 : 5(8) was of the view that certain aberrations had occurred during the selection process of the LDC. The word "aberration" had been vaguely used and no appropriate reasons had been given while the impugned letters dated 15.7.2013 and 23.08.2013 were issued by the respondents. The reasons given by the respondents for cancelling the recommendation is therefore totally vague and arbitrary. The same was also passed without hearing the petitioners and there has been gross violation of natural justice. He submits that the petitioners have undergone the whole process of examination and they were selected by Notification dated 24.06.2013. Thereafter, they were given the offer of appointment which was also accepted by the petitioner. He, therefore, submits that as the offer of appointment was given by the respondents and thereafter accepted by the petitioners the same amounts to a concluded contract and

therefore, the respondents could not have issued the impugned letters dated 15.07.2013 and 23.08.2013. It is further submitted by the learned counsel for the petitioners that by the same examination the process for filling up the posts of Junior Engineer, Assistant and Stenographer was also conducted. However, the respondents have proceeded only to cancel that selection of the petitioners and the other selected candidates for the post of Junior Engineer and Stenographer have not been interfered with.

Referring to the affidavit-in-opposition filed by the respondents, learned counsel appearing for the petitioners submits that from a perusal of the report of the enquiry committee, it is seen that one Mr. C. Zothankhuma, Registrar and Mr. P. Rinawma, Dean, SES & RM were members of the enquiry committee. He also submits that when the decision was taken by the Executive Council of the Mizoram University, the said persons, namely, Mr. C. Zothankhuma, Registrar and Mr. P. Rinawma, Dean, SES & RM were also present in the said Executive Council meeting. He, therefore, submits that the presence of the said two persons who were members of the enquiry committee in the Executive Council itself vitiates the whole Executive Council meeting held on 26.07.2013. It is also the submission of the learned counsel for the petitioners that if any reasons were given by the respondents for cancelling the recommendation of the petitioners the same has been done only in the affidavit-in-opposition which amounts to a total failure on following the principles of natural justice. He, therefore, submits that the action of the respondents was most arbitrary and therefore, the impugned letters dated 15.07.2013 and 28.03.2013 be set aside and the respondents be directed to appoint the petitioners to the posts of LDC s. He also submits that the respondents have only cancelled the recommendation for appointment but the offer of appointment has not been cancelled.

In support of his case, the learned senior counsel appearing for the petitioners has relied on the following cases:--

- (a) Tarani Talukdar and Another Vs. Union of India (UOI) and Others, .
- (b) Jayanta Kumar Bhattacharjee and Others Vs. State of Tripura and Others, ;
- (c) ORYX Fisheries Private Limited Vs. Union of India (UOI) and Others, ;
- (d) Dir. S.C.T.I. for Med. Sci. and Tech. and Another Vs. M. Pushkaran, ;
- (e) Union of India (UOI) and Another Vs. Pradip Kumar Kedia etc., ;
- (f) Rajendra Vs. State of Maharashtra and Others, and
- (g) B. Ramakichenin @ Balagandhi Vs. Union of India (UOI) and Others, .

3. The Mizoram University has filed affidavit-in-opposition opposing the writ petition. Mr. N. Sailo, learned senior counsel assisted by Ms. Dinari T. Azyu, learned counsel appearing for the respondents submits that there were complaints made against the assessment of the Selection Committee in the recruitment process of the 14 LDC"s and therefore, the respondent No. 1 by a

Notification dated 9-07-2013 had constituted a 3 (three) member committee to look into the alleged irregularities. The terms of reference of the 3 (three) members committee was to look into the status of the recruitment rules of the LDC's and the process of selection adopted for recruitment to the post of LDC. The said committee after examining the entire selection process had submitted its report on 16.7.2013 with the finding that the selection of candidates only on the basis of interview mark is not in order and the selection should have been made on the overall performance of written examination, computer proficiency test and interview. The scheme of examination which was given to the candidates was that the examination would consist of a competitive written examination with maximum marks of 50 and typing test on computer (qualifying nature) and interview with maximum marks of 60. The selection committee made 100 marks for the interview whereas the scheme had shown only for 60 marks. The selection committee had not followed the scheme of examination given to the candidates and had also travelled beyond the scheme of examination by awarding marks in the interview from 100 instead of 60. The Executive Council, therefore after consideration of the report had decided to re-conduct examination for filling up the post of 14 LDCs. He, therefore, submits that there is nothing wrong in the decision taken by the Executive Council.

The learned senior counsel for the respondents, has fairly submitted that the said persons, namely, Mr. C. Zothankhuma, Registrar and Mr. P. Rinawma, Dean, SES & RM were present in the Executive Council meeting held on 26.07.2013. He, however, submits that their presence in the meeting would not vitiate the whole Executive Council meeting inasmuch as they were statutorily required to be present in the meeting. He also submits that it was a unanimous decision of the Executive Council and therefore, even if the said two persons were present the same would have made no difference. It is the submission of Mr. N. Sailo, learned senior counsel that the principles of natural justice cannot be applied in a strait jacket manner more importantly in the present case when the whole selection process in so far as the LDCs are concerned was vitiated due to the violation of the scheme of examination as was supplied to the candidates. The report of the three member committee was carefully and minutely assessed and there is no question of there being any illegality and arbitrariness on the decision of the respondents inasmuch as the very basis and foundation of the selection stood vitiated. He has also drawn the attention of this Court to Statute 12(1), 12(2)(iii) and 12(2)(XX) which empower the Executive Council to take such decisions that may be demanded of the situation. The respondents on detecting certain irregularities in the proceeding of the selection committee and after carefully examining the three member committee report had therefore, taken the decision to cancel the recommendations of the petitioners. As regards the allegations made by the petitioners that for the post of Junior Engineers and Stenographers, the respondents had taken no action, he submits that the same was done fairly and on merit and therefore, there was no necessity for cancellation of the examination process for the said posts. He also submits that

in so far as the Junior Engineers and Stenographers were concerned, no complaints were received by the respondents.

Mr. N. Sailo, learned senior counsel also contends that in the employment notice dated 21st December, 2012 under the terms and conditions XI, it has been clearly stipulated that in case of any inadvertence mistake in the advertisement and in the process of recruitment which may be detected at any stage, even after issue of appointment the respondents had reserved the right to modify/withdraw/cancel any communications made to the candidate(s). The petitioners have accepted the said terms and conditions under the notice dated 21.12.2012 which is also not challenged in the present writ petition and therefore, the writ petition deserves to be dismissed on this count alone.

Learned senior counsel for the respondents has also relied on the following cases:

(i) Divisional Manager, Plantation Division, Andaman and Nicobar Islands Vs. Munnu Barrick and Others, ;

(ii) Punjab State Electricity Board and Others Vs. Malkiat Singh, and

(iii) Inder Parkash Gupta Vs. State of Jammu and Kashmir and Others, .

4. The petitioners have also filed affidavit-in-reply refuting the affidavit-in-opposition filed by the respondents.

5. I have heard the learned counsels appearing for the rival parties. This Court had directed the learned senior counsel appearing for the respondents to produce all relevant records pertaining to the case in hand. The same has been done by the learned counsel for the respondents. I have perused the same.

6. For a proper adjudication of the case in hand, terms and conditions No. (vii), (xi) and (xii) of the Employment Notice dated 21.12.2012 are reproduced hereinbelow:--

"vii) The prescribed qualifying/pass marks in written examinations are the minimum and merely getting the same does not entitle candidates to be called for further examination/personal interview.

In the event of number of candidates getting qualifying/pass marks being large with respect to the number of vacant posts, the University may resort to setting cut-off marks higher than the minimum qualifying/pass marks.

xi) In case of any inadvertent mistake in the advertisement and in the process of recruitment, which may be detected at any stage, even after issue of appointment, the University reserves the right to modify/withdraw/cancel any communication made to the candidate(s).

xii) The University reserves the right not to fill any of the post(s). There may be an increase or decrease in the number of posts."

7. The report of the three members committee has been annexed to the affidavit-

in-opposition filed by the respondents. The relevant portion of the report are also reproduced hereinbelow:--

"As per the scheme of exam which was given to the candidates, the exam will consist of a Competitive Written Exam. (Maximum Marks-50) & Typing Test on Computer (Qualifying nature) and interview (Maximum Marks-60). In the last recruitment of LDC, the Selection Committee used all the above criteria, except the interview, as screening and qualifying benchmarks only. The final selection was done entirely on the performance of the candidates in the interview. This method of selection has been called by the MZP as irregular and in violation of Recruitment Rules."

"Discussion with members of the Selection Committee reveals that the Selection Committee simply followed the method used by the previous Selection Committee in January, 2011 & October, 2011.

After a detailed deliberation, this Committee feels that the selection should have been done as per the scheme of exam. Precedence may be followed when there are no clear-cut guidelines, but not when clear guidelines are available. In this case, the precedent is also not consistent. During 2003, 2005, 2007 and 2008 final selections were made on the performance of Written Exam plus Interview. However, it appears that recruitments made in January, 2011 & October, 2011 adopted another method, i.e. making the final selection on the basis of interview marks only.

Those making the complaint, in the instant case, argue that some candidates who perform well in the written exam (200 marks) and Computer Proficiency Test (50 marks), a total of 250 marks, are losing out to candidates who do well in Interview (100 marks). According to them, this is unfair because the Selection Committee can make arbitrary selection.

Another ground of criticism is that the Selection Committee made 100 marks for Interview whereas the scheme of exam shows it as 60. However, this argument is irrelevant if final selection is not made on the basis of Written marks plus Computer Proficiency Test marks plus Interview marks. If final selection is made solely on the basis Interview marks, whether the Interview mark is 60 or 100, is immaterial.

In view of the above, this Committee feels that Selection of candidates only on the basis of Interview mark is not in order. Selection should have been made on the overall performance of Written Exam, Computer Proficiency Test and Interview."

8. There is no doubt that the whole examination process was completed by the respondents and thereafter offer of appointment was also issued to the petitioners. The petitioners were therefore waiting to get appointed to the post of LDCs after giving their acceptance to the said offer of appointment. However, by the impugned letters dated 15.7.2013 and 23.8.2013, petitioners came to learn

that their appointments were being kept on hold and thereafter the recommendation for appointment to the post of LDCs. were cancelled on the basis of the Executive Council meeting held on 26.7.2013. From the affidavit-in-opposition filed by the respondents, it emerges that there were complaints against the assessment made by the Selection Committee during the recruitment process to the post of the 14 LDC s. After the three member committee was constituted on 9.7.2013, the said committee submitted its report on 16.7.2013. A perusal of the report would show that there has been deviation by the Selection Committee on the scheme of examination given to the candidates. Further, the allotted marks for the interview was 60 but the Selection Committee had allotted marks to the candidates from 100 marks. This Court, on consideration of the enquiry report as well as the records, therefore, finds that the whole process stood vitiated inasmuch there has been violation of the scheme of the examination made known to the candidates.

9. From the records produced by the learned senior counsel appearing for the respondents it is seen that in the past both the marks obtained in the written examination and interview were tabulated for making final selection except in the recruitment made in January, 2011 and October, 2011. The present scheme of examination was that the examination will consist of a competitive written examination (maximum marks 200), Computer Proficiency Test (maximum marks 50) and Typing Test on Computer (Qualifying nature) Interview (maximum marks 60). From the scheme of examination supplied to the candidates, only the Typing Test was of qualifying nature. Therefore, in view of the scheme of examination, the Selection Committee could not have, under any circumstances, selected candidates only on the basis of the Interview marks obtained and that too on a total of 100 marks which was against the scheme of examination. This being so, this Court, has no hesitation to come to the finding that the whole selection process stood vitiated and that those who had done well in the Interview Test had taken a march over the other candidates who had done well in the Written Test.

10. Coming to the submissions made by the learned counsel for the petitioner that two persons, namely, Mr. C. Zothankhuma, Registrar and Mr. P. Rinawma, Dean, SES & RM were present in the Executive Council meeting held on 26.7.2013, this Court, has seen the records wherein it is seen that in 35th meeting of the Executive Council held on 26th July, 2013, there were 17 members including the aforesaid two persons with the Vice-Chancellor, Mizoram University in the Chair, while taking the decision to cancel the recommendation for appointment of LDCs. This Court is of the opinion that their presence in the Executive Council consisting of 17 members (including the two of them) would not have made any difference. Therefore, the submission of the learned counsel for the petitioners that their presence vitiates the Executive Council meeting is not accepted.

11. I have considered the authorities relied upon by the learned counsel

appearing for the petitioners and on consideration of the same this Court finds that the facts and circumstances therein are different from the present case in hand and therefore, the same are not applicable and do not help the petitioners.

12. A 3 (three) Bench decision of the Hon"ble Supreme Court in the case of Union Territory of Chandigarh Vs. Dilbagh Singh and others, has laid the ratio as under:

"12. If we have regard to the above enunciation that a candidate selected for appointment to a civil post, does not acquire an indefeasible right to be appointed in such post in the absence of any specific rule entitling him for such appointment and he could be aggrieved by his non-appointment only when the Administration does so either arbitrarily or for no bona fide reasons, it follows as a necessary concomitant that such candidate even if has a legitimate expectation of being appointed in such posts due to his name finding a place in the select list of candidates, cannot claim to have a right to be heard before such select list is cancelled for bona fide and valid reasons and not arbitrarily. In the instant case, when the Chandigarh Administration which received the complaints about the unfair and injudicious manner in which select list of candidates for appointment as conductors in CTU was prepared by the Selection Board constituted for the purpose, found those complaints to be well founded on a enquiry got made in that regard, we are unable to find that the Chandigarh Administration had acted either arbitrarily or without bona fide and valid reasons in cancelling such dubious select list. Hence, the contentions of the learned counsel for the respondents as to the sustainability of the judgment of CAT under appeal on the ground of non-affording of an opportunity of hearing to the respondents (candidate in the select list) is a misconceived one and is consequently rejected."

This Court is of the opinion that the aforesaid ratio laid down by the Hon"ble Supreme Court covers the present case in hand. Accordingly, the allegation of the petitioners that the principles of natural justice has been violated is also not accepted.

13. The last ground of the petitioners that the respondents have cancelled only the recommendation but the offer of appointment has not been cancelled is also not accepted inasmuch as when the very basis of their selection i.e., the recommendation for selection to the post of LDC has been cancelled, there is no necessity to cancel the offer of appointment. In the facts and circumstances of the case, this Court does not find any illegality in the action of the respondents by cancelling the recommendation of the petitioners for appointment to the post of LDC and therefore, this writ petition being devoid of merit is accordingly dismissed. No cost.