

(1998) 02 GAU CK 0033

In the Gauhati High Court

Case No : Civil Rule No. 31 (SH) of 1997

Jay Prakash Sharma

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 27-02-1998

Acts Referred:

Constitution of India, 1950 — Article 16, 16(2), 16(4), 226

Citation : (1998) 4 GLT 19

Hon'ble Judges : N. Surjamani Singh, J

Bench : Single Bench

Advocate : B.K. Deb Roy, for the Appellant; O.S. Ajar, for the Respondent

Final Decision : Allowed

Judgement

N.S. Singh, J.—Upon hearing the learned Counsel on both sides, it appears to me that the Petitioner, namely Shri Jay Prakash Sharma made a prayer in this writ petition for issuing a writ of Mandamus or any other appropriate writ or direction to the Respondents commanding/directing them to appoint the writ Petitioner in the post of Lecturer in Philosophy in any of the Govt. colleges of the State of Meghalaya in keeping with the prescribed procedure, more so, in the light of the notification dated 30.10.95 issued by the Meghalaya Public Service Commission, Shillong, hereinafter referred to as "MPSC", as in Annexure III to the writ petition and, also in view of the appointment of a candidate namely Chaturvedi Daring in the post of Lecturer in Philosophy who is below the Petitioner in the Merit/Select list.

2. According to the Petitioner, he was placed 1st Class third position in M.A. Examination in Philosophy under the NEHU in the year 1994 and presently holding the post of part-time Lecturer in Philosophy in Raid Laban College. He applied for the post of Lecturer in Philosophy in response to the advertisement made by the MPSC as appeared in "The Shillong Times" on 10.3.95 for recruitment of Lecturers in different subjects for the Govt. colleges of Meghalaya and, in pursuance to the said advertisement, he applied for and appeared before

the Interview Board conducted by the MPSC on 23.9.95. Thereafter, the MPSC recommended 4(four) successful candidates including the writ Petitioner for their appointment to the post of Lecturer in Philosophy in order of merit, wherein the name of the Petitioner finds against serial No. 2 in the Merit/Select List as per notification dated 30.10.95 as in Annexure III to the writ petition.

3. Subsequently, Smti Sunita Ch. Momin and Chaturvedi Daring, whose names appear at serial Nos. 1 and 3 of the select list have been given appointment to the post of Lecturer in Philosophy in Tura Govt. College some time in the year 1996 leaving the Petitioner in the dark. It is also the case of the writ Petitioner that, police verification with regard to the antecedent of the Petitioner had been done and thereafter, the same was forwarded to the special officer to the Govt. of Meghalaya, Education Department for issuing of onward appointment letter to him. But, till today, no appointment has been made without any justification. It is also urged that, he was born on 2.2.71 at Tura West Garo Hills District and he had passed High School Leaving Certificate Examination from Central Board of Secondary Education in the year 1986 and subsequently, he had passed P.U. (Arts) and B.A. (Hons) from Don Bosco College under NEHU. As he has no alternative, he approached this Court for ventilating his grievances with this writ petition.

4. The case of the writ Petitioner is contested by the Respondents No. 1 and 2 by filing counter affidavit and contending inter-alia that the Petitioner has applied for the post of Lecturer in Philosophy knowing fully well that selection and appointment shall be made according to the Reservation Policy of the State of Meghalaya. Since this has been clearly indicated in the advertisement and the appointments were made according to the Reservation Policy of the State of Meghalaya, and mere verification of character and antecedents of any person does not confer right for appointment to any job under the Govt. and, that the Govt. is not bound to accept the recommendations in violation of the Reservation Policy.

5. Supporting the case of the Respondents No. 1 and 2, a copy of the brief note is appended to the additional affidavit-in-opposition dated 3.9.97 as in Annexure A which contains the following facts:

The Reservation Policy basically provides for reservation of 40% in favour of the Khasi Jaintias, 40% in favour of the Garo, 5% in favour of Scheduled Castes, OBC and other Scheduled Tribes, with the remaining 15% being treated as General or unreserved, which are first filled up, in order of merit. The reservation policy also provides that where the total number of vacancies is 9 or less, then all the vacancies would be treated as reserved in favour of the Protected Communities.

6. Shri B.K. Deb Roy, learned Counsel for the Petitioner contended, that out of the four recommended candidates including the writ Petitioner, two had been given appointment to the post of Lecturer by leaving aside the case of the writ

Petitioner though his name appears as against serial No. 2 in the Merit/Select List, the candidate namely Chaturvedi Daring who is a Scheduled Tribe candidate whose name appears at serial No. 3, just below the writ Petitioner has been given appointment and, as such, it is a clear case of discrimination. Shri Deb Roy further contended, that under the related Reservation Policy, it is not barred on the part of the Respondents concerned to give appointment to the writ Petitioner in the post of Lecturer in Philosophy as sufficient number of suitable candidates for filling up the reserved vacancies is not available from the respective classes in the said relevant year and as such, such vacancies will be made available to others. Supporting his reasonings, Shri Deb Roy made reliance upon the related resolution dated 12.1.1972, No. PER.222/71/138 Govt. of Meghalaya, Personnel Department, Office Memorandum dated 20.4.1972, another related Office Memorandums dated 25.11.1976, 12.9.1979 and also the Office Memorandum dated 19.12.1981 on the subject of Reservation of vacancies for Scheduled Castes and Scheduled Tribes as in Annexure V to IX to the reply affidavit dated 15.9.1997.

7. It is also submitted by Shri B.K. Deb Roy, that while giving appointment to the writ Petitioner by the Respondents concerned, there shall be no question of violation or by-passing the aforesaid Reservation Policy. The learned Counsel further urged, that in the advertisement there is no indication or mention of the total number of reserved posts and as such, the Respondents cannot raise the plea that appointment shall be made according to the Reservation Policy of the State of Meghalaya since this has been clearly indicated in the advertisement. Supporting the case of the writ Petitioner, Shri Deb Roy further argued, that the writ Petitioner has been discriminated by the Respondents concerned in not affording appointment to him as the person/candidate below him has been given appointment.

8. Supporting the above contention, Shri Deb Roy had made reliance on a decision of the Apex Court rendered in Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others, and contended, that advertisement or the employment notices would indicate the number of reserved posts and subjectwise, reserved seats must be notified in advertisement.

9. At the hearing, Shri O.S. Ajar, learned Govt. Advocate appearing for the Respondents No. 1 and 2 submitted that the State Policy in reservation of Govt. posts specifically provides that, when the number of post is 9 or less, all the posts are treated as reserved for appointment of the indigenous tribals of the State and the process of recruitment/appointment has been done in accordance with the Reservation Policy and as such, there is no illegality on the part of the Respondents concerned in not giving appointment to the writ Petitioner.

10. Shri Ajar further argued, that mere recommendation of a candidate for appointment in a particular post, he has no right to claim for appointment in the post as of right.

11. In order to appreciate these controversies amongst the parties, this Court will now refer to the relevant resolutions and office memorandums pertaining to reservation of vacancies in the State of Meghalaya.

12. As per resolution No. PER./222/71/138, dated Shillong, the 12th January, 1972, the following reservation shall be made in favour of the Scheduled Tribes and Scheduled Castes in the post of services in connection with the affairs of Meghalaya which are filled by direct recruitment:

(a) There shall be a reservation of 40 percent of the vacancies in favour of Khasis and Jaintias.

(b) There shall be a reservation of 40 percent of the vacancies in favour of Garos.

(c) There shall be a reservation of 5 percent of the vacancies in favour of any other Scheduled Tribes of the Autonomous District of Assam now within Meghalaya and the Scheduled Castes of Assam.

3. If sufficient number of suitable candidates for filling the reserved vacancies is not available from the respective classes in any particular year, then such vacancies will be available to others. But the deficiency in the number of Scheduled Tribes and Scheduled Castes will be carried forward to the next recruitment year and made good in the recruitment of that year, provided that the reservation on account of the deficiency shall not be carried forward for more than one year. After the expiry of the second year, those reservations be treated as lapsed. It has also been decided that at no time shall the number of normal reserved vacancies and the "carry forward" vacancies together exceed 90 percent of the total number of vacancies in that year.

By another office memorandum dated 20th April, 1972, No. PER.222/71/141, item (c) of the above paragraph 1, of the aforesaid resolution dated 12th January, 1972 is to be substituted and shall be decided always to have been substituted on and from 21st January, 1972 by:

(C) there shall be a reservation of 5 per cent of the vacancies in favour of any other Schedule Tribes and Scheduled Castes as specified in the Fourth Schedule and Second Schedule respectively of the said Act in so far as they relate to Meghalaya.

Likewise, by another office memorandum dated 25.11.1976 No. PER. 222/71/Pt. III/22, the above item (c) of para 1, of the aforesaid resolution has been substituted by the following with immediate effect:

(C) there shall be a reservation of 5 percent of the vacancies in favour of-

(i) the Rabhas, Boro-Kacharis and Koths permanently residing in Meghalaya; and

(ii) any other Schedule Tribes and Schedule Castes as specified in the fourth Schedule and the second Schedule respectively to the North-Eastern areas (Reorganisation) Act, 1971 so far as they relate to Meghalaya.

Similarly, by another office memorandum dated 12.9.1979, No. PER (AR) 64/79/15, the Govt. of Meghalaya was pleased to order that the following proviso shall be added below paragraph 2 of the aforesaid resolution dated 12.1.1972:

provided that in case where 50 percent more of the reserved vacancies of any particular group could not be filled up in any particular recruitment year, the State Government may,

(a) direct that reservation shall not be treated as lapsed after the expiry of the second year but will be carried forward for one year more, i.e., for a total period of three years;

(b) order that a special recruitment only for selection of candidates from under-represented groups in regard to which deficiency is continuing, may be held.

As per office memorandum dated 19.12.1981, No. PER (AR) 257/81/8, where the number of vacancies is 9 or less, the same shall be treated as reserved vacancies in favour of the protected communities as specified in the said resolution and office memorandum.

13. As per brief note as in Annexure A to the additional affidavit-in-opposition of the Respondent Nos. 1 and 2, the MPSC had recommended four candidates against three vacant posts i.e., two of them are tribal and two are non-tribal and the Petitioner who is the second nominee is a non-tribal and the personnel and AR(B) Department had advised to give appointment to the two tribal candidates only not to give appointment to the Petitioner being non-tribal as the vacant post is to be kept reserved and carried forward.

14. On bare perusal of the aforementioned resolutions and notifications relating to the reservation policy, it is well settled that, if sufficient number of suitable candidates for filling up the reserved vacancies is not available from the respective classes in any particular year, then such vacancies will be available to others. (Emphasis given). But, the deficiency of the number of Scheduled Tribes and Scheduled Castes will be carried forward to the next recruitment year and made good in the recruitment of that year, provided that the reservations on account of the deficiency shall not be carried forward for more than one year.

15. In the instant case, out of the three vacant posts of Lecturer in Philosophy, two vacancies had been filled up, thus appointing the two tribal candidates whose names appear at serial No. 1 and 3 in the Select List.

16. At the hearing, the learned Counsel on both sides did not dispute that, the factum of reservation of the number of posts is not clearly indicated in the advertisement. The Petitioner is the second nominee in the Merit/Select List though he is a non-tribal candidate. In my considered view, there is no bar on the part of the Respondents concerned to afford appointment to the writ Petitioner in the post of Lecturer in Philosophy by following and complying all the related resolutions and office memorandums mentioned above as the same is permissible on their part to do so under the aforesaid resolutions/memorandums.

As there is no sufficient number of suitable candidates for filling one of the remaining reserved vacancies as discussed above at the relevant period, then, such one vacancy can be made available to the Petitioner as he is holding second position in the Merit/Select List.

17. The aforesaid resolutions/memorandums provided that the deficiency in the number of Scheduled Tribes and Scheduled Castes will be carried forward to the next recruitment year and made good in the recruitment of that year.

18. The main object of Article 16 of the Constitution of India is to create a constitutional right to equality of opportunity and employment in public offices even though this article is confined to citizens as distinguished from other persons. No doubt, certain exceptions to the right created by Clause (1) and Clause (2) of Article 16 flow from Clauses (3), (4) and (5) of the Article as the same relate respectively, to a recruitment of residence if sanctioned by Parliamentary legislation, reservation for backward class of citizens, if not adequately represented in the State Services and the prescription of professing a particular religion or belonging to a particular denomination, if the office is in connection with the affairs of any religions or denominational institution. In fact, Article 16(4) is not an exception to but gives a permissible basis as the State is not prevented from making any provision for reservation in the matters of promotion of any class or classes of posts in the services under the State in favour of Scheduled Castes and Scheduled Tribes which, in the opinion of the State they are not adequately represented in the services under the State. Besides, the right to equality of opportunity in general terms. Article 16(2) prohibits discrimination against citizen on the ground of religion, race, caste, sex, descent, place of birth and residence and hence, non-arbitrariness is a part of Article 16.

19. It is well settled, that mere inclusion in the Select List, candidate has no indefeasible right for his appointment in particular post. (See *Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others*, and *Union Territory of Chandigarh Vs. Dilbagh Singh and others*, but, candidates have vested rights to be considered by the Selecting authority/DPC as per advertisement unless specific condition is made. (See *N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others*, In the instant case, the Respondent Nos. 1 and 2 ought to have given appointment earlier to the writ Petitioner in the post of Lecturer in Philosophy as per related resolution/office memorandums as the same permits the Respondents concerned do it.

20. As discussed above, I am of the view that there is existence of an enforceable right of the writ Petitioner which is the foundation of the exercise of the jurisdiction of this Court under Article 226 of the Constitution of India.

21. For the reasons and discussions made above, I direct the Respondent Nos. 1 and 2 to afford/give appointment to the writ Petitioner in the post of Lecturer in Philosophy in any one of the Government Colleges (SIC) in the State of Meghalaya,

within a period of one month from the date of receipt of this judgment and order.
In the result, the petition is allowed, but no cost.