

(1998) 02 GAU CK 0017

In the Gauhati High Court

Case No : Civil Rule No. 289 of 1994 and Civil Miscellaneous Application No. 608 of 1997

K. Lamlee Kamei

APPELLANT

Vs

Manipur Public Service Commission and Others

RESPONDENT

Date of Decision : 23-02-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309

Citation : (1999) 1 GLT 353

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : A. Nilamani Singh, for the Appellant; Th. Ibohal Singh, L. Nandakumar Singh and N. Kotiswor Singh, for the Respondent

Judgement

H.K. Sema, J.—The problem involved in this writ petition relates to appointment of Deputy Director (Handloom) in the Industries Department from reserved (ST) quota. In this writ, the Petitioner is seeking a writ in the nature of Certiorari for quashing of the Notification No. 7/13/89-MPSC(DR) dated 1.3.94 recommending for appointment of the 4th Respondent to the post of Deputy Director (Handloom) in the Industries Department.

2. I have heard Mr. A. Nilamani Singh, learned Counsel for the Petitioner, Mr. L. Nandakumar Singh, learned Counsel for the Respondents 2 and 3, Mr. Ibohal Singh, learned Counsel for the Respondent No. 1 and Mr. Kotishwor, learned Counsel for the Respondent No. 4.

3. The undisputed facts are these Petitioner passed HSLC Examination in 1982 and P.U. 1st year in 1984. Thereafter, he obtained diploma in Handloom Technology from the Indian Institute of Handloom Technology, Varanasi, Ministry of Textiles, Govt. of India by passing the examination held in April, 1988 in First Class.

4. He was engaged as Weaving Instructor the Maringlane Tribal Weavers"

Cooperative Society from 16.6.1988 to 15.12.1989 and thereafter, served as Weaving Instructor in Sawombung Kabul Khunjao Weavers" Co-operative Society from 16.12.89 to 15.9.90. He was appointed as Instructor (Weaving) in the Industries Department, Govt. of Manipur on regular basis on the recommendation of DPC held on 13.9.90 and he joined the post on 17.9.90 and worked in the same capacity till 11.7.91. Thereafter, a vacancy in the post of Deputy Director (Handloom) from reserved category (ST) under the direct recruitment quota has arisen and the Petitioner was appointed to the said post on ad hoc basis by an order dated 9.7.91 for a period of 6 months and the Petitioner continued in the said post till the DPC held its sitting on 1.3.94, the ad hoc appointment of the Petitioner being extended till 31.3.94.

5. Recruitment to the post of Deputy Director (Handloom) has been framed by the Governor in exercise of power conferred by the proviso to Article 309 of the Constitution of India and published in the official Gazette of Manipur on 19.8.87, (in short the rules). Rule 5 of the Rules empower the governor the general power to relax the Rules if it is necessary or expedient so to do for reasons to be recorded in writing, and in consultation with the Manipur Public Service Commission, for relaxation of any of the provisions of the Rules.

6. Further, column 7 of the Rules prescribed educational qualification for direct recruitment. Column 7 of the Rules has an important bearing in disposing of this writ petition and is reproduced below:

Educational and other qualification required for direct recruits.

ESSENTIAL

Degree in Handloom/Textile Technology from a recognised University/Institute with 2(two) years experience in the field.

OR

Diploma in Handloom/Textile Technology from a recognised University/Institute with 5(five) years experience in the field.

DESIRABLE

Knowledge of Manipuri & Hindi.

(Qualification relaxable at the discretion of the Commission in the case of candidates otherwise well qualified.)

7. Commission First advertised the vacancy on 11.5.90. Pursuant to the vacancy advertised, Petitioner along with others applied for the post but the commission rejected the applications on 6.6.90 on the ground that the applicants did not possess the prescribed qualification with regard to experience as visualised under column 7 of the Rules. Thereafter, the Commission issued second advertisement for recruitment to the post on 10.10.90. pursuant to the second advertisement, 8 candidates applied for the post including the Petitioner but as they did not

possess the requisite experience as visualised under column 7 of the Rules, the Commission decided to relax the qualification on 4.1.91 and the interview was held on 22.2.91. However, the Commission did not find any candidates suitable for the post and no one has been recommended.

8. The third advertisement was issued by the MPSC by Notification No. 4/92-93 dated 8.12.93 on the basis of which the 4th Respondent has been recommended in so far with regard to the post of Deputy Director (Handloom) in clause 4 of the Advertisement runs as under:

(4) INDUSTRIES DEPARTMENT: One post of Deputy Director (Handloom) (Temp) ; Class-I Gazetted. PAY: Rs. 2200-400/-. MAXIMUM AGE : 35 years. E.Q. : Degree in Handloom/Textile Technology from a recognised University/ Institute with 2(two) years experience in the field or Diploma in Handloom/ Textile Technology from a recognised University/Institute with 5(five) years experience in the field. DESIRABLE : Knowledge of Manipuri & Hindi. Post is reserved for ST but to be treated as reserved for SC, if no suitable for ST candidate is available.

9. It is on the basis of the aforesaid advertisement that the candidates applied for the post and as would appear from the proceeding of the DPC held on 1.3.94, altogether 5 candidates including the Petitioner and the Respondent No. 4 have been considered in relax standard and the Respondent No. 4 was accordingly recommended on 1.3.94 for the appointment. This proceeding has been produced before the Court and it will be discussed at an appropriate time.

10. In the facts and circumstances aforesaid, Mr. Nilamani Singh raised the following contentions:

(1) In the advertisement dated 8.12.93 on the basis of which the DPC held its meeting on 1.3.94 and recommended the 4th Respondent for the post has not mentioned and it is a fraud practice on the public inasmuch as non-mentioning of the relaxation of educational qualification has precluded many candidates who are not possessing requisite qualification as prescribed under column 7 of the Rules from applying the post.

(2) That even without relaxing the qualification as visualises under column 7 of the Rules, the Petitioner was possessing the requisite qualification and experiences as would appear from Annexure-4 of the counter of the Respondent No. 1 inasmuch as Annexure-4 indicates that Petitioner has gained experience in the field for 5 years and 1 month and 22 days as on 10.1.94 and the 4th Respondent has gained experience in the field for 2 years, 5 months and 23 days as on 10.1.94 and therefore, the relaxation was granted by the Commission solely to favour the Respondent No. 4.

(3) The Petitioner is not equally circumstance with the 4th Respondent and therefore, unequal circumstances has been treated equally.

(4) MPSC has no jurisdiction under the Rule to relax the qualification with regard

to the, experience. The discretion of the Commission under the Recruitment Rules can only be exercised in the case of candidates otherwise well qualified.

These are the sums and substances raised by the counsel for the Petitioner.

11. Before I advert to the other points, I may at this stage mention that there is no dispute that both the Petitioner and the 4th Respondent are holder of diploma in Handloom Technology. Petitioner obtained the same from Varanasi and passed in First Class. The 4th Respondent has obtained the diploma in Handloom Technology from the Indian Institute of Handloom Technology, Gauhati in the month of April, 1989 and was placed in Second Class. The statement made in paragraph 8 of the writ petition that the 4th Respondent had obtained the diploma in Handloom Technology from the Institute at Gauhati in the examination held in the month of April, 1989 and was placed in the second class has been admitted by the 4th Respondent in paragraph 9 of its counter.

12. Respondents 2 and 3 have filed counter. It is the case of the Respondents that the case of the Petitioner has been considered on merit and therefore, he cannot raise any grievances. It is also the case of the Respondent that the decision to declare the diploma holders of the Institute of Handloom Technology for recruitment to the post of Textile Technologists to be equivalent to degree in Textile Technology in selecting candidates for the post in the Textile field has been taken as far back as on 20th November, 1974, (Annexure-R/1) of the counter of the Respondents 2 and 3. According to Mr. L. Nandakumar Singh, both the diploma obtained by the Petitioner from Varanasi and the 4th Respondent from Gauhati are being recognised Institute and they can be equated with a degree in terms of order dated 20th Nov."74. He accordingly submits that there was no necessity of relaxing the educational qualification and experience as visualised under column 7 of the Rules. As already said, Recruitment Rules was published in Manipur Gazette on 19th August, 1987. In column 7 of the Recruitment Rules, no mention has been made that diploma holders obtained from the Institute of Technology has been equated with a degree. It, therefore clearly appears that the order dated 20th Nov. 74 has not been given effect to all through. Since it has not been given effect to, the Respondent Government cannot now turn back that there was such a decision or policy and take the benefit of the same, even otherwise, this argument does not help either side. It is, however, admitted by Mr. L. Nandakumar that the advertisement dated 8.12.93 has been issued after the State Government has passed an order for relaxing the educational qualification and experience as visualised under column 7 of the Rules.

13. In the facts and circumstances aforesaid, now let us examine the contention raised by the Petitioner:

CONTENTION (1) : In the advertisement dated 8.12.93 on the basis of which the DPC held its meeting on 1.3.94 and recommended the 4th Respondent for the post has not been mentioned that the qualification has been relaxed and it is a

fraud practice on the public in as much as non-mentioning of the relaxation of educational qualification has precluded many candidate who are not possessing requisite qualification as prescribed under column 7 of the Rules from applying the post.

14. Pursuant to the direction of this Court, Mr. Ibohal, learned Counsel for the Respondent No. 1 produced MPSC file No. . 7/13/89-MPSC (DR) relating to the advertisement and recommendation for the post of Deputy Director (Handloom). It appears from the note 34 at page 21 of the File that decision has already been taken by the Commission to relax the qualification relating to experience on 4.1.91. Also there is no dispute by either of the parties that the advertisement dated 8.12.93 has been issued by the Commission after decision has been taken to relax the qualification relating to experience on 4.1.91. Column 4 of the advertisement dated 8.12.93 as reproduced above would clearly show that there is no mention whatsoever that the qualification as visualised under column 7 of the Recruitment Rules with regard to the experience is relaxable. In fact, column 4 of the advertisement clearly show that the experience as visualised under column 7 of the Recruitment Rules has been clearly indicated. This has misled and precluded many eligible candidates who are otherwise found qualified on the basis of relax Recruitment Rules with regard to the experience from applying for the post. It is a fraud practise on the public by the Commission. The more application it receives, the chances of getting better candidates are greater.

15. In this connection, Mr. Nilamani Singh has placed reliance on the Apex Court's judgment rendered in District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, It was pointed out by the Apex Court in paragraph 6 of its judgment as under:

When an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement.

It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice.

Even assuming that the Respondent appointee had better marks among those who had applied, it seems that no one with second class had applied or the applications only of the third class candidates were considered. If so, they were the application of those third class candidates who had applied and not of all those who would have applied had the advertisement given an indication that those with a third class degree could also apply.

16. Reliance has also been placed on the decision rendered by the Apex Court in

Miss Shainda Hasan Vs. State of Uttar Pradesh and others, . There it was pointed out as under:

Where in respect of an appointment of Principal, the Selection Committee relaxed the qualification of teaching experience in favour of Selected Candidate the relaxation would be unjustified, because in the absence of statutory rules providing power of relaxation the advertisement must indicate that the Selection Committee/Appointing Authority has the power to relax the qualifications.

17. In the instant case as already pointed out, the Commission has the discretion power only to relax the qualification in the case of the candidate otherwise well qualified. No power has been given to the Commission for relaxing the experience in the field.

18. It is, however, contended by Mr. L. Nandakumar that the Petitioner had competed in the DPC held on 1.3.94 without any protest and after realising that he had not been recommended in the proceeding, he has preferred this Civil Rule and therefore, the Petitioner is not maintainable. In this connection, counsel for the Respondents referred to the decision of the Apex Court rendered in Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, . It was pointed out by the Apex Court as under:

Moreover, the Respondent-candidate who had challenged the examination in High Court under Article 226, had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The High Court itself has observed that the setting aside of the result of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the district in question (Kanpur) also. They were not responsible for the conduct of the examination.

19. As already pointed out, the grievance is not only of the Petitioner but question of public importance is involved and the interest of public at large are affected by such arbitrary and discriminatory exercise of power which I shall be presently dealing. Therefore, this case cannot be thrown out at the threshold that the Petitioner's case is not maintainable because he appeared before the DPC without any protest. The Petitioner was holding the post on ad hoc basis at the relevant time when the DPC held its meeting on 1.3.94 and therefore, in that circumstances, he was compelled to appear.

20. Admittedly, the Commission has taken a decision on 4.1.91 to relax the qualification with regard to the experience. The third advertisement was issued on 8.12.93. However, there was no indication that the Recruitment Rules as visualised under column 7 of the Rules would be relaxed with regard to experience. This has resulted in committing fraud on the public in as much as if the relaxation of the rules regarding experience has been indicated in the advertisement, many more candidates would have applied and this has precluded many more eligible and even meritorious candidates from applying for the post.

Even otherwise, the arguments of Mr. Nilamani Singh that the Commission has taken decision to relax the rule only to favour the 4th Respondent is well founded, because from the documents annexed by the Commission as Annexure-R/4 in their counter showing the chart of the candidates with the qualification and experience, it clearly appears that the Petitioner has served in the field for 5 years, 1 month and 22 days as on 10.1.94 and the 4th Respondent has served from 2 years, 5 months and 23 days as on 10.1.94. This would show that the relaxation regarding experience in respect of the Petitioner was not called for.

21. There is yet another disturbing feature highlighted by the proceeding of DPC in its meeting held on 1.3.94 which is causing anxiety. As already said, MPSC's File has been produced and the entire records have been perused. The DPC Proceeding held on 1.3.94 which has been sought to be quashed in this writ petition is brief and appeared at page 86 of the file is reproduced below:

FILE No. 7/13/89-MPSC(DR)

Date of Interview: 1.3.1994

Reference : Governments requisition No. 60/26/80-IND dated the 30-12-1989 for I(one) post of Deputy Director (Handloom) in the Industries Department, Manipur.

Subject : Proceedings of the selection

Board of Manipur Public Service Commission constituted for selecting candidate for appointment to I(one) post of Deputy Director (Handloom) in the Industries Department, Government of Manipur. Report : In response to Manipur Public Service Commission's Notification No. 4/92-93 Item No. 4 dated the 8th December, 1993. The Commission received 7 (seven) applications (5-ST and 2 SC) for 1 (one) post of Deputy Director (Handloom) in the Industries Department, Manipur. Since the post is reserved for S.T, Scheduled Caste candidate can be considered for the post only when no suitable and qualified ST candidate is turns up for the post. All the candidates do not have experience of 5 years as required in the RRS and considered them in relax standard as they are Diploma Holders in Handloom Technology. After screening, 5(five) candidates are called for interview (viva-voce). All candidates appeared in the said interview (viva-voce) held on 1.3.1994 and recommended the following candidate for the post of Deputy Director (Handloom) in the Industries Department, Manipur.

-----	Merit position	Name of candidate	Roll No.
-----			1 2 3
-----	1st	Mr. K. Kamkhanlal	3 (ST)

2. The following expert/officer were present at the interview and assist the Commission in their deliberations:

Expert: 1. Mahmoodul Hassan, Sr. Lecturer (Weaving) Guwahati, Assam.

Departmental Representative:

Shri S. Kunjabihari Singh, Director of Industries, Manipur.

3. 1 (one) candidate is in the reserve list.

(I. Bijoy Singh) President Dated 1.3.1994. (Kh. Dhirendra Singh) Member Dated 1.3.1994.

This need not be referred to the Commission.

(I. Bijoy Singh) Chairman Manipur Public Service Commission.

22. In the instant case, the DPC has rendered the entire process of selection a mockery. A bare reading of the proceedings as reproduced above would clearly indicate the callousness and arbitrary exercise of power by the Constitutional Authority in performing their statutory duties by applying a slip shot method. Who are the candidates considered by the Commission and their relative merits are not mentioned in the proceedings. This is more so when the service of the expert has been requisitioned in the present interview. To me therefore, the recommendation of the 4th Respondent in the DPC held on 1.3.94 is an abuse of the process of power, an arbitrary exercise of power and is hit by Articles 14 and 16 of the Constitution, besides the advertisement has not indicated that the rules has been relaxed with regard to the experience as pointed out. It also appears from the proceedings of the DPC that one candidate has been kept in the waiting list, but which of the candidates has been kept in the waiting list is not indicated. This would open scope for applying pick and choose policy in the event of the resulting vacancy arises in the near future.

23. The Petitioner has succeeded his case on Ground No. 1 and therefore other grounds urged in this writ petition are not resorted to.

24. I am tempted to quote the observation made by the Apex Court in E.P. Royappa Vs. State of Tamil Nadu and Another, This is what the Apex Court had pointed out in paragraph 85, page 583-584 as under:

From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies ; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant consideration because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it

would amount to malafide exercise of power and that is hit by Articles 14 and 16. Malafide exercise of power and arbitrariness are different lethal radiations emanating from the same vice : in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16.

25. In the facts and circumstances as stated above, the proceedings of DPC held on 1.3.94 and the recommendation made on 1.3.94 is constitutionally not permissible and it is hereby quashed and set aside. Respondents are directed to re-advertise the post mentioning the relaxation with regard to the experience if so advised within a period of one month from the date of receipt of this order as the vacancy has occurred sometime in 1991, the inviting all eligible candidates and thereafter, the process of selection shall be completed within 2(two) months from the date of advertisement. Petitioner if holding the post as Deputy Director (Handloom) as on today shall continue till his case is examined and considered along with other eligible candidates by the Commission. It is made clear that if the Petitioner is found suitable by the Commission is well and good, if however, the Petitioner is not found suitable by the Commission, he should give way to the recommended candidate. It is further made clear that in the event the Petitioner has now become over-age, the time taken by the Petitioner in pursuing this writ petition shall be excluded. This yardstick would apply to 4th Respondent also. Before advertising the post, the Respondents shall also consider as to whether the decision taken by the Government in 1974 to equate the Diploma with a degree or not.

26. With the aforesaid directions, this petition is allowed. Parties are asked to bear their own costs. Needless to say that any interim order passed is automatically merged with this order.