
(2011) 12 UK CK 0125

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 1359 of 2005

Kamal Kishore

APPELLANT

Vs

State of Uttaranchal and others

RESPONDENT

Date of Decision : 27-12-2011

Acts Referred:

Uttar Pradesh Pravidhik Shiksha Adhiniyam, 1962 — Section 22E, 22E(1), 22E(2), 22E(3), 22E(4)

Citation : (2011) 12 UK CK 0125

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Sudhanshu Dhulia, J.—The petitioner has challenged the selection and appointment to the post of Laboratory Instructors ("Karmshala Anudeshak") in a Government Polytechnic run by a Committee of Management which is under grant in aid by the Government, namely, Kanahiya Lal Polytechnic, Roorkee, Haridwar. The petitioner alleges gross irregularities and violation of law while making the selection and the consequent appointments to the post of "Laboratory Instructors". The counter affidavit in this case has been filed by the State, the Committee of Management as well as the private respondents.

2. Arguments were heard of Mr. Sharad Sharma, Senior Advocate assisted by Ms. Indu Sharma, Advocate for the petitioner, Mr. N.P. Sah, Standing Counsel for the State of Uttarakhand, Mr. Arvind Vashisth, Advocate for respondent nos. 3 and 4 and Mr. L.P. Naithani and Mr. V.K. Kohli, Senior Advocates assisted by Mr. Siddharth Singh and Mr. I.P. Kohli, Advocates for the private respondents.

3. The main contention of the petitioner is that an advertisement was issued on 4.2.2004 in "Dainik Jagran" newspaper stating that, inter alia, seven posts of Laboratory Instructors are vacant in Kanahiya Lal Polytechnic, Roorkee (Uttaranchal) for which eligible candidates may apply. The petitioner had applied for the said post having all the required eligibility for the said post. In all, there

were seven different posts of Laboratory Instructors of different trade, such as, sheet metal shop, machine shop, carpentry shop, fitting, welding, foundry as well as wiring and jointing. There was a clear stipulated condition in the advertisement that in case a candidate wants to apply for more than one post of Laboratory Instructor then a separate application is liable to be made by him. The petitioner further contends that a meeting was held of the Search Committee of the said institute on 11.6.2004 and the Committee resolved that the selection has to take place in accordance with Government Order dated 18.12.1999. The main contention of the petitioner is that the procedure in the Government Order dated 18.12.1999 prescribes that marks will be awarded to a candidate in selection process as per the following :

Sr. No.

Eligibility, experience, practical and interview

Laboratory Instructor

1.

High School

10

2.

Intermediate

10

3.

B.Sc./B.A or Diploma in Engineering

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4.

G.M.T.L./ITI/Diploma in Engineering

20

5.

DCA

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6.

Higher eligibility, B.E./M.C.A. A.M.I.E., etc.

10

7.

Experience

20

8.

Practical

20

9.

Interview

10

4. The petitioner contends that the respondents have not made the selection as per the Government Order dated 18.12.1999. The principal contention here would be that marks have not been allotted to candidates as per the break-up given in the order dated 18.12.1999. Moreover, in all 294 candidates applied, out of which 192 candidates appeared for viva voce or the interview. After the interview, a list of 9 selected candidates was sent to the Management Committee, including the entire candidates who had applied for the post of Laboratory Instructors. Each selected candidate had certain marks given against his name for a specific trade. However, it is not stated as to how much marks these candidates have received for the interview! The contention of the petitioner is that in fact there is a total arbitrariness, in fact "nepotism" and "favoritism" in the matter. Many of the candidates who have been selected have absolutely no past experience, which was a preferential criterion, if not mandatory, for appreciating the suitability of a candidate. There are other anomalies as well.

5. The Regulations applicable for appointment in a Government Aided Polytechnic are known as "Uttar Pradesh Pravidhik Shiksha Institution Receiving Grant-in-Aid from the Government Regulations, 1996" (from hereinafter referred to as 1996 Regulations). According to the petitioner, appointments in a Polytechnic Institution receiving grant-in-aid are liable to be made under Regulation 15 (4). According to this provision a candidate has to be gauged by his overall performance and the selection committee may, if it chooses, take interviews. Therefore, the contention of the petitioner is that the marks are to be given only for his past academic records, experience, practical performance and lastly for the interview, if there is any. In other words, interview is only one of the criteria and as per Government Order dated 18.12.1999, according to which the selection has to be made, out of 100 marks only 10 marks to be given for interview. However, on the other hand, no marks have been given for past academic record or practical, in fact no practical test was taken from any of the candidates. The State, the Management Committee as well as the private respondents have, however, stated that the appointments had to be made under Rule 14 (6) of 1996 Regulations and not under Regulation 15 (4) of 1996 Regulations, as the post of Laboratory Instructor is a "teaching post" and the

Regulations clearly state that for a teaching post merit has to be determined only on the basis of marks received in the interview!

6. Admittedly, whereas the petitioner's case is that in the present case Regulation 15 (4) of 1996 Regulation and the procedure laid down therein would apply for selection, the private respondents and the committee of management rely upon Regulation 14 (6) in their case. The reliance of the respondents on Regulation 14 is for the reason that Regulation 14 (6) states that a candidate has to be judged only on the basis of interview. The two regulations i.e. Regulation 15 (4) and 14 (6) are for different purposes. Whereas under Regulation 14 (6) selection has to be made for "teaching post" as the heading itself denotes, under Regulation 15 (4) selections are to be made for the posts other than teaching posts.

7. Before we come down to the Regulations, it is necessary to state that polytechnic schools were governed in the erstwhile State of Uttar Pradesh as well as in the State of Uttarakhand by an Act known as "Uttar Pradesh Pravidhik Shiksha Adhiniyam, 1962" (from hereinafter referred to as the Act). Section 22-F of the said Act prescribed a procedure for selection of Principal and Teacher. Section 22-F of the Act reads as under :

22-F. Procedure of selection of principal and teacher.- (1) Subject to the provisions hereinafter specified, no person shall be appointed as Principal or teacher in an affiliated institution unless he-

(a) possesses the qualifications laid down in the regulations or has been exempted from such qualifications under sub-section (1) of Section 22-E;

(b) has been recommended by the selection committee constituted under sub-section (2) or sub-section (3), as the case may be, of the said Section and approved by the Director:

Provided that where the Director is satisfied that for any affiliated institution, no candidate possessing all the qualifications laid down in the regulations is available for appointment, he may permit the affiliated institution to employ as a temporary measure any suitable person for a period not exceeding one year:

Provided further that such period of one year may be extended with prior approval of the Director:

Provided also that in the case of leave vacancy or of a vacancy occurring for a part of the session of the affiliated institution, it shall be lawful for the Committee of Management to appoint a principal or teacher, and in that case information of such an appointment shall be given forthwith to the Director.

(2) The name of the selected candidate shall be forwarded for approval to the Director along with the list showing the names, qualifications and such other particulars, as may be laid down by regulations, of all candidates who may have applied for selection.

(3) The Director shall give his decision within two weeks of the receipt of the relevant papers mentioned in sub-section (2), failing which approval shall be deemed to have been accorded.

(4) Where the Director disapproves, for reasons to be recorded in writing, of any name proposed under sub-section (1), the Management may, within three weeks of the receipt of the disapproval, make a representation against it to the State Government whose decision in the matter shall be final.

(5) Where a recommendation made under sub-section (2) has been disapproved and the representation of the Management, if any, under sub-section (4) has been rejected, the selection committee shall proceed to select and recommend another name for approval as provided by Section 22-E and this Section.

(6) Where the selection made under sub-section (5) is again disapproved and the representation, if any, against the disapproval has not been accepted, the Director may appoint any qualified person out of the list of the candidates applying for the vacancy and such appointment be final.

8. Since the detail procedures for selection of principal and teacher have not been given in the Act, details have been given under Regulations framed under the said Act. The power to frame the Regulations vests with the Board formed under the Act, namely, u/s 23 of the Act. Section 23 of the Act reads as follows :

23. Power to make regulations. - (1) The Board may, for carrying out the purposes of this Act, make regulations consistent with the provisions of this Act and the rules framed there under and submit the same for approval of the State Government. The State Government may approve, modify or vary the regulations. The regulations, as approved by the State Government, shall be published in the Gazette and shall take effect from the date of publication, but where a date has been specified, from that date.

(2) Without prejudice to the generality of the forgoing powers, the regulations may provide for -

(a) the appointment, constitution, powers and duties of the committees and sub-committees constituted under this Act;

(b)...

(c) ...

(d) ...

(e)...

(f)...

(g)...

(h)...

(i)...

(j)...

(k)...

(l)...

(m)...

(n)...

(o)...

(p)...

(q)...

(r) inspection of a Centre;

(ra) The powers, duties and functions of Principal and the Committee of Management;

(rb)...

(rc)...

(rd)...

(re)...

(rf)...

(rg)...

(rh)...

(ri) all matters relating to the appointment and conditions of service of principals and teachers of affiliated institutions;

9. Therefore, u/s 23 (2) (ri) Regulations were framed by the Board in the erstwhile State of Uttar Pradesh which was approved by the Government and subsequently published in the Gazette on 19.7.1997, known as "Uttar Pradesh Pravidhik Shiksha Institution Receiving Grant-in-Aid from the Government Regulations, 1996". Relevant portion of Regulation 14 of 1996 Regulations, with which we are presently concerned, reads as follows :

14. Procedure for direct appointment to the post of principal and teacher - (1) The post of principal in any institution shall be filled under sub-section (3) of Section 22-F.

(2) Post of teachers shall be filled through selection committee, which shall constitute as follows :

[one]

Chairman of the managing committee of the institute, but where authorized controller has been appointed for management of the institute, in regard to that institute the authorized controller will be the Chairman.

Chairman

[two]

Head of institution

Member

[three]

An officer nominated by the Director which is not below the rank of Deputy Director, Technical Education, Uttar Pradesh

Member

[four]

Deputy Education Adviser (Technical), ?Uttar Pradeshik Karyalaya?, Kanpur under the Human Resources Development Ministry, Department of Education, Government of India

Member

[five]

An officer of the Board nominated by the Director, which is not below the rank of Joint Secretary.

Member

(3)....

(4)....

(5) ...

(6) The selection committee shall prepare a list, in accordance with merit according to the marks each candidate has attained in the interview. In case there are two or more than two candidates who have attained equal marks then higher place in the merit will be given to a person who is older in age. Name in the list shall be more than the number of vacancies but should not exceed 25 per cent of the vacancies.

10. Regulation 15 of 1996 Regulations reads as under :

15. Procedure for direct appointment on posts other than principal and teachers -

(1) In an institute all the posts other than the post of principal and teachers shall be filled by way of direct appointment and for which a selection committee shall be constituted, which shall constitute as follows :

[one]

Chairman of the managing committee of the institute, but where authorized controller has been appointed for management of the institute, in regard to that institute the authorized controller will be the Chairman.

Chairman

[two]

Head of institution

Member

[three]

An officer nominated by the Director which is not below the rank of Deputy Director, Technical Education, Uttar Pradesh

Member

[four]

An officer of the Board nominated by the Director, which is not below the rank of Joint Secretary.

Member

But, in case there is no representative of Scheduled Castes, Scheduled Tribes and other backward class in the selection committee, then one Group "B" officer of such category, of which there is no representative in the said selection committee, shall be nominated by the Director as Member.

(2)....

(3) ...

(4) The selection committee shall prepare a list, in accordance with merit according to the marks each candidate has attained in the interview. In case there are two or more than two candidates who have attained equal marks then higher place in the merit will be given to a person who is older in age. Name in the list shall be more than the number of vacancies but should not exceed 25 per cent of the vacancies. The selection committee will forward the list to the appointing authority.

11. A bare reading of Regulation 14 would show that reliance on it by the respondent institute and private respondents is misplaced, inasmuch as the post of Laboratory Instructor does not appear to be a teaching post, either from the Regulations or the schedule attached to it. Apart from the bare perusal of the above Regulations, the fact that the Search Committee in its meeting dated 11.6.2004 had clearly held that while making selection it will follow the Government Order dated 18.12.1999 further shows that the appointments were

to be given for "non-teaching posts", as it is for a "non-teaching post". The teaching posts are that of Principals, Lecturers, etc. The aforesaid Government order dated 18.12.1999 is a part of the writ petition (Annexure no. 9 to the writ petition). The said order is from the Secretary, Government of Uttarakhand, Technical Education, Kanpur, Uttar Pradesh stating that the lab instructors or laboratory instructors and computer programmers are to be selected as per their technical qualification, experience and interview, and the marks have to be given against each head, as already referred above. Hence, the procedure had already been laid down for selection of Laboratory Instructors and they had to be followed as per the standards and norms set in the Government Order dated 18.12.1999.

12. Be that as it may, even assuming for the sake of argument that the post of Laboratory Instructor is a teaching post and therefore under Regulation 14 (6) the candidates have to be judged only on the basis of interview, the least the selection committee was required to do was to lay down a criteria as to the basis on which the marks in the interview had to be awarded. Admittedly, no criteria has been laid down by the selection committee. The Principal of the respondent Polytechnic College who was personally called on 8.8.2011 clearly submitted that there is no record of the selection committee available with him which shows that any criteria was laid down by the selection committee on which marks in the interview were awarded to the selected candidates. This Court, therefore, vide order dated 8.8.2011 directed the Director, Technical Education, Uttarakhand to present the entire records pertaining to the selection process. The records were placed before this Court on 20.8.2011. These records only show that the management committee had selected the candidates only on the basis of marks received by them in the interview and further remarked that these are the selected candidates. There is, however, another list sent by them to the Director, Technical Education, Uttarakhand, Dehradun (Annexure no. CA-1 to the supplementary counter affidavit filed by the State) which is a list of all the candidates who had applied, which includes those who had appeared in the interview. It shows the number of marks allotted to each of these candidates. The entire list has been perused. There are many names who have higher marks than the selected candidates both in terms of educational qualification and past experience, etc., but who have not been selected!

13. The argument of the learned Senior Advocate Mr. L.P. Naithani, who appears for one of the private respondents i.e. selected candidates is that selection committee constitutes of experts and since the selection has been made by the experts it will be presumed that the selection is fair and just! Such an argument of the learned Senior Advocate Mr. L.P. Naithani appearing on behalf of private respondents is totally misconceived. This Court can always, under its power of judicial review, see as to whether the process adopted by the selection committee was fair and just. In this case, the process adopted by the selection committee was not fair and the selections have been made purely on the whims and fancies of the selection committee, in fact it smacks of nepotism and

favoritism, as there is nothing on record to show that the marks given to the selected candidates were on the basis of their past academic record or other qualifications. Even assuming for the sake of argument that the marks have been given only on the basis of interview, and even assuming for the sake of argument that Regulation 14 (6) of 1996 Regulations gives option to the selection committee to make selection only on the basis of interview, the selection committee before calling the candidates for such interview must have laid down certain criteria on the basis of which marks were liable to be allotted to the candidates who had appeared before the Selection Committee. Admittedly, there is no such criteria laid down by the selection committee. Therefore, the selection process adopted for the selection of "Laboratory Instructors" is flawed and as such the entire selection process is bad. The appointment orders of respondent nos. 6 to 12 dated 6.4.2005 and 21.4.2005 (Annexure Nos. 7 and 8 to the writ petition respectively) are hereby quashed. Their appointment on the post of laboratory instructor is hereby set aside. The respondents are directed to re-advertise the post of Laboratory Instructor and make fresh appointments in accordance with law.

14. Writ Petition stands allowed.

15. No order as to costs.