
(2005) 08 GAU CK 0056
In the Gauhati High Court
Case No : Writ Petition (C) No. 44 of 2005

Kanai Lal Poddar

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 01-08-2005

Acts Referred:

Citation : (2006) GLT 159 Supp

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Advocate : A.L. Saha and J. Pal, for the Appellant; A.K. Bhowmik, T.D. Majumder and S.R. Dey, for the Respondent

Judgement

A.B. Pal, J.—The Petitioner and the fourth Respondent herein are the Assistant Teachers of Netaji Subhash Vidyaniketan, a Government aided school managed by its Managing Committee. On 18.9.04, the third Respondent issued an advertisement inviting applications from bona-fide citizens of India for appointment to the post of Headmaster, Asstt. Head Master and some other posts of post graduate and under graduate teachers by direct recruitment. Both the Petitioners and the fourth Respondent applied for the post of Asstt. Headmaster and faced interview before a selection board constituted for the purpose. The Petitioner is admittedly senior to the fourth Respondent as known in the final seniority list of post graduates Asstt. Teachers published on 27.11.2001 (Annexure-2) wherein the Petitioner has been shown at Sl. No. 10 while the fourth Respondent figured at Sl. No. 11. The result of the interview went in favour of the fourth Respondent which is the cause of grievance of the Petitioner on the ground, inter alia, that the selection of the fourth Respondent was done as per the obsolete guidelines issued by the Director of School Education (the second Respondent herein) on 23.6.89 (Annexure-3) which had been quashed by this court on 4.11.97 in C.R. No. 263 of 94. After quashing of the said memorandum, the State Respondents issued a fresh memorandum on 2.1.01 (Annexure-5) laying down the guidelines to be followed for selection of

staff in Government aided schools. The grievance of the Petitioner is that these guidelines were not followed by the Respondents resulting to wrong selection of the fourth Respondent. Had the Respondents followed the latter guidelines contained in memorandum dated 2.1.01 he would have got 36.75 marks as against 40.60 marks of the fourth Respondent on academic performances and 15 marks as against 10 marks of the fourth Respondent on seniority which would have inevitably enabled him to score total marks more than the fourth Respondent. He, however, could not say what was his marks in the interview taken by the selection committee. According to him, the Respondents, instead of following the memorandum dated 2.1.01, illegally and without any good reason followed the guidelines contained in memorandum dated 23.6.89 (already quashed by this court) whereby both the Petitioner and the fourth Respondent were given 15 marks on seniority. He, however, admits that on academic performances, fourth Respondent was entitled to 28.3 marks and the Petitioner 24.6 marks as per his own assessment as per latter guidelines. Again, no marks given in the interview by the selection board were available to the Petitioner when this writ petition was instituted. His further grievance is that as per the advertisement (Annexure-6) a candidate for the post of Asstt. Headmaster must have Master degree/Honours in any subject securing at least 45% marks from any recognized university with good academic records. The Union Public Service Commission (for short, "the UPSC) in its advertisement for some Central posts explained that the term "good academic records" means at least 2nd class with 50% marks in graduation degree. The Petitioner obtained 50.8% marks in graduation while the fourth Respondent obtained 49.2% marks in honours graduation. If "good academic records" is interpreted in the light of the explanation given by the UPSC then certainly the fourth Respondent did not qualify for the post and for that reason alone his selection by the Committee is void. By this writ petition, the Petitioner has sought a direction for quashing the offer of appointment to the fourth Respondent to the post of Asstt. Headmaster communicated by the second Respondent on 18.1.05 or alternatively, to direct the Respondent Nos. 1 to 3 to arrange fresh selection in accordance with the guidelines contained in memorandum dated 2.1.01 (Annexure-5).

2. The Secretary of the Netaji Subhash Vidyaniketan filed affidavit-in-opposition on behalf of the third and fourth Respondents contending, inter alia, that the posts of Headmaster and Asstt. Headmaster of the Institution were lying vacant for a long time due to court cases and on 10.9.04, this court passed an order in W.P. (C) No. 157 of 2004, W.P. (C) No. 52 of 2000 and W.P. (C) No. 532 of 2001 directing the Secretary of the Institution to complete the process of selection and appointment for the two posts within three months from the date of receipt of the judgment. Accordingly, the advertisement (Annexure-6) was issued inviting applications and he received 27 applications for the post of Asstt. Headmaster out of whom 5 including the Petitioner and the fourth Respondent were the Asstt. Teachers of the Institution. Of the 5 teachers, Smt. Basabi Pal Chowdhury was the seniormost followed by the Petitioner and the fourth Respondent in second

and third position respectively. The fourth Respondent was junior to the Petitioner by about ten months on the basis of date of entry into the service of the Institution and both of them have completed more than 15 years of service in their posts as post graduate teachers. Out of 27 candidates, 21 turned up for the interview including the Petitioner and the fourth Respondent before the selection committee who sat on 19.11.04, 20.11.04 and 22.11.04. Before the interview taken by the selection committee on the above dates, a meeting of the selection sub committee was held on 17.11.04 and in that meeting the criteria for selection was formulated. Following that criteria the fourth Respondent was adjudged first and the Petitioner was found to be close second. On 24.11.04, the managing committee approved the selection of the fourth Respondent and the Petitioner as a member of the managing committee recorded his signature on the approval. The proposal was then sent to the second Respondent and on 18.1.05, the Secretary was asked to issue offer of appointment. On 20.1.05 the offer was issued in favour of the fourth Respondent and on 24.1.05 the second Respondent directed the Secretary to issue appointment letter. Accordingly, on the same day, the fourth Respondent was issued appointment letter and on 25.1.05 he joined to the said post. On 1.2.05 the second Respondent formally communicated the approval of the said appointment. It has further been contended that Annexure-5 on which much reliance has been placed by the Petitioner is not meant for selection of Headmaster or Asstt. Headmaster. The guidelines are meant for recruiting the staff for Government aided schools. The selection committee evolved its own procedure by providing 50 marks for academic performance, 35 marks for performance in the interview and 15 marks for seniority or the length of service. The selection committee assessed academic performance of the candidates on the basis of their results in the public examinations and accordingly awarded 71.30 marks to the fourth Respondent and 67.5 marks to the Petitioner. Even if the guidelines at Annexure-5 are followed then also the fourth Respondent and the Petitioner were to be given 42.83 marks and 36.75 marks respectively. As both of them have completed more than 15 years of service in the Institution, the selection committee awarded 15 marks to them. Thus, even if the equal marks were given to both of them for performance before the interview, the fourth Respondent would have got 6.05 marks more than the Petitioner. It has further been noted by the said Respondents that the fourth Respondent secured 62.6% marks in Higher Secondary examination securing 1st Division, 49.25% marks in B.Sc. Hon''s, 58% in M.Sc. and 62.6% marks in B. Ed. as against the Petitioner who obtained 44.51% marks securing 3rd Division in the school final, 47.7% marks in Higher Secondary, 50.8% marks in B.Com. (pass course), 53% marks in M.Com. and 60.4% marks in B.Ed. Thus, even in the calculation of the Petitioner, the fourth Respondent has to be awarded more marks than the Petitioner. It is, thus, contended that the selection procedure suffers from no illegality and irregularity and the Petitioner's grievances are absolutely without merit calling for no interference from this court in the selection and appointment of the fourth Respondent.

3. The State Respondents also filed separate counter affidavit supporting the stand taken by the Secretary of the Institution contending, inter alia, that the Petitioner as a member of the managing committee (teachers' representative) having approved the selection of the fourth Respondent for the post of Asstt. Headmaster cannot resile from the same to question the selection at a later stage. The State Respondents support the selection procedure adopted by the selection committee admitting that the guidelines rendered in Annexure-5 are not meant for the selection of Headmaster and Asst. Headmaster.

4. I have heard Mr. A.L. Saha, learned Counsel for the Petitioner, Mr. A.K. Bhowmik, learned Sr. Counsel assisted by Mr. S. Ghosh, learned advocate for the third Respondent and Mr. U.B. Saha, learned Sr. G.A. assisted by Mr. T.D. Majumder, learned Addl. G.A. for the State Respondents.

5. The Petitioner filed a rejoinder bringing in to his pleadings new issues that the posts of Headmaster and Asstt. Headmaster are to be treated as promotion posts and cannot be filled up by direct recruitment in view of the judgment of this court dated 20.12.04 in Writ Appeal No. 05 of 2002. In that case, this court held that the notification dated 6.4.82 regarding recruitment rules for the posts of Asstt. Headmaster/Headmistress for Higher Secondary schools under the Education department, Government of Tripura providing for filling up of such posts by promotion failing which on transfer and failing both by direct recruitment shall have to be applied to all the Government aided institutions meaning thereby that the selection of Asstt. Headmaster by direct recruitment method in the present case is invalid in view of the decision of this Court. The second issue which he has adumbrated in the rejoinder is that what he signed in the emergency meeting held on 25.11.04 was not a resolution approving the recommendation of the selection committee. The procedure is that after every emergency meeting, the resolution has to be placed in the next ordinary meeting for approval. On 4.3.05, the next ordinary meeting was held after the emergency meeting on 25.11.04, but in that ordinary meeting, no such resolution approving the selection was placed for approval.

6. Be that as it may, the pleadings of the respective parties as stated above bring into focus the first point whether the selection committee followed the obsolete procedure dated 23.6.89 quashed by this court on 4.11.97. After careful examination of the materials on record, I do not find any reason to take a view that the selection committee followed either the procedure laid down in the memo dated 23.6.89 or fresh procedure laid down in the memo dated 2.1.01. Both the memoranda have laid down guidelines for selection of staff of the Government aided institutions and in my considered view they do not have any application for selection of Headmaster or Asstt. Headmaster. In such a situation, there was nothing wrong for the selection committee to evolve a procedure for selection for the said posts and the Petitioner who himself participated in the procedure as a candidate cannot question the same only because he has not been selected. Even if hypothetically it is held that the Respondents should have

followed the revised memorandum on 2.1.01 then also as per the assessment of the Petitioner himself the fourth Respondent had to be awarded 40.60 marks as against 36.75 marks of the Petitioner. Thus, there is no dispute that in the filed of academic performance the fourth Respondent has to be given higher marks than the Petitioner whatever may be the guidelines/method followed. As regards marks to be allotted for seniority, according to the Petitioner, he was entitled to 15 marks as against 10 marks of the fourth Respondent as has been adumbrated in para-14 of this petition. It is an admitted fact that both the Petitioner and the fourth Respondent have completed more than 15 years in the post of post graduate teachers and for that reason, the selection committee had allotted them 15 marks each. The Petitioner has not clarified why he should be given 5 marks more than the fourth Respondent evens if the memorandum dated 2.1.01 is followed. In that memorandum no marks have been allotted for the length of service. In para 4, the length of time for which a candidate was waiting for employment with reference to the year of passing of the examination which is essential qualification for the particular post certain marks have been allotted. For 15 years and above, 15 marks and for 10 years to below 15 years, 10 marks have been allotted. This provision is made only for fresh recruitment of the persons who have been waiting long for employment. Even if this is pressed into service then also both the Petitioner and the fourth Respondent are entitled to 15 marks as admittedly they have completed more than 15 years in the post of post graduate teachers. Thus, as per the guidelines of the memorandum dated 2.1.01, the fourth Respondent and the Petitioner would get 15 marks each as per assessment of the Petitioner himself, as has been made in para 14, the fourth Respondent would get about 4 marks more than the marks to be allotted to him. His own assessment brings the fourth Respondent to the first position which exactly is the assessment done by the selection committee.

7. The next question which has been inducted afresh without amendment of the writ petition is whether the post of Asstt. Headmaster should be filled up by direct recruitment in view of the decision of this court in W.A. No. 05 of 02 as noted above. The recruitment rules published on 6.4.82 for the post of Asstt. Headmaster of the Higher Secondary Schools under the Government provided that one of the methods of recruitment shall be direct recruitment when promotion and transfer fails. There is no such pleadings in the writ petition that the posts should have been filled up by promotion or that without applying the first two methods of promotion and transfer the Respondents should not have gone for direct recruitment. In the absence of any such pleadings it is not known to this court under what circumstances the method of direct recruitment was adopted by the Respondents. It also cannot be lost sight of that as a matter of fact the selection virtually remained confined to the Asstt. Teachers of the Institution only as per their seniority, academic performance and merit. Even if instead of direct recruitment the method of promotion had to be followed, the same result would have inevitably arrived at by the selection committee. I do not feel it necessary to trouble myself more on this issue as the Petitioner did not

amend the writ petition to place on record this completely new issue for consideration of this court. Suffice it to say that direct recruitment being one of the methods as per the recruitment rules noted above and there having nothing to show under what circumstances this method was followed, it has to be held that there was no illegality or irregularity in selecting the fourth Respondent by direct recruitment.

8. The other issue is about the contention that "good academic records" means at least 50% marks in graduation as per the norms of the UPSC. The submission of Mr. Saha that norms followed by the UPSC squarely applies in selecting the Asstt. Headmaster of privately managed institution like the present one has, in my considered view, no substance. The comparative analysis of the academic performance clearly shows that the fourth Respondent is much superior than the Petitioner right from the basic qualification i.e. Higher Secondary examination and it could also be noted that the fourth Respondent is an honours graduate with Master degree in Science whereas the Petitioner is only a pass course graduate with Master degree in Commerce. Academic superiority of the fourth Respondent has been admitted by the Petitioner himself in para 14 of the writ petition. I do not agree that the good academic record shall mean only 50% in graduation as indicated in the advertisement of the UPSC and that other performance in Master degree, honours degree and other public examinations shall have no consideration. I am also of the view that the advertisement issued by the UPSC does not have any application in the procedure for selection of Headmaster or Asstt. Headmaster for the Government aided schools.

9. The above discussion leads me to the following conclusions:

(I) The memorandum dated 23.6.89 (Annexure-3)/R-9 or the memorandum dated 2.1.01 (Annexure-5) have not been followed in the impugned selection which has been done in accordance with the method evolved by the selection committee itself;

(II) The guidelines contained in memorandum dated 2.1.01 (Annexure-5) are not meant for selection of Headmaster/Asstt. Headmaster in Government aided schools.

(III) The selection of fourth Respondent for the post of Asstt. Headmaster following the method evolved by the selection committee does not suffer from any illegality or irregularity and, therefore, is not liable to be interfered with;

(IV) Nothing contained in the advertisement of the UPSC shall ipso facto apply applied for selection of Headmaster or Asstt. Headmaster of the Government aided schools under the State Government;

(V) The question whether the post of Asstt. Headmaster is to be filled up by promotion or by direct recruitment is not relevant the same being de hors the context:

(VI) The Petitioner being a member of the managing committee and having put

his signature on the resolution approving the selection of the fourth Respondent is precluded from questioning that selection.

10. Having concluded thus, the writ petition being devoid of any merit stands dismissed. No cost.