

**(2001) 10 GAU CK 0020**

**In the Gauhati High Court**

**Case No :** Writ Appeal No. 397 of 2001 in Civil Rule No. 959 of 1995

Keisham Ibobi Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

---

**Date of Decision :** 16-10-2001

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2001) 3 GLT 518

**Hon'ble Judges :** R.S. Mongia, C.J;A.H. Saikia, J

**Bench :** Division Bench

**Advocate :** T. Nandkumar Singh, for the Appellant; Govt. Advocate and N. Koteswar, for the Respondent

**Final Decision :** Dismissed

---

## **Judgement**

A.H. Sakia, J

1. The appeal was dismissed for the reasons to be recorded lateron and accordingly reasons for dismissal of the appeal are stated as follows:

The moot question involved in this writ appeal wherein the judgment and order dated 8.9.1997 passed by the learned Single Judge dismissing the Civil Rule No. 959/1995 is under challenge, is whether the Respondent No. 4 has possessed the requisite qualifications in terms of the Advertisement No. 2/95-96 published by the Manipwr Public Service Commissioner (for short "the Commission") to make himself eligible and suitable to be recommended by the Commission vide its notification dated 15.9.1995 for appointment as Additional Director (FSL) in the Home Department, Government of Manipur (for short "the Addl. Director").

2. The facts of the case are that the Commission issued an advertisement, being No. 2/95-96 Item No. 1 for direct recruitment to the post of the Addl. Director fixing 3 PM on 3.7.1995 as closing date for issue and receipt of application form. The essential qualification as regards the eligibility for the said post has been laid down in the said advertisement as follows :

#### "4. ESSENTIAL QUALIFICATION:

(1) Master's Degree in Chemistry/Physics/Bio-Chemistry/ Botany/Zoology/Micro-Biology/Anthropology (Physical)/ Mathematics/Master in Forensic Science.

Or

A Degree in Medicine.

(2) 8 (eight) years research/Analytical experience in Forensic Science.

#### DESIRABLE:

(a) A Doctorate Degree.

(b) Experience in Forensic Science Institution including general examination of question documents. (Qualification relaxable at the discretion of the Commission in case of candidates otherwise well qualified.

(3) The appellant as well as Respondent No. 4 along with others, having found themselves to be eligible and qualified in terms of the said advertisement, have applied for the said post of "the Addl. Director". Both of them, having been called, took the interview on 15.9.1995 held by the Commission. Consequently the Commission issued the Notification dated 15.9.1995 recommending the Respondent No. 4 for appointment to the post of the Add. Director". Being aggrieved, the Writ Petitioner/ appellant moved this Court through Civil Rule No. 959/95 challenging the legality and, validity of the recommendation of the respondent No. 4 vide Notification dated 15.9.1995 issued by the Commission with the prayer to quash and set aside the said recommendation. The Notification has been attacked mainly on 3 (three) grounds i.e. (i) the Respondent No. 4 has not possessed the required 8 years Research/Analytical experience in Forensic Science in terms of the advertisement because on 3.7.1995, the closing date fixed for issue and receipt of application form, the respondent No. 4 has completed only about 6 years 6 months, (ii) the research work done by the Respondent No. 4 leading to his Degree of Ph.D. on his thesis "Thermally Stimulated Luminescence in some solids Irradiated by X or Y Rays" does not fall within the subject of Forensic Science, and (iii) Since the Manipur University does not have any course or subject of Forensic Science leading to the conferment of M.Sc. Degree or Ph.D. in the said subject, the degree of M.Sc. In Physics and subsequent Ph.D. in Physics conferred upon the Respondent No. 4 cannot be said to be related to Forensic Science.

3. The Respondent No. 4 as well as the Commission have refuted the allegations questioning the eligibility and suitability of the candidature of the Respondent No. 4 by filing the respective counters. The Respondent No. 4 has claimed that he has more than 8 years of experience in Forensic Science and his subject research relate to the Forensic Science. Therefore, the Commission, on being satisfied, has called him for interview and specifically has found him suitable for the said post for which he has been recommended for such appointment. On the other

hand, the Commission In its affidavit has stated that the Respondent No. 4 before joining in his service as Scientific assistant (Ballistics/FSL) in the Home Department of Manipur he has been doing research in the Physics Department under the Manipur University since September 1986 and as such, he has acquired an experience of more than 8 years in Forensic Science. Further more, according to the experts, the thesis of the Respondent No. 4 is in the applied Field of Forensic Science and therefore the research work of the respondent No. 4 falls within the ambit of Forensic Science.

4. The learned Single Judge, taking into account the pleadings of the parties and after hearing the learned counsel appearing on behalf of the parties, has dismissed the Writ Petition holding that the respondent No. 4 fulfils the criteria of 8 years of experience in the Forensic Science as provided in the advertisement in view of the fact that the Commission has been satisfied on the expert opinion in this regard and the research work of Respondent No. 4 in Physics is also on the subject which related to Forensic Science as opined by the experts.

5. We have heard Mr. T. Nanda Kumar, learned Senior Counsel appearing on behalf of the appellant and also heard Mr. N. Koteswar, learned counsel appearing on behalf of the Respondent No. 4. We have carefully perused the impugned judgment and order dated 8.9.1997 and also the materials available on record including the pleadings of the parties.

6. Mr. Nanda Kumar, leaned Secnior Counsel appearing on behalf of the appellant vehemently argues that the Respondent No. 4 has not possessed 8 years research/analytical experience in Forensic Science when he has completed only 61/2 years and this aspect has been totally over looked by the learned Single Judge who has passed the impugned judgement on hypothesis mainly on the point of relaxation power of MPSC for relaxing the essential qualification and experience for appointment to the post of the Addl. Director" when admittedly it is not the case of both the parties that the Commission had relaxed the essential qualification and experience for the post of "the Addl. Director" in favour of the Respondent No. 4 nor had the Commission said that it had relaxed the essential experience prescribed for the post of the Addl. Director" in favour of the Respondent No. 4. Further more, the learned Single Judge has also misunderstood the important point that the research experience in Forensic Science cannot be obtained from a University wherein there is no facility for such work in Forensic Science. It is stated that Manipur University does not have any course or facility either to do research work or to obtain Ph.D. Degree in Forensic Science. That being the position, the Respondent No. 4 does not possess any qualification enabling him to be eligible and suitable for the post of "the Addl. Director" and accordingly the recommendation of the Respondent No. 4 for appointment of "the Addl. Director"; vide Notification dated 15.9.1995 issued by the Commission is illegal and improper and liable to be set aside.

7. The learned Sr. Counsel for the appellant has relied on a catena of decisions of the Apex Court. Those are (1) U.P. Public Service Commission Vs. Dr Saad

Usmani, (2) Director, A.I.I.M.S. etc. Vs. Dr. Nikhil Tandon and Others, (3) State of Punjab and Others Vs. Tara Singh Shahi, and (4) District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi,

8. From the perusal of the impugned judgment, it appears that the learned Single Judge has already dealt with the District Collector's case (supra) and Director, AIIMS case (supra) and rightly found that the ratio of those cases are not applicable in the present case. The U.P. Public Service Commission case (supra) related to the appointment for the post of Professor in Medicine in Govt. Unani College in U.P. The U.P. Public Service Commission issued an advertisement inviting application for two posts of Professor in "Moalejat\* (Medicine). One of the essential qualifications prescribed for the said post was:" 10 years teaching experience of the subject (8 years only in case of postgraduate) including 3 years on the post of Reader in recognised Institution". The Respondent worked as full time demonstrator for 8 years and Lecturer and Readers for 3 years, The Apex Court held that the period for which the respondent worked as Demonstrator cannot be taken into account for computing his requirement of 10 years teaching experience making him eligible for consideration for the appointment to the post since he did not possess a Post Graduate qualification while working as Demonstrator. We do not find that ratio of the said case is applicable in the instant case. In the cited case, it was clearly prescribed in the advertisement that 10 years teaching experience must include 8 years in case of Post Graduate and the decision of the Commission showed that the experience of the Respondent as Demonstrator should have been after acquiring the Post Graduate qualification on the post of Clinical Registrar/ Demonstrator. But in the instant case, it appears from the records particularly Annexures C/6 and C/8 appended to the counter affidavit filed by the Respondent No. 4 to the Writ petition that even as the petitioner has acquired experience of 61/2 years with effect from his date of joining as Scientific Assistant on 5.12.1988 till 3.7.1995, the Respondent No. 4 had been doing his research in Physics Department of Manipur University since September 1986. If the said period is counted, the experience of the Respondent No. 4 shall be more than 8 years. That apart, according to Rule 5 of the Police Department, Manipur (Addl. Director) (FSL) Recruitment Rules 1994, the Governor is empowered to order, in consultation with the Commission, for relaxation of any provision of the Rule if he is of the opinion that it is necessary or expedient to do so. Besides, in the advertisement itself, it is clearly reflected that the qualification may be relaxed at the discretion of the Commission in case of candidate otherwise well qualified. Therefore, it is seen that the power for relaxation has already been vested upon the Government as well as the Commission for relaxation of any provision of the said recruitment rules which govern the present appointment and for relaxation of qualification respectively. But in the instant case, as the experts of the selection committee have already opined that the petitioner has possessed more than 8 years of experience on the basis of certificate issued by the competent

authorities, the question of the said relaxation does not arise. Under such circumstances, we do not find any force on the submission of the learned counsel for the appellants that the petitioner does not have any experience of 8 years.

9. In the case of State of Punjab (supra) it was held that for the appointment to the post of Principal, the qualification prescribed, must be strictly adhered to. In the said case, since the respondent was an M.A. with 2nd Class with 52% of marks, it was held, he was not qualified to be appointed to the post of Principal as the qualification required for appointment to the post, was "M.A. 1st Division" or "High Second Division (55%)". In paragraph 15 of the said decision, their Lordships observed as follows :

"15. It is pointed out that since the respondent was M.A. Second Division with 52% marks, he was not qualified to be appointed to the post of Principal as the qualification required for appointment on that post was "M.A. First Division" or "High Second Division (55%)". It is thus apparent that the respondent not being qualified for appointment to the post of Principal could not legally claim such appointment nor was it possible for the High Court to have issued a Mandamus that the respondent be appointed or absorbed on that post. Articles 14 and 16 which contain the Rule of Equality do not envisage that a person who is not qualified for appointment can still claim such appointment merely on the basis of Fundamental Rights available under Articles 14 and 16. He cannot, in fact, invoke the provisions of those Articles as he has first to possess the essential qualification before invoking the Rule of Equality..."

It is no gainsaying that the essential qualification prescribed for a particular post must always be adhered to. There must not be any relaxation once a specific qualification is categorically mentioned unless relaxed in strict compliance of any rule provided for such purpose in the relevant recruitment rules itself. But the case in hand is not in equal footing of the above cited case.

10. Debunking the claims made on behalf of the appellant, Mr. Koteswar, learned counsel appearing on behalf of the Respondent No. 4, strenuously pleads that the Respondent No. 4 has already acquired 8 years research experience in Forensic Science and the subject in which has been conferred Ph.D. on his thesis "Thermally Stimulated Luminescence in some solids Irradiated by X or Y Rays", though admittedly in Physics, is candidly a subject related to the Forensic Science. Relying on the affidavit-in-opposition, filed on behalf of the Respondent No. 4, he contends that the subject of the research i.e. "Thermally Stimulated Luminescence in some Solids Irradiated by X or Y Rays" has great importance in the modern Forensic Science and the same is absolutely part and parcel of Forensic study and as such, there is no scope for any second opinion that this said subject does not fall within subject of Forensic Science. Besides, he also forcefully claims that once the experts of the selection committee, the constitution of which has never been challenged, opined regarding suitability and eligibility of the candidature of the Respondent No. 4, this Court should exercise judicial restraint in interfering with the same. Defending the impugned judgment

of the learned Single Judge, it is contended that since the experts were of the view that research work of the Respondent Non 4 relates to Forensic Science stream in Physics and accordingly the Respondent No. 4 possessed the requisite qualification, the learned Single Judge did not find any reason to differ with the view of the expert.

11. In support of his arguments, Mr. Koteswar has referred to a decision of the Apex Court in *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, In the said decision, their Lordships held that the Court should be slow to interfere with the opinions expressed by the experts, constituting the Board for recommendation of selection of candidate for the post of Readers unless there are allegations of mala fide or contravention of any statutory or binding rule or ordinance. In paragraph 13 it was held as follows :

"13... Boards of Appointments are nominated by the Universities and when recommendations made by them and the appointments following on them are challenged before courts; normally the courts should be slow to interfere with the opinions expressed by the experts. There is no allegation about mala fides against the experts who constituted the present Board; and so, we think, it would normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be ...."

12. He has also referred to a case reported in *Dr. M.C. Gupta and Others Vs. Dr. Arun Kumar Gupta and Others*, wherein the Supreme Court relying on *University of Mysore's* case (supra) held that the Court should be slow to interfere with the opinion expressed by the experts unless there are allegations of mala fides against them when the selection is made by the Public Service Commission in certain technical posts aided and advised by the experts having technical experience and high academic qualification in the specified fields. In paragraph 7 the Apex Court observed as under:

"7..... When selection is made by the Commission aided and advised by experts having technical experience and high academic qualifications in the specialist field, probing teaching/research experience in technical subjects, the Courts should be slow to interfere with the opinion expressed by the experts unless there are allegations of mala fides against them. It would normally be prudent and safe for the Court to leave the decision of academic matters to experts who are more familiar with the problems they face than the Courts generally can be. Undoubtedly, even such a body if it were to contravene rules and regulations binding upon it in making the selection and recommending the selectees for appointment, the Court in exercise of extraordinary jurisdiction to enforce rule of law, may interfere In a writ petition under Article 226. Even than the Courts, while enforcing the rule of law, should give due weight to the opinions expressed by the experts and also show due regard to its recommendation on which the State Government acted. If the recommendations made by the body of experts, keeping in view the relevant rules and regulations, manifest due consideration of

all the recommendations (see *University of Mysore v. C.D. GovindaRao*).....".

13. Much reliance has been placed in the decision of *Secy. (Health) Deptt. of Health and F.W. and Another Vs. Dr. Anita Puri and Others*, wherein the Supreme Court held that when a selection is made by the Experts body like Public Service Commission, on being advised by the experts having technical experience and high academic qualification in the field for which the selection is to be made, the courts should be slow to interfere with the opinion expressed by experts unless allegations of mala fide are made and established. Paragraph 9 of the said decision may be referred as follows:

"9. .... When the Public Service Commission is required to select some candidates out of a number of applicants for certain posts, the sole authority and discretion is vested with the Commission. The Commission is required to evolve the relative fitness and merit of the candidate and then select candidates in accordance with such evaluation. If, for that purpose the Commission prescribes marks for different facets and then evaluates the merit, the process of evaluation cannot be considered to be arbitrary unless marks allotted for a particular facet is on the face of it excessive. Weightage to be given to different facet of a candidate as well as to the viva voce test vary from service to service depending upon the requirement of the service itself..... It is too well settled that when a selection is made by an expert body like the Public Service Commission which is also advised by experts having technical experience and high academic qualification in the field for which the selection is to be made, the Courts should be slow to interfere with the opinion expressed by experts unless allegation of mala fide are made and established. It would be prudent and safe for the Courts to leave the decisions on such matters to the experts who are more familiar with the problems they face than the Courts. If the expert considers suitability of a candidate for a specified post after giving due consideration to all the relevant factors, then the Court should not ordinarily interfere with such selection and evaluation

14. That apart, as regards the issue whether degree of M.Sc. in Physics so obtained by the Respondent No. 4 or Ph.D. in Physics so conferred upon him does fall within the stream of Forensic Science, on careful . perusal of the Comprehensive Report of Systematic Development of Indian Forensic Science Services based upon the reports of Five Committees constituted by Bureau of Police Research and Development, Govt. of India (Vide letter No. CFI"s/16(4)/93 dated 1 st November 1993 of DG, BPR & D) which is annexed as Annexure R/5 to the Writ Appeal, we have found that there is a clear indication that the subject of Physics does come within the purview of Forensic Science. It is noted that as per the said Comprehensive Report at page 66 of the Writ Appeal, in Clause 10, every State and Central Law Enforcement Agency should set up a comprehensive and full fledged Forensic Science Laboratory and the main Forensic Science Laboratory, as mentioned in Clause 12, should have 12 divisions as follows:

(1) Ballistics

- (2) Biology
- (3) Chemistry
- (4) Documents
- (5) Explosives
- (6) Narcotics
- (7) Physics
- (8) Psychology
- (9) Photography
- (10) Serology
- (11) Toxicology
- (12) Research and Development.

It is, thus, seen that out of 12 divisions. Physics being placed at serial No. 7, is also included to be one of the divisions in the Forensic Science Laboratory and as such it can be safely deduced that Physics is also a part of Forensic Study considering its applicability and importance in the modern Forensic Science.

15. Having regard to the ratio of those decisions cited and also upon hearing the learned counsel for the parties, we find sufficient force in the submissions made on behalf of the respondent No. 4. Law has already been settled, as envisaged from the ratio of the abovoe cited cases that the power of this Court under Articles 226 must be exercised sparingly and also with great care and caution to upset the selection to certain technical post which is required to be made on the basis of the experts' opinion having the specific and high technical qualification. In the instant case, as the expert committee has already effectively fond the Respondent No. 4 to be qualified for the post of the Addl. Director" taking into account his subject of thesis having accepted to be related to Forensic Science as well as his required 8 years experience, we are of the firm view that there is no illegality or infirmity committed by the learned Single Judge in passing the impugned judgment and order and as such we have every reason to accept and approve the same.

16. For the reasons, discussions and observations indicated above, this Writ Appeal is dismissed. But considering the fact and circumstances of the case, we pass no order as to costs.