

(1997) 02 DEL CK 0039

In the Delhi High Court

Case No : Civil Writ Petition No. 887 of 1994

Kendriya Vidyalaya Sangathan Staff Association

APPELLANT

Vs

Kendriya Vidyalaya Sangathan

RESPONDENT

Date of Decision : 28-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 2 AD 509 : (1997) 66 DLT 538 : (1997) 41 DRJ 208

Hon'ble Judges : Lokeshwar Prasad, J

Bench : Single Bench

Advocate : N.K. Kaul and Anil Srivastava, for the Appellant;

Judgement

Lokeshwar Prasad, J.

(1) The petitioners, named above, have filed the present petition under Article 226 and 227 of the Constitution of India assailing the validity of the amendments carried out in the Recruitment Rules (hereinafter referred to as "the RRs") for appointment to the post of Internal Audit Officers, Account Officers, Accounts Officers(Cash) and Account-cum-Inspecting Officers of the Kendriya Vidyalaya Sangathan and the two advertisements (Annexure P-5 & P-6), issued for filling up the vacancies in the above said cadres.

(2) The facts relevant for the disposal of the present writ petition, briefly stated, are that petitioner No.1 is a Staff Association of the employees of Kendriya Vidyalaya Sangathan, duly registered under the Societies Registration Act, 1860 and also recognised by the Kendriya Vidyalaya Sangathan. Petitioner No.2, who is a member of petitioner No.1 Association/Society, is working as a Superintendent of Accounts in the Kendriya Vidyalaya Sangathan. Kendriya Vidyalaya Sangathan (respondent No.1) is a Society, duly registered under the Societies Registration Act, 1860, directly under the control of the Government of India through Ministry of Human Resource Development (respondent No.2) and is entrusted with the object of imparting academic education to the students from class 1st to class

12th (on the pattern of 10+2 scheme of the Central Board of Secondary Education). Respondent No.1 is thus a "State" within the meaning of Article 12 of the Constitution of India. Respondent No.1 is running Kendriya Vidyalayas all over the Country for imparting education. It is alleged that the respondents arbitrarily amended the RRs for the post of Internal Audit Officers, Accounts Officers, Accounts Officers(Cash) and Account- cum-Inspecting Officers of the Kendriya Vidyalaya Sangathan on 12.1.1992 and thereafter on 6.9.1993. As per the case of the petitioners the above said amendments are arbitrary, illegal and suffer from the vice of hostile discrimination between the similarly situated persons and thus are violative of Article 14 and 16 of the Constitution. The above said amendments, as per the case of the petitioners, impose arbitrarily the condition of departmental examination for promotion from the post of Superintendent of Accounts to the post of Internal Audit Officers, Accounts Officers, Accounts Officers(Cash) and Accounts-cum-Inspecting Officers of the Kendriya Vidyalaya Sangathan thereby altering the service conditions of the petitioners to their detriment contrary to law. It is further stated that the advertisements(Annexure P-5 and P-6), issued for the purpose of filling up the vacancies in the above said cadres of the Kendriya Vidyalaya Sangathan, are defective, contrary to the RRs and clearly reflect the mala fide intentions of the respondents. In the present petition, the petitioners have made the following prayers:- a) to issue a writ, order or direction including a writ in the nature of Mandamus quashing the amended recruitment rules for the posts of Internal Audit Officers, Account Officers, Account Officers(Cash) and Account- cum-Inspecting Officers made in the year 1992 and 1993/94 in the Kendriya Vidyalaya Sangathan; b) to issue appropriate writ, order or direction including a writ in the nature of Mandamus quashing the advertisement dated 29.2.1992 issued by the Kendriya Vidyalaya Sangathan; c) to issue appropriate writ, order or direction including a writ in the nature of Mandamus quashing the condition of departmental examination imposed on superintendent of accounts working in the Kendriya Vidyalaya Sangathan for promotion to the post of Internal Audit Officers, Account Officers, Account Officers(Cash) and Account cum Inspecting Officers; d) to issue appropriate writ, order or direction including a writ in the nature of Mandamus directing the respondents to frame Recruitment Rules for the posts of Internal Audit Officers, Account Officers, Account Officers(Cash) and Account cum Inspecting Officers in the Kendriya Vidyalaya Sangathan in accordance with law, e) to issue appropriate writ, order or direction including a writ in the nature of Mandamus directing the respondents not to frame discriminatory recruitment rules against the superintendent of accounts for appointment to the posts of Internal Audit Officers, Account Officers, Account Officers (Cash) and Account cum Inspecting officers, in the Kendriya Vidyalaya Sangathan as compared to the direct recruiters; f) to issue appropriate writ, order or direction including a writ or prohibition prohibiting the respondents from issuing appointment letters for the post of Internal Audit Officers, Account Officers, Account Officers(Cash) and Account cum Inspecting Officers, issued to the direct recruiters; g) to issue appropriate writ, order or direction including a writ in the nature of Mandamus

quashing the appointments if any made by the respondent from amongst the direct recruiters for the post of internal Audit Officers, Account officers, Account officers(Cash) and Account cum Inspecting Officers; h) to issue appropriate writ, order, or direction including a writ in the nature of Mandamus directing respondents to treat petitioner No.2 and other similarly situated superintendent of accounts similar with other similarly placed direct recruiters and not to impose the condition of departmental examination on them; i) to issue appropriate writ, order or direction including a writ in the nature of Mandamus directing the respondents not to alter the service conditions of the petitioner No.2 and members of petitioner No.1 Association; j) to award costs of these proceedings in favor of the petitioners and against the respondents; and k) to pass such other and further order as the Court may deem fit and proper in the facts and circumstances of the case.

(3) 1 Notice of the petition was given to the respondents who have filed counter affidavit resisting the claim of the petitioners. In the counter affidavit, filed on behalf of the respondents, certain preliminary submissions have been made explaining the process of screening the candidates and their selection by the Selection Committee in pursuance of advertisement (Annexure P-5). In the preliminary submissions it is contended on behalf of the respondents that an advertisement for filling up four posts of Accounts-cum-Inspecting Officers, Accounts Officer and Audit Officer was published in the Employment News dated the 29th February, 1992. Out of the four posts one post each was reserved for candidates belonging to Scheduled Castes and Scheduled Tribes. In response to the advertisement 395 applications were received out of which 278 applicants fulfilled the requisite eligibility conditions prescribed for the post. As the number of candidates was large and all the eligible candidates could not have been called for an interview, the respondents with a view to screen the candidates formulated eligibility criteria and applying the eligibility criteria 29 candidates belonging to the general category, including petitioner No.2 and 5, candidates belonging to Scheduled Caste category were short listed for purposes of interview with the help of an expert who was a retired Director from the Indian Civil Accounts Service. The Selection Committee, consisting of Controller of Accounts, Ministry of Labour, Deputy Controller of Accounts, Ministry of Human Resource Development, Senior Civilian Staff Officer, Ministry of defense and Deputy Commissioner (Finance) of the Kendriya Vidyalaya Sangathan, interviewed the candidates on 1-2/2/94 for the purpose of recommending the names of suitable candidates for being appointed to the above said posts. The Committee, after interviewing the candidates, recommended the names of six candidates. No candidate from the Scheduled Caste category was found suitable by the Committee. 3.2 On merits it is stated that the amendments in the RRs for the above said posts of the Kendriya Vidyalaya Sangathan were duly considered at the 56th meeting of the Board of Governors held on 6.9.93. In the above said meeting the objection/pleas of all the Associations, including petitioner No.1, were duly considered. The Board of Governors of the Kendriya Vidyalaya

Sangathan had a detailed deliberation regarding the need for introducing a departmental examination for promotion. It is also contended that the proposed amendments have been approved after due deliberations with all concerned and there is no clash of interest between the promotees and the direct recruits and the direct recruits and the departmental promotees cannot be stated to be similarly situated persons and, Therefore, there is no violation of Article 14 or 16 as alleged. The allegation of malafide has also been denied. It is contended that there is no defect or irregularity in the advertisements issued for filling up the posts in question. In the counter it is specifically stated that with a view to obviate any disadvantage to the employees it was decided by the Board of Governors of the Kendriya Vidyalaya Sangathan to enforce the amended RRs from a prospective date i.e. w.e.f. 1.1.94. It is also denied that the amendments in the RRs in any way alter the service conditions of the departmental candidates to their detriment. It is prayed in the counter, filed on behalf of the respondents, that the petition, filed by the petitioners be dismissed.

(4) The petitioners have filed a rejoinder to the counter affidavit controverting the pleas taken in the counter and reiterating the averments made in the petition.

(5) I have heard the learned counsel for the parties at length and have also carefully gone through the documents/material on record including the written submissions filed by both the parties.

(6) In the light of the challenges laid to the amendment of the RRs, to the two advertisements (Annexure P-5 & P-6) and the contentions advanced at the Bar, I formulate the questions arising for decision in the present case as under:- 1) Whether the amendments, which became effective w.e.f. 12.1.92 and from 1.1.94 in the RRs applicable to the post of Internal Audit Officers, Accounts Officers, Accounts Officers(Cash) and Accounts-cum-Inspecting Officers of the Kendriya Vidyalaya Sangathan are arbitrary and whether the same discriminate between similarly situated persons (direct recruits and promotees) as alleged? 2) Whether the advertisements (Annexure P-5 & P-6) are defective and if so to What consequence? 3) Whether the impugned action of the respondents is vitiated by malafides? QUESTION-1

(7) 1 The RRs applicable to the post of Internal Audit Officers, Accounts Officers, Accounts Officers (Cash) and Accounts-cum-Inspecting Officers of the Kendriya Vidyalaya Sangathan came into effect for the first time w.e.f. 5.12.83. Prior to 5.12.83 no RRs existed for the above said post. On 12.1.92 a proposal was made and approved to amend the RRs for the said post. The above said amendment in the RRs which was approved provided that 66 2/3% of the appointments to the said post would be made by promotion on the basis of seniority-cum-merit from amongst the Superintendent of Accounts with minimum 5 years regular service as such in the Kendriya Vidyalaya Sangathan Headquarters/Regional Offices, failing which by direct recruitment. The amended RRs further stated that 33 1/3% of the appointments would be by direct recruitment from the candidates possessing the following qualifications:- i) B.Com with at least 4 years

experience as Account officer/Audit officer in Central/State Govt/Autonomous Bodies/Public Undertakings. ii) M.Com with atleast 3 years experience as Audit Officer/Account officer in Central/ State Govt./Autonomous Bodies/Undertakings in Pay Scale of Rs. 2375-3500. iii) C.A.(Inter) or I.C.W.A.(Inter) or Mba with two years experience. 7.2 Prior to the above amendment there is was no provision in the RRs for direct recruitment to the above said posts. 7.3 Thereafter a further amendment was made in the RRs for the above said posts on 6.9.93 which was to be effective from 1.1.94. By the said amendment, the existing RRs with respect to the promotee quota were further amended so as to read as under:- "66-2/3 percent by promotion on the basis of seniority cum merit from amongst the Superintendent of Accounts with minimum of five years regular service as such in the Kendriya Vidyalaya Sangathan(HQ)/Regional Offices which have qualified the departmental qualifying examination as prescribed and conducted by the HQ(KVS) and failing which by direct recruitment. 7.4 In the present proceedings it is the validity of both the above mentioned amendments in the RRs for the above said post of Kendriya Vidyalaya Sangathan which is being assailed by the petitioners on the ground that the above said amendments in the RRs are arbitrary, illegal, violative of the provisions of the Article 14 of the Constitution, lack application of mind and discriminate between similarly situated persons. 7.5 It is settled law, culled out from various judicial decisions, that it is open to the appropriate authority to make rules providing qualifications and method for appointment/ promotion to different posts and the courts normally do not interfere with such matters unless it is shown that the exercise has been undertaken by the appropriate authority with ulterior motive or to discriminate amongst the candidates in contravention of Article 14 and 16 of the Constitution, say on the ground of residence within a particular area. The learned counsel for the petitioner, while arguing the case, made a vain attempt by saying that the promotees and the direct recruits to the above said post are "similarly situated persons" and that they cannot be discriminated in the matter of appointment to the above said post. In my opinion, the promotees and the direct recruits for appointment/promotion to the above said posts, in the facts and circumstances of the present case, cannot be by any stretch of imagination be treated or termed as persons "similarly situated". They form distinct and separate class and as already stated, it is for the rule making authority to decide as to whether the appointment to the post is to be made by "promotion" or by resorting to "direct recruitment" and thus no wrong can be attributed to the rule making authority on this count [see Capt. B.D.Gupta Vs. State of Uttar Pradesh and Others- 1990 (5) Slr SC 304. In the counter affidavit, filed on behalf of respondents, it has been specifically stated that in order to provide incentive to the meritorious and hard- working members of the staff the system of "Departmental Promotion Examination" was introduced with the approval of Board of Governors and as the experience and qualifications prescribed for Direct Recruits also include professional qualifications like Chartered Accountant, Cost Accountant, Mba, it was felt that there was no need for conducting an examination for the direct recruits. In my opinion, no fault can be found with the above reasoning given by

the rule making authority i.e. the respondents. 7.6 The allegation of arbitrariness and that of lack of application of mind by the rule making authority while effecting the impugned amendments in the RRs also fails on the ground that before effecting the amendments in the RRs the objections/pleas of all the associations including, petitioner No.1, were duly considered at the 56th meeting of the Board of Governors held on 6.9.93. It is specifically stated that in the above said meeting the representative of the employees, including petitioner No.1, were present and the Board of Governors had detailed deliberations regarding the need for introducing a departmental examination for promotion to the above said posts which they (the representatives of the employees) approved. The above contention of the respondents has gone on record un rebutted and unchallenged. There is no specific denial in the rejoinder which establishes this fact that the amendments, made in the RRs, being assailed in the present proceedings, were not arbitrary but were effected by the rule making authority (Respondents) after due deliberations with the representatives of the employees including petitioner No.1. 7.7 The Supreme Court in case Union of India (UOI) and Others Vs. P.C. Misra, has held that the rule making authority is competent to introduce amendment in the rules with retrospective effect which cannot be questioned on the ground of taking away "vested rights" or legitimate expectations of incumbents. Moreover, with a view to obviate any disadvantage to the employees (who would have become eligible for promotion to the existing vacancies prior to 6th September, 1993), it was decided by the respondents to enforce the amended RRs amended on 6.9.1993 w.e.f. 1.1.1994. Thus the "vested rights" of any of the employees including those who may be the members of the petitioner No.1, were not allowed to be affected adversely by the respondents. 7.8 In view of the above discussion, the amendments in the RRs, impugned in the present proceedings, in my opinion, are neither arbitrary nor the same discriminate between "similarly situated persons" and legally speaking no fault can be found with the same. QUESTION-2

(8) 1 The allegations of the petitioners in respect of the advertisements (Annexure P-5 & p-6) are that the advertisement issued by the respondents for filling up the above said posts are defective. In my opinion, the objections taken in respect of the advertisements are technical in nature and as a matter of fact lack in substance. As per settled law cases are won or lost on substantial questions and not on technical tortures. Moreover, no prejudice appears to have been caused as a result of such alleged lapses of technical nature which is evident from the fact that in response to advertisement (Annexure P-5) as many as 395 applications including that of petitioner No.2 were received in the office of the respondents and the number of applications received was so large that the same for .the purpose of calling the candidates for interview had to be shortlisted. 8.2 It was submitted by the learned counsel for the petitioners that at the stage of screening the applications, received in pursuance of advertisement (Annexure P-5), the respondents have adopted a criteria which is neither to be found in the RRs nor in the advertisement issued for the above said

posts and on account of the extraneous eligibility criteria, adopted by the respondents, for screening the applications, more than 90 per cent of the eligible candidates were not called for interview and out of 278 candidates, who fulfilled the requisite essential qualification, only 29 candidates were called for interview by the respondents. He further submitted that as a result of the adoption of the above procedure for screening the candidates, majority of eligible candidates, who were eligible as per the recruitment rules, were excluded from even being called for interview and the above action of the respondents, in not calling the eligible candidates for interview against the RRs or the advertisement issued, is arbitrary, illegal and vitiates the entire exercise right from issuing the advertisement in question. In so far as the above aspect is concerned, the only question requiring consideration is whether in the absence of any provision in the Recruitment Rules or in the advertisement issued for inviting the applications, the respondents were justified in short listing the candidates for the purpose of calling them for interview. This very question came up for consideration before the Supreme Court in case *Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and another*, and their lordships of the Supreme Court in the above said case have held:- "The High Court has taken the view that raising the period from five years to seven and half years" practice for purpose of calling the candidates for interview amounted to changing the statutory criteria by an administrative decision. According to us, the High Court has not appreciated the true implication of the short-listing which does not amount to altering or changing of the criteria prescribed in the Rule, but is only a part of the selection process. The High Court has placed reliance on the case of *Praveen Kumar Trivedi V. Public Service Commission*, M.P., 1986 Lab Ic 1990, where it has been pointed out that Commission cannot ignore a statutory requirement for filling up a particular post and cannot opt a criteria whereby candidates fulfilling the statutory requirements are eliminated from being even called for interview. As we have already pointed out that where the selection is to be made purely on basis of interview, if the applications for such posts are enormous in number with reference to the number of posts available to be filled up, then the Commission or the Selection Board has no option but to short-list such applicants on some rational and reasonable basis." 8.3 In the present case too in pursuance of the advertisement (Annexure P-5) as many as 395 applications were received out of which 278 candidates fulfilled the requisite essential qualifications prescribed for the post. As the total number of vacancies was only 4 and all the eligible candidates could not be called for interview the respondents with a view to short list the candidates to be called for interview framed an eligibility criteria to screen the candidates .pa on weightier basis which was as follows:- (i) Educational Weightage Points Qualifications 1st Class 11/111 class B.Com 20 15 M.Com. 25 20 Inter CA/ICWA/MBA 30 - Full-fledged CA/ICWA 40 - Note : B.Com 1st Class. M.Com.1st Class. Inter CA/ICWA/MBA and full-fledged CA/ICWA with four years, three years and two years experience respectively are equated at 40 points. ii) EXPERIENCE: 5 points for each year of experience as Accounts Officer/Audit Officer in Central/State Government/Autonomous bodies/public Sector

undertakings, subject to a maximum of 50 points. 8.4 Applying the above criteria, 29 candidates, belonging to the general category including petitioner No.2 and 5 Scheduled Caste candidates were short listed with the help of an expert who was a retired Director of the Indian Civil Accounts Service. In the presence of the above facts it cannot be stated that the criteria adopted by the respondents for short listing the candidates for the purpose of calling them for interview for the above said post had no rational or was unreasonable in any manner. QUESTION-3

(9) 1 In the present writ petition it has been alleged by the petitioners that the entire exercise of amending the RRs, adding arbitrary and unreasonable conditions which discriminate against similarly situated persons and the faulty advertisements (Annexure P-5 & P-6), issued contrary to the rules clearly show the malafide intentions of the respondents and the entire exercise, undertaken by the respondents is, Therefore, stands vitiated by malafides. 9.2 What is "malafides" as understood in Administrative Law? "Malafides" or "bad faith" means dishonest intention or corrupt motive. In *Jaichand Lall Sethia Vs. State of West Bengal and Others*, malafides has been so defined by their Lordships:-A malafide exercise of power does not necessarily imply any moral turpitude as a matter of law. It only means that the statutory power is exercised for purposes foreign to those for which it is in law intended. In other words, the power conferred by the statute has been utilized for some indirect purpose not connected with the object of the statute or the mischief it seeks to remedy." 9.3 The allegation of malafides has to be proved. In *E.P. Royappa Vs. State of Tamil Nadu and Another*, , their Lordships of the Supreme Court refused to declare the action "malafide" as "suspicion could not take the place of proof and "proof needed here is high degree proof". Burden of establishing "malafides" is very heavy on the person who alleges it. More serious the allegation, higher the degree of credibility of proof demanded by the Court. "Malafides" if not discernible from the impugned order, must be shown to exist either by direct evidence or clinching circumstantial evidence. In *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, , their Lordships have appreciated the difficulty of proving an allegation as to bad faith or indirect motive or purpose except on clear proof thereof. In *Rajendra Roy Vs. Union of India (UOI) and Another*, and in *M. Sankaranarayanan, IAS Vs. State of Karnataka and others*, , their Lordships have pointed out that inference as to malice must be based on factual matrix which cannot remain in the realm of insinuation, surmise, conjecture or vague suggestions. Suffice it to observe that difficulty of proof cannot dispense with necessity of proof. 9.4 If the above criterion is applied to the case in hand then on the basis of material available on record it cannot be held that the concerned functionaries of the respondents have exercised their power malafide or for extraneous reasons.

(10) The learned counsel for the petitioners while arguing the case, placed reliance on cases reported as *N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others*, , *Dr. Chetkar Jha Vs. Dr. Vishwanath Prasad Verma and*

Others, , Miss Prabha Kalyandeo Verma Vs. The Nagpur University and Others, , Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, and Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, I have gone through the above mentioned decisions of the Supreme Court and the same in my opinion in the facts and circumstances of the present case, in no way help the cause of the petitioners in the present writ petition.

(11) For the reasons recorded above, finding no merit in the writ petition, the same is dismissed leaving the parties to bear their own costs. However, before concluding, as a measure of abundant caution, it is clarified that vacancies in the above posts of Kendriya Vidyalaya Sangathan, arising before the amendments of the RRs, shall be filled in accordance with the provisions of the RRs as existing on the date(s) when the vacancies arose.