
(2005) 09 GAU CK 0024

In the Gauhati High Court

Case No : Writ Petition (C) No. 238 (A.P.) of 2004

K.K. Rajesh

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 08-09-2005

Acts Referred:

Constitution of India, 1950 — Article 16(1), 16(4)

Citation : (2006) 1 GLT 190

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : Kento Jini, for the Appellant; N. Lowang and I. Riram, for the Respondent

Final Decision : Allowed

Judgement

R.B. Misra, J.—Heard Mr. K. Jini, learned Counsel on behalf of the Petitioner and Mr. Ito Riram, learned Counsel appearing on behalf of the Respondent No. 4 and Mr. N. Lowang, learned Addl. Senior Govt. Advocate on behalf of the Respondent Nos. 2 and 3.

2. In this writ petition, prayer has been made for issuance of mandamus to the State Respondents and also to quash the order dated 12.11.2003 issued by the Director, State Institute of Rural Development (for short "Director, SIRD") appointing the Respondent No. 4. Further prayer has also been made for directing the State Respondents to appoint the Petitioner to the post of Accountant (Jr.) as an outcome of the selection.

3. Brief facts for the adjudication of the present petition are that an advertisement dated 16.7.2002 was published by Director, "SIRD"; for recruitment to a temporary post of Accountant (Jr.) in the pay scale of Rs. 4000-6000/- per month.

The said advertisement prescribed conditions for the candidates to the post of Accountant (junior) indicating:

Essential- Must passes a Degree in Commerce from a recognized University.

Desirable-Preference will be given to APST candidates those having experience in Commercial accounting (double entry system) in Autonomous/commercial/Semi Government/Government Organizations.

The Petitioner having M. Com degree with 60% marks from Arunachal University participated along with other candidates, and took up written examination held on 27.7.2003 and was declared successful in the interview concluded on 13.9.2003.

4. When the result of the selection was not declared, on approaching to the Respondent authorities Petitioner came to know that the Respondent No. 4 was appointed by an order dated 12.11.2003 (Annexure-1 to the writ petition).

5. It appears that on conclusion of the final interview the selection board comprising of Director (RD and PR) and Chairman as head and three other members declared only the names of successful candidates on 13.09.03 wherein, the Petitioner was shown at top of the panel of three selected candidates in order of merit. The text of the outcome of result of the selection board dated 13.9.2003 is extracted as below:

Recommendations of Selection Board held on 13.9.03 for filling up of the post of Accountant (Jr.) under the SIRD, A.P, Naharlagun.

The selection Board as constituted under the SIRD's order No. SIRDA-02/95 (Estt.) dated 19.8.2003 readwith order No. SIRDA-24/95 (Estt) dated 9.09.03, met on 13th September 2003 at 1100 hrs in the SIRD office, Naharlagun to take interview of candidates for the post of Accountant (Jr.) under the State Institute of Rural Development, Arunachal Pradesh, Naharlagun.

All together 11 (eleven) candidates were called for the interview out of which ten candidates appeared.

The election board verified the bio-data and other documents and interviewed each candidate appeared before the Board. On consideration of marks secured by the candidates in the written examination and marks secured in the viva-voce, the Selection Board recommendation a panel of 3 (three) candidates in order of merit as under:

1) Shri K. K. Rajesh

2) Miss Kartu Bam

3) Mrs. Ijum Doye

(T. Gamdik) (H.K. Bhattacharjee) Director(RD and PR) Director, SIRD, and Chairman Arunachal Pradesh and Selection Board Member Selection Board.

(A. Basit) (M.Riba) Joint Director (A and P) and Under Secretary (RD) Member, and Member. Selection Board Selection Board

6. According to the Petitioner he is in possession of M.Com degree and had secured 210 marks out of total 300 marks, whereas, position, Respondent No. 4, the second position holder had secured 188 marks out of 300 and the third position hold namely, Mrs. Ijum Doye had secured 156 marks out of 300. The statement of marks obtained in different subjects including viva-voce is provided in Annexure IV to the affidavit-in-opposition of the Respondent No. 2 and 3.

7. According to the learned Counsel for the Petitioner, the advertisement dated 16.7.02 had nowhere, indication that the single post was to be filled up by a reserved category candidate, and there was no other candidate at par with the Petitioner, where, the conditions as prescribed in the "Desirable" clause of the advertisement in question could come into play, however even after having secured highest marks in the selection, the Petitioner has been deprived of being appointed, whereas, against the single post of Accountant (Jr.) the Respondent No. 4 has been appointed.

8. The Respondent No. 2 and 3, however, have not denied in their affidavit-in-opposition that the Petitioner was first in merit list of the panel of three candidates recommended to the post of Accountant (Jr.) The Respondent No. 2 and 3 have denied the allegations of putting any kind of political pressure over the said selection, however, the Respondents have asserted that the Respondent No. 4 since was found suitable and eligible as per the existing reservation policy of the State Government, therefore, the appointment in her favour was issued.

9. The Respondent No. 4 has also filed an affidavit asserting that the she bonafidely had participated in the selection process and as per reservation policy of the State Government applicable for appointment to the Group-"C" category of post, and by virtue of having secured 2nd position in the panel of three recommended candidates and after getting benefit of being a desirable category of candidate as provided in the advertisement, she has been chosen to be a preferential candidate and accordingly has been appointed. According to Respondent No. 4, for none of her fault she may not be disgraced at this stage.

10. Learned Counsel for the Petitioner on the other hand, has invited attention of this Court to some judgments of the Hon'ble Supreme Court passed in Chakradhar Paswan Vs. State of Bihar and Ors, where it was observed that the appointment to the posts by way of reservation by applying roster could be made only where there are more than one post in existence and reservation of only existing post shall amount to 100 per cent reservation being violative of Article 16(1) and (4) of the Constitution.

In Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Faculty Association and Others, the Supreme Court (Constitution Bench) has considered its earlier decision of Dr. Chakradhar Paswan (supra) as well as other decisions namely Union of India and Another Vs. Madhav Gajanan Chaubal and Another, State of Bihar and Others Vs. Bageshwari Prasad and Another, Union of India and others Vs. Brij Lal Thakur, ; Suresh Chandra Vs. J.B. Agarwal and

others, Post-Graduate Institute of Medical Education and Research etc. Vs. K.L. Narasimhan and another etc., ; Arati Ray Choudhary Vs. Union of India (UOI) and Others, Smt. Chetana Dilip Motghare Vs. Bhide Girls Education Society, Nagput and others, , (Indra Sawhney v. Union of India 1992 Supp. (3) SCC 217 and Vidyulata Arvind Kakade v. Digambar Gyanba Sunvase, (C.A. No. 242 of 1992 dated 17.1.1992) and The State of Andhra Pradesh and Others Vs. U.S.V. Balram, etc., and while reviewing its earlier judgment dated 2.5.1997 passed in Civil Appeal No. 3175 of 1997 and after allowing the review petition (C) No. 1749 of 1997 preferred in C.A. No. 3175 of 1997 Post-Graduate Institute of Medical Education and Research etc. Vs. K.L. Narasimhan and another etc., the Hon''ble Supreme Court has observed that there cannot be any reservation to a single post. The relevant paragraph of Post Graduate Institute of Medial Education and Research, Chandigarh (supra) is quoted as below:

26. The decision in Chakradhar Paswan case (supra) that for a single post cadre no reservation can be made for the backward classes has also been followed in Chetana Dilip Motghare v. Bhide Girls' Education Society (supra) and it has been held in the said decision that when the post is a solitary post in the cadre, the roster and carry-forward scheme underlying any reservation policy cannot apply. A contrary view, however has been taken in the decision of State of Bihar v. Bageshwari Prasad, (supra) Suresh Chandra v. J.B. Agarwal (supra) and later on in a three-Judge Bench decision in Union of India v. Mahdavi (supra). Following the said three-Judge Bench decision in Mahdavi case (supra) reservation in a single post cadre by rotation of roster point has been upheld in Union of India v. Brij Lal Thakur and the decision rendered in the case of Post Graduate Institute of Medical Education and Research v. Faculty Assn. The latter decision is the subject matter of challenge in the review petition before us in C.A. No. 3175 of 1997.

31. There is no difficulty in appreciating that there is need for reservation for the members of Scheduled Castes and Scheduled Tribes and other Backward Classes and such reservation is not confined to the initial appointment in a cadre but also to the appointment in a promotional post. It cannot however be lost sight of that in anxiety for such reservation for the backward classes, a situation should not be brought about by which the chance of appointment is completely taken away so far as the members of other segments of the society are concerned by making such a single post cent percent reserved for the reserved categories to the exclusion of other members of the community even when such a member is senior in service and is otherwise more meritorious.

34. In a single post cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such a single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general members of the public. Such total exclusion of general members of the public and cent percent reservation for the backward classes is not permissible within the constitutional framework. The decisions of

this Court to this effect over the decades have been consistent.

35. Hence, until there is plurality of posts in a cadre the question of reservation will not arise because any attempt of reservation by whatever means and even with the device of rotation of roster in a single post cadre is bound to create 100% reservation of such post whenever such reservation is to be implemented. The device of rotation of roster in respect of single post cadre will only mean that on some occasions there will be complete reservation and the appointment to such post is kept out of bounds to the members of a large segment of the community who do not belong to any reserved class, but on some other occasions the post will be available for open competition when in fact on all such occasions, a single post cadre should have been filled only by open competition amongst all segments of the society.

37. We, therefore, approve the view taken in Chakradhar case that there cannot be any reservation in a single post cadre and we do not approve the reasoning's in Madhav case, Brij Lal Thakur case and Bageshwari Prasad case upholding reservation in a single post cadre either directly or by device of rotation of roster point. Accordingly, the impugned decision in the case of Post Graduate Institute of Medical Education and Research cannot also be sustained. The review petition made in Civil Appeal No. 3175 of 1997 in the case of Post Graduate Institute of Medical Education and Research, Chandigarh, is therefore allowed and the judgment dated 2.5.1997 passed in Civil Appeal No. 3175 of 1997 is set aside.

11. I have heard learned Counsel for the parties. In respect of the submissions of Respondents that the single post of Accountant (Jr.) is to be filled up in view of the terms and conditions prescribed in the said advertisement dated 16.7.2002, it is worth mentioning that there was no indication in the advertisement in question that single post of Accountant (Jr.) is to be filled up by reserved category candidate only, rather an indication was made in the desirable category of advertisement that "preference will be given to APST candidates having experience in commercial accounting (double entry system) in autonomous/commercial/semi govt./govt. organizations." The Respondent No. 4 though scheduled caste candidate of Arunachal Pradesh, however, cannot said to be in possession of specified experience as desired in the advertisement. The Petitioner, undisputedly, has secured first position in the panel of selected candidates in order of merit and since there cannot be any reservation to a single post, therefore, it was the Petitioner in fact who could be given appointment to the post of Accountant (Jr.). Since, no justifiable reasons have been forthcoming on behalf of the Respondent Nos. 2 and 3 for issuing appointment order in favour of Respondent No. 4. Whereas, the decisions referred to above by the Petitioner namely Chakradhar Paswan (Supra) as well as in Post Graduate Institute of Medical Education and Research, Chandigarh (supra) are protecting the cause of the Petitioner and in present facts and circumstances the appointment of Respondent No. 4 to a single post of Accountant (Jr.) is not legally sustainable and the Petitioner is legally entitled to be given appointment on the basis of

recommendation made by the Selection Board dated 13.09.2003. In these circumstances, the appointment order dated 12.11.2003 (Annexure-1 to the affidavit-in-opposition) issued in favour of Respondent No. 4 is hereby set aside and mandamus is being issued to the Respondents/authorities to take immediate steps for issuance of the appointment order in favour of the Petitioner.

12. With the above directions, the writ petition is allowed. No order as to cost.