

(2009) 11 GAU CK 0079

In the Gauhati High Court

Case No : Writ Petition (C) No's. 26, 27, and 28 of 2008

Lalremruati and Others

APPELLANT

Vs

Mizoram State Information Commission (Msic) and Others

RESPONDENT

Date of Decision : 18-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 309
Mizoram Subordinate Ministerial Services Rules, 1998 — Rule 14
Right to Information Rules, 2005 — Rule 9

Citation : (2006) 1 GLT 198

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Advocate : C. Lalramzauva, A.R. Malhotra, Haulianthang and Joseph Lalfakawma, for the Appellant; Michael Zothankhuma and Helen Dawngliani, for the Respondent

Final Decision : Allowed

Judgement

B.D. Agarwal, J.—All the aforesaid three writ petitions are being disposed of by this common judgment since the writ petitions are based on identical facts and the impugned order is one and the same in all the Writ Petitions.

2. Heard Shri C. Lalramzauva, learned Counsel for the Petitioners and Shri M. Zothankhuma, learned Counsel for the Respondent Nos. 1 and 2 and Smt. Helen Dawngliani, learned Govt. Advocate for the Respondent No. 3. The Respondent No. 5 was the then Secretary, Mizoram State Information Commission (MISC) and also the Chairman of the D.P.C./S.C. for selection of Group C and D staff in the MISC. This Respondent, though filed his affidavit, no one has him represented during the course of argument.

3. I have also perused the pleadings and counter pleadings filed on behalf of the parties. During the course of hearing the relevant file of the Recruitment process was also perused.

4. The office of the Mizoram State Information Commission (for short, "Commission") was constituted vide Notification dated 21.6.2006. By this Notification, posts of Ministerial staff and Group D posts were also sanctioned. Rule 9(b) of the Mizoram Right To Information Act, 2005 (for short, "RTI") prescribed that the Rules applicable to Mizoram Secretariat Services Rules, shall be applicable for the recruitment of the officers and staffs of the Commission. As per the Mizoram Subordinate Ministerial Services Rules, 1998, recruitment of Ministerial Staff is required to be done by a Committee known as DPC/Selection Committee and this composition has been laid down under Rule 14 (Annexure-10). Pursuant to the said Rules, a Selection Committee was constituted by the office of the State Information Commission (for short, "SIC") vide order dated 21.05.2007. The committee included the Secretary of SIC; representative of the DP & AR, Govt. of Mizoram and Deputy Secretary, SIC as its Member-Secretary. The Secretary of SIC was the Chairman of the Selection Committee.

5. As per the Recruitment Rules framed under proviso to Article 309 of the Constitution of India, the Ministerial Staffs, like Assistants, UDCs and LDCs are required to be selected by holding written tests and viva-voce. However, by issuing Corrigendum Notification dated 6.6.2007, the State Chief Information Commissioner (for short, "SCIC") withdrew the powers of DPC/SC for holding written examination and evaluation of answer scripts that was conferred under order dated 21.5.2007. On the basis of the aforesaid corrigendum order dated 6.6.2007, the competitive written examination was held by the Commission itself and power of the DPC/SC was limited to viva-voce of the candidates, selected by the Commission.

6. Accordingly, the DPC notification 365 candidates, selected by the Commission, for personal interview. But only 247 candidates were appeared. Interviews were held during the period 10.12.2007 to 30.12.2007 and after such interview; recommendations of the selected candidates were forwarded to the Commission on 04.02.2008. However, the recommendations were not accepted by the Respondent No. 1 and issued the impugned order dated 25.3.2008 cancelling the recommendations of the DPC/SC in toto. On the same date the Respondent No. 1 issued another order directing all the selected candidates to the post of UDCs, LDC and Grade IV posts to appear on certain dates with photographs, educational qualification certificates, birth certificates etc. and in the aforesaid notice, it was made clear that this notice shall be treated as "Call Letters". In this way, the MISC-Respondent No. 1 issued two letters on the same date. In the first letter it was mentioned that fresh DPC will be constituted, whereas in the second one by the same authority, Call Letters were issued and the candidates were directed to appear in the second and third week of April, 2008, without constituting a new D.P.C. These orders are under challenge in the aforesaid writ petitions. The Writ Petitions have been filed by the persons selected for the posts of UDC, LDC and Grade IV posts, praying for a writ of certiorari to quash the impugned orders and also a writ in the nature of mandamus so as to direct the

State Respondents for their appointment on the basis of recommendations of DPC.

7. The learned Counsel for the Petitioners submitted that the recommendation of the D.P.C. have been cancelled arbitrarily and without any justified ground. The learned Counsel for the Petitioners also submitted that the written examination was held for 225 marks, which comprises of 81.82 percent of the total marks, whereas only 50 marks were allotted for personal interview i.e. 18.18 percent of the total marks. On the basis of the ratio of the marks allotted for written tests and viva-voce, the learned Counsel for the Petitioners contended that there was hardly any scope for the DPC to manipulate the merit list, prepared by the Commission itself and as such, gross injustice has been done to the Petitioners by way of cancelling the recommendation of a validly constituted D.P.C.

8. On the other hand, Shri M. Zothankhuma, learned Counsel for the Commission submitted that the SCIC, being the "approving" authority, possesses inherent powers either to accept the recommendations in part or wholly or to reject the same in toto and as such, the Respondent No. 1 was within its ambit not to accept the recommendations. The learned Counsel also submitted that the recommendations were cancelled since the Respondent No. 1 noticed that there were gross irregularities in holding the interview, more particularly, the DPC did not maintain the records of its proceeding properly. Besides this, the DPC was also not represented by the Under Secretary, DP & AR, as required under the Rules. Shri Zothankhuma also submitted that the viva-voce marks were allotted in lump sum, without formulating any criteria. Besides this, the results were published by the DPC even before formal approval of the Respondent No. 1.

9. In addition to the aforesaid submissions, the learned Counsel also submitted that the writ Petitioners have no locus standi to file writ petitions and that the Petitioners have no indefeasible right to be appointed on the basis of the recommendations. In support of its submission, the learned Counsel has cited the decisions of the Hon"ble Supreme Court rendered in the case of State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo, Shankarsan Dash Vs. Union of India, and the decision rendered in the case of State of Rajasthan and Others Vs. Jagdish Chopra,

10. It is the common knowledge that even ordinary games are played under certain rules and maintaining discipline. It is also the settled position of law that the parties, appearing in proceedings before judicial authorities, should come with clean hands and demonstrate that they have acted fairly and their conduct and demeanor are above any sort of criticism.

11. In the present case the Respondent No. 5, who was the Secretary of the Commission and ex-officio Chairman of the DPC has imputed an allegation against the Chief Information Commissioner (R-1) that after submission of the select list the said Respondent had asked him to make certain changes in the list and include the name of some of his favourite candidates. According to the

Respondent No. 5 when he did not oblige the Respondent No. 1, he rejected the recommendations of the DPC out of grudge. This allegation has been categorically denied by the Respondent No. 1 in his affidavit filed through Respondent No. 2. Be that as it may, in absence of concrete evidence of malafide on the part of R-1, I hereby ignore the imputation made by Respondent No. 5 in his affidavit.

12. However, there are various other materials, which enough for me to observe that the Respondent No. 1 did not act fairly from the very beginning. I have already mentioned earlier that as per the Recruitment Rules Group-C and Group-D staffs are to be recruited through statutory DPC/SC. According to rules the DPC was constituted on 21.5.2007. In the said order the DPC was authorized to hold written examination of the candidates. This delegation of power was in conformity to the recruitment rules. However, for the best reasons known to the Commission, a Corrigendum Order was issued on 6.6.2007 withdrawing the powers of the DPC to hold written examination and evaluation of answer scripts. Thereafter the Commission itself held competitive examination of intending candidates and the results of written test was declared by the Commission, without involving the DPC. This appears to be in sheer deviation of the Recruitment Rules. In other orders, it appears to me that at the very inception of the process the CIC had usurped the powers of DPC for recruitment of staff.

13. Secondly, the recommendations of DPC were rejected vide order dated 25.3.2008, on the following ground:

On account of incomplete recruitment proceedings and publication of DPC recommendations in local newspapers before finalization of the proceedings of the recruitment, the confidentiality and sanctity of the recruitment process having been obliterated, the Commission hereby declare that all pending recruitment result for the post of UDC, LDC & IV Grade under the Commission inclusive of written results and interviews stand cancel with immediate effect.

Fresh DPC will be constituted by the Commission in due course.

14. On the same day the CIC issued another Notice directing the candidates for clerical and other posts to appear in his office with all necessary documents and this notice was directed to be treated as "Call Letter". Apparently this 2nd notice dated 25.3.2008 is contradictory to the first order of even date, where the State CIC had indicated that fresh DPC will be constituted. In my considered opinion, since the recruitment of Grade-C and D staffs are to be done by a Selection Committee the CIC had no authority to issue the second notice on 25.3.2008, asking all the candidates to appear before him and that too without clarifying the purpose of their appearance. This notice also smacks of arbitrary action on the part of the Respondent No. 1. This conduct of Respondent No. 1 can also be considered for interference with its decision not to accept the recommendations of DPC.

15. Now, I shall turn to technical objection raised by the learned Counsel for the

Respondents No. 1 and 2 that the writ Petitioners have no locus standi or indefeasible claim for the vacant posts. In this regard, Shri Lalramzauva, learned Counsel for the Petitioners relied upon the judgments rendered by the Hon''ble Supreme Court in *Union of India v. Ishwar Singh Khatri* reported in 1992 Supp. (3) SCC 84 ; *Union of India (UOI) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another*, and the judgment rendered in the case of *Sri Jyotish Kaiborta and Others Vs. The State of Assam and Others*, In all these cases writ petitions were filed by the candidates selected for certain posts and either the Select Lists were cancelled or the appointments were not made to the Petitioners. In the case of *Rajesh P.U. (supra)* the select list was challenged on the ground of anomaly in the markings in the written test. A plea was also raised before the Hon''ble Apex Court that select listed candidates have no vested right for obtaining a writ of mandamus for their appointment. However, the Hon''ble Supreme Court held that just because there was anomaly in the marking the cancellation of the whole select list is arbitrary and unreasonable. Finally the Apex Court directed the concerned department to give appointment to the selected candidates.

16. Similar view was also taken by the Hon''ble Supreme Court in the case of *Jyotish Kailborta (supra)*. While taking the aforesaid view the Hon''ble Supreme Court relied on certain observations in the case of *Sadananda Halo and Others Vs. Momtaz Ali Sheikh and Others*, I am persuaded to quote the observations made in paragraph 58 of *Sadananda Halo*, which are as under:

58. It is settled law that in such writ petitions a roving inquiry on the factual aspects is not permissible. The High Court not only engaged itself into a non-permitted fact-finding exercise but also went on to rely on the findings of the amicus curiae, or as the case may be, the scrutiny team, which in our opinion was inappropriate. While testing the fairness of the selection process wherein thousands of candidates were involved, the High Court should have been slow in relying upon such microscopic findings. It was not for the High Court to place itself into a position of a fact finding commission, that too, more particularly at the instance of those petitions who were unsuccessful candidates. The High Court should therefore have restricted itself to the pleadings in the writ petition and the say of the Respondents. Unfortunately, the High Court took it upon itself the task of substituting itself for the Selection Committee and also in the process assumed the role of an appellate tribunal which was, in our opinion, not proper. Thus, the High Court converted this writ petition into a public interest litigation without any justification.

17. I am of the view that the doctrine of "locus standi" is undergoing a change and writ petitions are being entertained even at the instance of third party, who are not directly interested in the result of the case. Truly speaking, Article 226 of the Constitution of India do not postulated any pre-condition that the Petitioner must have concluded or vested rights, for the relief sought for. In other words proof of vested right is not a sine qua non to get a writ of mandamus. In my considered opinion, the doctrine of locus standi has been evolved by way of

judicial pronouncements only to restrict frivolous applications or misuse of Article 226. Besides this, the instant writ petitions have not been filed by strangers to the issue or by unsuccessful candidates. On the other hand, the writ petitions have been filed by those persons who have been selected by a regularly constituted DPC. Hence, in my considered opinion, if the Petitioners are not allowed to ventilate their grievances on the technical ground of locus standi, it would amount to allowing the authorities to act at their whims.

18. The authorities cited on behalf of Respondents No. 1 and 2 stand on different footing altogether. In the case of Jagdish Chopra (*supra*) the Apex Court declined to pass a Writ of Mandamus for giving appointment to the writ Petitioner on the ground of expiry of the period of select list, whereas, I am considering a question about the propriety of the Respondent No. 1 to cancel the select list in toto. Similarly in the case of Sankarsan Dash (*supra*) the writ Petitioner was claiming his absorption from a different cadre to IPS cadre. The 3rd authority cited on behalf of the Respondents i.e. the case of Ram Chandra Dev (*supra*) arises out of Zamindari claim. Be that as it may, the observations made by their Lordships, indicating extensive powers of the High Court under Article 226 of the Constitution, needs to be looked and, as such quoted below:

8. On the merits, the position is absolutely clear. Under Article 226 of the Constitution, the jurisdiction of the High Court is undoubtedly very wide. Appropriate writs can be issued by the High Court under the said article even for purposes other than the enforcement of the fundamental rights and in that sense, a party who invokes the special jurisdiction of the High Court under Article 226 is not confined to cases of illegal invasion of his fundamental rights alone. But though the jurisdiction of the High Court under Article 226 is wide in that sense, the concluding words of the article clearly indicate that before a writ or an appropriate order-can be issue in favour of a party, it must be established that the party has a right and the said right is illegally invaded or threatened. The existence of a right is thus the foundation of a petition under Article 226. The narrow question which falls for our decision in the present appeals is whether the Respondents can be said to have proved any legal right in respect of the properties of which they apprehended they would be dispossessed by the Appellant.

19. In view of the aforesaid authorities, I find no difficulty or hesitation to hold that the writ Petitioners are the best persons to challenge the impugned order. However, whether a direction for their appointment can be given or not will depend upon the result of the case.

20. To examine the propriety of the impugned order dated 25.3.2008, it appears to me that the recommendations were not accepted and the select list prepared by the DPC was cancelled basically on the ground that the select list was aired in public through media diluting the "concept of confidentiality". In this impugned order the authority did not specify any illegality or irregularity in selecting candidates, allegedly committed by the DPC. So far as the allegation of

publication of result in the newspaper is concerned the writ Petitioners have stated in the reply-affidavit that the "select list" was obtained by some candidates by making appropriate application under the RTI Act, 2005 and thereafter it was given in the media.

21. In my considered opinion, the office of the Chief Information Commissioner has been constituted to promote transparency and preach fair play in public offices. However, in the present case, office of the CIC has ostensibly taken an opposite view. It is not the case of Respondents No. 1 and 2 that an incorrect and manipulated select list was published in the media. In my opinion, if the select list was un-authorisedly published by any person, albeit with correct facts and figures, the CIC at best could have taken appropriate action against the person who was involved in the aforesaid mischief. But certainly the CIC should have avoided to take recourse of cancelling the Select List in entirety, affecting the life and livelihood of citizens, for no fault on their part. It does not require any mention that unemployment is increasing and Government jobs are limited. In view of this ground reality the CIC could have taken resort to any other method to tackle the alleged violation of confidentiality of the Select List, without affecting the rights of selected candidates to get their job.

22. However, while filing affidavit-in-opposition in the Court, the Respondents No. 1 and 2 have projected a new case. According to the aforesaid Respondents the DPC did not maintain proper record of the proceedings. According to the Respondents the proceedings and minutes were recorded in the file of MSIC instead of maintaining separate files. Besides this, it has also been pleaded that the interview letters were issued by the Dy. Secretary of SIC and not under the seal of DPC. Another ground is that the DPC was not properly constituted in as much as Government of Mizoram was not represented by a competent officer and, finally, the DPC also did not specify the criteria of giving marks.

23. With regard to the maintaining of record of proceedings in the file of MSIC instead of creating a separate file, I am of the view that this objection is not touching the root of the propriety of the selection. So far as issuance of interview letters, I find that the "Call Letters" clearly indicate that it was issued by the Dy. Secretary, who was also ex-officio Member Secretary of DPC. Hence, there is no fault or irregularity in this regard. Regarding representation of the State Government in the DPC it is the allegation on the Respondent No. 1 that instead of Under Secretary the Superintendent of PD & AR department had represented the Government. Ms. Helen Dawngliani learned Govt. Advocate submitted that it is the usual practice that if Under Secretary is not available the department is represented by Superintendent, who is also a Gazetted Officer and in the recommendation letter it has been clarified that the Under Secretary had informed the DPC that the department would be represented by the Superintendent and that offer was accepted by the Secretary of MSIC. Besides this, along with reply affidavit of the writ Petitioners a Note of SIC dated 1.2.08 has been enclosed as Annexure-2A, wherein the SIC had opined that at this

stage it would not be proper to question the formation and composition of DPC. Hence, this ground to cancel the recommendation is also un-acceptable.

24. The last ground to cancel the recommendation is that a DPC did not formulate any criteria for giving marks. Apparently, 80% of the selection was done by the Commission itself and the DPC was left only to complete the formality by conducting viva-voce and for this purpose only 50 marks was allotted. Apparently neither recruitment rules nor the CIC had given any direction to the DPC in the matter of formulating criteria for oral interview. Hence, non-acceptance of recommendations without any allegation of malafide on the part of the DPC was not proper. There are umpteen numbers of judgments from the Hon'ble Supreme Court, wherein it has been held that selection done by an Expert Committee should not ordinarily be reassessed or interfered with by the Court without specific allegation of favouritism, arbitrariness or malafide action. Interestingly, during the course of hearing the learned Counsel for the Respondents No. 1 and 2 placed the result of written test of Group-C candidates, wherefrom I could gather that all the top three candidates have eventually been selected by the DPC.

25. For the foregoing reasons, I hold that the impugned order dated 25.3.2008 cancelling the recommendations of DPC and also directing the candidates to appear before the MSIC are unsustainable in law as well as on facts. Hence, the impugned orders are hereby quashed.

26. As could be gathered from the record, the office of the MSIC is being run with the staff appointed on contract basis. Keeping in mind the important duties and functions of the office of MSIC/CIC, it is desirable that the office should run with regularly appointed staff. Hence, Respondents No. 1 and 2 are directed to issue appropriate appointment orders as per the Select List, prepared by the DPC/SC, preferably within a period of 2 (two) months from the date of receipt of a copy of this order.

27. In the result, all the three writ petitions stand allowed.