
(2011) 07 SHI CK 0234
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 8646 of 2008

Mahesh Gupta and Another	Vs	APPELLANT
State of H.P. and Others		RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2011) 07 SHI CK 0234

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

V.K. Sharma, J.—The challenge herein in this petition initially filed as an Original Application (O.A) No. 1859 of 2002, before the erstwhile H.P. State Administrative Tribunal (since abolished) u/s 19 of the Administrative Tribunals Act, 1985 and later on, on abolition of the said Tribunal transferred to this Court under the provisions of "the Himachal Pradesh Administrative Tribunal (transfer of decided and pending cases and applications) Act, 2008" and registered as CWP (T) No. 8646 of 2008, is against the selection of Respondent No. 4 to the post of Dy. Advocate General, in the office of the Advocate General, Himachal Pradesh, Shimla.

2. The Petitioners had also participated in the process leading to the selection of Respondent No. 4. The requisite advertisement Annexure A-6 was issued on 10.2.2002. In all there were 23 candidates, who applied for the post. On the basis of screening test held on 32.6.2002, in which 13 candidates appeared, only six had crossed the first hurdle. They were called for personal interview held on 12.8.2002, on the basis of which Respondent No. 4 was selected. Out of the five unsuccessful candidates, two, the Petitioners, have challenged the appointment.

3. Two main grounds taken on behalf of the Petitioners for challenging the selection of fourth Respondent are, firstly that Respondent No. 3, Shri B.P. Sharma, Presiding Officer, Sales Tax Tribunal, who was also joined as a Member of the Selection Committee, was earlier holding the post of Additional Advocate

General in the office of the Advocate General, Himachal Pradesh, where Respondent No. 4 was also working at that time as Assistant Advocate General and he being an erstwhile colleague of Respondent No. 4, was favourably inclined towards him and was biased against the Petitioners and secondly that another member of the Selection Committee, namely Shri Chander Shekhar Sharma, the then Director Prosecution, Himachal Pradesh, was holding a post lower in status to that of the Dy. Advocate General, for which the selection was being made and as such he was not competent to be on the panel of selectors for the higher post.

4. As far as the first contention is concerned, the factual position in that regard has been fairly admitted on behalf of the Respondents including Respondent No. 4, the selected candidate whose appointment is under challenge in the present petition. It being so, reference to some of the cases, viz. (1) Budh Ram Vs. State of H.P., , (2) Sanjeev Kumar Alias Sonu Vs. State of Himachal Pradesh, , (3) Rangi Lal Vs. State of H.P., and (4) Durga Nand and Another Vs. State of Himachal Pradesh, wherein, both, Respondent No. 3 Shri B.P. Sharma and Respondent No. 4 Shri J.K.Verma, had appeared on behalf of the State in their respective capacity as Additional. Advocate General and Assistant Advocate General is being specifically made at the insistence of the Petitioners and their learned Counsel.

5. Before proceeding further, it shall be appropriate to notice constitution of the interview board, which was as under:-

1. Shri Dev Raj Sharma, IAS (Retd.) and Member, H.P. Public Service Commission (Chairman),

2. Shri M.C. Chopra, Chief Engineer (Retd.), Member H.P. Public Service Commission (Member),

3. Shri B.P.Sharma, Presiding Officer, Sales Tax Tribunal, Respondent No. 3. (Expert Member),

4. Shri Chander Shekhar Sharma, Director Prosecution, Himachal Pradesh (Departmental Representative).

6. It shall be pertinent to notice at this stage that though there is challenge to Shri Chander Shekhar Sharma, Director Prosecution, Himachal Pradesh, being a member of the Selection Committee, on the ground stated here-in-above, yet the fact remains that neither he has been impleaded as a party to the petition nor any material has been brought on record to show that the post he was holding as Director Prosecution, Himachal Pradesh, was in any way lower in status to that of the Dy. Advocate General, for which post selection was being made. According to Respondent No. 1-State, Shri Chander Shekhar Sharma being Director Prosecution, Himachal Pradesh, was Head of the Department. In such situation, it cannot be said that he was holding an office lower in status to that of the Dy. Advocate General. Even otherwise, the case of Respondent No. 1-State is that Shri Chander Shekhar Sharma was the nominee of the

Administrative Department, nominated by the Addl. Chief Secretary-cum-Secretary (Home) to the Government and was acting in the delegated capacity. Thus, I have no hesitation to come to the conclusion that Shri Chander Shekhar Sharma, Director Prosecution, Himachal Pradesh was in no way incapacitated from participating in the Interview Board as a departmental representative.

7. Now while coming to the contention on behalf of the Petitioners that Respondent No. 3, Shri B.P. Sharma, was not competent to act as an expert in the interview, as he was erstwhile colleague of Respondent No. 4, who was one of the candidates for the post and was ultimately selected, it would be seen that though admittedly Shri B.P. Sharma, was earlier holding the post of Additional Advocate General in the office of the Advocate General, Himachal Pradesh, where Respondent No. 4, Shri J.K. Verma, was also working as Assistant Advocate General at that time, yet the fact remains that at the material time when interview was held, Shri B.P. Sharma, had already left the office of the Advocate General and was instead working as Presiding Officer, Sales Tax Tribunal. All the Respondents including Respondent No. 3 have vehemently denied the allegations that he was either favourably inclined towards Respondent No. 4 or was in any way biased against the Petitioners. The allegation that Respondent No. 3, Shri B.P. Sharma, had also prevailed upon other members of the Interview Board appears in the nature of a wild allegation and is liable to be outrightly rejected for the reasons that neither other members of the Interview Board have been made parties to the present petition nor there is any material worth the name on record to come to the inference that Respondent No. 3, Shri B.P. Sharma, had in any way prevailed upon in forming opinion by other members of the Interview Board in favour of Respondent No. 4.

8. Now, while adverting to case law relied upon on behalf of the parties, I would first discuss the authorities relied upon on behalf of the Petitioners. In *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, one member of the board was himself a candidate for selection, which is not the situation in the present case and thus the authority relied upon is clearly distinguishable and does not apply to the facts and circumstances of the present case. The proposition of law laid down by the Hon'ble Supreme Court in *Ashok Kumar Yadav and Ors. v. State of Haryana and Ors.* 1985 (2) AISLJ 482, also does not apply to the facts of the present case as in that case the selection under consideration was for the State Judicial Service and the point in issue was with regard to ignoring the advice of the expert, a retired High Court Judge, by the Chairman of the Commission and dictum of law laid down by the Hon'ble Supreme Court that in such selection a sitting High Court Judge should be called by the Commission and nominated by the Chief Justice. In *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, the allegation of bias was regarding a close relative of a member of Commission appearing for selection, which again is not a situation in this case. Thus, this authority also does not apply to the facts of the case in hand.

9. The law relating to the powers of the court in exercise of judicial review to interfere with the selection made by a duly constituted Board or Selection Committee and the circumstances in which a challenge can be laid against the selection is by now fairly settled. There can be no dispute with the legal position that court cannot substitute its own opinion to brush aside the outcome of such selection made by the experts in the field. It is also an established legal position that a candidate who has once participated in the selection process and had not raised any objection as to the composition of the Selection Committee, cannot be permitted to raise such an objection at a later stage, when he comes to know that he could not cross the bar. In this regard, the learned Advocate General and the learned Counsel appearing on behalf of the Respondents have placed reliance upon large number of judicial pronouncements starting from the year 1957 upto 2010, viz. (1) *Manak Lal Vs. Dr. Prem Chand*, (para 8) (2) *G. Sarana Vs. University of Lucknow and Others*, (para 15), (3) *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, (paras 9 and 18), (4) *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, (para 23), (5) *Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others*, (para 13), (6) *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, (paras 9 and 16), (7) *Shri Bhajan Dass Kaith Vs. H.P. Public Service Commission and Another*, (para 8), (8) *Inderpreet Singh Kahlon and Others Vs. State of Punjab and Others*, (para 16), (9) *M.V. Thimmaiah and Others Vs. Union Public Service Commission and Others*, (para 19), (10) *Sadananda Halo and Others Vs. Momtaz Ali Sheikh and Others*, (paras 58 and 59), (11) *Amlan Jyoti Borooah Vs. State of Assam and Others*, (paras 31 and 32), (12) *Swaran Lata v. Union of India and Ors.* 1979 (1) SLR 710 (para 66) and (13) judgment dated 25th June, 2010, rendered by a Division Bench of this Court in CWP Nos. 4120 and 4121 of 2009, *Anay Kumar and Anr. v. State of H.P. and Ors.* and the connected matter.

10. There is no necessity to burden this judgment by extracting all the relevant paras of the above authorities, except the following three.

11. In the case of *Dr. G. Sarna*, supra, it has been held as under vide para 15 of the report:

We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the Appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the Committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the Committee. This view gains strength from a decision of this Court in *Manak Lal's* case wherein more or less similar circumstances, it was held that the failure of the Appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting:

It seems clear that the Appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point.

12. Similarly, in the case of Om Prakash Shukla, *supra*, it has been laid down as follows vide para 23:

Moreover, this is a case where the Petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the District of Kanpur also. They were not responsible for the conduct of the examination.

13. To the similar effect is the proposition of law laid down by the Hon''ble Supreme Court in the case of Dalpat Abasaheb Solunke and Ors. *supra*, vide para 13, which is extracted below:

The fourth and the last ground given by the High Court to set aside the appointment of the Appellant in CA No. 3507/89 is that the fourth and the fifth Respondents to the Writ Petition were guides of the Appellant when he was doing his M.Sc. by Research. We are unable to understand as to how the fact that they were his guides when the Appellant was doing his M.Sc. would influence their decision in selecting him, or vitiate the selection made. They must have been guides to many who had appeared for the interview. As senior teachers in the Faculty in question, it is one of their duties to guide the students. In fact, very often the experts on the selection Committees have to be drawn from the teaching faculty and most of them have to interview candidates who were at one or the other time their students. That cannot disqualify them from being the members of the Selection Committees. In fact, as stated by the 4th Respondent in his affidavit before the High Court, even the 2nd Respondent, the aggrieved candidate was also his student. Curiously enough the High Court has discarded the said fact by observing that in point of time, the Appellant was closer to the 4th Respondent as a student since the Appellant was his student at a later date. It is not necessary to comment further on this reasoning.

14. True it is that in rare and exceptional cases the allegations of bias can very well be looked into and if established, selection can be nullified even despite the fact that the person who challenges the selection has participated in the process. However, the present case is not of such nature.

15. In view of what has been stated here-in-above, I am more than satisfied that No. case is made out for any interference in the selection process culminating into appointment of Respondent No. 4, as Dy. Advocate General, in the office of the Advocate General, Himachal Pradesh, pursuant to the selection process under

reference. The petition is accordingly dismissed being without any merit. Pending application(s), if any, shall also stand disposed of.