

(2006) 08 GAU CK 0034
In the Gauhati High Court
Case No : Writ Petition (C) No. 397 of 2004

Manika Talukdar	Vs	APPELLANT
State of Tripura and Others		RESPONDENT

Date of Decision : 01-08-2006

Acts Referred:

Citation : (2006) 4 GLT 63

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

Bench : Single Bench

Advocate : D.C. Roy, A.C. Bhowmik, S.P. Bhattacharjee and M.K. Roy, for the Appellant; U.B. Saha and A.S. Lodh, for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.—Heard Mr. D.C. Roy. learned Counsel for the Petitioner and Mr. U.B. Saha, learned senior Govt. Advocate assisted by Mrs. A.S. Lodh, learned Counsel for the State Respondents.

2. In this writ petition prayer has been made to promote the Petitioner to the post of Additional Director, Department of School Education, Government of Tripura as per seniority, administrative experience and also in consideration of better educational qualification in comparison to Respondent No. 3 (the selected candidate). According to the Petitioner, she was more qualified, experienced and senior in comparison to the Respondent No. 3. However, her entire service records, experience and performances were ignored by the Selection Committee and the Selection Committee mala fidely selected Respondent No. 3 to the Additional of Joint Director, Department of School Education, Government of Tripura, and even the averments made in the writ petition to that effect were not specifically denied by the State, therefore, the prayer has been made to summon the records and analyze the same afresh and to asses the suitability of the Petitioner and other candidates for selection to the post of Additional Director. In support of his submission, learned Counsel for the Petitioner has referred and relied upon the following decisions of Supreme Court:

(i) In R.K. Sethi and another Vs. Oil and Natural Gas Commission and others, where in reference to the issue of next below Rule, it was held that if a junior employee is given promotion without considering his senior, the senior employee can claim the right to be considered for such promotion from the date his junior was promoted. In my respectful consideration the facts and circumstances of the present case are different and distinguishable and the verdict of R.K. Sethi (supra) is not applicable in the present case.

(ii) In Dr. Rajinder Singh Vs. The State of Punjab and Others, the Supreme Court on the issue of non-promotion/denial of promotion/supersession has observed that on the date of convening of DPC (Departmental Promotion Committee) the Respondents were not in possession of statutory qualifications in those circumstances, the DPC in question was directed to make a fresh recommendation. In my respectful consideration the facts of this case are different and verdict of Dr. Rajinder Singh (supra) is not applicable to the present case.

(iii) In 2004(2) GLT 388 (Punyotangu v. State of Arunachal Pradesh and Ors.) this Court has held that the power of relaxation was to be exercised by the authorities only when there was no candidate in the zone of consideration. Since the present case there is no question of relaxation of any rule in favour of any particular candidate, therefore, the decision of the learned Single Judge of this Court in Punyotangu (supra) is not applicable in the present case.

3. On the other hand Mr. U.B. Saha, learned senior Govt. Advocate for the State-Respondents has submitted that through the counter-affidavit, the State Government in an Annexure-R/3 (letter dated 18.11.2000 issued by the Government and enclosed to the counter affidavit) has indicated method, criteria, qualification and recruitment rules for the post of Additional Director of School Education under Education Department to be made in consultation with "The Tripura Public Service Commission" (in short called "Commission") and that the post of Additional Director i.e. a "selection post" was to be fulfilled by promotion failing which by direct recruitment. It has already been indicated in para 10 of the counter-affidavit that the Secretary of "Commission" has advertised the post inviting application from the eligible candidates and after fulfilling the procedural formalities and interview in consonance to the requirements of the "Recruitment Rules", the post of Additional Director was to be fulfilled by promotion as there was no automatic promotion. A Committee consisting of five responsible officers convened a meeting on 26.07.04 and has considered the cases of all eligible candidates, including the Petitioner, coming from feeder post of Joint Director of School Education/Joint Director of SCERT/District Education Officer/Principal, DIET enjoying the pay scale of Rs. 10,660-15,850/- and has made recommendation and with concurrence of the "Commission", the Government of Tripura had issued appointment in favour of the Respondent No. 3.

4. According to Mr. Saha, (i) The cases of eligible candidates were considered for

making the selection as disclosed in para 10 and 12 of the counter-affidavit, (ii) The "Commission", on whose consultation the final appointment to the selection post of in the post of Additional Director was to be made was not made party for the reasons best known to the Petitioner, on this point alone the present writ petition was liable to be summarily dismissed, (iii) The Petitioner has not chosen to file rejoinder affidavit to controvert the averments made in the counter-affidavit, (iv) This Court has to be slow in making judicial review of the decision of the Selection Committee and this Court is not expected to sit as Appellate Authority over the outcome of Selection Committee unless glaring procedural irregularities or proved mala fide or defiance of the relevant provision of rules are shown. The court is not expected to make an assessment on the performance of the candidates including their merits in a selection to the selection post where merit is the prime importance and criteria rather than the seniority, qualification and experience.

5. In support of his submissions Mr. Saha has referred and relied upon decisions of the Supreme Court:

(i) In *The Central Council for Research in Ayurveda and Siddha and Another Vs. Dr. K. Santhakumari*, it was observed that promotion is to be made on the basis of inter-se-merit of eligible candidates and not on the basis of strength of candidates seniority alone. The relevant paragraph 6 is quoted as below:

6. The principle merit-cum-seniority is an approved method of selection and this Court in *Sant Ram Sharma Vs. State of Rajasthan and Another*, held that promotion to "selection grade posts" is not automatic on the basis of ranking in Gradation list and the promotion is primarily based on merit and not on seniority alone. At page 1914 of the judgment, it is stated as under (para 6):

The circumstance that these posts are classed as "Selection Grade Posts" itself suggests that promotion to these posts is not automatic being made only on the basis of ranking in the Gradation List but the question of merit enters in promotion to selection posts. In our opinion, the Respondents are right in their contention that the ranking or position in the Gradation List does not confer any right on the Petitioner to be promoted to selection post and that it is a well established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection posts is under consideration, seniority should not be regarded except where the merit of the officers is judge to be equal and no other criterion is, therefore, available.

(ii) In *State of Orissa Vs. Durga Charan Das*, it was held that; the Constitution Bench of Hon'ble Supreme Court has held that the promotion to a selection post is not a matter of right which can be claimed merely by seniority. While making promotion to the selection post seniority and merit of a candidate has to be considered.

(iii) In *Union of India v. Mohan Lal Capoor (1973) 3 SCC 836* at p. 856 it was

held: "For inclusion in the list, merit and suitability in all respects should be the governing consideration and that seniority should play only a secondary role. It is only when merit and suitability are roughly equal that seniority will be a determining factor, or if it is not fairly possible to make an assessment inter se of the merit and suitability of two eligible candidates and come to a firm conclusion, seniority would tilt the scale."

(iv) In *B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc.*, It has been held that the principle of "merit-cum-seniority" lays greater emphasis on merit and ability and seniority plays a less significant role. Seniority is to be given weight only when merit and ability are approximately equal.

(v) In *Union of India and Others Vs. Lt. Gen. Rajendra Singh Kadyan and Another*, , it was observed as under (at page 2699 of AIR SCW):

Wherever fitness is stipulated as the basis of selection, it is regarded as a non-selection post to be filled on the basis of seniority subject to rejection of the unfit. Fitness means fitness in all respects. "Seniority-cum-merit" postulates the requirement of certain minimum merit or satisfying a benchmark previously fixed. Subject to fulfilling this requirement the promotion is based on seniority. There is no requirement of assessment of comparative merit both in the case of Seniority-cum-fitness and seniority-cum-merit. Merit-cum-suitability with due regard to seniority as prescribed in the case of promotion to All India Services necessarily involves assessment of comparative merit of all eligible candidates, and selecting the best out of them.

(vi) In *Durga Devi and another Vs. State of H.P. and others*, the Supreme Court has held "in the instant case, as would be seen from the perusal of the impugned order, the selection of the Appellants has been quashed by the Tribunal by itself scrutinizing the comparative merits of the candidates and fitness for the post as it the Tribunal was sitting as an appellate authority over the Selection Committee. The selection of the candidates was not quashed on any other ground. The Tribunal fell in error in arrogating to itself the power to judge the comparative merits of the candidates and consider the fitness and suitability for appointment. That was the function of the Selection Committee. The observations of this Court in (*Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others*, are squarely attracted to the facts of the present case. The order of the Tribunal under the circumstances cannot be sustained. The appeal succeeds and is allowed. The impugned order dated 10.12.1992 is quashed and the matter is remitted to the Tribunal for a fresh disposal on other points in accordance with the law after hearing the parties. The Supreme Court has observed: "It is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or

patent material irregularity in the constitution of the committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the instant case the University has constituted the Committee in due compliance with the relevant Statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant materials before it. Therefore, setting aside the selection on the ground of the so called comparative merits of the candidates, as assessed by the Court while sitting in appeal over selection so made would not be permissible.

(vii) In (1999) 2 GLR 31, it has been held by Gauhati High Court that while adjudicating writ against the decisions of the Selection Committee or DPC, it is not the function of the Court to hear appeals over the decisions of the Selection Committee or DPC and to scrutinize the relative merits of the candidates since the Selection Committee is to decide the matter as it has the expertise on the subject and the Court has no such expertise, however, the Court may interfere when there is infirmity in the selection process or decision making process or when the Selection Committee discarded the genuine merits/ACR's of the candidates on record-Court cannot substitute its opinion to a rightful decision arrived at by competent authority.

6. After hearing the learned Counsel for the parties, I find that the Petitioner's case was duly considered by the DPC and the promotion was made to the selection post of Additional Director, Department of School Education, Govt. of Tripura on the basis of merit and not seniority alone as seniority alone was not sole criteria in view of the settled position of law. The Selection Committee, after careful consideration, has found that the Respondent No. 3 is a suitable candidate and this Court cannot assess and analyse the functioning of Selection Committee as an appellate authority. In these circumstances, the prayer made by the writ Petitioner cannot be allowed.

7. The writ petition is accordingly dismissed. No costs.