
(2008) 02 RAJ CK 0090
In the Rajasthan High Court

Meethanath

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 11

Citation : (2008) 3 RLW 1864 : (2009) 1 SLR 481

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J.—The petitioner Meethanath @ Meethesh Nirmohi has filed this writ petition seeking relief that selection proceedings in pursuance of advertisement No. 5/90-91, conducted by respondent No. 2 Rajasthan Public Service Commission (hereinafter referred to as "the Commission") may be declared illegal and quashed and consequent appointment orders may be set aside.

2. Without prejudice to the above relief, the petitioner has further prayed that appointment of Shri Radhey Shyam Koli, respondent No. 4 who had not qualified the screening test and was wrongly called for appearing before the selection committee for interview may be declared illegal and quashed.

3. According to the facts narrated by the petitioner in the writ petition, the Commission invited applications from eligible candidates vide advertisement No. 5/90-91 with a view to selecting suitable candidates for appointment to the posts of Public Relations Officer in the Government of Rajasthan, Department of Information & Public Relations against five existing vacancies. Alongwith many others, the petitioner applied and he was allowed to appear in the screening test conducted by the Commission with Roll No. 122. In the said screening test, the petitioner was declared qualified alongwith 15 persons. However, the petitioner's candidature was rejected on the ground that the petitioner was not possessed of

five years" experience as a journalist or sub-editor of any state-level or national level newspaper.

4. Against aforesaid rejection of the candidature, the petitioner approached this Court by way of filing S.B. Civil Writ Petition No. 6675/1991 and, in that writ petition, ad interim order directing the respondent Commission to call the petitioner to face interview was passed and, in pursuance of the ad interim order, the petitioner was interviewed by the Commission.

5. In the writ petition, while laying the foundation, the petitioner has also made averments that on the interview-board, besides Shri G.P. Pilania, Member of the Commission, Shri R.S. Gupta and Shri D.N. Upadhyay set and both Shri Gupta and Shri Upadhyay extensively interviewed the petitioner.

6. After interview, the result of the petitioner was not declared and, at last, the writ petition filed by the petitioner was accepted vide judgment dated 2.12.1992 and the petitioner was held eligible for the post of Public Relations Officer. The validity of judgment dated 2.12.1992 passed in S.B. Civil Writ Petition No. 6675/1991 was assailed by the Commission before the Division Bench. The directions given by the learned Single Judge, to the extent of petitioner's eligibility for appointment to the post of Public Relations Officer under the Rajasthan Public Relations Service Rules, 1966 (referred to hereinafter as "the Rules of 1966"), was maintained. At the time of deciding the special appeal, the Division Bench passed the following order:

In the result we uphold the judgment of the learned Single Judge so far as the respondent No. 1 Mithlesh Nirmohi's eligibility to take up interview for the post of Public Relation Officer is concerned and order that if the respondent Mithlesh has secured requisite merit in the interview he be given appointment as Public Relation Officer by the Government forthwith. However, the finding of the learned Single Judge will confer no right on the daily news-paper Jaltey Deep to be treated as State level news-paper. That will be a matter which will have to be decided by the appropriate authority as per Rules. However, the State Government is directed to frame Rules prescribing norms, scales and standards for grant of a status to the news-paper to be classified either as a National level news-paper or a State level news-paper or to be treated as a local or District level news-paper. The special appeal stands disposed of accordingly on merits with no order as to costs.

In pursuance of the aforesaid order, the petitioner received communication dated 15.3.1993 whereby he was informed that he has not been selected for appointment to the post of Public Relations Officer. In the present writ petition, the petitioner has assailed the validity of the order dated 15.3.1993 on various grounds.

7. The petitioner has raised the contention that he belongs to scheduled caste category and, after rejection of his candidature, one Radhey Shyam Koli who had secured less marks in the qualifying screening test was called to appear at the

interview and, during the course of pendency of the writ petition, Shri Koli was interviewed as scheduled caste category candidate whereas by virtue of the ad interim order passed by this Court in favour of the petitioner, the petitioner was also interviewed; meaning thereby, the right of the petitioner to be interviewed was finally adjudicated while holding him eligible and qualified for recruitment to the post, therefore, according to the petitioner, Shri Radhey Shyam Koli was not even entitled to be considered for appointment because, after the petitioner having been declared eligible for appearing at the interview by this Court, candidature of Shri Radhey Shyam Koli was to be ignored by the Commission inasmuch as Shri Koli had secured less marks in the screening test than the petitioner and Shri Koli had been called to appear at the interview as the candidature of the petitioner was rejected by the Commission. The petitioner having been declared eligible, thereafter, Shri Radhey Shyam Koli had no right to be interviewed because as per the reply of the respondents, when the petitioner was held ineligible then Shri Radhey Shyam Koli was included in the list of candidates for interview in the category of Scheduled Caste. Therefore, according to the petitioner, the respondents were under obligation to provide appointment to the petitioner and candidature of Shri Radhey Shyam Koli, who had been substituted while rejecting the candidature of the petitioner, was to be ignored. But, the respondent Commission selected Shri Radhey Shyam Koli illegally.

8. It is argued by learned Counsel for the petitioner that the constitution of the selection committee itself was illegal because three persons were included in the selection committee by the Commission for adjudging the suitability of the candidates in the interview and according to Rule 20 of the Rules of 1966 the Commission is under obligation to prepare list of candidates whom it considered suitable for appointment to the posts concerned in the order of merit and forward the same to the Government; meaning thereby, the suitability is to be adjudged by the Commission. According to learned Counsel for the petitioner, both Shri R.S. Gupta and Shri D.N. Upadhyay were not entitled to be members of the selection committee for adjudging the suitability of the candidates for appointment to the posts of Public Relations Officer because they are stranger to the very nature of the posts and they can hardly be regarded experts in the field of Public Relations, therefore, the Committee was not at all consisting of any expert on the subject of public relations because the post of Director is provided as a senior post under the Rules of 1966 and it can be filled in 100% by transfer or appointment of IAS/RAS officers, therefore, the person who was appointed by way of promotion can be termed as an expert of the subject as he possesses qualification and experience; but, an incumbent transferred from IAS cannot be treated to be an expert or cannot be said to be competent to sit as an expert on the selection board. Shri R.S. Gupta was admittedly not a promotee but he was posted by way of transfer from the IAS and, on that post, he had only experience of a few days in the Department of Information & Public Relations. Therefore, it can be said that there was no expert sitting in the selection board to adjudge the suitability of candidates for appointment as Public Relations Officer.

9. Similarly, it is submitted that Shri D.N. Upadhyay remained Director of the Directorate of Information & Public Relations merely for one year and, that too, way back in the year 1980 and Shri R.S. Gupta assumed the charge on the post of Director on 5.8.1992 and he was holding the post for last one month only when he set in the interview board, therefore, neither Shri R.S. Gupta nor Shri D.N. Upadhyay can be termed expert on the subject of Information & Public Relations and, in fact, they were included on the board of interview by the Commission merely on account of their high-pedestalled bureaucratic status and these persons cannot adjudge the suitability of the candidates for the posts of Public Relations Officer as experts, therefore, any selection made with the assistance of such persons who were not experts and merely set as experts cannot be considered legal. In these circumstances, the constitution of the selection committee was totally illegal. In fact, fields of journalism, and public relations are especialities in themselves as is evidence from the qualification prescribed for the post of Public Relations Officer. It is pointed out by learned Counsel for the petitioner that even the petitioner was not considered eligible by the Commission on account of the ground that he did not possess five years experience in journalism or as sub-editor of a State-level or National-level newspaper, then, for the selection committee in which experts are to be included, Shri R.S. Gupta and Shri D.N. Upadhyay cannot be said to be experts of the field. On these premises, learned Counsel for the petitioner prays that the whole selection proceedings taken in pursuance of advertisement No. 5/90-91 deserves to be quashed.

10. It is also argued by learned Counsel for the petitioner that once the petitioner was found eligible for the interview then there was no occasion for the Commission to recommend the name of Shri Radhey Shyam Koli to be selected candidate who was not even in the list of candidates for interview but he was substituted in place of petitioner after rejection of his candidature but, later on, the petitioner was held eligible therefore candidature of Radhey Shyam Koli was to be ignored. However, this was no done by the Commission and Radhey Shyam Koli was included after rejection of the petitioner's candidature was selected and provided appointment by an incompetent Board. Therefore, according to learned Counsel for the petitioner, it is a fit case for quashing the whole selection proceedings.

11. Learned counsel for the petitioner, however, further submitted that without prejudice to the foregoing submissions, ultimately, upon consideration, this Court comes to the conclusion that at this stage, after 14 years, the selection may not be disturbed, the respondents may be directed to treat the petitioner suitable candidate and, for the said purpose, the Commission may be directed to recommend the name of the petitioner to the Government for appointment as Public Relations Officer treating him selected candidate.

12. On the other hand, a preliminary objection was raised by learned Counsel for the Commission that petition deserves to be dismissed on the ground of

constructive res judicata and general principles of Sections 10 and 11 as well as provisions of Order 2 Rule 2, of the CPC inasmuch as the earlier writ petition was filed by the petitioner in the year 1992 in which the only grievance was voiced by the petitioner with regard to eligibility for the post of Public Relations Officer. It is submitted that the candidature of the petitioner was rejected on the ground that the petitioner does not possess experience of working with a national-level newspaper and no other grievance was raised either with regard to constitution of the selection committee or with regard to the method adopted by the Commission. If the petitioner was in fact aggrieved at the relevant time, he ought to have raised these submissions in the earlier writ petition.

13. It is further submitted by learned Counsel for the Commission that in the month of September 1992 the earlier writ petition was filed and direction was issued by this Court to declare the result of the petitioner; meaning thereby, the petitioner was ready to accept the outcome of the selection proceedings without demure and he did not raise any such ground with regard to competency of the members of the selection committee. Therefore, according to learned Counsel for the respondent Commission, now when the petitioner has been declared unsuccessful by the interview-board, he cannot be allowed to raise objection to the constitution of the selection committee or with regard to eligibility of the members of the selection committee. The petitioner is challenging the selections made at a belated stage and after having taken chance at his own stake for selection. The Division Bench of this Court passed order to declare the result of the petitioner and the petitioner was not found suitable by the selection-board because he secured 40 marks which is less than the minimum marks prescribed by the Commission i.e., 50 marks. Therefore, at this stage, the petitioner cannot challenge the constitution of the selection committee. At no stage prior to filing this writ petition any grievance was raised by the petitioner with regard to legitimacy of the constitution of the selection committee.

14. It is contended by learned Counsel for the respondent Commission that the petitioner having participated in the selection and, in pursuance of the orders of this Court that he may be considered for the post and may be allowed to be interviewed provisionally and his result may be declared; meaning thereby, at that juncture, if he had been found suitable and selected for appointment to the post, he had no grievance against the legitimacy of the constitution of the selection committee and selection process was just and proper; but, now, when selection-board has not found the petitioner suitable for appointment he has turned to challenge the entire selection in which, while taking chance at his own stake, the petitioner participated with demure and without any objection.

15. Adverting to the merit of the case, it is vehemently contended by learned Counsel for the respondent Commission that the selection committee was constituted in accordance with the procedure laid down by the Commission for selecting most suitable candidates for appointment and when the petitioner was not found eligible initially, therefore, in the circumstances in view of the number

of posts and ratio by which the number of candidates were required to be called for interview, in the Scheduled Caste category, Shri Radhey Shyam Koli and Shri Jagannath Naga, next candidates in the descending order in the merit of the written examination, were called for interview. It is contended by the learned Counsel that Shri Radhey Shyam Koli secured 50 marks which is minimum marks prescribed for getting through the interview, therefore, despite the fact that the petitioner was declared eligible for interview, he was not found suitable for appointment to the post of Public Relations Officer on account of having failed to obtain minimum pass marks at the interview.

16. It is emphatically submitted by learned Counsel for the Commission that it is admitted position of the case that Shri R.S. Gupta and Shri D.N. Upadhyay were Directors in the directorate of Information & Public Relations and by virtue of the office they held they were rightly treated experts and called to be members of the selection committee. The petitioner was interviewed in pursuance of the directions of the Court alongwith other candidates and, as submitted in the foregoing arguments, at that juncture, the petitioner did not at all express any grouse against the legitimacy of the constitution of the selection committee. After interview, the selection committee did not find the petitioner suitable for the post and, therefore, the petitioner is not entitled to any relief in this writ petition.

17. It is lastly submitted by learned Counsel for the respondent Commission that the judgment cited by learned Counsel for the petitioner in Kumari Rashmi Mishra's case is not attracted in the facts and circumstances of the present case. According to him, in the cited judgment the only directions have been issued for amending rules and, in fact, no relief was granted to the appellant and no direction was issued either to the State for calculating the marks obtained for the purpose of merit. In the present set of facts and circumstances, more specifically, when the petitioner had earlier preferred writ petition with regard to his eligibility and, at that juncture, the petitioner did not voice any grievance as to the legitimacy of the selection process, therefore, the judgment in the case of Kumari Rashmi Mishra (supra) has no application to this case. Similarly, in view of the judgment in the case of Damayanti Devi reported in 1983 RLW 484, it has not been held that any method adopted by the Commission for conducting the examination would not allow short-listing; but, for the purpose of selection, short-listing cannot be treated to be part of the exercise for preparing the merit list and the selection is to be made only on the basis of the marks obtained. He has, therefore, submitted that since after rejection of the candidature of the petitioner Shri Radhey Shyam Koli was called to appear at the interview and he obtained 50 marks, he was recommended to be appointed.

18. I have considered the rival submissions advanced by learned Counsel for the respective parties and carefully perused the record.

19. At the outset, it may be observed that after the judgment of this Court with regard to eligibility of the petitioner to be considered as a candidate for

appearing in the interview is not in dispute. The Commission complied with that order and allowed the petitioner to appear in the interview and, as per record produced by the Commission, the petitioner secured 40 marks in the interview. It is well within the domain of the Commission, so long as it is not arbitrary, to prescribe the minimum marks to be secured by the candidate for being adjudged suitable for appointment to the post. The minimum marks prescribed by the Commission cannot, therefore, be questioned. But, at the same time, while according to the rules the merit is to be prepared on the basis of interview only then it is the duty of the Commission to give the information to the candidates. However, only on the ground that no information was previously given to the candidates, the selections made by the Commission cannot be declared illegal, more so, at this stage.

20. It is true that at this stage the petitioner cannot be allowed to raise any grievance with regard to the eligibility of the members of the selection committee because he himself appeared at the interview and this Court passed order for declaring his result; meaning thereby, this Court has passed order to declare the result of the selection of the petitioner that cannot be questioned by the petitioner by way of filing a subsequent writ petition. The objections to the constitution of the selection committee raised by the petitioner have no force inasmuch as it has come to the knowledge of the petitioner before the decision of the Division Bench, then, he was to raise the objection at that juncture. But, subsequently, while assailing the validity of the decision of the selection committee, now the petitioner cannot be permitted to raise any objection to the legitimacy of the constitution of the selection committee. At the said interview, the petitioner appeared without any objection.

21. However, the pleadings in the case have drawn attention of the Court to the specific purpose for constituting selection committee for recruitment by the Commission and it has been found that high echelon bureaucrats, merely on the justification of their departmental position, are called by the Commission to sit as members of the selection committee whereas the members are expected to be experts of the relevant field. It is indeed task of greater importance to sit as members in the selection committee for recruitment of the candidates for various services of the State and, therefore, the members must be experts in fact and not merely by inference. The respondent Commission must be enlightened enough to call only the experts on its selection committees for recruitment and not to make it a convenient job by calling upon the high officers of the Administrative machinery of the State, calling them experts in the field by virtue of the office they hold. It is not just that the Public Service Commission adjudges the suitability and recommends candidates for appointment. The future of the country is at stake in the hands of the selected candidates who are ultimately appointed to responsible posts under the State. It is also expected of the legislative body to frame specific rules and expressly provide for constitution of the selection committee so that, as it happens now a days, the Public Service Commission may not be transformed into a play-ball in the hands of the

bureaucrats of the State. In any case, on selection boards, there must not be more than one member from the bureaucratic wing because capabilities of an administrator and expertise of a subject with an expert are entirely different things and one cannot be substituted by the other.

22. From the record of the case, it is obvious that if the candidature of the petitioner would have been found correct at the initial stage there should not have been any occasion for calling Shri Radhey Shyam Koli for interview. After the petitioner was declared ineligible the Commission called the next candidates in the descending order of merit to appear at the interview. Therefore, obviously when the petitioner was declared eligible by this Court after adjudication of the matter, then, in that event the candidature of Shri Radhey Shyam Koli was to be ignored; but, he was interviewed and the petitioner was interviewed in pursuance of the order of this Court; meaning thereby, for adjudging the suitability of the petitioner his right was granted by the Commission but, as per the respondents, in the interview, the petitioner secured only 40 marks whereas for selection of the candidate in the Scheduled Caste category, initially 50 marks were prescribed which were reduced later on to 45 by the Commission. This Court only adjudicated upon the question of eligibility of the petitioner to be interviewed for selection and suitability was to be adjudged by the Commission only. Since the petitioner failed to secure minimum prescribed marks at the interview, he cannot be entitled to any relief sought for by him in this writ petition. The petitioner appeared in the interview and the result was declared in pursuance of the order passed by this Court, therefore, it does not lie with the petitioner to find faults with the selection process at this stage. Therefore, there is no force in this writ petition. The writ petition is dismissed. There shall be no order as to costs.