
(2017) 02 TP CK 0028
In the Tripura High Court
Case No : 403of 2009

Miss Papai Pal

APPELLANT

Vs

The Managing Committee & Ors

RESPONDENT

Date of Decision : 16-02-2017

Acts Referred:

Citation : (2017) 02 TP CK 0028

Hon'ble Judges : S.C. Das

Bench : Single Bench

Advocate : A.K.Bhowmik, S.Ghosh, S.R.Dey, R.Datta, B.Bhattacharjee, M.Choudhury, D.C.Nath, J.Bhusan, S.Chakraborty, B.Banerjee, I.Banik, D.Bhattacharjee, P.Saha

Judgement

1. Heard learned senior counsel, Mr. A. K. Bhowmik, assisted by learned counsel, Mr. R. Dutta for the petitioner, learned counsel, Mr. B. Banerjee for respondent No.1, learned counsel, Mr. D. Bhattacharjee for respondent No.8 and learned counsel, Mr. D. C. Nath for respondent Nos.7 and 9. No representation on behalf of other respondents.

2. Ramthakur Pathshala Girls Higher Secondary School, a non-Government Educational Institution, recognised by the Government of Tripura under the Tripura Grants-in-Aid Rules, 2005, made an advertisement dated 23.11.2007, published on 24.11.2007 in a daily newspaper for appointment of post graduate teachers in English and Education subjects etc., one for English and one for Education. The relevant part of the advertisement, marked Annexure-A/1 to the writ petition, reads as follows :- "ADVERTISEMENT

Application along with attested copies of Marksheets, Certificates for academic Qualifications, Age, Nationality, Employment Exchange Regn. Card and Income certificate of the family from S.D.M are invited from the eligible banafide citizens of India & permanent resident of Tripura for filling up the following posts, so as to reach the undersigned on or before the 8th December, 2007 time 11 A.M. to 2 P.M. No application will be received after the stipulated time. Incomplete

application will not be accepted.

Sl No Name of post No. of vacancy Pay Qualification required Age Category

1 2 3 4 5 6 7

1 Post Graduate Teacher 2 3250/- P.M. fixed pay B.A.(H)/M.A. in English B.A.(H)/M.A. in Education 37 years U.R. S.T.

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1. In service candidates are to apply through proper channel with No Objection Certificate.

2. Age limit may be relaxed for those persons who are in service.

Sd/- Secretary 23.11.07,

Ramthakur Pathsala Girls H.S. School, Agartala, Tripura."

3. The petitioner, respondent No.8 and other candidates applied for the post of English teacher and an interview was conducted by the Selection Board consisting of respondent Nos.2 to 6. The Interview Board recommended appointment of respondent No.8 and the petitioner felt aggrieved and collected all materials from the office of respondent No.1 and it was found that respondent No.8 was awarded 72.5 marks, whereas petitioner was awarded 63 marks in the interview and thereby the petitioner was deprived though on merit as well as on other criteria the petitioner was supposed to be selected.

4. The petitioner and respondent No.8 both were honours graduate in English and their academic performance has been stated in para-7 to the writ petition in a tabular form, which is not disputed, and the same reads as follows :- ".... The academic performances of the petitioner and that of the Respondent No.8 are shown in a table as follows :-

Name of Examination	Total Marks	Marks obtained by petitioner	Percentage Marks obtained by Respondent No.8	Percentage
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Secondary	800	577	72.125%	445 49.44
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H.S.+ 2 stage	1000	700	70%	572 57.25%
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B.A.(Hons) Part-I & II				
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800/ 600	473 out of 800	59.125%	243 out of total marks	600 0.5%"
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5. The case of the petitioner is that the respondents took a stand that following Memorandum dated 30.08.2003 (Annexure-17) and Memorandum dated 02.01.2001 (Annexure- 18) the selection process was conducted and the respondent No.8 was selected on need basis as per the said Memorandum. The petitioner alleged that there was no mention in the advertisement that the post was reserved for the need basis candidate and further those Memorandum dated

30.08.2003 and 02.01.2001 were also not followed and there was no rationale in awarding marks as against particular category. The respondents arbitrarily exercised favouritism in favour of respondent No.8 and wrongly selected him. The petitioner, therefore, prayed for quashing the selection of respondent No.8 and also prayed for directing respondent No.1 to appoint the petitioner in his place.

6. Respondent Nos. 1 and 8 contested the case by filing counter affidavit. Other respondents did not file any counter affidavit. Respondent No.1 is the principal respondent, i.e., the appointing authority. The stand taken by the respondent has been spelt out in paras 10 to 13 of the counter affidavit, which read as follows :-
"10. That in pursuance of the advertisement dated 23.11.2007 both the petitioner and the respondent No.8 have applied for the post of Post Graduate Teacher in English. Be it mentioned here that as per policy as referred by the writ petitioner to the answering respondents, only one post was earmarked for unreserved category which was treated to be filled up from the need category, in-as-much-as 30% posts were required to be filled up from the need category as per the Government policy any post hither to.

11. That it is necessary to point out that the Government has been following the method of selecting the candidate for need category vide Memorandum No.F.10(2-41)-DSE/2000 dated 2.1.2001 which is till in force.

Copy of the said Memorandum dated 2.1.2001 is enclosed and marked as Annexure-R-1.

12. That from the said Memorandum it would be available in paras-5, 6 and 7 as under:

"5. Total marks in interview in respect of need will be - 100 with the following break-up :

(a) need based on family income = 70 marks.

(b) Academic purpose need to be examined = 15 marks

(c) performance in interview = 15 marks

6. Details of 70 marks to be allotted in respect of need based on family income.

(a) Family income from Rs.6000/- P.A. = 70 marks

(b) Family income from Rs.6001 upto = 60 marks Rs.10,000/- P.A.

(c) Family income from Rs.10,001 = 50 marks upto just below poverty line P.A. Family income certificate is to be obtained from the Revenue Officer.

7. Details of 15 marks to be allotted in respect of academic qualification BASED on public examination.

(a) 1st Divn/1st Class (above 65% marks) = 15

(b) 1st Divn/1st Class (above 65% marks) = 30

(c) 2nd Divn/2nd Class = 11

(d) 3rd Divn/P = 9

(e) Compartmental/risk level = 7

(f) H.S. (old course) = 5

N.B. : (i) For recruitment of teacher in H.S.(+2) schools and Secondary, middle stage school, average of marks allotted for each may be taken into. (ii) For recruitment of teacher in H.S.(+2) stage schools 2(two) marks may be given in respect of candidates possessing qualification of Master Degree in Honours subject; to the condition that total marks allotted for academic purpose should not exceed 15.

13. That since the petitioner has submitted her marks, therefore, for avoiding the repetition her application form is not being submitted herewith, but the application form with annexures of the respondent No.8 is being submitted herewith. From the marks, it can be had from this numbers that none of the candidates had their Post Graduate degree in the subject. A comparative table of academic performance and assessment given to the said Memo(Annexure-R-1) is given hereunder:

Sl. No. Name of the candidate Madhyamik Higher Secondary B.A.(H)

1 Papai Pal (writ petitioner) 72.12% 70.7% 59.12%

2 Ratan Ghosh 49.44% 57.25% 48.6%"

Following the procedure, the weightage for academic performance was given to Papai Pal at 13.66 and for Ratan Ghosh 11. For income the weightage was given to Papai Pal- 50 and also 50 to Ratan Ghosh(respondent No.8). From the assessment sheet it would be available that in the interview Papai pal got 8 out of 15 whereas Ratan Ghosh got 12.5 out of 15. As a result papai Pal(writ petitioner) got 71.66 out of 100 and Ratan Ghosh, the respondent No.8 got 73.5 out of 100 in the need category. It is to be pointed out that since the calculation of the academic papers an arithmetical process the interview board did not allot any mark on that count and only they have given marks for performance in the interview and marks for the need category. On the basis of those assessment as per standing instruction of the Government and according to the Grant in Aid Rules all papers of the Selection Committee along with their recommendation were sent to the respondent No.7 for his approval on 18.8.2008 and on receipt of the approval the appointment letter in favour of the respondent No.8 was issued. Pursuant to the said appointment letter the respondent No.8 has joined as Post Graduate Teacher in English on 12.12.2008. Copy of the application form along with annexures is annexed and marked as Annexure-R-2."

7. Respondent No.8 in his counter affidavit exactly taken the same stand as that

of respondent No.1.

8. It is argued by learned senior counsel, Mr. Bhowmik that the petitioner since participated in the selection process cannot ordinarily challenged the selection if the selection is made following a fair and transparent procedure. Annexures-17 and 18 are all administrative orders and not a rule framed under Article 309 of the Constitution and while making the selection even those guidelines were also not followed by the respondents and the petitioner has been arbitrarily deprived. According to Mr. Bhowmik, there was no stipulation in the advertisement that the post was reserved for need category, whereas the respondents taken a stand that considering the need category respondent

No.8 has been selected. Referring to Annexure-10 series, it is submitted by Mr. Bhowmik that both in respect of academic performance as well as the need, the petitioner was supposed to be considered over and above the respondent No.8. The academic performance of the petitioner was much much better than the respondent No.8. Family income of the petitioner as reflected in Annexure-10 was Rs.1,500/- per month, whereas the family income of respondent No.8 was Rs.3,000/- per month. So, on both the categories the petitioner would get consideration over the respondent No.8, whereas there is no rationale in the selection, no basis has been given. Therefore, the selection of respondent No.8 is liable to be struck off and the respondents should be directed to give appointment to the petitioner.

9. Mr. Banerjee, learned counsel for respondent No.1, submitted that the selection was made following Memo dated 02.01.2001 and 30.08.2003. He has referred to para-5 and 6 of Memo dated 02.01.2001(Annexure-18) and submitted that the marks were given following that guidelines of the State Government. So, nothing wrong was committed by the Selection Board and the respondents in appointing respondent No.8.

10. Mr. Bhattacharjee, learned counsel for respondent No.8 submitted that petitioner participated in the selection process pursuant to the advertisement and the advertisement has not been challenged. There may be some ignorable irregularities, but there is no major illegality in the selection process. There is no allegation of mala fide against the Selection Committee. The guidelines, i.e., Memo dated 02.01.2001 and 30.08.2003, were not challenged. So, the appointment of the respondent No.8 cannot be quashed. He has also submitted that once the petitioner participated in the selection process, she cannot now turn around the manner of selection or the procedure of selection after being unsuccessful in the process. He has also submitted that respondent No.8 committed nothing wrong. He was selected by the Selection Committee according to the guidelines and so, this Court in exercise of power of judicial review may not interfere in the appointment of respondent No.8 and if the petitioner is found to be deprived, direction as may be necessary, be given to the respondents, but the appointment of the respondent No.8 should not be quashed. He has relied on the decisions of the Apex Court in the cases of Dr.

M.S.Mudhol & anr. V. S.D. Halegkar & ors., reported in (1993) 3 SCC 591, Rajya Sabha Secretariat & ors. V. Subhash Baloda & ors., reported in (2013) 5 SCC 169, Central Electricity Supply Utility of Odisha V. Dhobei Sahoo & ors., reported in (2014) 1 SCC 161.

11. The academic performance of the petitioner and the respondent No.8 has already been reproduced hereinbefore, which shows that the petitioner secured much higher marks in Secondary, Higher Secondary and B.A. Honours Examination than that of respondent No.8. The statement of eligibility of the

candidates prepared by the Selection Board has been annexed with the writ petition as Annexure-10. It is a statement in the format wherein the name of respondent No.8 has been shown in Sl.No.1 and in the remarks column respondent No.8 has been shown as stood first. The name of petitioner has been shown in Sl.No.21. For fair appreciation and ready reference, let us reproduce here the said statement as prepared in the format in respect of respondent No.8 and the petitioner. "Statement of Eligibility of Candidates applied for the post of Asstt. Teacher-PGT(U.R.) English Fixed Pay Rs.3250/- P.M.(Need Basis)

Sl. NO Name and Date of Birth Exam. Year Division Academic performance Inter View Performance Seniority basis and length of time Need basis TOTAL Employment Exchange Card No Remarks

1 Mr. Ratan Ghosh, C/O. Rathindra Ghosh, Subhash Park, P/O. Khowai, Pin- 799201, Tripura(W) 12/ 1/ 1978 Madh- 1994, H/S- 1996 B.A. (H)- 1999 49.44% (II), 57.25 (II) (II)

12.5 10 3000/- P.M. SC 72.5 4349/95 Ist

.....

21 Miss Papai Pal, D/O. Debasish pal, Vill-Town Pratapghar P.O.-Agartala College, Tripura (W),Pin- 799004 20/ 1/ 1986 Mad- 2002, H/S- 2004 B.A(H) -2007 72.12% 70(I) 59.12 (II)

8 5 1500/- P.M. SC 63 W- 2501/06

12. Annexure-10 shows that it was prepared by the Interview Board consisting of respondent Nos.2 to 6 and Sri Ranjit Kumar Dhar, the Secretary of Managing Committee of respondent No.1 also signed the same.

13. From the above statement it appears that no mark was given for academic performance. For interview performance W.P.(C) No.403 of 2009 Page 11 of 18 the respondent was given 12.5 marks, whereas the petitioner was given 8 marks. The Interview Board is the best judge to award marks on the basis of interview performance. The Court cannot sit over the wisdom of the Interview Board. So, that part cannot be challenged before the Court.

14. According to the respondents, seniority was not the basis whereas in the column seniority respondent No.8 was given 10 marks and petitioner was given 5

marks. If the respondents followed column 5 and 6 of Memo dated 02.01.2001 there was no scope to award any mark for seniority basis because para-5 of the said Memo prescribes marking only on 3 categories, whereas the Interview Board awarded marks for seniority. To consider need basis both the petitioner and respondent No.8 were given 50 marks. It is stated that as per para-6 of Memo dated 02.01.2001, 50 mark was given to both the petitioner and the respondent though the family income of respondent No.8 was double the family income of the petitioner, so far it is mentioned in the statement marked Annexure-10.

15. Para-1 of Memo dated 02.01.2001 reads thus: "M E M O

It has been decided that henceforth the following guidelines should be followed for recruiting the staff in Govt. aided Schools. This will take effect from the date issue of this Memo.

(A) 70% of Vacancies are to be filled up on Merit-Cum- Seniority basis.

(B) 30% of Vacancies are to be filled up on Need basis.

... .."

16. Paragraphs 5 and 6 read thus: "5. Total marks in interview in respect of Need will be 100 with the following break-up

(a) Need based on family income. 70 marks

(b) Academic performance in public 15 marks Examination

(c) Performance in interview 15 marks

6. Details of 70 marks to be allotted in respect of need based on family income.

(a) Family income from Rs.6,000/- P.A. 70 marks

(b) Family income from Rs.6,001/ up to 10,000/- P.A. 60 marks

(c) Family income from Rs.10,001/- up

to just below the poverty line P.A. 50 marks N.B. : Family income certificate is to be obtained from the Revenue Officer concerned."

17. N.B. 1 and 2 at the bottom of the said Memo reads thus: "N.B.: (i) For recruitment of teacher in H.S.(+2 stage) Schools and Secondary/Middle Stage Schools average of marks allotted for each public examinations may be taken into (ii) For recruitment of teacher in H.S.(+2 stage) Schools 2(Two) marks may be given in respect of candidates possessing qualification of Master Degree with Honours Subject to the condition that total marks allotted for academic performance should not exceed 15."

18. The Memo dated 30.08.2003 is the revised employment policy and was issued in supersession of earlier instruction. Para-9 of the said Memo reads thus: "(9) SENIORITY & NEED

70% of the vacancies shall be filled up on the basis of seniority-cum-merit and 30% on the basis of need. The term "Seniority" denotes the length of time for which a person has been waiting for employment with reference to the year of passing of the examination which is laid down as the essential qualification for that particular post.

"Need" shall be said to exist in case for which the family income is below the poverty line as determined by the Government from time to time."

19. It is an admitted position that there was no mention in the advertisement that the post of teacher in English was reserved for any category, rather it has been clearly mentioned that it was unreserved category post. It was the duty of the respondents to mention in the advertisement if the post was reserved for need category as per the aforesaid Government Memorandum. While that has not been mentioned in the advertisement, definitely the petitioner may raise the question about the entire selection process on that ground. If it was the sole ground that would be ignored while the petitioner participated in the selection process. But on security of Memos dated 02.01.2001 and 30.08.2003, I am quite strange to find that those Memos were also not followed by the respondents while making the selection through the interview. If the respondents followed the need criteria then the marks to be distributed 70 for need basis, 15 for academic performance and 15 for performance in the interview. Annexure-10, i.e., the statement of eligibility clearly reveals that for academic performance no mark was allotted rather for seniority mark was allotted, which was not a basis prescribed for need category.

20. In the counter affidavit the respondents stated that for academic performance also marks were given but the statement, which has been signed by the Interview Board as well as the Secretary of the Managing Committee reflects otherwise, which makes it abundantly clear that what the respondents stated in their counter affidavit is contrary to what the document itself says. It is, therefore, evident that the respondents did not follow the Memorandum though it is stated that they have followed the Memo dated 02.01.2001 and considering the need category the respondent No.8 has been selected.

21. So far as the revised employment policy is concerned, 70% vacancy shall be filled up on the basis of seniority-cum-merit and 30% on the basis of need. The post advertised was only one and in the advertisement it was clearly mentioned as the post meant for UR category. So, there cannot be a reservation on the basis of need and even if need is the category, then the petitioner was more needy than that of respondent No.8 so far the income certificates were concerned. It is, therefore, evident that the respondents did not follow those two Memos and did not play fairly. There is no basis of the selection process. Both in the category of academic performance and need the petitioner was better placed, whereas respondent No.8 was selected. Awarding marks in the category seniority, which was not a criteria for the need category as prescribed in Memo dated 02.01.2001.

22. Mr. Bhowmik, learned senior counsel, submitted that the reservation on the basis of need category etc. has been struck down by this Court. But it is an admitted position that the said judgment passed by this Court is under challenge in the Apex Court and here in this case the selection was made when those guidelines were in force. No doubt those were administrative instructions. But respondent No.1 being an Institution, recognised under Grant-in-Aid Scheme, was bound to follow the Government instructions. While following the Government instructions, respondent No.1 was bound to follow it in letter in spirit, but here it was clear that neither those two Memos were followed nor a transparent procedure was followed at the time of selection.

23. Learned counsel, Mr. Bhattacharjee, referring to the case of Dr. M.S.Mudhol(supra) submitted that appointment of respondent No.8 cannot be disturbed since he had no fault. He has referred to paragraphs 6 and 7 of the judgment, which read as follows:- "6. Since we find that it was the default on the part of the 2nd respondent, Director of Education in illegally approving the appointment of the first respondent in 1981 although he did not have the requisite academic qualifications as a result of which the 1st respondent has continued to hold the said post for the last 12 years now, it would be inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. There is nothing on record to show that he had at that time projected his qualifications other than what he possessed. If, therefore, in spite of placing all his cards before the selection committee, the selection committee for some reason or the other had thought it fit to choose him for the post and the 2nd respondent had chosen to acquiesce in the appointment, it would be inequities to make him suffer for the same now. Illegality, if any, was committed by the selection committee and the 2nd respondent. They are alone to be blamed for the same.

7. Whatever may be the reasons which were responsible for the non-discovery of the want of qualifications of the 1st respondent for a long time, the fact remains that the Court was moved in the matter after a long lapse of about 9 years. The post of the Principal in a private school though aided, is not of such sensitive public importance that the Court should find itself impelled to interfere with the appointment by a writ of quo warranto even assuming that such a writ is maintainable. This is particularly so when the incumbent has been discharging his functions continuously for over a long period of 9 years when the court was moved and today about 13 years have elapsed. The infraction of the statutory rule regarding the qualifications of the incumbent pointed out in the present case is also not that grave taking into consideration all other relevant facts. In the circumstances, we deem it unnecessary to go into the question as to whether a writ of quo warranto would lie in the present case or not, and further whether mere laches would disentitle the petitioners to such a writ."

24. The fact of that case is quite different to that of the fact of the present case. In that reported case the first respondent contributed nothing wrong and he

fairly appeared before the Interview Board. Here also respondent No.8 did not misrepresent him before the Interview Board, but the Interview Board did not follow a fair and transparent procedure, which vitiated the total interview process.

25. Education is meant for advancement of the society. It is expected that all educational institutions should be run by competent and qualified learned teachers. There is no doubt that the State can make law reserving certain percentage of the post for the socially and economically backward classes, but it must be transparent and there should not be any compromise of merit even while following the reservation policy strictly. Here the post was not reserved for any reserved category. It was an unreserved post but the respondents took the stand that it was reserved for need category, whereas to determine the need category the procedure prescribed that has not been followed.

26. Since the total interview process has been vitiated because of non-transparent conduct of interview and not

following the procedure which the respondents claimed to have followed the entire selection process vitiated and, therefore, the ratio of the decision of Dr.M.S.Mudhol(supra) cannot be applied.

27. Mr. Bhattacharjee, learned counsel for the respondent No.8 also referred the case of Shainda Hasan V. State of Uttar Pradesh & ors., reported in (1990) 3 SCC 48 on the same point, but in my considered opinion, in the given fact of this case the ratio of that decision cannot be applied.

28. Referring to the decision of Subhash Baloda(supra) Mr. Bhattacharjee, learned counsel, argued that the Interview Board is an expert body and once the Interview Board has made the selection, the Court cannot sit as a super body over the decision of the Interview Board.

29. I am in full agreement with the learned counsel, Mr. Bhattacharjee. The Interview Board is presumed to be constituted with eligible and expert persons and the petitioner did not challenge the constitution of the Interview Board before the interview and so, the petitioner cannot challenge it now. The wisdom of the Interview Board in respect of the marks awarded at the time of interview cannot be a subject matter of scrutiny of the Court because the power of judicial review is limited which has been settled by the Apex Court in catena of judgments. But the question is if the entire selection process was unfair and no proper and transparent procedure was followed, obviously the writ Court has the power to interfere in such selection process. The ratio of the decision of Subhash Baloda (supra), therefore, cannot be applied in the fact of the present case. Similarly, the ratio of the decision in the case of Dhobei Sahoo(supra) also cannot be applied though learned counsel, Mr. Bhattacharjee, has put lot of emphasis on this judgment. Here in this case I am of considered opinion that the respondents neither strictly followed the Memos dated 02.01.2001 and 30.08.2003 nor they followed a fair and transparent procedure in the selection process and so, the entire selection process vitiated.

30. Since the entire selection process is vitiated and is liable to be struck down, the prayer of the petitioner to give her appointment cannot be considered. The entire selection process pursuant to advertisement dated 23.11.2007 (Annexure-1 to the writ petition) and the appointment of the respondent No.8 thereunder are quashed. The respondent No.1 shall be at liberty to go for fresh selection following a fair and transparent selection process.

31. The writ petition is accordingly partly allowed and disposed of. Parties to bear their own costs.