
(1997) 09 GAU CK 0061
In the Gauhati High Court
Case No : Civil Rule No. 530 of 1997

Mithun Deb

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 12-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 309
Forest Service (Recruitment) Regulations — Regulation 3

Citation : (1998) 4 GLT 168

Hon'ble Judges : M. Ramakrishna, C.J

Bench : Single Bench

Advocate : B. Das, R.C. Dednath and P.S. Chakraborty, for the Appellant; U.B. Saha, S. Deb and R. Dasgupta, for the Respondent

Final Decision : Dismissed

Judgement

M. Ramakrishna, C.J.—Two Petitioners have approached this Court invoking the provisions of Article 226 of the Constitution of India seeking the following prayers:

(1)"Issue a writ directing the Respondents to postpone the examination for recruitment of TCS/TPS Grade-II posts as notified by Annexure-B and also directing them to fix some other date so as to enable the candidates to prepare themselves properly for the examination."and

(2)"To issue a writ directing the Respondents to restrain the Secretary, Deputy Secretary and the Controller of Examinations of Tripura Public Service Commission from participating in the conduct of the examination and to grant any other relief that may be deemed fit and proper by this Court."

2. The case of the writ Petitioners is that the Tripura State Public Service Commission issued a notification on the 1st of June, 1997 calling for applications from eligible candidates for appearing in the Combined Competitive Examination to be conducted by the Commission for recruitment to Tripura Civil Service Grade-

II and Tripura Police Service Grade-II in the pay scale of Rs. 2100-75-2250-80-2490-(SL) -3000-90-3720-95-4100-100-5000/- plus admissible allowances to the existing vacancies (the number of vacancies notified). The said notification is said to have been published in the local newspapers on the very same day, i.e., on 1st June, 1997. The further case of the Petitioners is that the last date fixed for receiving applications from eligible candidates in the Public Service Commission was 30th June 1997, whereas the date of commencement of examination as provided under the scheme in the notification is 19th September, 1997; the time allowed to the candidates to prepare for the above examination is not sufficient. In other words, regard being had to the date of publication of the notification and the last date of receipt of applications as well as the date of commencement of the examination, it hardly provides for three months time for the candidates to prepare themselves for appearing in the examination. This time is not enough to prepare properly. Hence the prayer that the commencement of the examination may be extended by another three months.

3. The grounds taken in the writ petition are that:

(1) Generally, the Union Public Service Commission provides six months' time from the date of publication of the notification to the date of holding of examination, that is with a view to provide enough time for the candidates to prepare themselves and appear in the examination.

(2) Secondly, the other ground of the writ petition is that there is a likelihood of some of the instrumentalities of the Tripura Public Service Commission, such as. Secretary, Deputy Secretary and the Controller of Examination, to participate in the examination with a view to favour their own candidates which may result in favouritism and nepotism; thereby it would affect fairplay in the examination.

On these two grounds the writ Petitioners have sought for the above prayers.

4. I have heard learned Senior Counsel, Mr. B. Das for the Petitioners, who having taken us through the grounds of the writ petition as well as the averments made therein including the documents produced in the writ petition, urged in support of the writ petition that-

(1) Generally when a combined competitive examination is sought to be held with a view to fill up large number of vacancies in the State, enough time should be made available to the eligible candidates to prepare and to appear in the examination so that their performance would be upto the expectations and the results would be very fair. the instant case, since the Public Service Commission has given only a short period of three months, that would not be very favourable to the candidates to enable them to prepare and participate in the examination. Shri Das, learned Counsel for the Petitioners, has produced a copy of the advertisement issued by the Union Public Service Commission on the 30th December, 1989 (published in the Employment News, 6-12 January, 1990). He pointed out that in view of the six months time allowed to hold the examination

by the Union Public Service Commission when large number of vacancies were sought to be filled up, generally the same concept must be adopted by the other State Public Service Commissions also.

5. The further arguments of Mr. Das, learned Counsel for the Petitioners is that if the Court does not prevent some of the officers of the Tripura Public Service Commission from participating in the conduct of the examination and making selection, there is likelihood of the element of favouritism and nepotism being involved affecting the fair selection of the candidates. Shri Das has placed reliance upon the authority of the Supreme Court in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*,

6. I am presently considering the notification issued by the Tripura Public Service Commission. It is seen there from that the Advertisement No. 7/97 dated 1st June, 1997 has been issued in partial modification of the Commission's advertisement No. 11/92 dated 16th September, 1992, with a view to fill up those vacancies. In other words the Public Service Commission intended to fill up these vacancies by holding a combined competitive examination in the year 1992 itself. whereas on account of some difficulties, the Public Service Commission could not hold the combined competitive examination in that year, that is, 1992. It is for that reason the examination was postponed and with a view to complete this work of holding examination and making selection in the year 1997, the Commission issued this notification on 1st June, 1997. This aspect of the matter clearly goes to show that there is a history behind this notification. Though the Public Service Commission issued a notification No. 11/92 on 16th September, 1992 calling for applications from eligible candidates to appear in the combined competitive examination in 1992, that is, about five years ago, that action on the part of the Public Service Commission came to be postponed for some strong reasons. In the event of this petition having been allowed granting further time as desired by the writ Petitioners, again that action on the part of the Public Service Commission to fill up those vacancies will be postponed by another few months. Therefore the Court will have to consider what will have to be the consequences of such action. At the outset the Court will have to examine as to whether it will be proper to postpone the examination, as desired by the Petitioners. If the action of the Public Service Commission of holding the examination and making selection is postponed by another few months, the consequential result would be the fresh graduates who are coming from the University portals with a degree in their hands must also have to be given a chance to appear in the examination, in which event the Public Service Commission will have to issue another notification afresh. Therefore, there will be general reaction in this process of making selection if the Court is to postpone the holding of the examination by another few months.

7. Secondly, normally the Court will not interfere in matters of what process should be adopted in selection, how marks are to be allocated in the written examination and how the viva-voce examination are to be conducted, since these

are the matters for expert bodies and not for the Courts to decide. Please see, Ashok Kumar Yadav and Others Vs. State of Haryana and Others, and Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, In that view of the matter when the Public Service Commission, which is an independent body for making selection, has in consultation with the concerned Government decided to hold the examination at a particular point of time following the requirements of Article 309 of the Constitution, the Courts are not supposed to interfere with that process of making selection , including the time allowed to the candidates for preparation before examinations are being held.

8. In so far as the notification having been issued by the Union Public Service Commission is concerned, on which reliance has been placed by Mr.Das, learned Counsel for the Petitioners, the concept of holding annual competitive examinations for making selections of candidates for the post in LAS and IPS by the Union Public Service Commission is based upon certain principles and that concept is different from the concept adopted by each State Public Service Commission for the purpose of holding examinations with a view to fill up certain vacancies in the state Such concepts may vary regard being had to the special requirements of the concerned state. So, merely because the Union Public Service Commission has given six months time, that does not mean that all States must give the same time to the candidates appearing in the competitive examinations conducted by the State Public Service Commissions. I have not been able to get the logic of this argument when we consider the requirement of Article 309 of the Constitution of India. In so far as the law laid down by the Supreme Court in A.K. Kraipak's case (supra), it is seen that their Lordships were called upon in that case to consider as to whether a selection made by the Board constituted under the Indian Forest Service (Recruitment) Rules, 1966, Regulation 3, came up for consideration to verify as to whether a member of the Board being himself a candidate for selection, would it be proper for such a person to sit as a member in the Board for making selection. Considering the several aspects including the peculiar circumstances of the case, the Supreme Court laid down that:

His opinion as regards their suitability for selection to the All India Service is entitled to great weight. But then under the circumstances it was improper to have included Naquishbund as a member of the selection board. He was one of the persons to be considered for selection. It is against all canons of justice to make a man judge in his own cause. It is true that he did not participate in the deliberations of the committee when his name was considered. But then the very fact that he was a member of the selection board must have had its own impact on the decision of the selection board. Further admittedly he participated in the deliberations of the selection board when the claims of his rivals particularly that of Basu was considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberations of the selection board there was a conflict between his interest and duty. Under those circumstances it is difficult to believe that he could have

been impartial. The real question was not whether he was biased. It is difficult to prove the state of mind of a person. Therefore we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney-General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human conduct. It was in the interest of Naquishbund to keep out his rivals in order to secure his position from further challenge. Naturally he was also interested in safeguarding his position where preparing the list of selected candidates.

(Please see para 15 of the judgment)

9. Therefore, the circumstances in which the above principle of law came to be laid down the Supreme Court considering the scope of Retaliation 3 made under the provisions of the Indian Forest Service (Recruitment) Rules, 1966; those circumstances are entirely different from the one with which we are concerned in the present case. In that view of the matter I do not see any force in the submission of Mr. Das, when he asked the Court based upon the above ground to extend the period of time for holding the combined competitive examination under the notification referred to above as I have already pointed out. For some reason or the other if court is to order postponement of the examination, it would result in further complications which I have already referred to above. Therefore looking from all these circumstances, I do not see any good ground to accede to the submission made by Mr. Das in this regard.

10. Before I part with this matter, it has now been brought to my notice that pursuant to the above notification about 7000 candidates have submitted applications to appear in the above examination and only two of them have approached this Court seeking for the relief and if their prayers are allowed at this juncture, it would result in serious complications to all. Therefore it would not be proper for the Court to enlarge the time and to postpone the examination. Secondly, when the Petitioners have applied for appearing in the above examination as far back as on 30th June, 1997 and they have come at the late stage filing the writ petition on 5 th September, 1997 seeking the above prayers when the date of commencement of the examination is 19th September, 1997; it is another reason why we will have to reject the prayer for postponement of the examination.

11. In the result the writ petition fails and is dismissed.