
(2015) 04 RAJ CK 0004
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3059/1998

M.K. Sashikumara Kurup

APPELLANT

Vs

Raj. State Ganganagar Sugar Mills Ltd. and Others

RESPONDENT

Date of Decision : 03-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21

Citation : (2015) 04 RAJ CK 0004

Hon'ble Judges : Veerender Singh Siradhana, J.

Bench : Single Bench

Advocate : Ramavtar Bachalya and Prem Chand Devanda, for the Appellant;
Virendra Lodha, Sr. Counsel and Vinod Goyal, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Veerender Singh Siradhana, J.—The petitioner having been declared successful in the recruitment process vide order dated 31st January, 1997, along with other successful candidates was not accorded appointment as Stenographer, and therefore, has instituted the instant writ proceedings, praying for the following relief(s):

"i) issue an appropriate writ, order or direction in the nature thereof and thereby quash and set aside the Notification dated 1/06/98 (Annexure-7);

ii) issue an appropriate writ, order or direction in the nature thereof and thereby direct the Respondents that since the petitioner has been selected as Stenographer which is apparent from letter dated 31/01/97 (Annexure-4) he be given appointment as Stenographer forthwith;

iii) issue any other appropriate order or direction which the Hon''ble Court deems just and proper and cost of the writ petition be also awarded."

2. Briefly, the indispensable skeletal material facts necessary for appreciation of the controversy raised needs to be first noticed.

"(a) Initially, the petitioner was appointed as Typist (English) in the year 1984 in the pay scale of Rs. 257-352. It is pleaded case of the petitioner that he was granted allowance of Rs. 100 per month for the period he worked as Steno-Typist, as would be evident from the order dated 15th November, 1989. Posting orders were issued on 14th October, 1996 in view of promotion accorded to the petitioner along with others on the post of UDC/Assistance in view of the order dated 3rd October, 1996.

(b) It is further pleaded that in response to advertisement dated 30th October, 1996, inviting application forms from the eligible candidates for appointment for the post of Stenographer in the pay scale of 1400-2600; submitted his application for consideration of his candidature and participated in the Stenography Test conducted on 16th January, 1997. The result of the Stenography Test was declared on 31st January, 1997, wherein the name of the petitioner appeared at serial No. 3. One Shri Arun Chaturvedi, who was also declared successful in Stenography Test (Hindi) along with the petitioner, was accorded posting vide order dated 27th June, 1997 (Annexure-5) whereas the petitioner was deprived of appointment and posting orders in spite of the fact that he was declared successful in the Stenography Test."

3. In response to the notice of the writ application, the respondents have filed their counter affidavit, stating that applications were invited from in service candidates working in the Company on different posts, for the purpose of direct recruitment through selection for the post of Stenographer. The minimum required qualifications were detailed out in the advertisement itself. The petitioner participated in the recruitment process for the post of Stenographer as an in service candidate. Since the petitioner failed to obtain the required minimum speed of 80 w.p.m. in the Short-hand Test as well as the Typing speed, and therefore, failed to qualify the examination for the purpose of appointment by direct recruitment as an in service candidate to the post of Stenographer.

4. The minimum required speed in Short-hand (English) is 100 w.p.m., which the petitioner failed to acquire. Shri Arun Chaturvedi, who participated in the selection process for appointment by way of direct recruitment, as an in service candidate, for the post of Stenographer qualified the Test and passed the Short-hand Test as well, and therefore, he was accorded appointment whereas the petitioner failed to qualify the test.

5. It is further specifically pleaded that the Board of Directors passed a resolution granting relaxation to the petitioner since he was only Secondary passed and not Senior Secondary School, and accordingly, he was treated as eligible and was allowed to participate in the selection process for direct recruitment to the post of Stenographer as an in-service candidate, which was a special recruitment carried out by the respondents. However, the petitioner did not appear to write the examination, for reasons best known to him, in spite of the relaxation accorded to him in the educational qualifications.

6. The learned counsel for the petitioner reiterating the pleaded facts and grounds, strenuously argued that once the petitioner was declared successful vide order dated 31st January, 1997, along with other successful candidates, the respondents ought to have accorded appointment and posting orders.

7. According to the learned counsel for the petitioner, the respondents have accorded to similarly placed candidate i.e. Shri Arun Chaturvedi, who too was declared successful along with the petitioner and not according similar benefit to the petitioner, the action amounts to discrimination and violation of the equality clause as guaranteed by the Article 14 of the Constitution of India.

8. Moreover, the petitioner being successful in the recruitment process, as would be evident from the result declaration by the respondents on 31st January, 1997 (Annexure-4), the action of the respondents is illegal, arbitrary and his violative of the mandate of Article 14, 16 and 21 of the Constitution of India, which calls for interference by this Court in exercise of writ jurisdiction.

9. Per contra, the learned Senior Counsel, Mr. Virendra Lodha, appearing on behalf of the respondents, reiterating the contents of the counter affidavit to the writ application, repelling the assailment, argued that the petitioner participated in the recruitment, as an in service candidate, but failed to qualify the Stenography Test conducted on 16th January, 1997. Referring to the proceedings of the Court drawn on 5th February, 2015, the learned counsel would further submit that the challenge projected to the notification dated 1st June, 1998 (Annexure-7), is beyond the scope of writ petition for the petitioner cannot question the subsequent notification inviting applications from eligible candidates for appointment to 5 vacant posts of Stenographers, after having unsuccessfully participated in the recruitment process in response to notification dated 30th October, 1996.

10. Be that as it may, the petitioner was again accorded an opportunity for appointment to the post of Stenographer, granting relaxation in educational qualifications from "Senior Secondary" to "Secondary School Examination", subject to fulfillment of other conditions having regard to the satisfactory service for more than 13 years. But the petitioner chose not to participate in the recruitment process for reasons best known to him.

11. I have heard the learned counsel for the parties and with their assistance perused the materials available on record.

12. In view of the pleadings of the parties and rival submissions; the respondents, vide order dated 3rd July, 2014, were called upon to produce the relevant record involving the recruitment process conducted in pursuance to notification dated 30th October, 1996, wherein the petitioner participated for consideration of his candidature for appointment to the post of Stenographer, as an in service candidate, wherein he was declared unsuccessful.

13. On 5th February, 2015, the learned counsel for the respondents produced the

original record from where it was reflected that the petitioner (Mr. M.K. Sashikumara Kurup @ Pillai), failed to pass the Stenography Test conducted on 16th January, 1997. His speed was 70 w.p.m. (words per minute) whereas the minimum required speed to pass the said Test was 80 w.p.m. (words per minute), and therefore, he was not selected for appointment to the post of Stenographer.

14. The matter was adjourned on 5th February, 2015, on the request made on behalf of the counsel for the petitioner for reasons personal to the counsel (Mr. P.C. Devenda). The proceedings drawn on 5th February, 2015, reads thus:

"The writ proceedings instituted in the year 1998, projects a challenge to the notification dated 1st June, 1998(Annex. 7), in pursuance to which the petitioner participated in the selection process and was declared unsuccessful, for having failed to acquire the minimum speed.

This Court vide order dated 3rd July, 2014, called upon the counsel for the respondents to produce the relevant record to show as to what speed was attained by the petitioner in Shorthand/Typing test.

Learned counsel for the respondents and produce the original record from where it is reflected that the petitioner (Mr. M.K. Sashikumara Kurup @ Pillai), has not passed the Stenography test conducted on 16th January, 1997, as his speed was 70 w.p.m. whereas the minimum passing speed is 80 w.p.m.; and therefore, he could not be selected for appointment to the post of Stenographer.

The matter has been deferred for one or the other reason pleaded on behalf of the counsel for the petitioner, on early four occasions. Today, Mr. Ramavtar Bachalya appearing on behalf of the counsel for the petitioner (Mr. P.C. Devenda), again made a request for adjournment for reasons personal to the counsel for the petitioner.

As a matter of last indulgence, the matter is posted to 10th February, 2015. It is made clear that if Mr. P.C. Devenda, counsel for the petitioner, fails to appear and argue the matter on the next date; the matter will not be adjourned any further and would be heard finally including proceedings ex-parte."

15. The reply to the writ application was filed on behalf of the respondents on 14th September, 1998, with a copy in advance to the counsel for the petitioner. The averments made in the counter affidavit to the effect that the petitioner failed to acquire the minimum speed in Typing Test as well as in Shorthand Test, and therefore, was declared unsuccessful in the recruitment process conducted for the purpose of appointment by way of direct recruitment as an in service candidate on the post of Stenographer; have not been disputed by subsequent pleadings, be it a rejoinder or an additional affidavit, on behalf of the petitioner.

16. There is a specific statement made in the counter affidavit on behalf of the respondents that the case of Shri Arun Chaturvedi, is distinguishable from that of the petitioner. Shri Arun Chaturvedi qualified the "Shorthand Test" as well for the

purpose of appointment by way of direct recruitment, as an in service candidate, for the post of Stenographer (Hindi) whereas the petitioner was declared unsuccessful.

17. From the pleaded facts and materials available on record, it is not in dispute that the petitioner failed to acquire the minimum prescribed "Typing Speed" as well as "Shorthand Speed, and therefore, he was declared unsuccessful. The specific statement made in the counter affidavit, also finds corroboration from the original record, which was produced for perusal of the Court, and has not been questioned by the petitioner.

18. The mere fact that the petitioner was declared successful in the result vide order dated 31st January, 1997 along with Shri Arun Chaturvedi, ipso facto, would not confer and indefeasible right in favour of the petitioner for appointment to the post of Stenographer in the face of specific pleadings and materials available on record, indicating that the petitioner failed to acquire the minimum "Typing Speed and "Shorthand Speed", in the recruitment process conducted in pursuance to advertisement dated 30th October, 1996 wherein the petitioner participated for consideration of his candidature.

19. It is trite law that a successful candidate do not acquire an indefeasible right to be appointed which cannot be legitimately denied. A notification inviting applications from eligible candidates for consideration of their candidatures for appointment, is merely an invitation to eligible candidates to apply for recruitment. In the event of their selection, they do not acquire any right for appointment to the post unless the relevant statutory recruitment rules so indicate.

20. Moreover, in the instant case at hand, there is a specific statement, in no uncertain words, in the counter affidavit, that the petitioner failed to qualify the "Stenography Test", conducted on 16th January, 1997, as he failed to acquire the minimum "Typing Speed", as well as "Shorthand Test/Speed". This fact has not been disputed by the petitioner rather he has insisted for appointment only on the strength of the declaration of result vide communication dated 31st January, 1997.

21. The petitioner, who participated in the recruitment process with the terms and conditions stipulated therein without any demur, and having failed to qualify the "Stenography Test" for he did not acquire the required "Typing" as well as "Shorthand" speed, cannot stake claim for appointment sustainable in the eye of law.

22. In the singular facts, circumstances and materials available on record, in the instant case at hand, the claim of the petitioner is devoid of any substance.

23. For the reasons and discussions hereinabove, the writ application lacks in merit, and therefore, deserves to be dismissed.

24. Ordered accordingly.

25. However, in the facts and circumstances of the case, there shall be no order as to costs.

26. In view of the final adjudication on the writ application, the stay application stands closed.