

(2019) 07 MP CK 0087

In the Madhya Pradesh High Court

Case No : Writ Petition No. 17938 Of 2018

Nilay Kumar Poddar

APPELLANT

Vs

State Of Madhya Pradesh & Others

RESPONDENT

Date of Decision : 08-07-2019

Acts Referred:

Citation : (2019) 07 MP CK 0087

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : L.C. Patne, Viraj Godha, Anshuman Singh, Ayushman Choudhary

Final Decision : Dismissed

Judgement

S.No., Required Minimum Educational Qualification and Age Limit., Required Minimum Experience.

1.

2. ", "Post-Graduation from a Recognised University.

Full time Degree/3 years Diploma in Hotel/Hospitality Management/ Administration from National Council for Hotel Management & Catering Technology/Institute approved by AICTE or State Board of Technical Education/University Recognized by

UGC with minimum 55% marks in aggregate or its equivalent grade. Age Limit: 52

years (Age relaxation for SC, ST, OBC and departmental candidates is as per rule (However under no circumstances the age should exceed 57 years.", "At least 25 years of experience in teaching or in

teaching and hotel industry taken together including

minimum 5 years as Head of Department (or above)
teaching hotel operations related subject(s) in an
Institute of Hotel Management under the N Council
for Hotel Management & Catering
Technology/State Board of Technical
Education/Recognized University and possessing at
least 5 years of administrative experience within the
minimum total experience of 25 years.

documents obtained under the Right to Information Act to demonstrate that
under the same qualification, the candidature of respondent No.4 has been",,,
rejected for the post of Principal, Institute of Hotel Management, Catering &
Nutrition, PUSA, New Delhi. It is further submitted that respondent",,,
No.4 was initially promoted from the post of Lecturer to the post of Senior
Lecturer by order dated 4.8.2009 and further promoted to the post of HOD,,
by order dated 1.3.2012 but in pursuant to the order passed by Central
Administrative Tribunal (CAT), Jabalpur in O.A. No.301/2010 dated 26.9.2012,",,
promotion of respondent No.4 was cancelled and he was reverted back to the
post of Lecturer w.e.f. 4.8.2009 and his promotion to the post of HOD,,
also stood cancelled. Thereafter, he was again promoted to the post of Senior
Lecturer vide order dated 22.11.2012. All these material particulars",,,
have been suppressed by respondent No.4 before the Selection Committee.,,,

9. Respondent No.4 filed additional return to the rejoinder by submitting that he
was promoted to the post of Senior Lecturer by order dated 4.8.2009,,
which was challenged by one Ashok Awasthi before the Central Administrative
Tribunal at Jabalpur. Vide order dated 26.9.2012 in Original,,
Application was allowed and promotion order dated 4.8.2009 was set aside and
the Management was directed to hold review Departmental Promotion,,
Committee (DPC) and reinstate Ashok Awasthi in place of Mrs. Shamshad
Ahmed. In compliance of the aforesaid direction, the order dated 4.8.2009",,,
was cancelled and all the Senior Lecturers were reverted back to the post of
Lecturer. Again, the meeting of the DPC was held and respondent No.4",,,
along with others were given promotion to the post of Senior Lecturer w.e.f.
4.8.2009 and the Board of Governors also gave concurrence to all the,,
promotions to the post of HOD w.e.f. 29.2.2012. Therefore, there was no break

in service in promotion of respondent No.4 to the post of HOD.",,,

10. Respondents No.2 and 3 also filed the additional return by submitting that the post of General Manager (Training) is above the post of HOD in the,,

State Institute of Hotel Management, Bhopal. In the Committee of MPIHT the post of General Manager (Training) is higher than the post of HOD. It",,,

is further submitted that non-selection by one Institution cannot be cited as precedent to disqualify the incumbent from appointment at other institute.,,,

The respondents No.2 and 3 are independent authority and have prescribed their norms for selection and they found respondent No.4 more suitable,,

than the petitioner for the post of Principal, hence the petition is liable to be dismissed.",,,

11. I have heard Shri L.C. Patne, learned counsel appearing for the petitioner; Shri Viraj Godha, learned Panel Advocate for respondent/State; Shri",,,

Anshuman Singh, learned counsel appearing for respondents No.2 & 3 and Shri Ayushman Choudhary, learned counsel appearing for respondent",,,

No.4 at length and perused the material available on record.,,,

12. The petitioner has assailed the appointment of respondent No.4 mainly on the ground that he lacks the qualification of 5 years' experience as,,

HOD. It is important to mention that there is no statutory Act or Rules prescribing the service conditions, procedure of selection and qualification, etc.",,,

for the post of Principal State Institute of Hotel Management. Respondents No.2 and 3 have prescribed the required minimum qualification and,,

experience for the said post. It is not in dispute that respondent No.4 possesses the required minimum qualification and age-limit for the post in,,

question. The dispute is only in respect of minimum required experience, especially 5 years as HOD. 5 years' experience as HOD (or above) in the",,,

field of teaching, hotel operations and management , related subjects.",,,

13. Respondent No.4 became HOD on 29.2.2012 and worked as such till 9.10.2015 i.e. for a period of 3 years and 7 months. Thereafter, he was sent",,,

on deputation to M.P. Tourism Development Corporation as General Manager (Training) and for the some period he remained as Joint Secretary in,,

M.P. Tourism, Bhopal. The pay-scale of aforesaid all three posts are same i.e. 15600-39100+6600/- as declared by respondent No.4 in the application",,,

form. According to respondents No.2 and 3, the post of General Manager (Training) is above the post of HOD, whereas the pay-scale of both the",,,

posts is same.,,

14. Out of total 25 yearsâ?? teaching experience in Hotel Industries including minimum 5 years as HOD or above, in teaching and hotel operations,",,

related subjects in an Institute of Hotel Management under the National Council for Hotel Management & Catering Technology/State Board of,,

Technical Education/Recognized University is required for the post in question. Respondent No.4 is having almost 20 years of teaching experience in,,

the Institute of Hotel Management, Bhopal. He had also worked as HOD of Institute of Hotel Management, Bhopal for 3 years and 7 months.",,

Thereafter, he had worked as General Manager (Training) and Joint Secretary, M.P. Tourism Development Corporation Bhopal and that would count",,,

in the experience under the head of HOD or above. All the 29 years and 6 months of experiences is in the credit of respondent no.4 in the field of,,

teaching, management, and administrative experience, etc. in hotel industries and MP Tourism. He secured much higher marks than the petitioner in",,,

the Interview. It is the satisfaction of the Selection Committee to assess the suitability of the candidate for the post. The petitioner is also having the,,

required qualification and experience and he was also shortlisted for the Interview, but he could not secure the marks more than respondent No.4. In",,,

the matter of selection or appointment on a particular post the law is well-settled in respect of interference by the High Court in the writ petition filed,,

under Art. 226 of the Constitution of India. In the case of Dalpat Abasahed Solunke V/s. Dr. B.S. Mahajan : 1990 (1) SCC 30,5 it has been laid down",,,

as under:-,,

It is needless to emphasise that 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."",,,

In the case of Union of India V/s. S. Vinodh Kumar : (2007) 8 SCC 100, the Supreme Court of India has Court held:",,,

18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were",,,
not entitled to question the same."",,,

15. Even otherwise in the present case the life of waiting list is six month from the date of joining of respondent no.4. The petitioner has approached,,
this court after expiry of 6 months period. The issue whether this court can extend life of waiting list which had already been expired even before,,
filling of this writ petition . The Supreme Court of India in the case of Sadananda Halo & others V/s. Momtaz Ali Sheikh : (2008) 4 SCC 61,9 has",,,
considered this issue and held that :,,

59. It is also a settled position that the unsuccessful candidates cannot turn back and assail the selection pro-cess. There are of course the exceptions",,,
carved out by this Court to this general rule."",,,

Judgment of this Court in Union of India and Others v. B. Valluvan and Others [(2006) 8 SCC 686.] This Court therein opined that the life of a panel,,
ordinarily is one year. Therein this Court noticed this Court's earlier decision in Surinder Singh v. State of Punjab [(1997) 8 SCC 488] to hold:,,

17. The life of a panel ordinarily is one year. The same can be extended only by the State and that too if the statutory rule permits it to do so. The",,,

High Court ordinarily would not extend the life of a panel. Once a panel stands ex-hausted upon filling up of all the posts, the question of en-forcing a",,,

future panel would not arise. It was for the State to accept the said recommendations of the Selection Com-mittee or reject the same. As has been,,

noticed hereinbefore, all notified vacancies as also the vacancy which arose in 2000 had also been filled up. As the future vacancy had already been",,,

filled up in the year 2000, the question of re-ferring back to the panel prepared in the year 1999 did not arise. The impugned judgment, therefore",,,

cannot be sus-tained."",,,

In that case, however, it was held:",,,

11. The Review Bench of the High Court posed unto itself a wrong question. It did not say how an error apparent on the face of the record had been",,,

committed. It did not assign sufficient or cogent reason to hold as to how the original application before the Tribunal would have been maintain-able if,,

the petitioners had no existing legal right. The 1st re-spondent did not have any legal right to be appointed. He filed an application pursuant to the said,,

advertisement. It is not his case that his application had not been considered. He did not raise any plea of unfair treatment. No mala fide was also,,
alleged."",,,

In that case, the posts more than advertised were filled up.",,,

25. Yet again in State of Bihar and Others v. Amrendra Ku-mar Mishra [(2006) 12 SCC 561], this Court took the same view, stating:",,,

Life of a panel, it is well known, remains valid for a year. Once it lapses, unless an appropriate order is issued by the State, no appointment can be",,,

made out of the said panel."",,,

It was furthermore held:",,,

13. The decisions noticed hereinbefore are authorities for the proposition that even the wait list must be acted upon having regard to the terms of the",,,

advertisement and in any event cannot remain operative beyond the prescribed period."",,,

26. In this case, however, the life of panel was two years. The process of filling up the posts out of the said select list started within one year from the",,,

preparation thereof.â??,,

16. In view of the foregoing discussion, I do not find any illegality in the order of appointment of respondent No.4 as Principal, State Institute of Hotel",,,

Management. The petitioner is not entitled to get the appointment. The petition deserves to be and is hereby dismissed.,,,

No order as to cost.,,,