
(2013) 10 CHH CK 0022
In the Chhattisgarh High Court
Case No : W.P. (S) No. 1276 of 2008

Nilesh Kumar Pandey

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 30-10-2013

Acts Referred:

Citation : (2014) LabIC 839

Hon'ble Judges : Pritinker Diwaker, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pritinker Diwaker, J.—Challenge in the present writ petition is to the selection of respondent No. 4 on the post of Law Officer, Home (Jail) Department. On 22.11.2006 an advertisement (Annexure P/4) was issued by respondent No. 2 - Chhattisgarh Public Service Commission (in short "PSC") for various posts, including two posts of Law Officer, Home (Jail) Department, out of which one was for unreserved category and the other was for scheduled tribe category. After scrutinizing and verifying various applications received pursuant to the said advertisement, 14 candidates, including the petitioner and respondent No. 4, were called for interview by the PSC. However, out of them 12 candidates participated in the interview. After completion of interview and comparing academic record of the candidates, merit list was drawn, in which respondent No. 4 was placed at Sl. No. 1 whereas the petitioner stood at Sl. No. 2. Since there was only one post of Law Officer for unreserved candidate, the petitioner being in the second position was kept in the waiting list.

2. Pursuant to the said merit list, on 7.12.2007 the PSC formally issued the result selecting respondent No. 4 for the post of Law Officer against unreserved category whereas one Shekhar Singh was selected against the post reserved for scheduled tribe category and the petitioner was shown in the waiting list appended to the merit list.

3. Aggrieved with the selection of respondent No. 4, the petitioner has filed the present petition with the contention that selection of respondent No. 4 has been made de hors the conditions stipulated in the advertisement and therefore, the same is liable to be quashed. However, the petitioner has not sought any relief for his appointment on the post of Law Officer.

4. In support of his contention, learned counsel for the petitioner has raised the following grounds:

(i) that in the advertisement it was specifically mentioned that a candidate applying for the post of Law Officer should have experience of two years as a lawyer whereas respondent No. 4 does not possess the said experience. According to the petitioner, as per certificate dated 3.1.2006 respondent No. 4 was a member of High Court Bar Association, Bilaspur from 20.5.2002 till issuance of the said certificate whereas during the said period, he was pursuing his LL.M. course from Pt. Ravishankar Shukla University, Raipur since 2003 till 2005 and thereafter, he was working as contract Assistant Professor (Law) in Kaushalendra Rao law College, Bilaspur from 1.8.2006 till 1.12.2007. Thus, it cannot be said that respondent No. 4 had experience of two years as a lawyer and as such, he was ineligible for the post of Law Officer.

Further, along with the advertisement, proformas of various certificates, including the experience certificate, were provided and the experience certificate submitted by respondent No. 4 was not in consonance with the same.

(ii) that respondent No. 4 gave incorrect information while filling in the application form on 2.1.2007 and a false declaration was made, therefore, in view of Condition No. 13(a)(5) of the advertisement, his candidature ought to have been rejected.

(iii) that the information submitted by respondent No. 4 on 1.12.2007 to the PSC and the declaration made in respect thereof runs contrary to the information and declaration made by him on 2.1.2007 and on this count also, his candidature ought to have been rejected.

5. Replying to the arguments advanced on behalf of the petitioner, it has been contended by learned counsel appearing for respondent No. 4 as under:

(i) That the present petition is not maintainable because the petitioner has not sought any relief for consideration of his case for appointment on the post of Law Officer and in fact, the petition is only for academic purposes.

(ii) That as per the advertisement, respondent No. 4 was required to have experience of two years as a lawyer and even while doing LL.M. course, a person can acquire experience of practising lawyer because there is no legal impediment for a practising lawyer to pursue LL.M. course simultaneously, as is evident from Annexure R/4 filed by the PSC with its return.

(iii) That there is no reason to disbelieve the experience certificate (Annexure

P/9) of respondent No. 4 issued by the Registrar General of the High Court of Chhattisgarh. A categorical stand has been taken by the PSC that all those candidates, who were practising in the High Court, were issued similar experience certificate by the Registrar General as has been submitted by respondent No. 4 and therefore, it was not the case where respondent No. 4 was issued any different certificate. Even assuming that the experience certificate submitted by respondent No. 4 was not in the prescribed format, the same can only be termed as an irregularity and not an illegality in view of there being no challenge to the validity of such experience certificate.

(iv) So far as suppression of material information is concerned, since column No. 15 of the form dated 2.1.2007 was required to be filled in by the candidates who were in regular service and certificate to that effect was sought, therefore respondent No. 4, who was working on contract basis at the relevant time, was not required to fill in that column. As such, the declaration made by respondent No. 4 can not be termed as incorrect or false declaration.

Further, respondent No. 4 while filling in column No. 13 of the form dated 1.12.2007, which was specifically required to be filled in by the candidates engaged in Government/Semi-Government or private services, had made a categorical declaration that he had worked as contract Assistant Professor (Law) in Koushlendra Rao Law College, Bilaspur, firstly from 1.8.2006 to 30.4.2007 and then from 2.7.2007 till the date of filling in the said form. Thus, before his selection all the facts were disclosed by respondent No. 4 to the PSC and therefore, it can not be said that any false declaration was made by respondent No. 4 or that he procured his appointment by suppression of any fact.

(v) That in Law Colleges, most of the practising lawyers are performing the work of teaching and it being merely a part-time job does not prohibit such persons either to teach in the college or to practise in the courts. As such, while pursuing his LL.M. course or working as a part-time teacher, respondent No. 4 can acquire the experience of practising lawyer.

(vi) That after due verification and considering the academic record of respondent No. 4, he was placed at Sl. No. 1 in the merit list and is performing his duties as Law Officer since almost last more than three years, therefore disturbing him at this stage would adversely affect his career. The petitioner has already been appointed as Welfare Officer (Jail), Home Department and on this count also, the petition deserves to be dismissed.

6. In the return filed by the State Government, it has been stated that it is the PSC who conducted the examination and the State Government is merely a formal party.

7. While justifying the selection of respondent No. 4, the PSC in its return has stated that since the experience certificate submitted by respondent No. 4 was a valid certificate the same was accepted by the PSC as per norms. The PSC has also stated categorically that even while pursuing LL.M. course, a person can

acquire experience of practising lawyer because there is no legal impediment for a practising lawyer to pursue LL.M. course simultaneously vide Annexure R/4 filed by the PSC with its return.

8. I have heard learned counsel for the parties and perused the material available on record.

9. It is well settled principle of law that the Court would not interfere, with the decision of the selection committee when its decision is reasonable, not arbitrary and not based on extraneous or irrelevant consideration. The Court can not encroach upon the power of the selection board by substituting its own views and opinion in the absence of oblique motive attributed to the members of the selection board. While exercising its power in the matters of appointment/selection, the Court has to confine itself to the question of legality, to see whether the decision making authority exceeded its powers, committed an error of law or breach of the rules of natural justice and reached a decision which no reasonable man would have reached or abused its power.

10. As regards the first ground urged by the petitioner that respondent No. 4 was not having requisite experience for the post applied, from perusal of the experience certificate (Annexure P/9) submitted by respondent No. 4 it is apparent that he obtained membership of Chhattisgarh High Court Bar Association on 20.5.2002 and was enrolled by the State Bar Council vide No. C.G./492/2001/Adv. and on the date of issuance of the said certificate i.e. 3.1.2006, he was still a practising lawyer.

11. Even if respondent No. 4 was pursuing his LL.M. course, the said period can not be excluded while calculating the period of experience as a practising lawyer because there is no legal impediment for LL.M. students to continue with his practice as a lawyer vis-à-vis a practising lawyer to pursue his LL.M. course. This fact is also evident from the communication (Annexure R/4) dated 24.1.2008 filed by the PSC with its return. This apart, once the PSC accepts that a person pursuing his LL.M. course can simultaneously practice, it would be difficult for this Court to hold that the experience as a lawyer during the period of pursuing LL.M. course can not be treated as valid. Likewise, if respondent No. 4 was teaching as a part-time teacher in a particular college while doing practice, the said period can not be excluded for the purposes of experience as a practising lawyer.

12. Furthermore, as per Rule 3 of the Advocates (Right to Take up Law Teaching) Rules, 1979, a practising lawyer is permitted to teach in the educational institutions. Rule 3 reads as under:

3. Right to practising advocates to take up law teaching.--(1) Notwithstanding anything to the contrary contained in any rule made under the Act, an advocate may, while practising, take up teaching of law in any educational institution which is affiliated to a University within the meaning of the University Grants Commission Act, 1956 (3 of 1956), so long as the hours during which he is so

engaged in the teaching of law do not exceed three hours in a day.

(2) When any advocate is employed in any such educational institution for the teaching of law, such employment shall, if the hours during which he is so engaged in the teaching of law do not exceeds three hours, be deemed, for the purposes of the Act and the rules made thereunder, to be a part-time employment irrespective of the manner in which such employment is described or the remuneration receivable (whether by way of a fixed amount or on the basis of any time scale of pay or in any other manner) by the advocate for such employment.

13. Thus, from the above, it is apparent that there is no legal impediment for a practising lawyer to teach in any of the educational institutions. It is not the case of the petitioner that teaching hours of respondent No. 4 were more than three hours and therefore, he could not have practiced as a lawyer simultaneously.

14. So far as disclosure of material facts is concerned, respondent No. 4 while filling in the form has specifically mentioned that he was working on contract basis on the post of Assistant Professor for a particular period and was being paid fixed remuneration of Rs. 3000/- for the academic session 2006-07 and Rs. 5000/- for the academic year 2007 onwards. Thus all the necessary information i.e. doing LL.M. course and working as part-time teacher in Law Colleges etc. were disclosed by respondent No. 4 to the PSC before his selection.

15. Considering the above legal position, this Court is not inclined to accept the arguments of the petitioner that respondent No. 4 was not having the requisite experience of two years or that he had suppressed the material information from the PSC and made false declaration to secure his appointment on the post of Law Officer.

16. In the present petition, the petitioner has merely prayed for setting aside the appointment of respondent No. 4 on the post of Law Officer but has not sought for his appointment on the said post. Though objection to this effect was raised by respondent No. 4 in his return, yet the petitioner did not think it proper to amend the petition accordingly. Therefore, it appears that the petitioner is satisfied with his appointment on the post of Welfare Officer (Jail), Home Department, which he obtained after filing of the present petition. This being the position, the petition has also become academic. With the aforesaid observations, this Court finds no illegality or irrationality or impropriety committed in the appointment of respondent No. 4 on the post of Law Officer by the PSC. There is no substance in this petition warranting interference by this Court in exercise of its power under Article 226 of the Constitution of India. Accordingly, the petition is dismissed.