

(2005) 02 OHC CK 0008

In the Orissa High Court

Case No : Writ Petition (C) No. 9525 of 2004

Prasanta Kumar Patri and Another

APPELLANT

Vs

Registrar, Utkal University and Others

RESPONDENT

Date of Decision : 28-02-2005

Acts Referred:

Information Bulletin Recruitment Rules — Rule 11, 18, 7

Citation : (2005) 02 OHC CK 0008

Hon'ble Judges : P.K. Mohanty, J;J.P. Mishra, J

Bench : Division Bench

Advocate : Kali Prasanna Mishra, S. Mohapatra, C. Mallick and J.K. Khandayatray, for the Appellant; D. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

J.P. Mishra, J.—In this writ application the Petitioners have prayed to quash the entire selection process of admission in Part-time Executive M.B.A. Programme of the P.G. Department for the academic session of 2004-2007 alleging "the same to have been conducted by an illegally constituted Selection Committee." Simultaneously, they have also claimed themselves to be eligible for the said course and have sought for direction to the opp.parties for their admission. The factual aspect runs as follows:

In response to the advertisement in daily newspapers by the Utkal University for the Part-time Executive Programme of P.G. Department for academic session 2004-2007, the Petitioners applied for the same with a view to undergo the aforesaid programme. Both of them did their Graduation from the Utkal University in the year 2003 and having more than seven years professional experience at Executive/Supervisory Level (Annexures-1 to 4) appeared in the interview being called by the Utkal University on 16.8.2004. They performed to their utmost satisfaction but were not selected even for the reserved category as per Annexure-7 to which Petitioner No. 1 belongs being the son of an ex-army personnel. As they did not find their names in the provisional merit list

(Annexure-5) they represented vide Annexure-6 which was not responded resulting in filing of the writ application. According to them, they were having required qualification as per Information Bulletin of 2004-2005, copy of which is Annexure-8. They have averred that the Selection Committee should have been constituted by five members as per Annexure-9 and the Committee which conducted the interview was consisting of three members. Therefore, according to them, the entire selection process should be quashed. It has also been averred that they were discriminated and they were not selected for the said course.

2. Opp.party Nos. 1 to 4 filed counter with the averment denying the allegations. According to them, the Petitioners were not having requisite qualification, i.e., they had not gathered experience of two years after obtaining the Graduation degree. Therefore, they were not considered for admission. The Utkal University has taken a stand that the Selection Committee constituted in accordance with the provision (Annexure-9) and the members were highly qualified to conduct the interview. There is no mala fide on their part and the process of selection should not be interfered with. It is also stated by them that the representation of the Petitioners was considered by the P.G. Council and stood rejected on 28.8.2004. They have also stated in paragraph-7 of their counter dated 2.11.2004 that the Petitioners were not interviewed. Their further stand is that there was no discrimination in selecting the candidates relying on Annexure-A/1 and B-1 series.

3. In the rejoinder, the Petitioners said that Annexure-B/1 is a manipulated document since once Petitioner No. 1-P.K. Patri was called for interview vide Annexure-10. The University filed further counter explaining that all the candidates appeared in the interview and there was some interaction explaining the stand that they were not interviewed and relied on Annexure-C/1 series and D/1.

4. Learned Counsel for the Petitioners have contended that since they had professional/supervisory experience about seven years prior to obtaining the Degree in the year 2003, they should have been selected by the opp.parties considering their experience earned prior to the degree of Graduation. According to the counsel, the Rule 18(e) of the Information Bulletin is wrongly interpreted by the University and has placed reliance on D. Stephen Joseph Vs. Union of India and others, . It is next contended that the Selection Committee was not constituted by five members violating the norms as per Annexure-9 and, therefore, it should be quashed. He further contends to initiate a contempt proceeding against Nirmal Chandra Kar for filing false affidavit.

5. Learned Counsel for the University has placed reliance on N. Suresh Nathan and another Vs. Union of India and others, and contends that since the rule was in conformity with the past practice, they followed the same calculating the period of experience only after obtaining Graduation degree. As the Petitioners have not gained experience of two years as per Rule 18(e) of the Information

Bulletin subsequent to their Graduation in the year 2003, they were not selected. He has contended that the Selection Committee was constituted according to the norms and they have not manipulated any document.

6. Admittedly, both the Petitioners obtained their Graduation degree in the year 2003 and had some experience in the supervisory capacity being diploma Engineers prior to the year 2003. To appreciate the submission, Clause 18 of the Information Bulletin of 2004-05 along with other clauses of eligibility needs to be quoted which reads thus:

xx xx xx xx xx (a) Venue: Department of Business Administration

(b) Duration: Three Year (Six Semesters) from 6 p.m. to 9 p.m.

(c) Number of Seats: 40 (Forty)

(d) Eligibility: Graduation having at least 2 years of working experience at executive/supervisory level in reputed organizations.

(e) Selection Procedure: Career, Experience and Interview.

(f) Course Fee: Rs. 20,000/- per year.

(g) Course structure: Six semesters consisting of total 3200 marks, theory papers having 30 percent weight age for mid semester, quizzes, assignments etc. and 70 percent to end semester examinations. Specialisation's in areas of marketing Management, financial Management, Operations management, Human resource management and System management. The course also required submission of a dissertation.

(h) Contact Person: Prof. N.C. Kar, Course of Co-Ordination, Department of Business Administration, Utkal University, Bhubaneswar, Tel: 2580874 (O), 2581495 (R) Fax: 2582022.

In the decision relied by the learned Counsel for the Petitioners, the Apex Court held that when the rule is specific prescribing particular length of service in the feeder post together with the educational qualification enabling candidate to be considered for promotion, it will not be proper to count experience from the date of acquisition of superior educational qualification for the reason that the said interpretation will violate the purpose of giving incentive to acquire higher education. In the present case, no incentive is being given since it is a selection process to admission into a particular course. Therefore, the prevalent practice in consonance with the rules has to prevail.

7. In the decision reported in N. Suresh Nathan and another Vs. Union of India and others, the construction of provisions under Rule 11 of the Recruitment Rules for the post of Assistant Engineers was considered and the Apex Court has held as hereunder:

The Recruitment Rules for the post of Assistant Engineers in the P.W.D. (Annexure-C) are at pages 57 to 59 of the paper book. Rule 7 lays down the

qualifications for direct recruitment from the two spruces, namely, Degree-holders and Diploma-holders with three years' professional experience. In other words, a Degree is equated to Diploma with three years' professional experience. Rule 11 provides for recruitment by promotion from the grade of Section Officers now called Junior Engineers. There are two categories provided therein—one is of Degree-holder Junior Engineers with three years' service in the grade and the other is of Diploma-holder Junior Engineers with six years' service in the grade, the provision being for 50% from each category. This matches with R.7 wherein a Degree is equated with Diploma with three years' professional experience. In the first category meant for Degree-holders, it is also provided that if Degree-holders with three years' service in the grade are not available in sufficient number, then Diploma-holders with six years' service in the grade may be considered in the category of Degree-holders also for the 50% vacancies meant for them. The entire scheme, therefore, does indicate that the period of three years' service in the grade required for Degree-holders according to Rule 11 as the qualification for promotion in that category must mean three years' service in the grade as a Degree-holder and, therefore, that period of three years can commence only from the date of obtaining the Degree and not earlier. The service in the grade as a Diploma-holder prior to obtaining the Degree cannot be counted as service in the grade with a Degree for rather purpose of three years' service as a Degree-holder. The only question before us is of the construction of the provision and not of the validity thereof and, therefore, we are only required to construe the meaning of the Appellants Degree-holders that the rule must be construed to mean that the three years' service in the grade of a Degree-holders for the purpose of Rule 11 is three years from the date of obtaining the Degree is quite tenable and comments to us being conformity with the past practice followed consistently. It has also been so understood by all concerned till the raising of the present controversy recently by the Respondents. The Tribunal was, therefore, not justified in taking the contrary view and unsettling the settled practice in the Department.

8. In view of the above judicial pronouncement, the construction of Rule 18(e) has to be found out. Admittedly, it is a process of selection to the course of Part-time Executive M.B.A. Programme of the P.G. Department for the academic session of 2004-2007. Rule 18(e) of the Information Bulletin indicates requirement "Graduates having at least two years experience at Executive and Supervisory level in reputed organization" for the course. Further, the career experience and the interview were to be considered along with the above eligibility. The above provision, in our view, requires the Graduation Degree first and thereafter working experience of two years. The University has relied on Annexure-A/1 of 2004, B/1 of 2003 and also the students showing admission for the year 2002 to the Executive M.B.A. Programme. In all the three annexures, the students who were admitted had earned experience subsequent to their Graduation Degree exceeding two years or at least two years. So, a practice was followed continuously to admit candidates having supervisory experience of two

years and above only after obtaining the Graduation Degree. The Petitioners had only one year experience at the time of interview, i.e., 16.8.2004 for the Degree obtained by them in the year 2003. Since the rule in consonance with the practice followed for years together, it will not be proper to unsettle the practice by construing the past experience before obtaining the Graduation Degree for admission into the M.B.A. course.

9. It is in the averments of the Petitioners that Petitioner No. 1 did not take admission though he was selected in the year 2003 and has alleged manipulation of Annexure-B/1. Annexure-10 reveals that Petitioner No. 1 was called to furnish his document in Sl. No. 7, i.e., the evidence in support of his service. It is nowhere in the averment that he had produced the required evidence in support of service in response to Annexure-10 before the opp.parties. Annexure-B/1 is the list of candidates who were admitted to the Session of 2003 into Executive M.B.A. Programme. Since this Petitioner No. 1 was not admitted, his name is not there in Annexure-B/1. So, the question of manipulation of Annexure-B/1 does not arise.

10. Annexure-9 requires that the Selection Committee is to be made consisting of: (i) Course Co-ordinator, (ii) Associate Course Co-ordinator, (iii) two faculty members selected by the Teachers Council, and (iv) a nominee of the Chairman, P.G. Council. The opp.parties have replied in paragraph-6 of their counter. According to the reply, the Selection Committee comprise of the Course Co-ordinator, Associate Course Co-ordinator, Faculty members selected by the Teachers Council, nominee of Chairman P.G. Council, namely, Prof. P.K. Sahu and P.K. Mohanty and the Chairman of P.G. Council himself attended the said Committee. It has been further mentioned that the Chairman, P.G. Council is one of the senior most Professor of the Department of Business Administration. He is also a teacher of Teachers Council for the Department having proficiency in teaching, research, consistently and other curriculum and the present Chairman, P.G. Council has vast experience in the field having thirteen years experience in IIM, Calcutta and twenty two years experience as a professor. So, the Committee was efficient and properly constituted and there was no ill-intention of the Committee in selecting the students.

11. Annexure-9 requires constitution of the Selection Committee by five members. Annexure-A/1 of 2004 reveals signature of Course Co-ordinator in the list showing admission of students for the year 2004. Annexure-C/1 bears signature of four persons out of the Selection Committee including the Course Co-ordinator. It has been stated that the Chairman, P.G. Council attended the Selection Committee and there is no mala fide shown by the Petitioners on the part of the Selection Committee. We do not find any fault in constituting the Selection Committee.

12. In paragraph-7 Nirmal Ch. Kar, Professor Business Administration, representing the Utkal University has said on oath that the Petitioners were not interviewed (they were not interviewed) and the affidavit was filed on 2.11.2004.

The same person filed counter affidavit on 20.12.2004 showing that all the candidates were invited to appear at the interview conducted by the Selection Committee. They were also required to produce original documents. At the initial stage, verification of documents was conducted in presence of members of Selection Committee and thereafter candidates were interviewed. During such verification there was some interaction with the Committee members and the candidates so as to avoid boredom till verifications are completed. He has further stated that he is not able to recall his memory to the specific questions put to the Petitioners as they have narrated in their reply dated 8.12.2004.

13. Annexure-C/1 reveals the name of both the Petitioners in Sl. Nos. 12 and 13 and they were awarded marks in Col. 1, but they were not awarded any remark in the next column as they were not eligible. The same practice also continued in the case of other candidates whose names appeared in Sl. Nos. 56 and 57. In view of the above documents and the affidavit of Nimai Ch. Kar, it is difficult on our part to accept that the affidavit filed on 2.11.2004 to be true to the extent that the Petitioners were not interviewed. It goes without saying that filing of false affidavit amounts to contempt and such matters have already been decided in the case of Hiralal Chawla and Anr. v. State of U.P.: (1992)2 SCC 149 and the same was referred in U.P. Resi. Emp. Co-op House B. Society and Ors. v. New Okhla Indus. Deve Authority and Anr. 96 (2003) CLT 585. Therefore, we direct the Registry to issue show cause notice to Nirmal Chandra Kar as to why proceeding for contempt shall not be initiated against him returnable within four weeks from today. He be supplied with the photo copies of both the affidavits dated 2.11.2004 and 20.11.2004 along with the copies of the annexures attached to the affidavits.

In the result, we dismiss the writ petition with the aforesaid direction.

P.K. Mohanty, J.

14. I agree.