
(2005) 12 AHC CK 0003
In the Allahabad High Court
Case No : C.M.W.P. No. 13140 of 1990

Rajendra Nath Misra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-12-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 320
Uttar Pradesh Public Service Commission (Procedure of Conduct and Business) Rules,
1976 — Rule 75

Citation : (2006) 7 AWC 6687

Hon'ble Judges : R.P. Yadav, J;N.K. Mehrotra, J

Bench : Division Bench

Advocate : M.P. Sharma, Rohit Tripathi, Shachindra P. Singh, Shrawan Verma, C.B. Pandey and P.N. Bajpai, for the Appellant; Tanuja Som Vanshi and R.B. Singh, for the Respondent

Final Decision : Allowed

Judgement

R.P. Yadav, J.—By means of this writ petition under Article 226 of the Constitution of India, the Petitioner prays for issuance of a writ of certiorari quashing the appointment order of Respondent No. 4 made on the recommendation of the U.P. Public Service Commission, the Respondent No. 3, and also for a mandamus commanding the Respondents to appoint the Petitioner as Assistant Director (Music) under the Respondent No. 2 on the basis of the selection made on 2.2.1989. He has also prayed for the notional salary of the said post with interest thereon.

2. Pursuant to an advertisement made by U.P. Public Service Commission, Respondent No. 3, on 15.5.1986, inviting the applications for one post of Assistant Director (Music), the Petitioner as well as Respondent No. 4 and some others applied for the said post. The selection was to be made on the basis of interview. The minimum qualification prescribed for the post, was Graduate Degree in Music from a recognized university or institution. The Petitioner along

with other candidates, who had applied for the said post, were interviewed on 1.2.1989, whereas the candidature of the Respondent No. 4 was cancelled on the ground that she did not fulfil the requisite qualification. She made a representation, whereupon, an inquiry was made from the Allahabad University and on receipt of the reply from the University, the Respondent No. 4 along with one another candidate was interviewed on 7.3.1989. In the final result, which was declared on 9.3.1989, Respondent No. 4 was declared to have been selected, whereas the Petitioner was placed in the waiting list.

3. Respondent No. 4 holds "senior diploma" in Music. It is alleged by the Petitioner that the "senior diploma" is not equivalent to "Graduate Degree in Music" and that the said diploma has not been recognized by the Government as equivalent to Graduate in Music and, therefore, Respondent No. 4 did not possess the required minimum qualification.

4. It is submitted by the learned Counsel for the Petitioner that the Respondent No. 4 did not fulfil the requisite qualification and the "senior diploma" held by her was not recognized as equivalent to Graduate Degree in Music, therefore, she was not eligible to be interviewed and the Respondent No. 3, the Public Service Commission had rightly rejected her candidature earlier but committed mistake in reviewing its own order and that too on the basis of reply given by the Allahabad University. Even under the residuary powers, power of review was not available to the Public Service Commission. It is also submitted that the competent authority to accord recognition of equivalence is the Government and not the Allahabad University and since the Government has not recognized the "senior diploma" equivalent to Graduate Degree in Music, the Respondent No. 4 would have neither been interviewed nor selected on the said post. It is also urged that the Petitioner having been placed at serial No. 1 of the waiting list, was entitled to be appointed on the post of Assistant Director (Music) and the recommendation made by the Public Service Commission and the appointment order issued by the Government on that basis were liable to be quashed. It is also urged that while doing so, the Public Service Commission did not act fairly according to the mandate of the Constitution and that it had acted favourably to the Respondent No. 4 on account of the undue influence exerted by her.

5. The learned Counsel for the State without trying to justify the act of the Public Service Commission, referring to the counter-affidavit filed on behalf of the State (Respondent No. 1) has submitted that the State Government acting on the recommendation of the Public Service Commission had issued the appointment letter. The learned Counsel for the Respondent No. 3 has tried to justify the action of the Commission on the ground that before allowing the Petitioner for interview, an inquiry was made from the Allahabad University and on the basis of the reply received, the Respondent No. 4 was permitted to be interviewed. He denied that there was any undue influence on the Commission or undue favour was extended to the Respondent No. 4. The learned Counsel has also submitted that according to the counter-affidavit filed by the Public Service Commission

Respondent No. 3, the "senior diploma" is equivalent to Post Graduate Degree in Music and Respondent No. 4 was treated fulfilling the requisite qualification on the principle of "Higher includes lower." However, the learned Counsel did not produce any Government order in support of the case that the "senior diploma" in Music possessed by the Respondent No. 4, is recognized by the Government equivalent to Graduate Degree in Music or Post Graduate Degree in Music.

6. No doubt, the Public Service Commission is a constitutional body and it is expected to work in a fair and independent manner. The Hon"ble Supreme Court in *State of Punjab v. Manjeet Singh* 2003 (99) FLR 426: 2003 (6) AWC 4776 (SC), while dealing with the case of Punjab Public Service Commission where the appointment was to be made on the basis of interview held that it is certainly the responsibility of the Commission to make the selection of efficient people amongst those who are eligible for consideration. The unsuitable candidates could well be rejected in the selection by interview. It is not the question of subservience but there are certain matters of policies, on which the decision is to be taken by the Government. The Commission derives its powers under Article 320 of the Constitution as well as its limits too. Independent and fair working of the Commission is of utmost importance. It is also not supposed to function under any pressure of the Government, as submitted on behalf of the Appellant Commission. But at the same time it has to conform to the provisions of law and has also to abide by the rules and regulations on the subject and to take into account the policy decisions which are within the domain of the State Government. It cannot impose its own policy decision in a matter beyond its purview.

7. In *District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi*, the Hon"ble Supreme Court with regard to the functioning of the Commission observed as follows:

It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No Court should be a party to the perpetuation of the fraudulent practice.

8. In the advertisement, which was issued by the Respondent No. 3, the Public Service Commission, qualification required for the said post of Assistant Director (Music) was Graduate Degree in Music. The Petitioner claims himself as having degree and diploma from Bhatkhande Hindi Sangeet Mahavidyalay and Prayag Sangeet Samiti, which have been recognized equivalent to Graduate Degree and

Post Graduate Degree in Music, whereas the Respondent No. 4 was holder of "senior diploma" in Music. The Commission did not produce educational certificates or the copy of the Diploma possessed by her (Respondent No. 4). The Public Service Commission also does not say that the Government has recognized the "senior diploma" possessed by the Respondent No. 4 as equivalent to Graduate Degree in Music or Post Graduate Degree in Music. The recognition even if accorded and reply sent by the Allahabad University is of no value because unless the Government has granted recognition to the "senior diploma" equivalent to Post Graduate or Graduate Degree in Music, the Public Service Commission could not treat the same as equivalent to Post Graduate Degree in Music on the basis of the report of the Allahabad University.

9. The Respondent No. 4 did not come forward to contest the petition. We are also told that after filing of the petition, she left the job and is no more in service. The Commission was right, when it initially rejected the candidature of the Petitioner and did not permit her for interview and review of the earlier order on the basis of report of Allahabad University was not justified. Although we do not agree with the argument of the learned Counsel for the Petitioner that the Commission has no power to review. If this submission is accepted, it will lead to absurd results, because "to err is human" and in case apparent mistake or error committed unknowingly or negligently, comes to the notice of the authority concerned, it must have inherent power to review and correct it.

10. The learned Counsel for the Petitioner has also submitted that under Rule 75 of the Uttar Pradesh Public Service Commission (Procedure and Conduct of Business) Rules, 1976, the Commission possesses powers to deal with the residuary matters, but this does not include the power to review its own earlier orders. Since there was no error in the earlier order rejecting the candidature of the Respondent No. 4, there was no legal ground to review the same although as said above, the Commission being a constitutional functionary can review its own orders passed in administrative capacity, if, it comes to their knowledge that some apparent mistake has occurred. In the present case, there was no mistake at all, so there was no question for review of the earlier order and allow the Respondent No. 4 to be interviewed. The Commission has also not alleged that the Government has recognized the "senior diploma" as equivalent to Graduate Degree or Post Graduate Degree. It was, therefore, evident that the Respondent No. 4 did not possess the requisite minimum qualification prescribed for the post of Assistant Director (Music) and, therefore, she could have neither been interviewed nor selected for the said post. The recommendation made by the Public Service Commission, Respondent No. 3 in her favour is legally not sustainable and consequently the appointment order could have also not been legally issued to her. She was not qualified to hold the said post.

11. In view of the above conclusions, the petition is allowed. The appointment of Respondent No. 4 on the post of Assistant Director (Music) is quashed. The Respondent No. 3 is directed to make fresh recommendation for appointment of

next available suitable candidate on the said post of Assistant Director (Music) if, during the intervening period, some one else, has already not been appointed on the said post.