

(2019) 10 MAN CK 0001

In the Manipur High Court

Case No : Writ Petition (c) No. 1006, 1007, 1008, 1037, 1047, 1048, 1087, 1088 Of 2018

Ronaldo Moirangthem And Others

APPELLANT

Vs

Union Public Service Commission And Others

RESPONDENT

Date of Decision : 04-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2019) 10 MAN CK 0001

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : S. Biswajit Meitei, Amarjit Naorem

Final Decision : Disposed Of

Judgement

Kh. Nobin Singh, J

[1] Heard Shri S. Biswajit Meitei, learned Advocate appearing for the petitioners and Shri Amarjit Naorem, learned Advocate for the UPSC, the respondent.

[2] Since these writ petitions have arisen out of a similar set of facts and circumstances, the same are being disposed of by a common judgment and order.

[3] The facts and circumstances of these cases are almost identical and since there is no much dispute between the parties as regards the facts and circumstances of the cases, the details thereof are not narrated herein.

[4.1] The Petitioners are the students who are studying in different institutes/ universities pursuing various courses. While the petitioners were undergoing XII standard or having just completed XII standard, they came to know about an advertisement for selection of Indian Armed Forces Officers through NDA Examination to be conducted by the Union Public Service Commission (hereinafter referred to as 'the UPSC'). They all being eligible submitted their applications, duly filled and along with requisite documents, for the said

examination, the written test of which was held on 10.09.2017 and one of the centres was at Manipur Public Service Commission Examination Hall. During the course of the examination, the petitioners were found to have used unfair means for which they received a letter dated 27-09-2017 as show cause notice issued by the Under Secretary (NDA, UPSC) for taking disciplinary action for having used unfair means.

[4.2] On receipt of the said Show Cause Notice dated 27.09.2017, the petitioners gave their replies thereto stating that they were not fully aware of the rules and regulations of the examination that such dire punishment would be imposed for such acts. By the said replies, the petitioners made humble request to the Chairman, UPSC to kindly excuse them for their mistakes and prayed for pardoning them for their unintentional mistakes. They also assured the UPSC that they would not repeat such acts in future in any of the examinations conducted by the UPSC.

[4.3] In spite of the said replies being given by them explaining the reasons for their mistakes committed in the examination hall and their assurance of not repeating the same in the future examination, the petitioners received the letter dated 10.11.2017 issued by the Under Secretary (NDA) Union Public Service Commission for taking disciplinary action of debarring them for 10 (ten) years from appearing in all future examinations/selections to be held by UPSC with effect from 24.10.2017.

[4.4] The petitioners through their parents made a joint representation dated 28.08.2018 to the Chairman, UPSC praying for recalling the disciplinary action of debarring for 10(ten) years from appearing in all future examinations/selections to be held by UPSC with effect from 24.10.2017 and tendering unconditional apology with a beseech to make a sympathetic view in respect of their bonafide and unintentional mistakes committed in the examination. After the said representation submitted by them, the petitioners received another letter dated 03.10.2018 thereby reiterating the same disciplinary action of debarring for 10(ten) years from appearing in all future examinations/ selections to be held by UPSC with effect from 24.10.2017. Being aggrieved by the said letters dated 10.11.2017 and 03.10.2018 issued by the Under Secretary (NDA) Union Public Service Commission, these writ petitions have been filed by the writ petitioners.

[5] The unfair means alleged to have been committed by the petitioners, as relied upon by their counsel, are given below:

1.

W.P. (C) No. 1087/ 2018 (Totto Tokchom)

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Hand Written Paper

2.

W.P. (C) No. 1048/2018 (Nicolson Yumnam)

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Hand Written Paper

3.

W.P. (C) No. 1037/ 2018 (Thounaojam Robinson Singh)

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Hand Written Paper

4.

W.P. (C) No. 1006/2018 (Ngangbam Bhuvan Singh)

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Using Eraser

5.

W.P. (C) No. 1088/2018 (Jitkumar Singh)

-

Using the space for rough work by writing answers apart from normal uses.

6.

W.P. (C) No. 1007/ 2018 (Yumnam Deepak Kumar)

-

Using the space for rough work by writing answers apart from normal uses.

7.

W.P. (C) No. 1008/2018 (Gopichand Nameirakpam)

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Using the space for rough work by writing answers apart from normal uses.

8.

W.P. (C) No. 1047/2018 (Ronaldo Moirangthem)

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Using the space for rough work by writing answers apart from normal uses

[6] The stand of the UPSC as indicated in its affidavit is that clause VII of para 5 of the examination notice dated 07.06.2017 provides that a candidate would be declared by the UPSC to be guilty, if he or she is found to have indulged in unfair means during the examination and the punishment for such misconduct shall be

imposed as provided in sub-clause A & B of Clause XIII of para 5 of the said notice which reads as under:

(a) to be disqualified by the Commission from the examination for which he is a candidate and / or

(b) to be debarred either permanently or for specified period

(i) by the Commission from any examination or selection held by them.

It has further been stated that the petitioners have admitted to have used unfair means in the examination held on 10-09-2017 and are liable to be punished as per rules. The UPSC, after having afforded an opportunity of being heard, passed a fair and just order dated 10.11.2017 whereby the petitioners have been found guilty for using unfair means during examination and accordingly, the UPSC has decided to debar the petitioners for 10 years from appearing in all future examinations or selections to be held by it. Since the petitioners have been awarded punishment as per the provisions and the guidelines mentioned above, there is nothing wrong in the said impugned letters and therefore, the writ petitions are liable to be dismissed by this Court.

[7] It has been submitted by Shri S. Biswajit Meitei, learned counsel appearing for the petitioners that the penalties imposed upon the petitioners are not proportionate to the gravity of misconduct/ offence committed by them and in other words, it is not commensurate with gravity of the offence committed by them. While taking a decision to impose penalty upon the petitioners, the UPSC has not considered the mitigating factors and in particular, the career of the petitioners. The serial numbers of the questions are different from student to student and therefore, there is no room for them to share the answers. Since the nature of alleged unfair means used by the petitioners is different, the imposition of the same punishment is unreasonable and it is a clear indication of non-application of mind while awarding punishment. In support of his contention, he has relied upon many decisions of the Hon'ble Supreme Court. The first decision is the one rendered in Bhagat Ram Vs. State of Himachal Pradesh & ors., (1983) 2 SCC 442 wherein it has been held by the Hon'ble Supreme Court that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution. The aforesaid law has been reiterated in Ranjit Thakur Vs. Union of India & ors., Vs. (1987) 4 SCC 611 and addition thereto, the Hon'ble Supreme Court held:

'25. Judicial review generally speaking, is not directed against a decision, but is directed against the 'decision-making process'. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would

ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. In *Council of Civil Service Unions v. Minister for the Civil Service* Lord Diplock said:

'Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground

I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community; . . .'

In *Guru Nanak Dev University & anr Vs. Harjinder Singh & anr*, (1994) 5 SCC 208, the respondents were found to be guilty of using unfair means in BA II Examinations, for which they were debarred from appearing in any university examination for a period of two years. The expression 'unfair means' is defined in Ordinance 10 of the University Ordinances which is inclusive and not exhaustive. The High Court allowed the writ petition challenging it but the Hon'ble Supreme Court set aside the judgment and order of the High Court. In *State of Punjab Vs. Prem Sagar & ors.*, (2008) 7 SCC 550, the Hon'ble Supreme Court was confronted with the issue relating to sentencing. The Hon'ble Supreme Court observed that in our judicial system, we have not been able to develop legal principles as regards sentencing. After referring to its earlier decisions and the views of experts in the field, the Hon'ble Supreme Court held'

'8. Although a wide discretion has been conferred upon the court, the same must be exercised judiciously. It would depend upon the circumstances in which the crime has been committed and his mental state. Age of the accused is also relevant.

31. We have noticed the development of law in this behalf in other countries only to emphasise that the courts while imposing sentence must take into consideration the principles applicable thereto. It requires application of mind. The purpose of imposition of sentence must also be kept in mind.'

In *Alister Anthony Pereira Vs. State of Maharashtra*, (2012) 2 SCC 648, the Hon'ble Supreme Court held:

'85. The principle of proportionality in sentencing a crime-doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the

crime-doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.

In *Yakub Abdul Razak Memon Vs. State of Maharashtra*, (2013) 13 SCC 1, the Hon'ble Supreme Court held:

'873. Thus, the two cardinal factors viz. one, the penalty imposed must be proportionate to the gravity of the crime and second, the degree of responsibility of the offender must be taken into account in determining the sentence for an individual accused in addition to the aggravating and mitigating circumstances.'

In *Mofil Khan & anr Vs. state of Jharkhand*, (2015) 1 SCC 67, the Hon'ble Supreme Court was concerned with the principles of sentencing. Referring to its earlier decisions wherein certain principles in the matter of sentencing have been evolved by it, the Hon'ble Supreme Court observed that the broad principles tailored by it in its judgments provide guidelines to ensure that the discretion vested in the court is not unbridled.

On the other hand, it has been submitted by Shri Amarjeet Naorem, learned counsel appearing for the UPSC that it is the discretionary power of the UPSC to impose penalty in terms of rule 5, for which he has relied upon the order dated 02-08-2019 passed by the Hon'ble Supreme Court in *Union Public Service Commission & anr Vs. Nayak Raj etc.*, in Civil Appeal No.6036-40 of 2019. In the said case, the Hon'ble Supreme Court observed:

'Only one aspect does find some sympathy with us i.e. the age profile of the candidates ranging from 16 years to 19 years. They are the students of the Sainik School, Ghorakhal, District Nainital. Of course being from such a greater disciplined school, infact a greater responsibility is expected from them. The punishment of debarment for ten years would also not only exclude them from that exam for which the permissible age is 16 to 19 years but would also prevent them from appearing in further examinations as the debarment is for a long period of ten years.

Insofar as conduct of examination by the UPSC is concerned, learned counsel for the appellants did submit that since the for maximum age appearing for examination in some of the examinations is 30 years, the respondent (s) would be able to take the examination after debarment period of ten years. However, that position is not very helpful to the line of reasoning of the appellants, as it would amount to preventing the respondent(s) from taking the examination at a younger age of 16 to 19 years while permitting them at a more advanced age

We are also informed that the debarment is of four categories: (a) Life debarment, (b) bar of 10 years (c) bar of 5 years and (d) debarment for that examination. In all probability, all of them, if not most of them, would have become overage for taking the examination in question as the next examination is only in the year 2020.

We, thus, consider it appropriate to direct the appellants to re-examine the

quantum of punishment in the given facts of the case at their own discretion as to whether the punishment of debarment can be lowered from 10 years to not more than five years.'

[8] The Ministry of Defence, Government of India issued a Notification dated 07-06-2017 notifying rules for the conduct of a Competitive Examination National Defence Academy Naval Academy

Examination (II) 2017, of which Rule 5, Note 5 reads as under'

'NOTE-5: CANDIDATES WHO HAVE PASSED WRITTEN TEST ARE NOT REQUIRED TO SUBMIT THEIR ORIGINAL CERTIFICATE OF AGE AND EDUCATIONAL QUALIFICATION EITHER TO DIRECTORATE GENERAL OF RECRUITING, ARMY HQ, WEST BLOCK- III, RK PURAM, NEW DELHI-110066 OR TO NAVAL HEADQUARTERS, DMPR, OI&R SECTION, 'C' WING, SENA BHAWAN NEW DELHI-110011.

ALL CANDIDATES CALLED FOR INTERVIEW MUST CARRY THEIR ORIGINAL MATRICULATION CERTIFICATE OR EQUIVALENT EXAMINATION CERTIFICATE TO THE SERVICES SELECTION BOARD (SSB). ORIGINALS WILL HAVE TO BE PRODUCED BY THE CANDIDATES WHO QUALIFY AT THE SSB INTERVIEW SOON AFTER THE INTERVIEW. THE ORIGINALS WILL BE RETURNED AFTER VERIFICATION. THOSE CANDIDATES WHO HAVE ALREADY PASSED 10+2 EXAMINATION MUST CARRY THEIR ORIGINAL 10 +2 PASS CERTIFICATE OR MARKS SHEET FOR THE SSB INTERVIEW. IF ANY OF THEIR CLAIMS IS FOUND TO BE INCORRECT THEY MAY RENDER THEMSELVES LIABLE TO DISCIPLINARY ACTION BY THE COMMISSION IN TERMS OF THE FOLLOWING PROVISIONS

A candidate who is or has been declared by the Commission to be guilty of:

- (i) obtaining support for his candidature by any means, or
- (ii) impersonating, or
- (iii) procuring impersonation by any person, or
- (iv) submitting fabricated documents or documents which have been tampered with, or
- (v) making statements which are incorrect or false or suppressing material information, or
- (vi) resorting to any other irregular or improper means in connection with his candidature for the examination, or
- (vii) using unfair means during the examination, or
- (viii) writing irrelevant matter, including obscene language or pornographic matter, in the scripts(s), or
- (ix) misbehaving in any other manner in the examination hall, or

(x) harassing or doing bodily harm to the Staff employed by the Commission for the conduct of their examination, or

(xi) being in possession of or using mobile phone, pager bluetooth or any electronic equipment or device or any other equipment capable of being used as a communication device during the examination, or

(xii) violating any of the instructions issued to candidates along with their Admission Certificates permitting them to take the examination, or

(xiii) attempting to commit or as the case may be abetting the Commission of all or any of the acts specified in the foregoing clauses, may in addition to rendering himself liable to criminal prosecution be liable

(a) to be disqualified by the Commission from the examination for which he is a candidate and/or

(b) to be debarred either permanently or for a specified period

(i) by the Commission from any examination or selection held by them:

(ii) by the Central Government from any employment under them; and

(c) if he is already in service under Government to disciplinary action under the appropriate rules.

Provided that no penalty under this rule shall be imposed except after:-

(i) giving the candidate an opportunity of making such representation, in writing as he may wish to make in that behalf, and

(ii) taking the representation if any, submitted by the candidate within the period allowed to him into consideration.'

[9] On perusal of the said rules, it is seen that the expression 'unfair means' is not defined therein. All that the said rules provide, is that if a candidate is found to have committed any of the offences as provided therein, is liable to criminal prosecution and in addition thereto, he is liable to be disqualified for the examination or be debarred either permanently or for a specified period from any examination/ selection held by it. There can be no dispute at all that if a candidate is found to be guilty for any of the aforesaid offences, he is liable to be punished and what is the quantum of punishment appears to be left with the UPSC. In other words, it is the sole discretion of the UPSC to decide the quantum of punishment. But there appears to be no any guideline in the said rules as to how the quantum of punishment is to be decided by the UPSC.

[10] From the aforesaid decisions of the Hon'ble Supreme Court relied upon by the counsel for the petitioners, it is seen that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution. The facts of those cases are not exactly identical with that of

the present cases but the principles laid down therein are relevant and moreover, in Harjinder Singh case (supra), the Hon'ble Supreme Court did not interfere with the quantum of punishment, as the punishment was debarment for two years only. The short question that calls for consideration by this Court is as to whether the penalty imposed upon the petitioners for the unfair means used by them, is commensurate with the gravity of their misconduct committed in the examination or not. The answer is in the negative for the reason that there appears to be no principle to be followed by the UPSC while deciding the quantum of punishment. It is well settled that the exercise of discretionary power by an authority without any principle to be followed by it at the time of imposing punishment, is unreasonable and arbitrary. While the case in Union Public Service Commission & anr Vs. Nayak Raj was being considered by the Hon'ble Supreme Court, it was informed by the counsel appearing for the UPSC that the debarment is of four categories: (a) Life debarment;

(b) bar of 10 years; (c) bar of 5 years and (d) debarment for that examination. This categorization of the debarment is nowhere mentioned in the rules nor has the principle been laid down therein, by which the UPSC can elect punishment either of them depending upon the facts of each case. In other words, there appears to be no norm at all as to how the UPSC shall elect the punishment of either the life debarment or the debarment for 10 years or debarment of 5 years or debarment for that examination in a given case because no such rules framed by the UPSC have been brought to the notice of this Court by the counsel appearing for the UPSC. Even in the said case, the Hon'ble Supreme Court had some reservation as regards the quantum of punishment imposed on the respondents i.e., debarment of 10 years and accordingly, the Hon'ble Supreme Court directed the UPSC to re-examine the quantum of punishment at its discretion as to whether the punishment of debarment could be lowered from 10 years to not more than five years. During the course of hearing the present case, this Court put a query to the counsel appearing for the UPSC as to whether the UPSC had complied with the direction of the Hon'ble Supreme Court and since he had no information with him in that regard, he was given some time to seek instruction. On 04-09-2019 when these matters were taken for hearing, he informed this court on instruction that no decision had been taken by the UPSC by then. The facts of the present cases are identical to that the said case but in that case, the Hon'ble Supreme Court did not consider whether there was any rule to regulate the exercise of its discretionary power by the UPSC while deciding the quantum of punishment. As seen from the chart given in the preceding para, the nature of misconduct amongst the petitioners is not similar but the same punishment was imposed upon them which cannot be said to be a correct decision and consequently, the impugned letters dated 10-11-2017 are bad in law for the reason that the quantum of punishment awarded by the UPSC to the petitioners is on the higher side and is neither proportionate nor commensurate with the gravity of misconduct in the light of the law laid down by the Hon'ble Supreme Court. The UPSC being an institution and a constitutional

authority, has to act fairly and reasonably so as not to infringe the mandate enshrined in Article 14 of the Constitution of India.

[11] In view of the above, the above writ petitions are disposed of with the direction that the UPSC shall re-consider the quantum of punishment awarded to the petitioners keeping in mind the observations made hereinabove and take a decision, accordingly, within a month from the date of receipt of a copy of this judgment and order.