

(2001) 04 GAU CK 0022

In the Gauhati High Court

Case No : Civil Rule No's. 137 of 1997 and 478 of 1998

Shankar Chowhan

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 12-04-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309, 315

Citation : (2001) 1 GLT 684

Hon'ble Judges : B.B. Deb, J

Bench : Single Bench

Advocate : A.C. Bhowmik, R. Dutta and D.C. Roy, for the Appellant; S. Deb, A. Dey, S. Chakraborty and A. Ghosh, for the Respondent

Final Decision : Allowed

Judgement

1. In both the cases same and similar questions are involved. The fact leading to filing of both the cases are as follows:-

On requisition from the Panchayat Department the Public Service Commission floated an advertisement bearing No.7/95 dated 1.11.1995 (Annexure-1) inviting application from the eligible candidates for filling up few posts of Panchayat Officer Group "C" non-gazetted posts prescribing among others the essential qualifications as (i) Degree of a recognised University, (ii) Training and Rural Development and extension service.

2. The petitioners in both the cases applied for the said posts besides others, private respondents No. 4 to 12 in Civil Rule No. 137 of 1997 and 4 to 8 in Civil Rule No. 478 of 1998 also applied. All were faced the interview/test both written and viva voice, but the private respondents have been selected while the petitioners were not. Hence, they filed the petition under Article 226 of the Constitution of India, contending, inter alia, that the petitioners having requisite essential qualification were denied the due consideration by Public Service Commission while the private respondents having no requisite qualification were

allowed to face the interview and were also selected and subsequently appointed and in doing so the Public Service Commission not only committed wrong and illegality by allowing the ineligible candidates, private respondents but also denied the right of the petitioners to be treated fairly and, as such, it is violative of Article 14/16 of the Constitution of India.

3. From the Annexure-1 in Civil Rule No.137 of 1997 the advertisement which is available as Annexure-IV in Civil Rule No. 478 of 1998 it reveals that the required essential qualifications are as follows:

" (i) Degree of a Recognised University.

(ii) Training in rural development and extension service

So far qualification in (i) is concerned, there is no dispute, Petitioners as well as the private respondents are undoubtedly having the degree of recognised university. They are graduates. The dispute arises regarding the required qualification of "training in Rural Development & Extension of Service."

4. The learned counsel for the Public Service Commission, having referred the counter affidavit frankly submits that none of the petitioners nor any of the private respondents had the requisite qualification as prescribed in (ii) above. None of them could fulfill the essentially required qualification in "Training in Rural Development & Extension of Service". But having regard to the urgency of the employment to man the posts relating to the different scheme undertaken by the Government for village up liftment, both the petitioners as well as the private respondents were asked to face the interview adhering to equal treatment to both of them.

5. Mr. S. Deb, learned senior counsel for the respondent Tripura Public Service Commission (TPSC) having invited my attention to the order dated 1.4.1997 passed by this court in Civil Misc. Petition No. 113/97 arising to of Civil Rule No. 137/97 submits that no particular training of any definite duration has been held to be not required by this court while disposing the interim matter.

6. It is correct that this court while disposing the related interim matter vide judgment/order dated 1.4.1997 among others held -

"Therefore, it can be very well said that even if any person having a degree of Graduation undergoes training even for 5 days and takes a certificate thereof then in that case also he is according to the advertisement, entitled to face the interview."

7. The above observation of this court is in conformity with the Recruitment Rules and the Recruitment Rules for the post of Panchayat Officer was published by notification dated 27.11.1993 vide Tripura Gazette, Part I dated 12th February, 1994 (Annexure-RR/10). Para 7 of Annexure-RR/10 is relevant for the present case which is re-produced below:-

"7. Educational and (i) Degree of a recognised University. Other qualification

required for direct (ii) Training in Rural Development and recruitment. extension service."

Thus it reveals that the essential qualification required for becoming eligible for the post of Panchayat Officer is one must be a Graduate and must have undergone a training in Rural Development and Extension Service, of course, duration of such training is not mentioned and as such there cannot be a quarrel that if any person having qualification of Graduation has any training in Rural Development and Extension of Service in his credit, he is only eligible to be considered for the post of Panchayat Officer.

8. Mr. Deb, the learned senior counsel for the TPSC submits that almost all the candidates are lacking of such training qualification. In para 8 of the counter affidavit filed by the TPSC, it remains acknowledged by the TPSC that out of as many as 914 candidates only two candidates, namely, Shri Gopal Chandra Majumder and Smti Sanchita Roy were found eligible and they satisfied the eligibility criteria laid down in the advertisement. Para 8 of the counter affidavit further contends that the Director of Panchayat, Government of Tripura vide communication No.F.I(II-II)-ESTT/PR/87/13527 dated 26.12.1996 conveyed the approval of the Government for taking , interview of 90 candidates whose names were sent by the respondent No. 2, That communication is available under Annexure-Com. 1 is re-produced below: -

"Annexure-Com-1

No.F. 1(11-1 D-ESTT/PR/87/13527 Government of Tripura, DIRECTORATE OF PANCHAYATS. Dated, Agartala, the 28th Dec./96.

To

The Secretary,

Tripura Public Service Commission, Agartala.

Subject Requisition for recruitment to the post of Panchayat Officer.

Sir,

In continuation to this office letter No.F.I (II-II)-ESTT/PR/87/ 13425 dated the 19th Dec./96 I am to inform you that the Government has examined the cases and accorded approval for taking interview of 90 candidates whose names went from your end. It has also been decided by the Government that at this stage R.R. should not be amended.

I would, therefore, request you to kindly arrange for interview of the candidates at an early date.

Yours faithfully, Sd/-N.C. Sinha, 24/12/96. Director of Panchayats, Government of Tripura."

9. From the aforesaid letter, it appears that the Government accorded the

approval of 90 candidates for taking interview and the TPSC having succumbed to the desire of the Government took up the candidature so approved by the Government. On requisition from the requiring department viz. Directorate of Panchayats, TPSC itself invited applications vide advertisement dated 1.11.1995 (Annexure-1) requiring essential qualification like degree of a recognised university and training in rural development and extension of service. The Recruitment Rules under proviso to Article 309 of the Constitution of India also prescribed the aforesaid qualifications.

10. Now, how the Director of Panchayats or Government assumed the power to relax any condition is not intelligible to me. The Recruitment Rules has been framed in the name of Governor and has the force of subordinate legislation which cannot be modified, altered or disturbed by any Executive action without resorting to Article 309 of the Constitution of India. Had there been any necessity, the competent authority may amend and/or alter the Recruitment Rule in exercise of power under proviso to Article 309 of the Constitution of India, but the Government has no right to deviate from the existing Recruitment Rule.

11. In the counter the TPSC admitted that only two candidates fulfilled eligibility criteria out of 914 candidates while the State Government conveyed its approval to the TPSC regarding 90 candidates as revealed from Annexure-Com. 1. It is a clear interference by the State Government to the constitutional function of the TPSC. TPSC has been constituted under Article 315 of the Constitution of India and the function to be exercised by the TPSC has also been prescribed under Article 320 of the Constitution of India.

12. From the counter-affidavit filed by the State respondents, particularly from para 10 of the counter-affidavit, it appears that according to the TPSC only two candidates fulfilled the eligibility criteria, namely, Shri Gopal Chandra Majumder and Smti Sanchita Roy, but the TPSC accommodated as many as 90 candidates though found to be not eligible, but as recommended by the State Government. From this admission, an unprecedented example has been established how the constitutional wisdom of an autonomous body like TPSC could surrender to the desire of the Government in the matter of selection of candidates, which is unthinkable and unexpected under the constitutional scheme of our Indian democracy.

13. The TPSC produced the minutes of the Commission so far the selection of Panchayat Officers is concerned under sealed cover. From the same it appears that out of two eligible candidates only one was selected with other eight fortunate candidates, and they got their names empanelled in the select list. The merit sheet produced under sealed cover appears to be incomplete, only the total marks scored by individual candidates have been shown without showing any break up and that was signed only by the Chairman and not on the date of taking interview. All the merit sheets appear to have been signed on 24.1.1997 though interview held on different dates between 15.1.1997 and 24.1.1997. The TPSC produced 15 sheets of merit sheet bearing page Nos. P-1 to P-15 (written by

different inks) and another sheet containing nine recommended names and five names in the waiting list and that sheet was signed by the Chairman and another member on 25.1.1997.

14. From the aforesaid discussion and particularly having considered the acknowledged position of non-eligibility of all the candidates except two, I am of the considered opinion to hold that the recommendation made by the TPSC vide its minute dated 25.1.1997 is contrary to the Recruitment Rule save and except one, namely, Smti Sanchita Roy. The TPSC should not have issued the call letters or interview cards inviting the non-eligible candidates to appear in the interview test since the candidates are lacking of eligibility as per Recruitment Rule, but unfortunately having succumbed to the desire of the Government, the TPSC issued call letters to as many as 90 ineligible candidates. Had the Government been very keen to man the posts of Panchayat Officer without causing any delay, the Government could have come with amendment of the Recruitment Rule deleting the eligibility criteria of training, but instead of adopting the usual course in a befitting manner the TPSC has been unduly influenced by the letter of Director of Panchayats dated 28.12.1996 (signed on 24.12.1996). Though he said letter contains the recital that Government "accorded approval for taking interview of 90 candidates whose names were sent from your end", but the Government decision is not available with the record. So, it is not ascertainable as to whether the Director of Panchayats actually conveyed the decision of the Government or influenced the TPSC by his letter in the pretext of Government decision. Be that as it may, in either case the consequence would be the same as the Government has no right or authority to ask the TPSC to take interview of ineligible candidates having deviated from the Recruitment Rule, of course I must admit that the Government has the right to amend the Recruitment Rule, but without doing amendment the Director of Panchayats influenced the TPSC by the said communication dated 28.12.1996.

15. Under the aforesaid discussion, I am constrained to hold that the entire process of selection undertaken by the TPSC stands vitiated save and except the candidature of Smti Sanchita Roy who fulfilled the eligibility criteria according to the Recruitment Rules. The appointments made acting upon the said recommendation of the TPSC also stood vitiated.

16. While interim order was granted by this court allowing the Government to make appointments vide order dated 1.4.1997, it was made clear that appointments of respondent Nos. 4 to 8 of Civil Rule No. 137 of 1997 would be subject to the result of the main writ petition and as such I am constrained to hold that the appointments made acting upon the recommendation of the TPSC (except Smti Sanchita Roy) are liable to be quashed as contrary to the provisions of law and I do hereby quash all appointments made by the Government pursuant to the panel prepared by the TPSC on 25.1.1997 for the posts of Panchayat Officer save and except one that is Smti Sanchita Roy, who was found to be eligible.

17. In the result, both the writ petitions are allowed with a cost of Rs. 1,000 to be paid by the respondent No. 1 to the petitioner of both the cases @ Rs. 500 each.