
(2010) 04 GAU CK 0057
In the Gauhati High Court
Case No : Writ Petition (C) No. 4 (SH) of 2007

Shiningstar Warjri

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 4 GLT 927

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Advocate : H. Nongkhlaw and R. Sharon, for the Appellant; A. Khan, for the Respondent

Judgement

T. Vaiphei, J.—In this writ petition, the Petitioner is aggrieved by the refusal of the State-Respondents to appoint him as an Assistant Teacher of Kynshi Mawria L.P. School on the basis of the select list dated 14.6.2005 prepared by the Director of Elementary and Mass Education, Meghalaya.

2. These are the material facts. The State- Respondents advertised three posts of Assistant Teachers for three different schools on 14.5.2004. Out of these three posts, the Petitioner applied for the post of Kynshi Mawria Government L.P. School. The written examination was conducted on 15.7.2004 while the personal interview was conducted on 30.8.2004. On the basis of the recruitment examination, the Petitioner stood first and it was recommended by the Deputy Inspector of Schools (Respondent 5) for his appointment in order of merit vide the letter dated 14.6.2005 issued by the Director of Elementary and Mass Education, Meghalaya (Respondent 3). The particulars of the marks obtained by the candidates for the post of Assistant Teacher for Kynshi Mawria Govt. L.P. School as furnished by the Joint Director of Elementary and Mass Education, Meghalaya is found at Annexure- III to the writ petition, which is reproduced hereunder:

SI. Name of Candidates in order of merit Sex Whether General SC/ST Age as on

the of Jan of the year Education Qualification Other Qualification/ Diploma
Experience Marks secured in the written Exam Marks secured in the Viva Voce
Total marks obtained cols. 8 and 9 Remarks

1. Smti Trinmistra L. Nongiait, HSSLC F ST YrMnDy 2106. HSSLC

116 304 420

2. Shri Shinning Warjri, BA M ST 23.5. 23.6. e l b i g e l l i BA

102 417 519 1st

3. Shri Lurstar Lyngkhai, HSSLC M ST 25.09.

HSSLC

83 372 455 2nd

4. Smti.Nansibel Syiemlieh HSSLC M ST 19.11

HSSLC

64 383 447

5. Smti Maryta Lyngdoh, HSSLC F ST 22.7.

HSSLC

49 330 379

6. Shri Readingstar L. Lyngkhai, HSSLC M ST 24.06.

HSSLC

47 405 452 3rd

7. Smti Mishalin Jana, HSSLC F ST 22.06.

HSSLC

43 342 385

8 Shri Pyniangb- habor Lyngdoh, BA M ST 26.0

BA

42 355 397

9 Smti. Sisdalyne Rani, HSSLC F ST 24.0

HSSLC

40 352 392

3. It appears that when there was delay in offering appointment to the Petitioner, he filed a resantation to the Respondent No. 3 for his appointment on the basis of the select list prepared by him, but the same proved futile. To the

astonishment of the Petitioner, he was informed by the Special Officer to the Government of Meghalaya. Education Department in his letter dated 27.11.2006 that the merit list prepared by the Respondent No. 5 could not be acted upon as 150 marks allotted to each of the five members of the Personal Interview Board thereby making it a total of 750 marks for personal interview was on the high side and that the Total Marks obtained for Personal Interview had been worked out by the Directorate at 50 and thus the final marks obtained by the candidates is as indicated below:

Government of Meghalaya Education Department

No. EDN. 144/2005/Pt. II/42,

Dated Shillong, the 27th November, 2006

From:

Smti T.E. Dkhar, Special Officer to the Govt. of Meghalaya Education Department.

To,

Shainingstar Warjri, Kynshi, West Khasi Hills District,

Subject: Application under Right to Information Act, 2005.

Sir,

I am directed to refer to your application dated 21.8.2006 on the above subject and to furnish herewith the required information under Right to information Act, 2005 for favour of your information.

That basing from the result of the Interview by the Deputy Inspector of School to the Directorate of Elementary and Mass Education, the recommended candidates in order of merit are as follows:

1. Shri Shainingstar Warjri
2. Shri L. Lyngkhoi
3. Shri R.L. Lyngkhoi

However, it may be mentioned that after checking the details of marks obtained by the candidates, it was found that the merit list will not be as proposed by the D.I. of Schools. There were five members of the Personal Interview Board, each giving marks out of 150 thereby making the total 750. The Total Marks obtained for the Personal Interview was worked out at the Directorate out of 50 and thus the final marks obtained by the candidates is as indicated below:

Marks obtained out of 750 Marks obtained out of 50 Marks obtained for written
Total of columns 3 and 4 Rank

TL Nonglait 304 20 116 136 1st

Shainingstar Waijri 417 28 102 130 2nd

L. Lyngkhai 372 25 83 108 3rd

N. Syiemlieh 383 26 64 90

M. Lyngdoh 330 22 49 71

R. L. Lyngkhai 405 27 47 74

M. Jana 342 23 43 66

P. Lyngdoh 355 24 42 66

S. Rani 352 23 40 63

Yours faithfully, Sd/-

Special Officer to the Govt. of Meghalaya Education Department.

Memo No. EDN. 144/2005/Pt. II/42-A, Dated Shillong, the 27th November 2006.

Copy is forwarded to:

1. The Director of Elementary and Mass Education, with reference to the letter No. DEME/GA/WKH/Appt/172003/297, dated 28th Sept., 2006.

By order etc. Special Officer to the Govt. of Meghalaya Education Department.

4. Thus, on the basis of the "revised select list" prepared by the State Government, the Respondent No. 5 issued the impugned order appointing the Respondent No. 6 as Assistant Teacher of Kynshi Mawria Govt. L.P. School. According to the Petitioner, the manner in which marks were shown and calculated in the second part of the said letter dated 27.11.2006 is totally biased and even if the Table is properly scrutinized also, the Respondent No. 6 could not stand 1st as the marks obtained by him are still higher. It is contended by the Petitioner that the action of the State- Respondents is not appointing him on the basis of the merit list prepared by the Respondent No. 3 and in appointing the Respondent No. 6 is arbitrary, mala fides and illegal and this calls for the interference of this Court.

5. The State-Respondents contested the writ petition and filed their affidavit-in-opposition. The Registry note dated 22.3.2007 indicates that notice was issued to and has been duly received by the Respondent No. 6. None appeared for her. The case of the State-Respondents is that after the result sheet of the candidates was submitted by the Respondent No. 5 to the Respondent No. 3, the same was scrutinized at the Directorate level and the marks obtained by the respective candidates in the personal interview were worked out at, and recalculated out of 50 marks. The revised calculation of the marks obtained by each of the candidates was forwarded to the Administrative Department for approval. Based on the revised calculation of marks so made, the Respondent No. 6 secured 20 marks out of 50 marks in the personal interview while the Petitioner scored 28

marks out of 50 marks. The total marks secured by the Respondent No. 6 was 136 i.e. 20 + 116 and the total marks obtained by the Petitioner was 130 i.e. 28 + 102. Resultantly, the Respondent No. 6 was placed in the first position. According to the State-Respondents, when the total marks allotted for written examination was 150 marks, it would be irrational to allot 750 marks for the personal interview. Therefore, keeping the marks obtained by the candidates in the written examination intact, the marks obtained by the candidates in the personal interview was re-calculated against 50 marks allotted for the personal interview instead of 750 marks allotted earlier. The Respondent No. 6 secured 116 marks and the Petitioner obtained only 102 marks out of 150 marks in the written examination. The marks secured by the Respondent No. 6 for the personal interview was 304 marks out of 750 marks while the Petitioner obtained 417 marks, which, when worked out on the basis of 50 marks, would come to 20 and 28 respectively. It is affirmed by the State-respondents that substantially more marks are Plotted for the written examination vis-a-vis personal interview so that the element of subjectivity is reduced to the minimum while selecting the candidates for appointment to a post. It is, therefore, contended that there is no infirmity in the impugned action of the State-Respondents warranting the interference of this Court.

6. A comparative reading of the respective pleadings of the parties indicates that in the written examination, the Petitioner and the Respondent No. 6 obtained 102 marks and 116 marks respectively and that in the personal interview, the Petitioner obtained 417 marks whereas the Respondent No. 6 secured 304 marks. Therefore, the mark allotted for personal interview far exceeds the mark earmarked for the written examination. The State-Respondents have taken exception to this and, I think, rightly so. In *All India State Bank Officers' Federation and Others Vs. Union of India (UOI) and Others*, , the Apex Court observed:

There can be no rigid or hard-and-fast rule that the interview marks can only be 15 percent and no more. The percentage of marks for viva voce or interview which can be regarded as unreasonable will depend on the facts of each case. Decisions of this Court show that no rigid rule, relating to percentage of marks for interview of general universal application can or has been laid down. What the interview or viva voce marks should be may vary from service to service and the office or position or the purpose for which the interview is to be held. But the interview should not be so high as to give an authority unchecked scope to manipulate or act in an arbitrary manner while making selection.

7. It will also be profitable to refer to the case of *Inder Parkash Gupta Vs. State of Jammu and Kashmir and Others*, In that case, responds 3 to 10 were appointed as ad-hoc Lecturers in Medicine in the Medical Education Department by the State of Jammu and Kashmir without obtaining recommendations of the Jammu and Kashmir Public Service Commission. The Supreme Court in *J and J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc.*

etc., directed the State of Jammu and Kashmir to obtain recommendations of the Commission to make appointment in terms thereof Pursuant thereto, an advertisement was issued by the Commission for some posts of Lecturers. The notification further stipulated that the candidates who possessed any experience in the line, any distinction in sports/games, NCC activities should furnish certificate, along with the application, to that effect. The Commission interviewed the candidates in terms of Rule 51 of the J and K Public Service Commission (Conduct of Business and Procedure) Rules, 1980, which provided 100 marks for viva voce as against 40 marks for other criteria. Upon taking the viva voce and considering the materials on record, the Public Service Commission proposed a list of 16 candidates in which the Appellant was placed at SI. No. 13 while the Respondents who were placed at SI. No. 3 to 10 of the select list were appointed. Two posts were kept in abeyance as the matter regarding reservation was pending before the State Government. Questioning the validity of Rule 51 of the J and K Public Service Commission (Conduct of Business and Procedure) Rules, 1980 and consequently the selection and appointment of Respondents 3 to 10, the writ petition was filed by the Appellant, inter alia, contending therein that Respondents 3, 6 and 9 were not eligible to be considered for appointment to the said posts as they did not possess requisite experience of two years as Registrar/Tutor while Respondent 10 was overaged. Further contention of the Appellant was that his research work, experience and publications had not been taken into account by the Commission. In particular, his higher qualification of DM had not been given due weightage and that 100 marks earmarked for viva voce in Rule 51 is unreasonable and excessive. Though the High Court decided in favour of the Appellant, but it refused to set aside the entire selection on the premise that the same had been made long ago and one of the Respondents had been promoted and proceeded to dispose of the writ petition with certain directions. The Apex Court disposed of the appeal with some directions. The observations of the Apex Court therein relevant for our purpose are found at paragraphs 32, 33 and 34 of the judgment, which read thus:

32. In its judgment, the High Court did notice that in awarding marks for minimum qualification prescribed for the post, the Commission did not award any mark at all to some Respondents. It, therefore, for all intent and purpose had considered the candidature of the candidates only on the basis of 110 marks. If the marks awarded for sports/games and NCC activities are excluded as they are beyond the purview of Rule 8; and as it fixed 100 marks for viva voce test, a clear case of breach of the statutory rules had been made out. While the Appellant had been given minimum marks in the viva voce test, the other Respondents who did not fulfil the requisite criterion were awarded higher marks.

33. The High Court, in our opinion, was correct in holding that Rule 51 providing for 100 marks for viva voce test against 40 for other criteria is contrary to the law laid down by this Court.

(See Union of India v. N. Chandrasekharan, Indian Airlines/Corporation. v. Capt.

K.C. Shukla, Anzar Ahmed v. State of Bihar and Satpal v. State of Haryana).

34. It is true that for allocation of marks for viva voce test, no hard-and-fast rule of universal application which would meet the requirements of all cases can be laid down. However when allocation of such marks is made with an intention which is capable of being abused or misused in its exercise, it is liable to be struck down as ultra vires Article 14 of the Constitution of India.

(See: Jasvinder Singh v. State of J and K and Vijay Syal v. State of Punjab).

8. In the instant case, the allocation of 750 marks for personal interview by the Personal Interview Board at the District level has been rightly found by the Directorate of Elementary and Mass Education to be excessive and grossly disproportionate to the marks allocated for written examination. Allocation of such marks can be construed to be unreasonable/irrational and has given the Personal Interview Board unbridled scope to manipulate or act in an arbitrary manner while making the selection. For example, the Respondents No. 6 scored 116 marks in the written examination, but she secured only 304 marks in the viva voce. On the other hand, the Petitioner who obtained only 102 marks in the written examination was found to score 417 marks in the personal interview i.e. 113 marks more than the marks obtained by the Respondent No. 6 thereby knocking her out at the final tally. Some element of arbitrariness in the manner in which assessment were made by the Personal Interview Board cannot, therefore, be ruled out. It is also quite possible that the Petitioner could in fact perform far better than the Respondent No. 6, but then it is equally important that their respective performance ought to be assessed against a more objective test. Having said that, I am not able to persuade myself to uphold the subsequent actions taken by the State-Respondents in adopting a strange method of correcting the errors committed by the Personal Interview Board. Two wrongs do not make a right. If the State-Respondents found the allocation of 750 marks by the Personal Interview Board for the personal interview to be excessive, the solution does not lie in unilaterally adopting a revised method of assessing the performance of the Petitioner and the Respondent No. 6 without actually holding the personal interview. In other words, the course of action adopted by the State-Respondents in this case suffers from the vice of arbitrariness and unfairness and has affected the legitimate expectation of the Petitioner to be treated fairly. They could not have simply taken over the action of the Personal Interview Board: they ought to have returned the select list by pointing out the defects found therein and advised the Personal Interview Board to allocate 50 marks for the personal interview and thereafter conduct the personal interview of the Petitioner and other short-listed candidates afresh. Consequently, the Petitioner has made out a case for limited interference by this Court in the impugned actions of the State-Respondents.

9. The net effect of the foregoing discussion is that this writ petition partly succeeds. The impugned action of the State-Respondents in unilaterally revising the marks for personal interview from 750 marks to 50 marks and thereafter

awarding 20 marks and 28 marks to the Respondent 6 and the Petitioner respectively are hereby quashed. Likewise, the resultant impugned order dated 12.1.2007 appointing the Respondent No. 6 to the post of Assistant Teacher of Kynshi Mawria Govt. L.P. School is also quashed. The State-Respondents shall now direct constitution of a Review Personal Interview Board to hold personal interview of the short-listed candidates including the Petitioner within one month from the date of receipt of this judgment. The Review Personal Interview Board shall thereafter take necessary action thereon in accordance with law within one month thereafter. The entire exercise of the recruitment shall be completed by the State-Respondents within one month thereafter. However, on the facts and in the circumstances of this case, the parties are directed to bear their respective costs.