

(2004) 04 AHC CK 0153
In the Allahabad High Court
Case No : C.M.W.P. No. 40094 of 2003

Smt. Jyoti Rastogi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 30-04-2004

Acts Referred:

Official Secrets Act, 1923 — Section 3, 5
Uttar Pradesh Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Services of Teachers) Rules, 1978 — Rule 10

Citation : (2004) 3 AWC 2662

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : S.K. Shukla and Ashish Gupta, for the Appellant; Shadab Ali, B. B. Jauhari, Subodh Kumar and P.V. Jauhari, C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—The petitioner has prayed for quashing the entire selection proceedings, including select list prepared after interviews held on 6.7.2003 for appointment to the post of Assistant Lady Teacher in Other Backward Classes category in Sri Chandra Gupta Mahila Vidyalaya Junior High School, Roshanganj, District Shahjahanpur, and for restraining respondent Nos. 2 to 4 to issue appointment letter to respondent No. 5.

2. Brief facts giving rise to this writ petition are that Sri Chandra Gupta Mahila Vidyalaya Junior High School, Roshanganj, District Shahjahanpur is a recognised and aided Junior High School. The appointment and other service conditions of the teachers of the institution are regulated by the provisions of U. P. Recognised Basic Schools (Junior High Schools) Rules, 1978 (in short the Rules of 1978). Rule 4 provides that the minimum qualification for the post of Assistant Teacher shall be Intermediate examination by the Board of High School and Intermediate Education, U. P. or equivalent examination, (with Hindi and Teachers' Training Course recognized by the State Government or by the Board as such Hindustani

Teachers" Certificate, Junior Teaching Certificate, Basic Teaching Certificate or Certificate of Training). Rules 5 and 6 provide for eligibility and disqualification. Rule 7 provides for advertisement of vacancies to be made in daily newspaper giving particulars as name of the posts, minimum qualification and age limit and the last date of receipt of applications. Rule 9 provides for Selection Committee. For appointment of Assistant Teachers in the institution other than minority institution, the Management is required to constitute a Selection Committee. The Committee shall include the Manager, Head Master of the recognised school in which the appointment is to be made, and a nominee of the District Basic Education Officer. The procedure for selection is provided in Rule 10. The relevant provision of the procedure for selection provided in Rule 10 is quoted as below :

"10. Procedure of selection.--(1) The Selection Committee shall, after interviewing such candidates as appear before it on a date to be fixed by it in his behalf, of which due intimation shall be given to all the candidates, prepare a list containing as far as possible the names, in order of preference, of three candidates found to be suitable for appointment.

(2) The list prepared under Clause (1) shall also contain particulars regarding the date of birth, academic qualifications and teaching experience of the candidates and shall be signed by all the members of the Selection Committee.

(3) The Selection Committee shall, as soon as possible, forward such list, together with the minutes of the proceedings of the Committee to the management.

(4) The Manager shall within one week from the date of receipt of the papers under Clause (3) send a copy of the list to the District Basic Education Officer.

(5) (i) If the District Basic Education Officer is satisfied that :

(a) the candidates recommended by the Selection Committee possess the minimum qualifications prescribed for the post ;

(b) the procedure laid down in these rules for the selection of Headmaster or Assistant Teacher, as the case may be, has been followed, he shall accord approval to the recommendations made by the Selection Committee and shall communicate his decision to the management within two weeks from the date of receipt of the papers under Clause (4).

(ii) If the District Basic Education Officer is not satisfied as aforesaid, he shall return the papers to the management with the direction that the matter shall be reconsidered by the Selection Committee.

(iii) If the District Basic Education Officer does not communicate his decision within one month from the date of receipt of the papers under Clause (4), shall be deemed to have accorded approval to the recommendations made by the Selection Committee."

3. The Committee of Management of the school published advertisement in daily

news paper "Amar Ujala" on 18.5.2003 to fill up the backlog vacancies of Lady Assistant Teacher. One of the vacancies each was reserved for Other Backward Classes and Scheduled Caste respectively. The petitioner belongs to Other Backward Classes. Her educational qualification given in para 5 of the writ petition detailed as below :

Sl. No. Name of Examination Marks secured Percentage 1. High School 399 66.67% 2. Intermediate 321 64.2% 3. B.Sc. 869 64.4% 4. M.Sc. (Mathematics) 481 48.1% 5. B.Ed. Second in Teaching and First in Practical Teaching 6. Specialisation in Educational Computing.

4. The Selection Committee consisting of Sri Brijesh Chandra Saxena, Manager of the school, Smt. Sushila Rajpoot, Principal of the school and Sri Om Prakash Sharma, Nagar Shiksha Adhikari as departmental representative met and interviewed 20 eligible and qualified candidates on 6.7.2003. Out of these 20 candidates 4 were absent. The Committee decided to award 80 marks for educational qualifications, 20 marks for teaching qualifications and 30 marks for interview. The committee awarded 104 marks to the petitioner and 105 marks to Smt. Mona Rastogi respondent No. 5 and selected Smt. Mona Rastogi for the post and made recommendations to the District Basic Education Officer. Respondent No. 5 was appointed on 8.9.2003 and her appointment was approved on 18.9.2003 along with Smt. Sushila Bhartiya, in the Scheduled Caste category. The approval letter discloses the qualification of respondent No. 5 as B.A./B.Ed.

5. An impleadment application to implead Smt. Sushila Rastogi and Sri Brijesh Chandra Saxena, Head Mistress and Manager of the school was allowed on 9.9.2003. On the same date notices were issued, in pursuance of which, a counter-affidavit has been filed by Sri Ashwani Kumar Rastogi, husband and pairakar of respondent No. 5. Shri Shabad Ali, Principal of the school and Manager have also filed their counter-affidavits through their counsel Sri B. B. Jauhari and Sri Subodh Kumar.

6. Heard Sri S.K. Shukla for petitioner, Sri Shadab Ali for respondent No. 5, Sri B.B. Jauhari for respondent Nos. 4 and 6 and Sri Subodh Kumar for respondent No. 7 as well as learned standing counsel.

7. Counsel for petitioner has challenged the selection on the ground of mala fides and gross arbitrariness. According to him, the petitioner had better educational qualifications than the selected candidate Smt. Mona Rastogi. The petitioner is M.Sc./B.Ed. and has three first classes namely in High School, Intermediate and B.Sc. Second class in theory in B.Ed. and first class in practical and is specialised for educational computing. She has annexed the proceedings signed by the members and statement of marks awarded by the selection committed to each candidate.

8. The comparative statement of the marks awarded to Smt. Mona Rastogi and petitioner Kr. Jyoti Rastogi given by the Selection Committee are given as

belows :

Sl.No. Particulars Marks Awarded Marks Awarded 1. Name Smt. Mona Rastogi Kr. Jyoti Rastogi (Respondent No. 5) (Petitioner) 2. Date of Birth 27.9.1974 16.1.1973 3. High School 1st Class 15 1st Class 15 4. Intermediate 2nd Class 18 1st Class 25 5. Graduation 2nd Class 30 1st Class 40 6. Training Written 2nd Class 6 Written 2nd Class 6 Practical 1st Class 10 Practical 1st Class 10 Total 79 Total 96 7. Interview 1. Manager 10 1. Manager 0 2. Principal 10 2. Principal 0 3. Representative 06 3. Representative 08 Total 26 Total 08 Grand Total 105 Grand Total 104

9. It is contended that the Manager and the Principal of the school were biased and that they acted with a mala fide intention to select respondent No. 5. Both of the Manager and the Principal awarded 10 marks each to respondent No. 5, and both of them awarded zero to the petitioner, whereas the Nagar Shiksha Adhikari, representing the department awarded 6 marks to the respondent Nos. 5 and 8 marks to the petitioner. The Manager and the Principal deliberately gave 10 marks each to the respondent No. 5 and zero to petitioner, to increase the total marks to be awarded to respondent No. 5. Counsel for petitioner contends that the award of 30 marks for interview is not provided under the Rules and that the Committee was not guided by either the Rules or any Government Orders or guidelines by the department in fixing 30 marks out of 150 for interviews and thereby providing a scope for manipulation in the selections. According to him the selections are to be based only on the basis of educational qualification and that even if Rules of 1978 do not provide for any guidelines for interviews, allocation of 23.7% marks (30 out of 130) gives sufficient discretion to the Selection Committee to manipulate the selections. It is submitted that the respondent No. 5 had secured second division in intermediate and graduation and in order to increase her marks the Manager and Principal gave her maximum marks and both of them gave zero marks to the petitioner to give her advantage of one mark in selection. Counsel for petitioner submits that a candidate having M.Sc. and B.Ed. qualifications with three first classes to her credit cannot be given zero marks by the Manager and Principal and this was deliberately done violating her right under Articles 14 and 16 of the Constitution of India and thereby vitiating the entire selection proceedings.

10. Sri Subodh Kumar appearing for respondents submits that the method and process of awarding of marks during interviews under Rule 10 (i) of the Rules of 1978 has not been provided. It was open to the Selection Committee to adopt any procedure and criteria. The petitioner has not disclosed the source from which she secured proceedings of the Selection Committee and the statement of marks and that the petitioner is highly qualified for the post of Assistant Teacher in Junior High School. It is contended by him that the petitioner can seek appointment in any Intermediate Colleges or even Degree College. He has denied any bias or mala fides in selection. In the counter-affidavit of Smt. Sushila Rastogi, Principal of the College, it is stated in paragraph 9 that the candidates

were interviewed for their knowledge and that since the petitioner did not give any correct reply to any question, she was given zero marks.

11. Rule 10 (i) provides that the Selection Committee shall after including such candidates, appeared before which on a date to be fixed by which in his behalf prepared a list containing as far as possible the vacancies in order of preference of three candidates found to be suitable for appointment. Sub-rule (2) provides that the list shall also contain particulars regarding the date of birth, academic qualifications and teaching experience of the candidates and shall be signed by all the members of the Selection Committee. The rules are conspicuously silent about the allotment of marks for educational qualifications and interview. It is, therefore, open to the Selection Committee to adopt any method which is fair and reasonable for selecting eligible and qualified candidates.

12. The object of any process of selection for appointment is to secure best and the most suitable person for the job. The process must avoid patronage, favouritism, and bias. The selection should be based on merit, tested impartially and objectively, which is essential purpose of such selection. Where the Rules do not provide for the method of allocation of award of marks, a fair and reasonable procedure must be adopted. Where the selections are for the purpose of initial entry into service the allotment of marks for interview should be within reasonable proportion so as to make the selections fair and avoid arbitrariness. It was held by Supreme Court in *Lila Dhar Vs. State of Rajasthan and Others*, that in case of admission to a college the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life and greater weight has to be given to performance in the written examination. In *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, the allocation of 33.3% to the viva voce test was to be held beyond all the reasonable proportion and rendered the selection of the candidates as arbitrary. It was held that where the recruitment is made from younger candidates whose personalities are on the threshold of the development and who show signs of great promise, the selection must combine academic ability with personality promise and some weight has to be given to viva voce test. It must vary from service to service and according to the requirement of the service, the minimum qualification prescribed, the age group from which the selection is to be made, the body to which the task of holding the viva voce test is proposed to be entrusted and a host of other factors. Exaggerated weight should not be given to the interview for obvious oblique motives. The Constitution Bench of Supreme Court in *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, in the matter of selection to Haryana Civil Services (Executive) recommended 12.2% marks for viva voce for general category, 25% marks for Ex-Service Officers to be fair and reasonable. The Court observed that in case of initial entry into service the percentage of marks should not be so high so as to become determinative factor in the process of selection.

13. In *Jasvinder Singh and Others Vs. State of Jammu & Kashmir and Others*,

the observations in Ashok Kumar Yadav were explained in the appointments of Sub-Inspectors of Executive/Armed Police in State of Jammu and Kashmir, 25 marks allocated to viva voce compared to 100 allocated to written test worked out at 20% was found to be valid, in the circumstances where there was no specific allegations of mala fides and the marks obtained in interview did not vary to large scale. In Vijay Syal and Another Vs. State of Punjab and Others, the Supreme Court explained the Ashok Kumar Yadav's case and held that in the absence of allegations of mala fides and allocation of 10.4% marks for interview, in selections to the post of Assistant District Transport Officer, the selections did not suffer from any arbitrariness. In this case out of total number of 240 marks, 25 marks was allocated for interview and the Court did not find any justification to provide for award of marks for additional educational qualification.

14. In the present case, I find substance in the submission of counsel for petitioner that award of 30 marks out of 130, which comes to 23.07% for direct recruitment to the post of Assistant Teacher to Junior High School is on higher side, which is likely to attract arbitrariness in the selections. Having regard to the legal position laid down in Ashok Kumar Yadav's case followed by Hon'ble Supreme Court and subsequent judgments, the minimum training qualifications and the requirements for job of Assistant Teacher in Junior High School. I find that in such selections, provisions of 15% marks for interview will be reasonable. The selections must be made providing for 70% marks for educational qualifications, 15% for teaching qualifications, and 15% for interview. Such an allocation will reduce the chances of arbitrariness, mala fides and bias in the selection. The State respondents are directed to ensure that in all future selections this allocation of marks should be made the criteria for selections.

15. Coming to the present case, I find that the petitioner had secured maximum marks for educational qualification and that out of 100 she had secured 96 marks in education and training qualifications whereas respondent No. 5 had secured only 79 marks. It is not possible to believe that a candidate with such a good academic record will secure zero marks in interview from both the Principal and Manager whose qualifications are not known, whereas in the same interviews the departmental representative awarded 8 marks out of 10 to her. There are allegations of mala fides in the writ petition. The allocations of marks establish mala fides and arbitrariness and bias in favour of respondent No. 5. This is further fortified by the fact that respondent No. 5 was given 10 marks each which were the highest possible marks by both the Manager and the Principal to the respondent No. 5 so as to give her advantage of one marks over the petitioner, whereas the departmental nominee had given only 6 marks to her. The allegations of mala fides have been substantiated by the proceedings of the Selection Committee.

16. I do not find any force in the objection of Sri Subodh Kumar appearing for the Manager of the institution, that the proceedings of the Selection Committee and the statement of marks cannot be relied upon by the Court unless the

petitioner discloses the source from where she obtained confidential documents. The record of the selection proceedings cannot be said to be a confidential document with any statutory protection. The genuineness of the documents has not been denied by the respondents. They have only objected to the admission of the document in evidence unless the source is disclosed. The petitioner as a candidate to the selection has a right to information of the proceedings of selection. She could have prayed to the Court by applying for discovery and production of the documents. The fact that she obtained it from the source which she has not disclosed in the writ petition will make the document inadmissible in evidence. A document can be said to be confidential only if it has the protection of Official Secret's Act, 1923, or any other valid law and that such confidentiality is claimed by the respondents by making a proper affidavit. The document in the present case is not entitled to such a protection.

17. For the aforesaid reasons, I find that the entire selection proceedings are vitiated on account of mala fides by the Manager and the Principal of the college. They were apparently biased in favour of respondent No. 5 by awarding maximum marks to respondent No. 5 and zero to the petitioner. The allegations of mala fides and arbitrariness against the petitioner are established, and that the petitioner was denied equality in selections.

18. The writ petition is allowed. The entire selections for the post of Assistant Teachers in Other Backward Classes category, in the school in pursuance of advertisement dated 18.5.2003 are set aside and the consequential appointment and approval of respondent No. 5, for such appointment is also set aside. The respondent Nos. 2, 3 and 4 are directed to hold selections afresh, in accordance with procedure and the allocations of marks provided in this judgment. They will also examine whether the petitioner and respondent No. 5 hold minimum teachers' training qualifications for appointment to the post. The petitioner is held entitled to the cost of the writ petition from respondent Nos. 3, 4 and 5. The State respondents are directed to issue necessary guidelines for allocation of marks in interviews, in terms of the directions given above.