

(1996) 09 OHC CK 0018
In the Orissa High Court
Case No : O.J.C. No. 5274 of 1994

Smt. Urmila Beura

APPELLANT

Vs

Director, Higher Education and Others

RESPONDENT

Date of Decision : 11-09-1996

Acts Referred:

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

Citation : (1997) 2 OLR 263

Hon'ble Judges : P. Ray, J;D.M. Patnaik, J

Bench : Division Bench

Advocate : R.C. Patnaik, for the Appellant; R.K. Mohapatra and B. Routray, for the Respondent

Final Decision : Dismissed

Judgement

D. M. Patnaik, J.—The petitioner invokes the extraordinary jurisdiction of this Court under-Article 226 of the Constitution of India.to quash the appointment of opposite party No.4 to the post of Lecturer in Education in the Bhadrak Women's College. Petitioner's case is as follows :

2. The Principal-cum-Secretary of the Bhadrak Women's College invited applications to fill up the aforesaid post from among lady candidates, the last date for receiving applications being 16.8.1993 (vide Annexure-1). The petitioner and opposite party No.4 along with others applied for the post in due lime and faced interview on 19.12.1993 at 11.00 A.M. The Selection Committee placed opposite party No.4 in the first position and the petitioner in the second position. The selection and appointment of opposite party No.4 are challenged on two grounds, firstly, that she did not have the requisite qualification of Master's Degree in Education as on the last day of application and secondly, the appointment was because of extraneous consideration, such as, the political pressure and influence.

3. Mr. R. C. Patnaik, learned counsel for the petitioner, with regard to the first

point, submitted that the minimum eligibility criteria should be considered as on the last date of application and has elided on the cases of Principal, King George's Medical College, Lucknow Vs. Dr. Vishan Kumar Agarwal and Another, , Mrs. Rekha Chaturvedi (Smt) Vs. University of Rajasthan and Others, , Dr. N. V. Nair.v. Union of India (1993) 1 SLR 708, District Collector v. M. T. Sundari Devi (1990) 4 SLR 237 and U..P. Public Service Commission v. Alpana (1994) 2 SLR 59.

Countering this argument of Mr. Patnaik. Mr. B. Routray for opposite party No.2 and Mr. R. K, Mohapatra for opposite party No.4 though fairly conceded the legal proposition laid down by the Supreme Court in the above cases, yet, to reconcile the position Mr. Routray submitted that once it is found that opposite party No.4 acquired the requisite qualification by the date of interview, the same shall date back to the last date of receiving the applications. To support, his view, Mr. Routray has relied on several decisions, but mention may be made of one taking a similar view in the case of Sukhrarm Pal Singh v. U. P. Secondary Education Services Commission reported in 1993 LIC 555. In all the Supreme Court cases cited by Mr. Patnaik though this was the position with regard to the requisite qualifications as on the last date of application, yet in none of the decisions. Supreme Court held in the way it is submitted by Mr. Routray. Therefore, this contention is not accepted. The conclusion is irresistible that since opposite party No.4 as on the last date of application had not acquired Master's Degree in Education, she was ineligible for being considered for the interview and therefore, her appointment to the post is also bad.

However, the question remains, whether in the facts and circumstances of the present case, appointment of opposite party No.4 should be quashed. There are more than one reasons for which I am of the view that the appointment should not be quashed.

4. In the writ petition, mala fide has been attributed against opposite party No.2. the Principal, the Selection Committee (vide para-7) and in Annexures-5 and 6, paper cuttings, the allegation is directed against the President of the Governing Body. No material has been placed before the Court to prove mala fide against any one of them. That apart, the question of mala fide would arise if the Selection Committee or the person in authority appointed a person who was either unqualified, undesirable or was inferior in merit.

It may be emphasised that opposite party No.4 in her counter in para-6 gave a comparative chart indicating the career of herself and (that of" the petitioner. It is apparent that both were found possessing requisite academic qualifications. But a bare perusal would indicate that in Intermediate of Articles Examination opposite party No.4 was placed in Ist Division and the petitioner was placed in 3rd Division. In the Bachelor of Articles Examination, while opposite party No.4 got IInd Class Hons.with distinction, the petitioner got a mere 3rd class Hons. In the Master's Degree in Education, though both are placed in the Ist Division, opposite party No.4 stood at Sl.No.8 in the University. This position is not denied.

On going through the comparative chart of academic career of the petitioner and opposite party No.4, it can be said that opposite party No.4 had comparatively a better career than the petitioner. Therefore, here is a case where the Selection Committee has not overlooked the merit of the petitioner and if this comparative career has weighed in the mind of the Selection Committee, this Court should not interfere with the process of selection. This principle is well settled.

On this point, we may appropriately refer to the decision in the case of *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, . In that case challenge to the appointment was not on the ground of any statutory violation but only on the ground of absence of requisite qualification. The Constitutional Bench unanimously held that the Courts should normally be slow to interfere with the opinion of expressed by the experts particularly when there is no element of mala fides against the experts who constituted the body. It further held that in the matter of selection of candidates, the Selection Committee (in that case, the Board) does not perform the function of an executive authority so as to issue an executive order or that their act is a quasi-judicial one. Therefore, so far as selection/appointment made by the academic bodies is concerned, the High Courts should not apply the tests which are legitimate to be applied in the case of writ of certiorari. I have already held that the petitioner has failed to prove mala fide. The case also does not bring out any violation of statutory rules. Therefore, quashing of appointment of opposite party No.4 would not be proper

5. It can at best be said that the Selection Committee either knowingly or inadvertently committed something wrong. Even then power of the High Court in issuing a writ should not be exercised merely for the purpose of rectifying or correcting the action of the public authorities unless there is a flagrant violation of law and/or rules in force or there is any palpably illegal action culminating in a total miscarriage of justice. Reference may be made to the decision of this Court in the case, of *Dologobinda Khadai v. State of Orissa* AIR 1991 Ori 1983 and in the case of *Sudhir Kumar Sinha and Others Vs. Bangalore University and Another*, .

6. Admittedly, the post held by opposite-party No.4 has not been brought within the fold of gram-in-aid though the college is an aided college and therefore, the post is presently a management post. There is no bar for the management to keep any number of Lecturers in a particular subject except that they must be qualified in the appropriate subject as per the guidelines of the University Grants Commission, There is no doubt about the academic qualifications of opposite party No.4. Therefore, this is another reason for not quashing the appointment of opposite party No.4.

7. In all the cases cited by Mr. Patnaik with regard to absence of minimum eligibility criteria though the Apex Court held the selection/ appointment to be bad, yet did not set aside the appointment/selection on various equitable considerations. They are as follows :

In the case of Principal, King George Medical College (supra) though the Court held that the respondent was not eligible for being considered, yet did not set aside the selection for the reasons that the University authorities had not insisted on the mandatory requirement in respect of two other students similarly situated.

In the case of Rekha Chaturvedi (supra) though the Court held the selection to be bad, but did not set aside the selection in spite of illegality on the ground that the selected candidates have been working in their respective posts for about eight years.

In the U.P. Public Service Commission case (supra) though the Division Bench held the selection of the respondent to the post of Munsif was bad, yet did not set aside the selection on the ground that the respondent was holding the post by virtue of the interim order of High Court.

In the case of the District Collector (supra) the respondent was given a wrong appointment to the post but was not allowed to join the post when on scrutiny it was found that she was ineligible to hold the post. She moved the State Administrative Tribunal and the Tribunal directed the authorities to appoint her and consequently she worked in the post and while continuing in service, she acquired the requisite qualification. Though the Court held that she was ineligible for appointment because of absence of requisite qualification, but considering that she was in service since 1986 and acquired the qualification and that by then she was over-aged, the Court held that it would be unjust to deprive her from the post.

8. In the result, the writ application is disposed of accordingly, but there would be no order as to costs.

Pradipta Ray, J.—Although I agree that the writ petitioner in the present writ application is not entitled to succeed, I am unable to agree with the reasoning given by learned Brother D.M.Patnaik, J. for the same. My agreement with the conclusion is for different reasons.

2. To appreciate the questions involved in the present writ application some material dates are required to be noted. On August 1, 1993 the relevant advertisement was issued inviting applications for the posts of lecturers in Bhadrak Women's College, Bhadrak (hereinafter referred to as the "College") in different subjects as mentioned in the advertisement. It was stated that women candidate securing 55% marks in M.A. Examination might apply. August 16, 1993 was the last date for submitting applications. Opposite party No.4 appeared in M.Ed. Examination in July 1993. She submitted application on August 16, 1993 for the post of Lecturer in Education for which M.Ed.. qualification was essential. At the time of application she was awaiting the result of the M.Ed. Examination which was held in July, 1993. On November 8, 1993 result of the M.Ed. Examination was published and opp.party No.4 was placed in First Class. Interview was held on December 19, 1993. As the opp. party No.4 had already obtained Master Decree in Education, she was accepted as eligible for being

considered and upon an assessment of comparative merit selection was made. Opp. party No.4 was placed at the top of selected candidates. Appointment letter was issued by the President of the Governing Body on January 19, 1994. Some news items were published in News Papers on January 28, and 30, 1994 alleging favouritism and illegality in the selection. The writ petitioner sent representation to the authorities of the Education Department on February 25, 1994. Being unable to get redress of her grievances, the writ petitioner filed this writ petition on August 5, 1994.

3. The petitioner's main ground for challenging the impugned selection and appointment of opp. party No.4 is that she was ineligible to apply as on the last date for submission of application and accordingly she could not at all be lawfully considered. Learned counsel for the petitioner has cited several decisions in support of his contention that the requisite qualifications are to be judged as on the date, if any, specified in the advertisement or in absence of any specified date as on the last date of submission of applications.

4. From conspectus of decisions cited, it appears that such is the position of law enunciated by the Supreme Court in *Principal, King George Medical College v. Vishnu Kumar Agarwal* AIR 1934 SC 221, *Mrs. Rekha Chaturvedi (Smt) Vs. University of Rajasthan and Others*, , *Dr. N. V.Nair v. Union of India* (1993) 1 SLR 708,.

5. But this case has a special distinguishing feature which requires consideration. In the present case opp.party No.4 appeared at the M.Ed. Examination before last date for submission of applications. The result of the M.Ed. Examination was published before the date of interview. It is a settled position that after the results of an Examination are published the same relate back to the date of examination. Mr. Routray appearing on behalf of opp.party No.2 has placed a decision of Allahabad High Court reported in 1993 LabIC 555 (*Sukaram Pal Singh v. U. P. Secondary Education Services Commission*) to submit that in the facts of the present case opp.party No.4 should be held to have possessed the requisite academic qualification (M.Ed.) on the relevant date, i.e., she last date for submission of application.

6. In the present case relevant question to be determined is that in a case where a candidate had appeared at the examination before the relevant or material date for submission of application, but the result of the examination was published between the last date of application and the date of interview whether such a candidate could he said So have possessed the qualification and treated as eligible for being considered for selection.

7. Though no direct pronouncement of law on the said question has been placed before this Court the decision of the Supreme Court in *Ashok Kumar Sharma and Another Vs. Chander Shekher and Another*, throws some light on the said question. In *Ashok Kumar Sharma's* case the disputed candidates appeared for the B.E. (Civil) Examination before submission of applications and their results

were published on August 21, 1992. Interviews were commenced from August 24, 1992. Supreme Court referred to Rule 37 of the Public Service Commission Business Rules of the concerned State (Jammu and Kashmir) which is quoted below :

"Applications of candidates who have appeared in the examination, the passing of which may make them eligible to appear in an interview for recruitment to a post to be made otherwise than by a competitive examination, but results whereof have not been declared up to the date of making of the application, may be entertained provisionally, but no such candidate shall be permitted to take the interview if he is declared as having failed in the examination or if the results are not available on the date the viva-voce test is held."

8. After referring to the aforesaid Rule 37 Supreme Court in Ashok Kumar Sharma's case adopted the principle behind the said rule and held that the said disputed candidates were duly qualified on the date of interview and upheld selection of those disputed candidate. Although in several other decisions the Supreme Court unequivocally laid down that the candidates selected must be qualified as on the last date for making applications for the post in question or on the date specifically mentioned in the advertisement/ notification for the purpose and that the qualifications required by the candidates after the said date should not be taken into consideration, yet, in Ashok Kumar Sharma's case Supreme Court considered the disputed candidates as eligible because of distinguishing factual feature that the candidates therein appeared at the relevant examination before the material date and were declared successful between the last date of application and the date of interview. Decision in Ashok Kumar Sharma's case suggests in favour of the proposition that where a candidate had appeared at the examination before the last date of making application or the relevant prescribed date, if any, and the result of such examination was published before the date of interview, such candidate should be regarded to have possessed the qualification on the relevant date because his success related back to the date of examination.

9. Such a view appears to be quite reasonable inasmuch as it would not lead to any arbitrariness or discrimination but will serve public interest and also the interest of the candidates who were awaiting the result of already concluded examination on the relevant date. The students have no control over publication of the result and as such deserving candidates who have already appeared at the examination should not be denied opportunity of offering themselves as candidates in as much as after publication of result they would be regarded to have possessed the qualification from a date prior to the relevant date and said acquisition of qualification should not be regarded as subsequent acquisition. Such view is also harmonious with the other settled principle that result of an examination relates back to the date of the examination. This will permit only a definite class of persons to apply and make them eligible for consideration leaving no scope for any arbitrary or discriminatory approach. Once the said principle is laid down as a general proposition of law for the purpose of

consideration of eligibility, persons belonging to such class will have the opportunity to apply unless the advertisement or notice expressly prohibits entertainment of applications from the said class of persons. This view does not militate against the safeguard laid down by the Supreme Court in several decisions including the decision in the case of *Rekha Charurwedi v. University of Rajasthan and Ors.* (supra) and at the same time serves public interest by enabling consideration to be broad based and more competitive as laid down in *Ashok Kumar Sharma's case* (supra).

10. Accordingly, it is held that the O.P.No.4 was to be treated to have possessed the requisite qualification on the relevant date for being considered for selection to the concerned post. O.P.No.4 secured first Class in M.Ed. Examination and satisfied the criteria by securing more than 55% marks in the M.Ed. Examination. In view of aforesaid findings, it is not at all necessary to enter into other allegations of mala fide and/or arbitrariness as alleged in the writ petition as the said allegations are mainly founded upon basic precept that opp.party No.4 was ineligible.

11. The Supreme Court again and again pointed out that comparative assessment of merit is the task of the expert selection body and the Court should not meddle with such decision of an expert body unless the decision is ex facie arbitrary, discriminatory or perverse. If the Selection Committee adopts uniform and rational standards and criteria in assessing comparative merit the Courts should not sit in appeal over such decision. Upon consideration of the material on record it cannot be held that the determination of the merit was in any way or manner without any basis or arbitrary or discriminatory.

12. Learned Brother D. M. Patnaik J. has taken the view that even if the opp.party No. 1 was ineligible for being considered in the interview this Court should not interfere with the selection made by the Selection Committee. I am unable to persuade myself to agree with the said view. If it were found or held that opp.party No.4 was ineligible for being considered, then the Selection Committee had no authority or competence to consider an ineligible candidate. Selection of an ineligible candidate is beyond jurisdiction and as such void. If the Court permits selection of ineligible candidates the same would amount to encouragement to arbitrary action and violation of the guarantee of equal opportunity as enshrined in Articles 14 and 16 (where it is applicable) of the Constitution:

13. Hon"ble D. M.Patnaik, J. has also made some observations suggesting that because opp.party No.4 was continuing in the post for quite some time, her appointment should not be quashed or set aside. He has referred to the orders passed by the Supreme Court in several decisions. I am unable to agree with the said observation. Firstly orders of the Supreme Court in those decisions in the peculiar facts and circumstances of those particular cases do not amount to enunciation of any general proposition of law. Secondly, in the present case the writ petitioner cannot be held to be responsible for any delay. She complained

and sent representations from the beginning. She moved this Court promptly as her representation was not considered. A writ petitioner should not be denied relief because of the inability of the Court to dispose of the writ petition expeditiously. When a petitioner has acted with reasonable prompt, he should not be denied justice on the ground of delay over which he has no control.

14. As I have already held that the opp.party No.4 was eligible for being considered for selection, I agree with the conclusion arrived at by Hon''ble D. M. Patnaik, J. that this Court should not interfere with the impugned appointment of opp.party No.4.