

(2018) 05 GAU CK 0075
In the Gauhati High Court
Case No : WP(C) 6428 of 2015

Smti. Chandana Deka

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 14-05-2018

Acts Referred:

Citation : (2018) 05 GAU CK 0075

Hon'ble Judges : ACHINTYA MALLA BUJOR BARUA, J

Bench : Single Bench

Advocate : J Patowari

Final Decision : Disposed Off

Judgement

1. Heard Mr. J. Patowary, learned counsel for the petitioner, Mr. P. Borah, learned counsel appearing for the respondent Nos. 3, 4 and 5 and Mr.

N.J. Khataniar, learned Standing Counsel for the Higher Education Department.

2. The petitioner, who claims to have a good academic record, was serving as an Assistant Professor in the Department of Sanskrit in the Gurucharan

College, Silchar. Prior to that, she was serving as an Ad-Hoc lecturer in the Department of Sanskrit at MNC Balika Mahavidyalaya, Nalbari.

3. An advertisement dated 04.07.2015 was issued by the Principal-cum-Secretary of Nalbari College, which was published in the daily English

newspaper namely "The Assam Tribune" dated 04.07.2015, wherein applications were invited from eligible candidates, amongst others, for filling

up the vacant sanctioned post of Assistant Professor in Sanskrit in Nalbari College, Assam. As per the advertisement, the last date of receipt of

applications was fixed fifteen days after the date of publication of the advertisement. The required qualification etc was also prescribed in the

advertisement itself. According to the petitioner, on the date when the advertisement was issued, the Office Memorandum dated 25.06.2012 laying down the guidelines for selection of Assistant Professor in provincialised colleges was in force. The said Office Memorandum stipulates the procedure of adding the percentage of marks secured by a candidate in HSLC.HS/PU, Degree, PG, B.Ed/M.Ed, Ph.D etc, so as to arrive at the total marks that a candidate may secure.

4. The petitioner accordingly offered her candidature against the aforesaid advertisement and she was issued a call letter bearing No.

NO/NC/Interview/Call Letter/Sanskrit/2015/415 dated 19.09.2015 requiring her to appear in an interview, which was scheduled to have been held on

04.10.2015. The petitioner accordingly appeared in the interview and could learn that the Selection Committee also awarding certain marks for the oral

interview that the candidates were subjected. The petitioner was aggrieved inasmuch as the Office Memorandum dated 25.06.2012, which held the

field when the advertisement was issued, did not provide for holding any interview and as such according to the petitioner, the procedure adopted by

the college authorities in holding the interview was de-hors the procedure prescribed by the Office Memorandum dated 25.06.2012. In the aforesaid

premises, this writ petition has been preferred for setting aside the selection that was held on 04.10.2015 with a further direction to hold a fresh

selection strictly as per the procedure laid down in the Office Memorandum dated 25.06.2012.

5. The college authorities on the other hand, filed an affidavit in opposition dated 25.01.2016, wherein in paragraph-6, a stand has been taken that they

are bound by the circulars issued by the Government from time to time and on the date when the interview was held on 04.10.2015, the Office

Memorandum dated 14.08.2015 was holding the field. According to the respondent college authorities, the Office Memorandum of 14.08.2015 did

provide for the procedure of holding an interview for 20 marks and accordingly the respondent authorities seek to justify the holding of the interview

on 04.10.2015.

6. The State respondents through the Director of Higher Education, Assam also filed an affidavit dated 14.03.2018, wherein in paragraph-6, a stand

had been taken that as on 04.10.2015, when the interview was held, the Office

Memorandum dated 14.08.2015 was in force. But in paragraph-5, another stand had been taken by the Director of Higher Education that in the selection process that was held on 04.10.2015 including the interview, one Ms Barnali Borthakur was selected as the first candidate in order of merit.

7. But, it has also been taken note of that the said statement in paragraph-5 of the Director was merely on the basis of the record that were available with the Director, but there is nothing to indicate that the result of the interview was published on any occasion indicating that Ms. Barnali Borthakur was the first candidate in order of merit.

8. In the aforesaid factual circumstance, Mr. J. Patowary, learned counsel for the petitioner relies upon the decision of the Supreme Court rendered in

Madan Mohan Sharma and another vs- State of Rajasthan and others, reported in (2008) 3 SCC 724. In paragraph-11 of the said judgment, it has been held thus:-

“Once the advertisement had been issued on the basis of the circular obtaining at that particular time, the effect would be that the selection process should continue on the basis of the criteria which were laid down and it cannot be on the basis of the criteria which has been made subsequently.”

9. In the said case before the Supreme Court, the issue was that at the time when the advertisement was issued, an earlier circular was in force prescribing for a particular procedure, whereas at the time of interview, the subsequent circular came in force, which provided for a different procedure.

10. In the view of this Court, the ratio laid down by the Supreme Court in Madan Mohan Sharma (supra) would be squarely applicable in the facts of

this case also inasmuch as, on the date on which the advertisement was issued on 04.07.2015, the Office Memorandum dated 25.06.2012 was in

force, whereas on the date when the interview was held on 04.10.2015, the subsequent Office Memorandum dated 14.08.2015 had in the meantime

came into force. Accordingly, this Court is of the considered view that the selection process pursuant to the advertisement dated 04.07.2015 would be

covered by the procedure prescribed in the Office Memorandum dated 25.06.2012 and not the subsequent Office Memorandum dated 14.08.2015. As

the Office Memorandum of 25.06.2012 did not provide for holding any interview, therefore, the act of the respondent college authorities in holding an

interview on 14.10.2015 and awarding 20 marks for the purpose would be without jurisdiction and de-hors the provision of the Office Memorandum of 25.06.2012.

11. Mr. P. Bora, learned counsel appearing for the respondent college authorities makes a submission that the petitioner came to know about the

interview on the day she received the call letter and having participated in the interview and on being unsuccessful, now the petitioner cannot turn

around and assail the same.

12. The said submission of Mr. Bora, learned counsel for the respondent college authorities would have to be looked from the factual background of

this case inasmuch as, on the date when the present writ petition was filed i.e. on 13.10.2015, the result of the selection process undertaken by the

college authorities was not published and therefore, it cannot be construed that the petitioner had filed this writ petition upon being unsuccessful.

Although the Director of Higher Education in his affidavit had taken a stand that one Ms Barnali Borthakur was the selected candidate, but the same

is on the basis of the unpublished result of the selection process, which the Director came to know based upon the record that was transmitted by the

college authorities for his consideration. But the same by itself cannot be construed to be a situation, where it can be held that the results of the

selection process was published and the petitioner was aware that she was unsuccessful and thereupon she had filed the present writ petition. Further,

merely because the call letter requires the petitioner to appear in an interview to be held on 14.10.2015, but the same by itself was not an indication

that 20 marks for interview will be added for the purpose of the selection.

13. Mr. J. Patowary, learned counsel for the petitioner also relies upon a decision of this Court rendered in *Deboranjan Saikia and others vs- State*

of Assam and others, reported in (2005) 3 GLR 659, wherein in paragraph-10, this Court upon taking into consideration the law laid down by the

Supreme Court in *Om Prakash Shukla vs-Akhilesh Kumar Shukla and others*, reported in 1986 (Supp) SCC 285 and *Madan Lal and others vs-*

State of J&K and others, reported in (1995) 3 SCC 486 had arrived at a finding that the law laid down in *Om Prakash Shukla (supra)* and *Madan Lal*

(*supra*) are not inflexible and there are certain exception to the said principle laid down therein. One of the principles carved out by this Court was that

in a situation where the selection had been held in a manner that was not prescribed by the statute, the principle laid down in Om Prakash Shukla

(supra) and Madan Lal (supra) would not be applicable. It is to be stated that the principle laid down in Om Prakash Shukla (supra) and Madan Lal

(supra) was that in the event an incumbent voluntarily participates in a selection process and was unsuccessful, cannot subsequently turn around and

assail that the selection process was held in an illegal manner.

14. Mr. Patowary, learned counsel for the petitioner also relies upon the decision of the Supreme Court rendered in State of Rajasthan â?vs- R.

Dayal and others, reported in (1997) 10 SCC 419, wherein in paragraph-8, it has been held that the vacancies that had occurred prior to the

amendment of the Rules, would be covered by the original Rules and not be the amended Rules.

15. From the said point of view also, the procedure laid down in the Office Memorandum dated 25.06.2012 would be applicable in the instant case and

not the subsequent Office Memorandum dated 14.08.2015.

16. In view of the above, this Court is of the view that the procedure adopted by the respondent authorities in following the Office Memorandum of

14.08.2015 for holding the selection process pursuant to the advertisement dated 04.07.2015 would be vitiated inasmuch as on the date of the

advertisement i.e. 04.07.2015, the earlier Office Memorandum dated 25.06.2012 was in force.

17. Further, it has also to be taken note of that as per the affidavit filed by the Director of Higher Education; the vacancies that were advertised in the

advertisement of 04.07.2015 were given the permission to be advertised on 25.06.2015. Therefore, at least on the said date, the vacancies had already

arisen.

17. In view of the above, the interview as well as the selection process held on 04.10.2015 is accordingly interfered and set aside. The respondent

authorities may now proceed with the selection process pursuant to the advertisement of 04.07.2015 as per law. In terms of the above, the writ

petition stands disposed of.