

(2018) 06 GAU CK 0082
In the Gauhati High Court
Case No : Writ Prtition (C) No. 6205 of 2014

Smti Paramita Acharjee

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 15-06-2018

Acts Referred:

Assam College Employees (Provincialization) Rules, 2010 — Rule 7(A)

Citation : (2018) 06 GAU CK 0082

Hon'ble Judges : MICHAEL ZOTHANKHUMA, J

Bench : Single Bench

Advocate : A Dhar, AD Choudhury, K Gogoi, DM Nath

Final Decision : Disposed Off

Judgement

Â Heard Mr. A Dhar, learned counsel for the petitioner. Also heard Mr. A D Choudhury, learned counsel for the respondent Nos. 3 and 4. Mr. K

Gogoi, learned counsel appears for the respondent Nos. 1 and 2 and Mr. DM Nath, learned counsel appears for the respondent No.5.

The petitioner has submitted an application along with her bio-data for filling up the vacant post of Assistant Professor in the Bengali department in

Radha Madhab College, Silchar, in pursuant to an Advertisement dated 22.06.2014/ 24.06.2014, issued by the respondent No.4. The petitioner was

however, not called for the interview. Being aggrieved, the petitioner has filed the present writ petition directing the respondent Nos. 3 and 4 to

consider the petitioner for appointment to the post of Assistant Professor in Bengali.

The petitionerâ??s counsel submits that the petitioner came to learn that her application was rejected by the Selection Committee when the

respondent No-3 submitted their affidavit-in-opposition. In the affidavit-in-

opposition, the consolidated statement of marks of the candidates, who had applied for the post of Assistant Professor in Bengali was shown and against the petitioner's column, it was stated that the petitioner's application had been rejected for not giving her signature in the bio-data.

The petitioner's counsel submits that the Advertisement dated 22.06.2014/24.06.214 nowhere provides that a candidate is to give her signature in

the biodata. He further submits that the petitioner in any event had given her signature in the application form and the bio-data was only an annexure to the application form.

The petitioner's counsel submits that the rejection of the petitioner's application being arbitrary and unfair, the Selection Committee's recommendation dated 19.11.2014 should be set aside.

Mr. AD Choudhury, learned counsel for the respondent Nos. 3 and 4 submits that the selection process conducted by the Selection Committee was

fair and transparent. He submits that there was no malafide involved in the rejection of the petitioner's application. He also submits that the entire

writ petition is based upon the legitimate expectation of the petitioner for appointment to the post of Assistant Professor in Bengali and accordingly,

the petitioner would have to satisfy the Court that the decision taken by the authorities was a gross abuse of power and not taken in public interest.

He also submits that the Selection Committee's recommendation of the respondent No. 5 for the vacant post of Assistant Professor of Bengali

has not been challenged by the petitioner and as such, the petitioner cannot be allowed to make a challenge to any consequential action to be taken by

the authorities. In support of his submissions, the learned counsel for the respondent Nos. 3 and 4 has relied upon the Judgments of the Apex Court in

the case of Chief General Manager,

Calcutta Telephones District, Bharat Sanchar Nigam Ltd. & Ors. vs- Surendra Nath Pandey & Ors., reported in (2011) 15 SCC 81, Heinz India

Private Ltd vs- State of Uttar Pradesh & Ors, reported in (2012) 5 SCC 443 and in the case of Sethi Auto Service Station & anr. vs- Delhi

Development Authority & Ors., reported in (2009) 1 SCC 180.

In the case of Chief General Manager, Calcutta Telephones District, Bharat Sanchar Nigam Ltd. & Ors. (supra), the Apex Court has held at

paragraph-33 as follows:

¶33. As noticed earlier, in the present case, the appellants had adopted a very reasonable and a fair approach. A bonafide enquiry into the fact

situation was conducted by a Committee of high ranking officers of the department. In our opinion, the High Court was wholly unjustified in

interfering with the decision taken by the appellants in the peculiar circumstances of the case. It is settled beyond cavil that the decisions taken by the

competent authority could be corrected provided it is established that the decision is so perverse that no sensible person, who had applied his mind to

the question to be decided could have arrived at it. The aforesaid principle is based on the ground of irrationality and is known as *Wednesbury*

Principle.

The Court can interfere with a decision, if it is so absurd that no reasonable authority could have taken such a decision. In our opinion, the procedure

adopted by the appellants can not be said to be suffering from any such irrationality or unreasonableness, which would have enabled the High Court to

interfere with the decision.

In the case of *Heinz India Private Ltd vs- State of Uttar Pradesh & Ors* (supra), the Apex Court has held at paragraph-60 as follows:

¶60. The power of judicial review is neither unqualified nor unlimited. It has its own limitations. The scope and extent of the power that is so very

often invoked has been the subject-matter of several judicial pronouncements within and outside the country. When one talks of 'judicial review' one is

instantly reminded of the classic and oft quoted passage from *Council of Civil Service Unions (CCSU) v. Minister for the Civil Service* [1984] 3 All

ER 935, where Lord Diplock summed up the permissible grounds of judicial review thus:

Judicial Review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about,

one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I

would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'.

By 'illegality' as a ground for judicial review I mean that the decision-maker must

understand correctly the law that regulates his decision-making

power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons,

the judges, by whom the judicial power of the State is exercisable.

By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness'. It applies to a decision which is so outrageous

in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have

arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer

or else there would be something badly wrong with our judicial system... ..

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural

fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by

an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred,

even where such failure does not involve any denial of natural justice.

In the case of *Sethi Auto Service Station & anr. vs- Delhi Development Authority & Ors.* (supra), the Apex Court has held at paragraph-32 as

follows:

33. An examination of the afore-noted few decisions shows that the golden thread running through all these decisions is that a case for

applicability of the doctrine of legitimate expectation, now accepted in the subjective sense as part of our legal jurisprudence, arises when an

administrative body by reason of a representation or by past practice or conduct aroused an expectation which it would be within its powers to fulfill

unless some overriding public interest comes in the way. However, a person who bases his claim on the doctrine of legitimate expectation, in the first

instance, has to satisfy that he has relied on the said representation and the denial of that expectation has worked to his detriment. The Court could

interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of

natural justice and not taken in public interest. But a claim based on mere legitimate expectation without anything more cannot ipso facto give a right

to invoke these principles??.

The counsel for the respondent No. 5 submits that the selection of the respondent No. 5 by the Selection Committee has not been challenged by the petitioner and accordingly the writ petition has to be dismissed. He submits that the respondent No. 5 is serving in the college without any salary and

he is also 39 years of age. He also submits that there was no illegality involved in the appointment of respondent No.5. The counsel for the

respondent No.5 also submits that if this Court allows the writ petition, respondent No.5 would be overaged to take part in the selection process.

Mr. K Gogoi, learned counsel for the respondent Nos. 1 and 2 also submits that the petitioner not having challenged the Selection Committee's

recommendation, any consequential action to be taken, cannot be challenged by the petitioner as the recommendation by the Selection Committee is a

mandatory requirement under Rule- 7 (A) of the Assam College Employees (Provincialization) Rules, 2010. I have heard the counsels for the parties.

The basic issue involved is with regard to whether the absence of the petitioner's signature in the bio-data would amount to the petitioner's

application being an incomplete application and whether the action of the Selection Committee in rejecting the petitioner's application was

arbitrary.

The advertisement calling for candidates for filling up the post of Assistant Professor in Bengali, states as follows:

Applications are invited from the candidates having UGC norms with NET/ SLET/SET/M.Phil degree on or before 10.07.2009/ Ph.D.degree as

per UGC Regulation, 2009 for a post of Assistant Professor in Bengali (Unreserved) in UGC scale of pay Rs.15600-39100+ AGP 6000. Attested

copies of testimonials (in triplicate) from HSLC onwards and a Bank Draft of Rs.1,000/- drawn in favour of Principal/ Secretary, Radhamadhab

College, Silchar should reach the undersigned within 10(ten) days from the date of publication of this advertisement. The age of the candidate should

not exceed 38 years as on 01.01.2014. Incomplete and applications received after due date will be rejected at the time of scrutiny and no call letter

will be issued to such candidates.

A bare perusal of the contents of the advertisement shows that there is no requirement of a candidate to sign the bio-data. It only talks of incomplete

applications. The petitioner herein had submitted her application for, wherein she had given her signature. Further, the bio-data submitted by the petitioner along with her application form, was annexed with the application. The Selection Committee have also made a consolidated statement of marks of the candidates for the post of Assistant Professor in Bengali. The consolidated statement of marks shows that 20 candidates had applied for the post and the names of all the 20 candidates are reflected. In the consolidated statement of marks, the marks obtained by all the 20 candidates based on their academic records, research performance and teaching experience shows that the petitioner herein had secured the highest marks of 58.99, while the selected candidate, who is the respondent No. 5 secured 54.90 marks. Thus, the very presence of the petitioner in the consolidated statement of marks secured by her shows that there was no confusion or problem with the petitioner's biodata which had been submitted by the petitioner. It is not the case of the college respondents that the petitioner's bio-data was incomplete except to the extent that she did not give her signature in the said bio-data. It is not understood as to how the absence of the petitioner's signature from the bio-data could have caused any prejudice, illegality or arbitrariness to the selection process. The petitioner's bio-data having been accepted by the college respondents to be the bio-data of the petition, as the same is reflected in the consolidated statement of marks of the candidates, it is not understood as to how the absence of the petitioner's signature in the bio-data can be a ground for rejection.

A perusal of the consolidated statement of marks of the 20 candidates, who applied for the post of Assistant Professor in Bengali shows that 9 out of 20 candidates had been rejected including the petitioner. The rejection of the other candidates was on the ground that no mark sheets of HSLC have found with the application. Also the candidate was over-aged. There was no submission of the formal application and rejection for nonsubmission of bio-data etc. The other ground taken for rejection of the other applications was that the applications had not been made through proper channel. In the petitioner's case, the only ground for rejection is that the petitioner did not sign the bio-data, though the application form of the petitioner contained the petitioner's signature.

On considering the issue, this Court finds that there being no condition put forth

in the advertisement requiring signature of a candidate in the bio-data or marks sheets and testimonials etc, this Court finds the action of the respondents in rejecting the petitioner's application as arbitrary.

The ultimate aim for having a selection process for appointing an Assistant Professor is to teach the future generation. In this context, the object of the selection process would have to be to get the most meritorious candidates. The act of appointing an Assistant Professor being to teach the future generation, the overriding public interest that has to be taken note off is that the most meritorious candidate should be selected. As this Court finds that the action of the respondent Nos. 3 and 4 in rejecting the petitioner's application is found to be arbitrary and not justified, the rejection of the petitioner's application is accordingly set aside. The respondent Nos. 3 and 4 shall consider the case of the petitioner along with the other candidates for the post of Assistant Professor of Bengali along with other candidates whose applications have not been rejected, as reflected in the consolidated statement of marks of the candidates, who applied for the post of Assistant Professor in Bengali (Annexure-E) of the affidavit-in-opposition filed by the respondent Nos. 3 and 4. It is also made clear that in the event any of the candidate who were eligible to be considered for appointment on the basis of the advertisement dated 22.06.2014 and 24.06.2014 for the post of Assistant Professor of Bengali Department in Radha Madhab College, Silchar, becoming over-aged, the respondent Nos. 1 to 4 shall condone the over-age of the said candidate (s).

Writ petition is accordingly disposed off.