

(2008) 09 CAL CK 0023
In the Calcutta High Court
Case No : Writ Petition No. 16366 (W) of 2007

Sri Baidya Nath Saha

APPELLANT

Vs

Visva Bharati Santiniketan, Birbhum and Others

RESPONDENT

Date of Decision : 08-09-2008

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Right to Information Act, 2005 — Section 19(1)

Citation : (2008) 09 CAL CK 0023

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Tapabrata Chakraborty and Mr. Debasis Nandi, for the Appellant; P.S. Bose and Mr. Sankar Kumar Samanta for Respondents, Mr. Anil Kumar Gupta for the University Grants Commission, for the Respondent

Judgement

Soumitra Pal, J.—In the writ petition the petitioner has challenged the intimation dated 11th November, 2006 issued by the authorities of Visva Bharati intimating that the post of Assistant Director (Adult & Continuing Education & Extension) would be readvertised as the selected candidate did not join the post.

2. The facts of the case are that pursuant to an advertisement, being Advertisement No. 1/2003 issued by the authorities of the Visva Bharati, inviting applications for the post of Assistant Director (Adult & Continuing Education & Extension) reserved for scheduled caste, the petitioner a member of the Scheduled Caste Community and an assistant teacher, had applied for the post. According to him, as he fulfilled the eligibility criteria, on 11th June, 2003 he was called for the interview. Thereafter, as the results were not published, the petitioner brought it to the notice of the Scheduled Castes/Tribes, Backward Classes and Minorities Association (for short "the Association"). The Association took up the cause of the petitioner. On 28th August, 2005 a representation was furnished to the Vice-Chancellor, Visva Bharati, respondent No.2 requesting him to intimate why the post was yet to be filled up. In response, by a memo dated 10th September, 2005 the Deputy Registrar of the Visva Bharati, the respondent

No.4, intimated the Secretary of the Association that as clarifications were awaited from the University Grants Commission, the appointment letter could not be issued. Subsequently as the first empanelled candidate did not join and no steps were taken to appoint the next candidate on the panel, on 18th September, 2006 the Working President of the Association issued a representation to the respondent No.2 highlighting the fact. In reply the respondent No.4 intimated the President of the Association that as only one person was empanelled for the said post by the Selection Committee and as the selected candidate did not join, the post would be readvertised. Since the selection process was conducted in an allegedly clandestine manner, as results were not disclosed and no reasons were forthcoming as to why the second person on the panel was not appointed when the first person had refused to join, the petitioner on 2nd March, 2007 made a representation and raised certain queries before the Public Information Officer, Visva Bharati under the Right to Information Act, 2005 (for short "the Act"). On 9th April, 2007 the Central Information Officer intimated that in the interview no marks were awarded and considering all aspects one recommendation was made by the selection committee and decision was taken to empanel only one candidate. Being aggrieved, on 4th May, 2007 an appeal u/s 19(1) of the Act was filed. Thereafter, on 20th May, 2007 the Association by a letter to the respondent No.2 requested not to readvertise and to consider be candidature of the candidates already interviewed. However, in the month of May, 2007, the respondent No.2 published an advertisement seeking applications for different posts including the post of Assistant Director (Adult and Continuing Education and Extension). Being aggrieved by the publication of such advertisement this writ petition was filed.

3. The matter was moved on 7th August, 2007, when after hearing the learned advocates for the parties directions were issued for filing of affidavits and an interim order was passed directing the Visva Bharati not to issue any interview letter in respect of the post of Assistant Director without the leave of the Court. Affidavits have since been exchanged and are on record.

4. Learned advocate for the petitioner submitted that it appeared from the resolution dated 5th August, 2006 that there was a panel and the Committee had recommended Ajit Kumar Mondal, an employee of Visva Bharati. However as he declined to take up the assignment and since there was a panel, according to him the authorities ought to have selected the petitioner on the basis of his qualifications and experience which others were evidently lacking. Submission was Ajit Kumar Mondal, the selectee, lacking in essential qualifications, was selected in breach of the norms. Referring to the essential qualifications it was submitted that as none of the candidates were having Ph.d. degrees and as Ajit Kumar Mondal and Subrata Biswas were having low second class master's degree and did not have first class Bachelor's degree, the petitioner having first class master's degree and second class Bachelors degree was the only suitable candidate. Even assuming Ajit Kumar Mondal was having the qualification, since he did not take up the assignment, the petitioner, who was qualified and

admittedly having the experience, ought to have been recommended and selected and placed on the panel in order of preference as evident from the resolution dated 5th August, 2006. Since the evaluation procedure has not been spelt out in the affidavit in opposition and as in the interview admittedly no marks were allotted, prayer is to issue directions for appointing the petitioner since if fresh selection is undertaken on the basis of readvertisement, the petitioner would suffer irreparably as qualifications for the said post have been changed and the petitioner has crossed the age limit. Learned advocate for the petitioner relied on the following judgments in support of his contentions:

1. Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others,
2. Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another,
3. Bhagwan Parshu Ram College and Another Vs. State of Haryana and Others,
4. Jitendra Kumar & Ors. v. State of Haryana & Anr., 2007(8) SCC 480
5. Harish Chandra Sarkar v. State of West Bengal & Anr., 2007(1) CLJ Cal 108.

5. Learned senior advocate appearing on behalf of the Visva Bharati authorities submitted since the selection committee consisted of eminent members one cannot raise the issue of bias or arbitrariness. Moreover, no particulars have been furnished that the selection procedure was conducted in a clandestine manner. Particulars of mala fide have not been disclosed and as the writ Court has no power to appoint, the petition is not maintainable. Referring to paragraph 4 of the petition it was submitted that the petitioner does not have required eight years experience to qualify for the post. Besides the statement in paragraph 14 of the writ petition is erroneous as there was no second person in the panel. On behalf of the respondents reliance was placed on the following judgments:

1. Lila Dhar Vs. State of Rajasthan and Others,
2. Union of India (UOI) and Others Vs. Kali Dass Batish and Another,
3. Satya Narain Shukla Vs. Union of India (UOI) and Others,
4. Swapan Kumar Pal Vs. Achintya Kumar Nayak and Others,
5. Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others,
6. Rajendra Singh Yadav and Others Vs. State of U.P. and Others,
7. Narayan Govind Gavate and Others Vs. State of Maharashtra and Others,
8. State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others,
9. Dineshchandra Jamnadas Gandhi Vs. State of Gujarat and Another,

10. Maheshwar Prasad Srivastava Vs. Suresh Singh and Others,
11. The Collector of Customs and Others Vs. Pednekar and Company (Private) Limited (In Liquidation) and Another,
12. Ashok Kumar Yadav and Others Vs. State of Haryana and Others,
13. Mansukhlal Vithaldas Chauhan Vs. State of Gujarat,
- 14 State of Haryana Vs. Naresh Kumar Bali,
15. Jasvinder Singh and Others Vs. State of Jammu & Kashmir and Others,
16. Bharagath Engineering Vs. R. Ranganayaki and Another,
17. Union of India (UOI) and Another Vs. Samar Singh and Others,
18. Dr. Asim Kumar Bose Vs. Union of India (UOI) and Others,
19. Ramji Lal and Another Vs. State of Haryana,

6. The issues which calls for consideration are a) whether the petitioner has the qualification and experience for being appointed to the post; b) whether the procedure for selection was proper; c) if qualified, whether facts warranted empanelling the name of the petitioner and d) whether in the facts and circumstances directions can be issued for appointing the petitioner.

7. In order to decide the issue whether the petitioner has the qualification and experience for the post, it is necessary to refer to the relevant portion of the advertisement for the concerned post, which is as under:

"Visva-Bharati

Santiniketan

Advertisement No.: 1/2003

D. Others

29. Assistant Director (Adult & Continuing Education & Extension) (Reserved for SC/ST)

Qualifications for Serial No. 29

Essential:

- i) A candidate holding a Ph.D/M.Phil. degree should possess at least a second class Master's degree; or
- ii) A candidate without a Ph.D. degree should possess high second class Master's degree and second class in the Bachelor's Degree or
- iii) A candidate not possessing Ph.D. degree but possessing second class Master's degree should have obtained first class in the Bachelor's Degree.

Eight years experience of field work research in Adult Education & Extension, Non formal education or community" development.

Desirable:

- i) Experience of planning, executing and evaluating Rural Development Programme.
- ii) Publication in any of the areas of a specialization.
- iii) Experience in administration."

8. In this regard it is appropriate to refer to the qualifications and experience of the three candidates - the petitioner, Subrata Biswas and Ajit Kumar Mondal who had appeared in the interview as evident from the affidavit in opposition filed by the Visva Bharati, which are as follows:

No.

Name & address

Date of birth

qualification

experience

1

2

3

4

5

1.

BAIDYANATH SAHA Opposite to GanandaAsram P0: Bolpur Dist. Birbhum

10.12.56

SF 11 (50.7%) 1974 U.E. P(54.3%) 1975 B.Sc.11 (41.2%)1979 M.Sc.I (64.9%)1981 B.Ed.1(60%) 1986

8 years

2.

SUBRATA BISWAS VILL. Simulpur P.O.: Thakurnagar Dist. North 24 Pgns.

19.7.64

M.P.II (53.3%)1980 H.S.11 (55.1%)1982 B.Com 11(42.5%)1986 MSWII (51.7%)1989 Adult Edn.1(80%)1987

8 years

3.

AJIT KR. MONDAL Asst. Director, REC PSV, Sriniketan

10.5.57

H.S.II (45.4%)1974 BA II (46.5%)1977 MA II (49.25%) 1979

More than 8 years

9. Before referring to the qualifications of the respective candidates it is to be decided whether securing 49% or 51% can be called as high second class. The answer is in the judgment in J.P. Kulshrestha (supra) where the Apex Court has held ...When the range of second class marks is wide, of the candidate who gets that class with marks within the lower bracket you cannot say he gets a high second class. If he manages to get 48 marks he barely gets a second class - not a high second class.High is high and a superior second class denotes marks somewhere near first class marks (Paragraph 13). Now turning to the facts since Ajit Kumar Mondal, the selected did not join the post it is to be examined whether the petitioner and Subrata Biswas had the essential qualification and experience. Since admittedly none of the candidates had Phd. degrees they did not qualify under essential qualification No.(i). However, as the petitioner possessed first class Master's degree and a second class Bachelors' degree he fulfilled the" essential qualification No. (ii) which Subrata Biswas did not. Subrata Biswas secured 51.7% in MSWII which was not a high second class Master's degree and also did not qualify under (iii) as he did not possess first class Bachelor's degree. Incidentally, Ajit Kumar Mondal, the selectee, in my view, did not fulfil any of the conditions under (ii) and (iii) of the essential qualifications as he had secured 49.25% in M.A. which was not a high second class and was also not having first class Bachelors' degree. It is significant that the Visva Bharati in paragraphs 14 and 15 of its affidavit, except bald denials, has not at all controverted the allegations in paragraphs 23, 24, 25 and 26 of the writ petition. The contention on behalf of the respondent that the petitioner did not have the required experience is not tenable as the respondents have in their affidavit (page 9 of the affidavit in opposition) have admitted that he was having experience of eight years. Thus the petitioner was having the essential qualification and experience which made him eligible for recommendation and appointment.

10. So far as the second issue is concerned it is to be noted that when the petitioner came to learn that Ajit Kumar Mondal had not joined, he had on 2nd March, 2007 by a letter sought for certain information, the relevant portion of which is set out hereunder:

"3. Information Sought:

3.1. Information concerning appointment to the post of Asst. Director, Adult and

continuing Education & Extension:

- a) Procedure for evaluation (Distribution of Marks) to empanel the candidates after taking interview.
- b) Photo copies of the testimonials of the candidates interviewed.
- c) Marks awarded (with individual statement) by the members of the selection committee to the candidates interviewed.
- d) Marks awarded to the candidates interviewed on academic career and experience.
- e) Reason behind empanelling only one candidate."

The Central Public Information Officer and Deputy Registrar (Administration) Visva Bharati by letter dated 9th April, 2007 provided the information, the relevant portion of which is extracted hereunder:

"Subject: Supply of information as per "The Right to Information Act, 2005"
Reference : Your application dated 02.03.2007 requesting for information under "The Right to Information Act, 2005"

Sir,

In connection with the aforesaid subject and reference this is to state that the undersigned Central Public Information Officer had requested the following concerned officials to provide the information (as relevant to the concerned Department) as sought for by you under "The Right to Information Act, 2005" (the RTI Act, 2005):

.....

Regarding appointment to the post of Assistant Director, Adult and Continuing Education & Extension:

- a) Considered by the Selection Committee on the basis of all aspects including performance in the interview
- b) The Members of the Selection Committee recommended only one person on the basis of all aspects including performance in the interview
- c) No such marks is awarded
- d) The Experts of the Selection Committee decided to empanel only one candidate after interviewed the candidates."

(Emphasis supplied)

11. Significantly, though no marks were awarded, the selection committee had recommended only one person on the basis of all aspects including performance in the interview. In my view, marks awarded acts as the barometer for assessment of candidates. It is the best method of evaluation. In the absence of

marks the inevitable conclusion would be such recommendation and selection was either on face value or on extraneous factors. Though admittedly marks were not awarded, strangely the selection committee had recommended one candidate - Ajit Kumar Mondal - after considering all aspects. Now what does all aspects mean? Marks, had it been awarded, would have certainly been an aspect. In its absence one has to fall back on the other aspects- essential qualification and experience of a candidate. However, there is nothing on record to show that essential qualification and experience of the candidates weighed with the Selection Committee when selection and recommendation was made. The exercise, in short, is so manifestly unreasonable that no reasonable authority entrusted with the power in question could reasonably have made such a decision. (State of U.P. v. Dharmender Prasad Singh - Paragraph 28). Therefore, the procedure adopted by the Committee cannot be said to be fair and proper and the law in Joginder Singh (supra) cannot be made applicable to the facts of the case.

12. During argument it was submitted on behalf of the petitioner that as there was a panel and as the committee recommended the name of one person in order of preference for appointment thereby meaning there were multiple names, the name of the petitioner ought to have been recommended for appointment. In order to delve into this fact, it is appropriate to refer to the resolution appearing in pages 11 and 12 of the affidavit in opposition filed by the Visva Bharati authorities the relevant portion of which is set out hereunder:

Visva-Bharati

Santiniketan

1. Recommendation by Selection Committee-Academic/Non-Academic/Selection Committee

.....

12. Recommendation in order of preference: Considering all aspects including performance in the interview.

1. Ajit Kumar Mondal"

Resolution

RESOLVED that the recommendation of the Selection Committee in the meeting dated 11.06.2003 for the post of Assistant Director Adult Continuing Education and Extension as stated below be approved and acted upon

Name of the post

Recommendation of the Selection Committee & term of appointment

Assistant Director (Adult & Continuing Education & Extension

Six candidates were called for interview and three appeared before the Selection

Committee.

The Committee recommended the following panel of name in order of preference for appointment to the position in the Scale of pay Rs. 12,000-18,300/

Karma-Sachiva (Registrar)

13. Significantly the Selection Committee had recommended Ajit Kumar Mondal from the following panel of name in order of preference for appointment. Panel means a list of names. No doubt a panel in certain cases may consist a single name. But in the instant case, in view of the words "in order of preference for appointment" appearing in the resolution, as there were multiple candidates, it should be construed as choosing or estimating one above another. Hence, as in the interview, there were multiple candidates, the Committee ought to have considered the case of the petitioner vis-a-vis two other candidates in the backdrop of their qualifications and experience. However, the selection committee, as it appears from the records, totally ignored the academic qualifications of the petitioner for reasons best known to it. Hence, in my view, as the petitioner was having the requisite qualification and experience he deserved empanelment and in the facts of the case an appointment. It is to be noted that though it is a settled proposition of law that the selection committee is not required to record reasons and even mere inclusion of the name of the candidate in the selection list does not give him a right of appointment, in the instant case there was infirmity in the decision making process. No marks were awarded in the interview, the criteria of essential qualifications were not at all taken into consideration and surprisingly no opinion was given by the committee. So the principles of law in *Lila Dhar* (supra), in *Satya Narayan Shukla* (supra), in *Ashoke Kumar Yadav* (supra), in *Jasvinder Singh* (supra), in *Neelima Mishra*, in *M. Prasad* (supra) and in *Mansukhlal Vithaldas Chauhan* (supra) are not applicable to the facts of the case. The principles of law in *Narayan Govind Gavate* (supra) are applicable to the facts of this case as there is sufficient evidence on record to show that only the petitioner had the essential qualification and experience for appointment.

14. Now, the issue is since the petitioner has the qualification and experience, whether the facts and circumstances warrant his appointment. The answer for obvious reasons has to be in the affirmative. The reasons are not far to see. From the facts it is evident that the petitioner applied for the post which amongst others included Ajit Kumar Mondal. Ajit Kumar Mondal, an employee of Visva Bharati was selected by the selection committee. Such selection was not on the basis of marks. However, it was after consideration of all aspects in the interview. If selection was after considering all aspects and marks, then the respective qualifications and experience of the candidates should have been considered which the committee did not. From the endeavour made in this judgment it is evident though the petitioner was having the mandatory qualification and the experience, yet strangely when Ajit Kumar Mondal declined to take up the assignment, the Visva Bharati authorities after about four years readvertised the

post with different set of qualifications when by the passage of time the petitioner had crossed the stipulated age and thus became ineligible to apply. In this regard, it is to be noted that the statements made in paragraph 21 of the writ petition have gone uncontroverted since the authorities have not provided reasons for their denial in paragraph 13 of their affidavit. This entire action of Visva Bharati authorities, in my view, in dilly-dallying and then readvertising and thus elbowing out the petitioner having the qualification and experience as per the advertisement of 2003 cannot be called bona fide and is against the principles of fair play. The authorities of Visva Bharati should be reminded that since it is a State under Article 12 of the Constitution of India selection, recommendation and appointment cannot be on their whims and fancies which precisely has been done while selecting Aiiit Kumar Mondal.

15. Now the question is whether in the facts of the case the High Court can exercise its discretionary jurisdiction under Article 226 of the Constitution of India. In *Swapan Kumar Pal* (supra) it has been held for exercising power of judicial review, the Court has a limited role to play. It could interfere only, if any legal error has been committed in the decision making process. It could not enter into the merit of the decision. (Paragraph 19) In the said judgment the Apex Court while dismissing the appeal held that the competent authority..... was to consider the respective cases of the parties upon application of the relevant criteria so far as the candidates are concerned. (Paragraph 14) In the case in hand there is nothing on record to show that while selecting Ajit Kumar Mondal the criteria or the essential qualifications of other candidates were considered. In such circumstances when Ajit Kumar Mondal did not join and the post has been readvertised, in order to prevent injustice if appropriate directions are not issued for appointment of the petitioner to the post of Assistant Director/Adult and Continuing Education & Extension it would amount to allowing an injustice to continue and upholding an action taken not on the basis of criteria in the advertisement No.1/2003.

16. The principles of law laid down in *Ashim Kumar Bose* (supra) and in *State of Haryana v. Naresh Kumar Bali* (supra) are not applicable as the petitioner, now overaged, cannot apply, and direction for consideration by the respondent authority who had neglected to act in a proper manner would not serve justice. In this context it is appropriate to refer to paragraph 20 of the judgment of the Supreme Court in the *Comptroller and Auditor General v. K.S. Jaganathan* (supra) which is as under:

20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials

or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

(Emphasis supplied)

17. In view of the facts of this case, the principles of law laid down in other authorities, relied on by the respondents, are not applicable.

18. In such circumstances as the selection committee while selecting Ajit Kumar Mondal ignored relevant materials - the essential qualifications, and thereafter when the selectee did not join, readvertised the post with modified criteria thus frustrating the claim of the petitioner who was the only candidate having the essential qualification and experience under the 2003 advertisement, if orders are not issued directing his appointment to the post concerned it would amount to putting a seal on a highly irregular action on the part of the Visva Bharati authorities. The writ petition is, therefore, allowed. The interim order is confirmed. Hence, let there be a direction on the Vice-Chancellor, Visva Bharati, The Registrar, The Deputy Registrar (SC/ST Cell), The Selection Committee and the Executive Council respondent Nos. 2, 3, 4, 5 and 6 to issue letter of appointment to the petitioner to the post of Assistant Director (Audit and Continuing Education and Extension) (reserved for SC/ST) within a period of four weeks from the date of communication of this order.

No order as to costs.

Later :

After the judgment is delivered, the learned senior advocate appearing on behalf of the Visva Bharati prays for stay of operation of the judgment and order for a period of two weeks after the vacation.

Prayer is considered and allowed. Let there be a stay of operation of the judgment and order till 14th November, 2008.

Urgent xerox certified copy of this judgment and order, if applied for, be furnished to the appearing parties on priority basis.