
(2007) 07 MP CK 0071
In the Madhya Pradesh High Court

State of Madhya Pradesh and Others

APPELLANT

Vs

Dr. (Smt.) Neelima Singh

RESPONDENT

Date of Decision : 12-07-2007

Acts Referred:

Evidence Act, 1872 — Section 115

Citation : (2007) 3 MPHT 570 : (2008) 1 MPLJ 342

Hon'ble Judges : A.K. Patnaik, C.J.;Rajendra Menon, J

Bench : Division Bench

Judgement

A.K. Patnaik, C.J.

This is an appeal u/s 2 of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 against the order dated 1-8-2006 of learned Single Judge passed in W.P. No. 3326 of 2004 [2006 (4) M.P.H.T. 19].

The facts briefly are that on 18-7-2004, the Director of Medical Education, Government of Madhya Pradesh, issued an advertisement inviting applications inter alia for one post of Assistant Professor in Medicine from candidates belonging to the General Category for G.R. Medical College, Gwalior. On 3-8-2004, the Director of Medical Education issued a corrigendum to the advertisement so as to add one more post of Assistant Professor, Medicine for candidates belonging to the General Category in G.R. Medical College, Gwalior. One Mr. J.S. Namdhari, who had filed Writ Petition (S) No. 355 of 2003 before the Bench of the High Court at Gwalior, filed an application in the said writ petition praying for stay of the selection pursuant to the advertisement to the two posts of Assistant Professor, Medicine for General Category as he was interested in being appointed in one of these posts. On 30-7-2004, a learned Single Judge of this Court passed an interim order directing that selection pursuant to the advertisement shall go on but one post of Assistant Professor, Medicine in G.R. Medical College, Gwalior shall not be filled up until further orders. During 13-10-2004 to 16-10-2004, the selection through interviews was conducted by the Selection Committee and for one of the posts at G.R. Medical

College, Gwalior, Dr. Ajay Pal Singh was recommended for appointment and was subsequently appointed. For the second post, the Selection Committee did not name any person for appointment and instead, placed the respondent in waiting list in the first position. The respondent filed an application in W.P. (S) No. 355 of 2003 before the learned Single Judge of the High Court for vacating the stay and the learned Single Judge passed an order on 29-11-2004 vacating the interim order of stay but observed that the appointment of the candidate to the second post of Assistant Professor, Medicine in G.R. Medical College, Gwalior shall be subject to the result of the writ petition.

When the respondent who had been placed in the waiting list in the first position was not appointed, she filed W.P. No. 3326 of 2004 before Gwalior Bench of the High Court on 24-12-2004 praying for a mandamus on the appellants to appoint her in the second post of Assistant Professor, Medicine in G.R. Medical College, Gwalior pursuant to the advertisement dated 18-7-2004 and the corrigendum dated 3-8-2004 and also praying for restraining the appellants from re-advertising the posts. The respondent also filed I.A. No. 4737 of 2005 to appoint her in accordance with the selection which was held pursuant to the advertisement dated 18-7-2004 and the corrigendum dated 3-8-2004 but the prayer in the said I.A. was rejected by learned Single Judge by order dated 4-4-2005. Thereafter on 3-9-2005, the Dean of G.R. Medical College, Gwalior issued a fresh advertisement inviting applications for two posts of Assistant Professor in Medicine from General Category candidates. In response to the said advertisement, the respondent also submitted her application. She also filed I.A. No. 15287 of 2005 before the learned Single Judge in W.P. No. 3326 of 2004 praying for interim order direction the appellants not to fill up the posts pursuant to the advertisement issued on 3-9-2005, but by order dated 28-9-2005, the learned Single Judge rejected the prayer in the said I.A. Thereafter, the selection by way of interview was held on 14-2-2006 for filling up the two posts advertised by the advertisement dated 3-9-2005 and in the said selection, the respondent was not selected.

Thereafter, W.P. No. 3326 of 2004 was heard by the learned Single Judge and by the impugned order dated 1-8-2006, the learned Single Judge held that the appellants have acted arbitrarily and malafide and not fairly in not appointing the respondent to the second post of Assistant Professor, Medicine in G.R. Medical College, Gwalior. The learned Single Judge, in particular, held that the respondent was not appointed to the post because there was stay by the Court in W.P. (S) No. 335 of 2003 and was therefore kept in the waiting list but subsequently when this Court vacated the stay order passed in W.P. (S) No. 335 of 2003 and permitted the appellants to appoint one person pursuant to the advertisement dated 18-7-2004 and the corrigendum dated 3-8-2004, the respondent was not appointed and instead, one Dr. Jagjit Singh Namdhari who was posted in the second post was continued in deputation in the said post. By the impugned order, the learned Single Judge thus allowed the writ petition and directed the appellants to issue appointment order in favour of the respondent on contract

basis for a period of three years from the date of her appointment as per terms and conditions mentioned in the advertisement. The learned Single Judge also held in the impugned order that it was a fit case in which cost should be imposed on the appellants and accordingly, imposed cost of Rs. 15,000/- in favour of the respondent.

Mr. Vivek Khedkar, learned Government Advocate submitted that the law is well settled that candidates placed in the waiting list cannot claim any right for appointment. He cited the decision of the Supreme Court in Sanjoy Bhattacharjee Vs. Union of India and others, , in which it has been held that a candidate who has been put in waiting list does not get any vested right for appointment and cannot seek any direction from the Court. He also cited the decision of the Supreme Court in N. Mohanan Vs. State of Kerala and Others, for the proposition that a person having been selected does not, on account of being empanelled alone, acquire any indefeasible right to appointment. He next submitted that since the respondent was placed in the waiting list, she cannot pray for a direction from this Court to the appellants for her appointment and for this reason, the impugned order passed by the learned Single Judge, in so far as it directs the appellants to appoint the respondent on the basis of her position in the waiting list is liable to be quashed.

Mr. Khedkar next submitted that in Shankarsan Dash Vs. Union of India, , the Supreme Court has held that once the selection process is closed, persons who are placed in the panel for selection cannot claim any appointment. He submitted that in this case, on account of the interim order of stay passed by this Court in W.P. (S) No. 355 of 2003, the Selection Committee could not make the selection on the second post of Assistant Professor, Medicine in G.R. Medical College, Gwalior and therefore, the authorities had no option but to close the selection process and advertise the post afresh along with other posts for selection in accordance with law. He submitted that the respondent in fact participated in the selection process pursuant to the re-advertisement of the post and was not selected and is, therefore, estopped from now contending before the Court that she was entitled to be appointed on the basis of selection made pursuant to the first advertisement. He cited decision of the Supreme Court in G. Sarana Vs. University of Lucknow and Others, , in which it has been held that where a candidate for selection knowing fully well the relevant facts about the members of the Selection Board voluntarily appear in the interview without raising any objection against the constitution of the Selection Board and took a chance of favourable recommendation, it was not open to him to turn round and question the constitution of the Board when the decision was unfavourable to him.

Mr. Khedkar further submitted that an express prayer was made by the respondent before the learned Single Judge in interlocutory applications filed in W.P. No. 3326 of 2004 for an interim order restraining the appellants from re-advertising the post and directing the appellants to appoint the respondent in accordance with the selection pursuant to the first advertisement dated

18-7-2004 and the corrigendum dated 3-8-2004, but the learned Single Judge rejected the said prayer for interim order and only thereafter the selection was conducted pursuant to the second advertisement dated 3-9-2005. He submitted that on these facts, the Court should not hold that the second advertisement dated 3-9-2005 and the selection by way of interview conducted on 14-2-2006 pursuant to the second advertisement dated 3-9-2005 were illegal.

Mr. Rajendra Shrivastava, learned Counsel for the respondent, on the other hand, submitted that the contention of Mr. Khedkar that the selection process pursuant to the first advertisement dated 18-7-2004 and the corrigendum dated 3-8-2004 came to an end after the Selection Committee could not make the recommendations for the second post of Assistant Professor, Medicine in G.R. Medical College, Gwalior on account of the stay order passed in W.P. (S) No. 355 of 2003 is not correct because the interim order passed by the learned Single Judge in W.P. (S) No. 355 of 2003 was vacated on 29-11-2004 and the appellants were permitted to appoint the selected candidate on the second post of Assistant Professor, Medicine in G.R. Medical College, Gwalior subject to the result in the writ petition but instead of appointing the respondent, the appellants appointed the petitioner in W.P. (S) No. 355 of 2003 Dr. J.S. Namdhari in the second post of Assistant Professor, Medicine by order dated 7-4-2005 illegally.

Mr. Shrivastava cited the decision in R.S. Mittal Vs. Union of India (UOI), , in which the Supreme Court has held that although a person on the selected panel has no vested right to be appointed for the post to which he has been selected, there has to be a justifiable reason to decline to appoint a person who is in the select panel and if there is no such justification to ignore such a person placed in the select panel for appointment, the Court can pass appropriate orders directing the authorities to make the appointment. He also cited the decision of a Division Bench of the Punjab & Haryana High Court in Managing Committee, through its Secretary, Dayanand Mahila Mahavidyalaya, Kurukshetra v. Smt. Sharda Rani and Ors. 1991 (6) SLR 555 and submitted that on facts similar to the facts of the present case, the Punjab & Haryana High Court has held that the action of the College authorities in denying appointment to Smt. Sharda Rani and to go in for fresh selection for the post was not justified. He submitted that in the aforesaid decision, the Punjab & Haryana High Court has also held that the plea of estoppel raised on behalf of the College authorities to deny relief to Smt. Sharda Rani against the obvious injustice done to her merely on the ground that she had also applied for selection at a subsequent interview where some other candidate was preferred to her was also not tenable.

We have considered the aforesaid submissions of learned Counsel for the parties and we are of the considered opinion that the plea of estoppel taken by the appellants in this case has to be rejected outright. This is because the respondent, as soon as she was not selected for appointment on account of the interim order of stay passed by the Court in W.P. (S) No. 355 of 2003, moved the

learned Single Judge initially in W.P. (S) No. 355 of 2003 for vacating the said order of stay and on 29-11-2004, the learned Single Judge in fact vacated the said order of stay and permitted the authorities to make appointment of selected candidate with the observation that such selection and appointment of the candidate for the second post of Assistant Professor, Medicine in G.R. Medical College, Gwalior would be subject to result in W.P. (S) No. 355 of 2003. When the authorities did not appoint the respondent to the second post of Assistant Professor, Medicine in G.R. Medical College, Gwalior and intended to re-advertise the post and go in for fresh selection, the respondent again moved this Court in a separate Writ Petition W.P. No. 3326 of 2004 with a prayer to direct the appellants to appoint the respondent in the second post of Assistant Professor, Medicine and to restrain the appellants from re-advertising the post. When the Court refused to grant interim relief and the Dean, G.R. Medical College, Gwalior issued a fresh advertisement dated 3-9-2005, the respondent did not withdraw her writ petition - W.P. No. 3326 of 2005 but participated in the selection process pursuant to the advertisement dated 3-9-2005. The fact that the respondent did not withdraw the writ petition and continued to pursue the writ petition with the prayer that the appellants be directed to appoint her in the second post of Assistant Professor, Medicine in G.R. Medical College, Gwalior and with the further prayer to restrain the appellants from making re-advertisement to the said post would show that the appellant was still interested in pursuing her remedy for being appointed to the second post of Assistant Professor, Medicine in G.R. Medical College, Gwalior on the basis of selection made pursuant to the first advertisement dated 18-7-2004 and the corrigendum dated 3-8-2004. Section 115 of the Evidence Act states that when one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing. The aforesaid facts are clear that the respondent had at no stage by declaration, act or omission, intentionally caused the authorities to believe that she intends to give up her claim to be appointed to the second post of Assistant Professor, Medicine in G.R. Medical College, Gwalior pursuant to the first advertisement dated 18-7-2004 and the corrigendum dated 3-8-2004 and the selection conducted pursuant thereto. We are, thus, of the view that from the conduct of the respondent in this case, no plea of estoppel can arise in favour of the appellants as contended by Mr. Khedkar.

It is true, as has been contended by Mr. Khedkar, that a person placed in the select list has no right to claim appointment and accordingly, the Court cannot issue a mandamus to the authorities to make the appointment merely because the person has been placed in the select list. It is still more true that a person who is placed in the waiting list in a selection cannot claim any right to be appointed to the post for which he has been placed in the waiting list and, therefore, the Court cannot issue a mandamus to the authorities to appoint a

person merely because he has been placed in the waiting list. But in *Shankarsan Dash v. Union of India* (supra), cited by Mr. Khedkar, the Supreme Court has held that where the authorities take a decision not to fill up a vacancy from amongst candidates placed in the select list, such decision has to be taken bonafide for appropriate reasons and the State is bound to respect the comparative merit of candidates as reflected in the test and no discrimination can be permitted in this regard. Similarly, in *R.S. Mittal v. Union of India* (supra), cited by Mr. Shrivastava, the Supreme Court has held that even though a person placed in the select panel has no vested right to be appointed to the post, there has to be justifiable reason to decline to appoint a person who is in the select panel.

Applying the aforesaid law to the facts of the present case, we find from the record produced before us that the selection that was conducted pursuant to the advertisement dated 18-7-2004 and the corrigendum dated 3-8-2004, interviews were held during 13-10-2004 to 16-10-2004 for the different posts of Assistant Professor, Medicine advertised in the advertisement and the corrigendum. In the interview-sheet dated 15-10-2004 for selection of Assistant Professor 2004, it was clearly indicated that there were two posts of Assistant Professor for G.R. Medical College Gwalior and in respect of one of these two posts, there was a stay. For the one post for which there was no stay, Dr. Ajay Pal Singh, who had secured 66.56 per cent of marks was selected for appointment in G.R. Medical College, Gwalior and the respondent who had secured 66.54 per cent of marks was placed in waiting list at serial No. 1. The reason, therefore, why the respondent was placed in the waiting list in the first position was that there was a stay order passed in this Court in W.P. (S) No. 355 of 2003 on 30-7-2004. This is thus not a case where the Selection Committee had given higher marks to any other candidate besides Dr. Ajay Pal Singh for the post of Assistant Professor, Medicine in G.R. Medical College, Gwalior and for this reason place the respondent in the waiting list. The respondent could not be selected for appointment because of stay order passed by this Court on 30-7-2004 in W.P. (S) No. 355 of 2003 and therefore, as soon as the stay order was vacated on 29-11-2004 and the authorities were permitted to make the appointment to the second post of Assistant Professor, Medicine in G.R. Medical College, Gwalior, fairness required that the authorities immediately appointed the respondent in the second post of Assistant Professor, Medicine at G.R. Medical College, Gwalior.

The only reason given by the appellants for not appointing the respondent to the second post of Assistant Professor, Medicine in G.R. Medical College, Gwalior is that the selection process pursuant to the advertisement dated 18-7-2004 and the corrigendum dated 3-8-2004 was over. On the facts of this case, the selection process which was intervened by stay order passed by this Court in W.P. (S) No. 355 of 2003 could be over only after the Court vacated the said stay order on 29-11-2004 and the selection for the second post was completed by the authorities. Until the selection was completed by the authorities for the second post of Assistant Professor after the interim order of stay was vacated on 29-11-2004 by the Court in W.P. (S) No. 355 of 2003, the appellants could not

have gone for re-advertisement and fresh selection on the said post. But it appears that instead of completing the selection to the second post of Assistant Professor, in Medicine for G.R. Medical College, Gwalior after the stay order was vacated on 29-11-2004, the appellants had in an unfair manner, refused to consider the respondent for appointment to the second post of Assistant Professor, Medicine in G.R. Medical College, Gwalior even though she was entitled to be appointed to the second post on the basis of her merit as assessed by the Selection Committee and have instead advertised the post afresh on 3-9-2005. In our considered opinion, there was no justifiable reason for not appointing the respondent to the second post of Assistant Professor, Medicine for G.R. Medical College, Gwalior and the refusal on the part of the appellants not to appoint her in the second post of Assistant Professor, Medicine and to re-advertise the second post of Assistant Professor, Medicine for fresh selection was unfair and arbitrary. In our view, therefore, the learned Single Judge was right in holding that the appellants have not acted fairly and their action was arbitrary and in directing the appellants to appoint the respondent to the post of Assistant Professor, Medicine in G.R. Medical College, Gwalior.

In *Shankarsan Dash v. Union of India* (supra), on which great reliance is placed by Mr. Khedkar, the Supreme Court held that what is relevant is to see as to when the process of final selection was closed and mere completing the formalities cannot be of any help to the authorities. As we have indicated above, the process of selection was intercepted by the interim orders passed by the Court on 30-7-2004 directing the authorities that one post of Assistant Professor, Medicine in G.R. Medical College, Gwalior shall not be filled up until further orders. Once that interim order was vacated by the Court on 29-11-2004 permitting the authorities to go ahead with the selection and appointment to the second post of Assistant Professor, Medical College for G.R. Medical College Gwalior, the process of selection could be over only after the authorities considered the respondent for the second post of Assistant Professor, Medicine in accordance with the recommendations of the Selection Committee on the basis of her merit position. Until such consideration was over, the appellants were not legally justified in re-advertising the post and go in for a fresh selection. The advertisement for the second post of Assistant Professor, Medicine for G.R. Medical College, Gwalior on 3-9-2005 and the consequential action to fill up the second post of Assistant Professor pursuant to the said advertisement was thus illegal and the fact that the respondent participated in the second selection thus, was of no relevance and in any case, would not be a ground for not appointing the respondent for the second post of Assistant Professor, Medicine for G.R. Medical College, Gwalior on the basis of the first selection. Moreover, the refusal of the learned Single Judge to grant orders restraining the appellants from re-advertising the post as prayed by the respondent in the I.A. cannot also be a ground for not holding in the final order in the writ petition that the re-advertisement of post was not fair and legal.

Mr. Khedkar finally submitted that the cost of Rs. 15,000/- awarded by the

learned Single Judge in the impugned order against the appellant be deleted as the appellants had been advised to go in for a fresh advertisement and selection for the post of Assistant Professor, Medicine for G.R. Medical College, Gwalior, which could not be filled up on account of the stay order passed by this Court. We find a lot of force in the submission of Mr. Khedkar. The question whether the second post of Assistant Professor was to be filled up by a fresh advertisement and fresh selection or was to be filled up on the basis of selection pursuant to the first advertisement and selection is an intricate question and it is quite possible that the authorities may not have been advised correctly in taking the decision to re-advertise the post and to go in for fresh selection. We therefore, delete the cost of Rs. 15,000/- awarded against the appellants but uphold the impugned order passed by the learned Single Judge.

The writ appeal is partly allowed as indicated above. The original records be returned.