
(2016) 01 OHC CK 0064
In the Orissa High Court
Case No : W.P.(C) No. 21514 of 2013

Subhaya Prusty

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 19-01-2016

Acts Referred:

Assam Rifles Act, 2006 — Section 165
Civil Procedure Code, 1908 (CPC) — Section 20(c)
Constitution of India, 1950 — Article 14, 16, 226

Citation : (2016) 1 ILRCuttack 738 : (2016) LIC 2055

Hon'ble Judges : Dr. B.R. Sarangi, J.

Bench : Single Bench

Advocate : Sidheswar Mallik and P.C. Das, Advocates, for the Appellant; A. Mohanty (C.G.C.), L. Jena (C.G.C.), for the Respondent

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J.—The petitioner has filed this application seeking to quash the order dated 27.8.2013 issued by the authority vide Annexure-4 rejecting his candidature for enrolment into Assam Rifles for Electrical Trade on the plea "Found low-in-merit against your State".

2. The factual matrix of the case in hand is that an advertisement was published in employment news by the Director General Assam Rifles, Silong for recruitment in Assam Rifles for various posts. So far as State of Orissa is concerned, one post in Electrical Trade has been advertised and the recruitment rally was scheduled to be held at Dimapur (Nagaland), NRS-Dimapur and Lokhra (Assam). The advertisement also indicates that the application should reach by 8.9.2012 and application received beyond that date shall not be entertained. The petitioner having got requisite qualification as per Clause-7 and Clause-9 of the advertisement for electrical trade, i.e. 10th class pass and possesses ITI certificate, applied for the said post. As per Clause-14, the written test will consist of only OMR based objective type multiple choice question to be

answered using a pen. The question paper will be of 100 marks. Clause 16 of the advertisement provided that candidates who qualify in all respect will be placed in merit list depending upon the category wise vacancies allotted to the States and instruction to join the training centre or enrolment will be issued on the basis of the merit list. The petitioner was the only candidate from the State of Orissa for the one post in electrical trade reserved for Orissa who submitted his application for the post of electrician on 27.7.2012 pursuant to the advertisement. Accordingly, he has been called on 25.8.2012 to report before the Presiding Officer Recruitment and Selection Board at Lokhra (Assam) on 25.9.2012 along with the original documents. He appeared the written test conducted on 25.9.2012 and having qualified vide letter dated 26.10.2012 in Annexure-3 was called upon to report for medical examination on 26.10.2012 at Assam Rifles Composite Hospital, Shokhubi, Dimapur in the State of Nagaland. In response to the same, petitioner appeared in the medical test. But on 27.8.2013 he has been issued with an order vide Annexure-4 in his home address at R.M. Patna in the district of Puri that his candidature has been rejected due to the reason "found low-in-merit against your State". Hence this application.

3. Mr. Sidheswar Mallik, learned counsel for the petitioner strenuously urged that the petitioner being the only candidate from the State of Orissa for single post of electrician reserved for the State of Orissa, there is no question of determination of comparative merits between the parties and rejection of his candidature is contrary to the advertisement issued in Annexure-1. It is stated that once the petitioner qualified in the written test and physical efficiency test and was found medically fit for such appointment, denial or rejection of his candidature on the plea of "low in merit against your State" cannot sustain in the eye of law. It is further urged that the plea of rejection of candidature is contrary to the terms of the advertisement issued in Annexure-1. The qualitative requirement mentioned in Clause-9 of the advertisement only stipulates the educational qualification. It is stated that since the petitioner has got requisite qualification, he has been called to appear in the test as per the advertisement itself. The determination of low in merit on the basis of percentage of marks has not been indicated in the advertisement itself. Apart from the same, it is urged that since all the correspondences have been made in the home address of the petitioner in the district of Puri, Orissa, the cause of action has arisen within State of Orissa, therefore this Court has got jurisdiction to entertain this application. To substantiate his contention, he has relied upon the judgments in *Nawal Kishore Sharma v. Union of India and others*, (2014) 9 SCC 325 : (AIR 2014 SC 3607), *Amlan Jyoti Borooah v. State of Assam and others*, (2009) 3 SCC 227 : (AIR 2009 SC (Supp) 1903) and *K. Manjusree v. State of Andhra Pradesh and another*, (2008) 3 SCC 512 : (AIR 2008 SC 1470).

4. Mr. A. Mohanty, learned counsel and Mr. L. Jena, learned counsel have appeared for opposite party Nos. 1 and 2 separately, but they have relied upon the composite counter-affidavit filed by opposite party Nos. 1 and 2 and state that the final selection of the candidates was made on the basis of the merit in

each category. The cut-off percentage of marks for passing in unreserved/general/ex-serviceman categories was 35% and the cut-off percentages of marks for passing in reserved categories SC/ST and OBC was 33%. It is stated that the petitioner secured only 33% of marks and though the petitioner was declared pass in OBC category, he did not qualify as an unreserved candidate for the post advertised as he could not meet the eligibility criteria for the said category. It is further stated that this writ petition is not maintainable before this Court as this Court has lacked territorial jurisdiction to hear the matter. Therefore, they seek for dismissal of the writ petition.

5. On the basis of the facts pleaded above, it appears that the candidature of the petitioner has been rejected as per the policy laid down in para-2, sub-paras XII and XVI of MH A U.O. No.I 45023/6/2008-Pers-II dated 25.06.2009. Merit list in each category namely General, OBC, SC, ST and Ex-Servicemen is prepared separately in respect of each States/UTs on the basis of aggregate marks obtained in the written test. The final selection of the candidates is made in order of merit in each category. The qualitative requirement being applicable to each category, minimum percentage of mark has been fixed for Unreserved/General/Ex-serviceman categories at 35% and cut-off percentages of marks for passing in reserved categories i.e. SC/ST/OBC has been fixed at 33%. Since petitioner secured 33% marks, he has been declared pass in OBC category, but he did not qualify as an unreserved candidate by securing 35% of marks. Therefore, he has been intimated vide Annexure-4 that he being low in merit list, he has not been selected for recruitment to the post advertised pursuant to Annexure-1. But the reasons which has been assigned has not been indicated to the petitioner in any manner whatsoever and for the first time New Plea has been taken by the opposite parties which has not been intimated to any of the candidates pursuant to the advertisement issued in Annexure-1.

6. In *K. Manjusree* (AIR 2008 SC 1470) (supra), the Apex Court held that in a recruitment process, selection criteria has to be prescribed in advance. Rules of game cannot be changed afterwards. The minimum qualifying marks for interview prescribed after the interviews were over was held not permissible. The minimum qualifying marks both for written examination and interview can be prescribed in advance, but not after the process of selection is over.

7. In *Amlan Jyoti Borooah* (AIR 2009 SC (Supp) 1903) (supra), the Apex Court held that the selection test should be done in the order mentioned in the advertisement and any deviation from the advertisement itself should be in conformity with the principles of natural justice.

8. In *Secretary, A.P. Public Service Commission v. B. Swapna and others*, 2005 (2) Supreme 615, the Andhra Pradesh Public Service Commission had initially advertised for recruitment to eight posts of Asst. Public Relation Officers. Subsequently seven more vacancies were advertised. Therefore, the recruitment was made for fifteen vacancies. The selection was finalised on 2.7.1996. During the currency of the wait list the competent authority again notified 14 more

vacancies on 14.4.1997 to be filled up by the candidates from the wait list. In that case, the Apex Court held that there were two principles in service laws, which were indisputable. Firstly, there could not have been appointment beyond the advertised number and secondly, the norms of selection could not have been altered after the selection process had started. In paragraph-16 of the said judgment, the Apex Court states as follows:

"The High Court has committed an error in holding that the amended rule was operative. As has been fairly conceded by Learned Counsel for the applicant-respondent No. 1 it was unamended rule, which was applicable. Once a process of selection starts, the prescribed selection criteria cannot be changed. The logic behind the same is based on fair play. A person who did not apply because a certain criteria e.g., minimum percentage of marks can make a legitimate grievance, in case the same is lowered, that he could have applied because he possessed the said percentage. Rules regarding qualification for appointment if amended during continuance of the process of selection do not affect the same. That is because every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the rule must be held to be prospective. If the Rule is expressed in a language which is fairly capable of either interpretation it ought to be considered as prospective only."

9. Similar question came up for consideration before this Court in *Mrs. Madhumita Das and another v. State of Orissa and others*, 100 (2005) CLT 465, wherein the question before this Court was not that the modalities fixed by the Committee/Full Court were illegal, but the question is that once norms were published in the advertisement for notice of all, whether it could be changed at a later stage without notice to any of the candidates and general public and without issuing any corrigendum to the advertisement in question. In our opinion once an advertisement was issued to fill up a post in any office under the State, it is the duty of the recruiting authority to give necessary information to all in a precise and clear manner and relying upon the judgment in *Secretary, A.R. Public Service Commission (supra)*, this Court has come to a conclusion, which reads as follows:

"Once selection process was started the norms fixed in the advertisement could not have been changed and if they were liable to be changed then the same should have been published in the like manner in which initial advertisement was published. Non-publication of the norms changed subsequently after starting of the selection process was violative of Article 16 of the Constitution and thus is not sustainable in the eye of law."

10. Applying the principles laid down by the Apex Court mentioned above to the present context, it appears that the reliance placed on the policy dated 25.6.2009 has not been indicated in the advertisement issued in Annexure-1 to bring the same to the notice of the candidates. Therefore, determination of

eligibility criteria on the basis of percentage of marks secured in a qualitative recruitment without being advertised in Annexure-1 cannot sustain in the eye of law.

11. So far as territorial jurisdiction of the Court is concerned, it is to be seen whether any part of the cause of action has arisen within the State of Orissa. The cause of action has been defined to mean every fact, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. Right to invoke Article 226 of the Constitution of India to enforce fundamental rights and other legal rights against the State or authority or its agency is a constitutional right. Such right should not be made illusory or unenforceable upon narrow construction of the concept of cause of action.

12. In *Chandrama Bhusan Sarangi v. Union of India and others*, 2011 (I) ILR CUT 398, this Court held that High Court can exercise power to issue writ, direction or order for enforcement of any of the fundamental rights conferred by Part-III of Constitution or for any other purpose, if cause of action wholly or in part has arisen within the territorial jurisdiction of High Court. The expression "cause of action" means bundle of facts which petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. Therefore, question of territorial jurisdiction must be decided on facts pleaded in petition. Similar view has also been taken by this Court in *Girish Mohanty v. Union of India and others* (O.J.C. No. 2607 of 2001, disposed of on 03.03.2015).

13. In *Nawal Kishore Sharma* (AIR 2014 SC 3607) (supra), the Apex Court categorically held that cause of action partly arose at his native place High Court within whose territorial jurisdiction, he received the letter has jurisdiction to entertain the application. Further it is held that as cause of action for the purpose of Article 226 (2) of Constitution of India must be assigned the same meaning of cause of action as given under Section 20 (c) of the Code of Civil Procedure, 1908. In that view of the matter, since all the correspondences have been made in the local address of the petitioner, which is within the territorial jurisdiction of this Court and part of cause of action arose within State of Orissa, this Court has got jurisdiction to entertain this application. The objection with regard to jurisdiction is answered accordingly.

14. In view of the foregoing discussion made above, since the policy laid down in para-2, sub-para-XIII and XVI (2) dated 25.6.2009 does not form part of the advertisement in Annexure-1, any action pursuant to such policy being contrary to the provisions of law, the order impugned in Annexure-4 rejecting the candidature of the petitioner for the post of electrician pursuant to advertisement in Annexure-1 in respect of State of Orissa against single post cannot sustain in the eye of law. Accordingly, the order dated 27.8.2013 in Annexure-4 is hereby quashed. The opposite parties are directed to take necessary follow up action for giving employment to the petitioner against the post advertised within a period of three months from the date of communication of this judgment.

15. Accordingly, the writ petition is allowed. However, there would be no order to costs.