



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C)/7/2023

Lek Megu
D/o Late Akut Megu,
NEIFM Pasighat, PO/PS Pasighat, East Siang District, Arunachal Pradesh.

VERSUS

THE UNION OF INDIA and 3 Ors.
Represented by the Secretary, Ministry of Ayush, Govt. of India, Ayush Bhawan, B
Block, GPO Complex, INA, New Delhi 110023 2:The North Eastern Institute of
Ayurveda and Homeopathy (NEIAH)
Age: 0
Occupation :
Represented by the Director
NEIAH
Mawdiangdiang
Shillong
Meghalaya 793018
Ph. No. 0363 253813

3:The North Eastern Institute of Folk Medicine (NEIFM)
Age: 0
Occupation :
Represented by the Director (NEIFM)
Pasighat
Arunachal Pradesh.

4:The Director
Age: 0
Occupation :
North Eastern Institute of Folk Medicine (NEIFM)
Pasighat
District East Siang
Arunachal Pradesh
Ph. No. 0368222218

Advocate for the Petitioner : Nikita Danggen

Advocate for the Respondent : Marto Kato

:::B E F O R E:::

HON'BLE MR. JUSTICE NELSON SAILO

Date of Hearing : 18.08.2023& 21.08.2023

Date of Judgment : 25.08.2023

JUDGMENT & ORDER

Heard Ms. N. Danggen, learned counsel for the petitioner and Mr. M. Kato, learned Deputy Solicitor General of India (DSGI) for the respondents.

[2.] The petitioner has filed the instant writ petition with the following prayers:-

“In the premises aforesaid your Petitioner humbly prays that your Lordship may be please to admit this petition, call for records of the case and issue rule on the respondents to show cause as to why:

1. A writ of certiorari should not be issued quashing and setting aside the impugned notice no. NEIFM/211/Advt./2016/P-III/867 dated Pasighat the 3rd August, 2022 with regard to the Petitioner herein as being arbitrary;

2. A writ of certiorari should not be issued quashing and setting asidet he impugned advertisement no. 07/2022 dated 07/12/2022 with regard to petitioner already being selected;

3.A writ in the nature of Mandamus should not be issued to issue a suitable direction commanding the respondents to comply with the

*exam result notification No. 2-158/2019/NEIAH/ADMN/NEIFM/REQ/
dated 24/03/2020 and issue appointment letters to the selectees."*

[3.] Brief facts of the case as projected by the petitioner is that an advertisement dated 08.03.2018 for filling up of two (2) posts of Upper Division Clerk (UDC) was floated by the respondent No. 4 and the petitioner accordingly responded to the advertisement. The petitioner was issued a calling letter-cum-Admit Card by the respondent No. 3 who was going to conduct the written test. The written test was scheduled for 19.02.2020 from 11 AM to 1 PM. According to the petitioner, she appeared for the written test and performed well. While she was waiting for the results to be declared, the same was not done for a long time and accordingly, she submitted a representation to the respondent No. 4 on 05.04.2022 asking the respondent No. 4 to look into the matter and to declare the results of the test that was conducted. However, instead of declaring the results, the respondent No. 3 on 03.08.2022 (Annexure - IV) issued the recruitment cancellation notice wherein, at Sl. No. 3 of the cancellation notice, apart from the other selection process, the recruitment process for the two post of UDC was cancelled due to administrative reasons. The petitioner being aggrieved with the cancellation submitted a representation to the respondent No. 4 on 12.08.2022 asking for the reason in detail as to why the selection process was cancelled. The petitioner also took the help of the local MLA.

Despite the representation submitted, the respondent authorities concerned did not provide the details for cancelling the recruitment process except for stating that it was due to administrative reasons.

[4.] According to the petitioner, the respondent No. 3 had issued a result notification dated 24.03.2020 to the respondent No. 4 wherein, the list of selected and wait listed candidates of various Group 'B' and Group 'C' posts were notified on the basis of the written examination/skill test held on 19th – 21st February, 2020. The petitioner contends that her name has been clearly notified as a selected candidate for the post of UDC based on the advertisement dated 08.03.2018. However, as the result was not declared and instead, the recruitment cancellation notice dated 03.08.2022 having been issued, the petitioner is before this Court.

[5.] Ms. N. Danggen, learned counsel for the petitioner submits that in terms of the advertisement dated 08.03.2018, the petitioner appeared for the written test as scheduled and having performed well, she was expecting the results to be declared. However, the respondent authorities failed to declare the results and the petitioner left with no other option submitted her representation for declaration of the result. The respondents authorities instead of publishing the result issued the recruitment cancellation notice for the various posts advertised, including the advertisement dated 08.03.2018 by stating that the cancellation

was due to administrative reasons. The learned counsel submits that to the knowledge of the petitioner, she was selected and short listed as one of the successful candidate for the two (2) posts of UDC but for reasons best known to the respondents, the selection process was cancelled by stating that it was due to administrative reasons. The learned counsel submits that the information of the petitioner has turned out to be correct because the respondents in their counter affidavit have annexed communication dated 24.03.2020 issued by the respondent No. 3 to the respondent No. 4 wherein, the name of the petitioner clearly finds place as one of the selected candidate for the two (2) post of UDC advertised. The learned counsel submits that while it may be true that the petitioner may not have the right to claim for appointment to the post on the basis of her selection but without assigning proper reason, the respondent authorities cannot simply cancel the selection process and deny the petitioner the right to be appointed to the post of UDC. She therefore submits that the respondents should be directed to publish the results and appoint the petitioner to the post of UDC. In support of her submission, the learned counsel relies upon the following authorities:-

(1) Asha Kaul (Mrs) & Anr. -Vs- State of Jammu and Kashmir & Ors.

(1993) 2 SCC 573 and

(2) State of U.P & Ors. -Vs- Vindhyavasini Tiwari & Ors. 2014 SCC OnLine

All 16434.

[6.] Mr. M. Kato, learned DSGI for the respondents on the other hand submits that after the test for the two (2) posts of UDC was held, the marks of the candidates was sent to the respondent No. 4 by the respondent No. 3 through e-mail on 24.03.2020. The same was thereafter submitted to the Ministry of Ayush, Govt. of India vide letter 25.03.2020 for further necessary direction through e-mail. In reply, the Ministry of Ayush, Govt. of India vide letter dated 01.04.2021 conveyed and advised the respondent No. 4 that the proposal to change the mandate and nomenclature of the institute was under consideration by the Government and therefore, it was decided not to proceed with the process of direct recruitment at this stage. Thereafter, the matter was pending for further direction. After the change of the mandate and nomenclature of the institute and on further receipt of the communication dated 10.03.2022 and 10.05.2022 to dispose of the matter in view of the Ministry letter dated 01.04.2021, the matter was processed and the Ministry of Ayush, Govt. of India vide letter dated 02.08.2022 approved the cancellation of the recruitment process initiated by the respondent No. 4 on the ground of change of nomenclature and mandate of the institute and due to some procedural infirmity in the recruitment process. Accordingly, the institute issued the cancellation notice dated 03.08.2022 and uploaded the same in the institute's website and also published it in the employment news dated 1st – 7th October, 2022.

[7.] The learned DSGI submits that the respondents have come up with an advertisement No. 7 of 2022 dated 07.12.2022 advertising one (1) post of UDC under the respondent No. 4 establishment and the petitioner also applied for the said post. He submits that the reason for cancellation of the earlier selection process was on account of change of nomenclature, the mandate of the institute and due to some procedural infirmity in the recruitment process. The learned DSGI submits that the petitioner does not have the indefeasible right to be appointed even if she was recommended and selected. He submits that it is a settled law that name of a candidate may appear in the merit list but he or she does not have the indefeasible right to seek an appointment. In other words, inclusion of name of candidate in the select list does not confer on such candidate any vested right to get an order of appointment. In support of his submissions, the learned DSGI relies upon the following authorities:-

(1) Punjab State Electricity Board & Ors. -Vs- Malkiat Singh (2005) 9 SCC 22.

(2) Kulwinder Pal Singh & Anr. -Vs- State of Punjab & Ors. (2016) 6 SCC 532.

(3) Dinesh Kumar Kashyap & Ors. -Vs- South East Central Railway & Ors. (2019) 12 SCC 798 and

(4) Judgment dated 07.10.2020 of the Supreme Court in Civil Appeal No.

3334 of 2020 (Commissioner of Police & Anr. -Vs- Umesh Kumar).

[8.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. As can be seen, the grievance of the petitioner is that she appeared for the selection test held for the two (2) posts of UDC pursuant to the advertisement dated 08.03.2019 and she was short listed as one of the selected candidate for the said post which is evident from the communication dated 24.03.2020 made by the respondent No. 3 to the respondent No. 4. However, instead of declaring the results and appointing her, the respondent authorities have cancelled the recruitment process due to administrative reasons. What exactly is administrative reasons has been further explained by the respondents in their counter affidavit stating that the recruitment process had to be cancelled on the ground of change of nomenclature and mandate of the institute. Further, the same was also due to some procedural infirmity in the selection process. It is seen that the respondent No. 3 on 24.03.2020 had sent the details of the conduct of written examination/skill test for filling up various Group 'B' and Group 'C' posts under the establishment of the respondent No. 4, which included the marks and the list of selected and wait listed candidates against the respective group to which they belonged to. The said communication was said to have been made by e-mail. It is also seen that a copy of the said communication has been marked to the Under Secretary to the Govt. of India,

Ministry of Ayush, New Delhi for information. The respondent No. 4 through its Director on 25.03.2020 wrote to the Under Secretary to the Govt. of India, Ministry of Ayush, New Delhi requesting the approval of the recommendation of the respondent No. 3 to take further action for appointment of the selected and eligible candidates. However, the Under Secretary on 01.04.2021 wrote back that there was a proposal to change the mandate and nomenclature on the institute which was under consideration by the Government. Therefore it was decided not to proceed with the process for direct recruitment at the moment. In so far as the representation of the petitioner was concerned, the Ministry of Ayush instructed the respondent No. 4 to dispose of the same in terms of the Ministry's letter dated 01.04.2021. The communication was made to this effect on 10.05.2022.

[9.] When the matter was taken up for hearing on 18.08.2023, this Court upon finding a mention about a letter dated 04.03.2021 of the respondent No. 4 to the Ministry of Ayush in the communication dated 01.04.2021, asked the learned DSGI to produce the same. Accordingly, the learned DSGI has produced the said letter. A perusal of the letter written by the respondent No. 4 through its Director to the Deputy Secretary to the Govt. of India, Ministry of Ayush goes to show that it is regarding certain queries sought from the respondent No. 4 by the Ministry. The question raised was as to why the result of written examination/skill test was opened by the institute without placing the same

before the Selection Committee. The reply to the query is that the results of the selection process conducted by the respondent No. 3 was sent by the respondent No. 3 to the respondent No. 4 via e-mail. As the communication and the attachment was addressed to the Director of the respondent No. 4 institute, the same was opened by the Director. Therefore, it appears that as the communication was sent by e-mail, the same lost confidentiality, which was one reason amongst others which prompted the issuance of the instruction not to proceed with the process of direct recruitment. The other reason as noticed earlier was on account of the proposal to change the mandate and nomenclature of the institute which was being considered by the Government in the Ministry of Ayush. The question therefore which arises is that the petitioner having come to learn that she was one (1) of the short listed selected candidate for the two (2) posts of UDC, can claim her appointment on the strength of such selection.

[10.] It is now a settled principle of law that mere inclusion of a name of a candidate in the select list does not confer on such candidate any vested right to get an order of appointment. The Constitution Bench of the Hon'ble Supreme Court in *Shankarsan Dash -Vs- Union of India*, reported in (1991) 3 SCC 47 in the given facts of that case held that unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the license of acting in an

arbitrary manner. The decision not to fill up the vacancies has to be taken for bona fide and appropriate reasons. If the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates without discrimination. This decision of the Constitution Bench was referred to by the Hon'ble Supreme Court in *Punjab State Electricity Board & Ors*(supra).

[11.] What flows from the above principle of law laid down by the Apex Court is that it is open for the authority concerned not to fill up vacancies but such decision should not be arbitrary or unreasonable. Once the decision is found to be based on some valid reason, the Court would not issue any Mandamus to the authority concerned for filling up of vacancies. In the present case as well, it may be seen that the reason for not proceeding to process the direct recruitment at the relevant stage was on the ground of certain consideration by the Government of India in which the Ministry of Ayush which included the proposal to change the mandate and nomenclature of the institute. The respondents have also in their counter affidavit have stated that it was due to some procedural infirmity in the recruitment process which overall was termed as a cancellation due to administrative reasons. The respondent No. 3 had sent the results of the selection test which included the marks and the list of selected and wait listed candidates via e-mail and therefore, the same did not have confidentiality. Though this has not been specifically mentioned in the counter affidavit but the fact remains that even the petitioner while filing the writ

petition was also aware of the fact that she is one of the selected and short listed candidate against the two (2) posts of UDC that was advertised. It may also be seen that the respondents in the present case had not only cancelled the selection process for the post of two (2) UDC but also the selection process for all other posts that were advertised. Therefore, the decision taken under the facts and circumstances cannot be said to be arbitrary or unreasonable. As for two (2) authorities relied upon by the petitioner, it is seen that the Apex Court in *Asha Kaul (Mrs) &Anr.* (supra) had also referred to the Constitution Bench decision of the same Court in *Shankarsan Dash* (supra). Since this Court has held that the decision to cancel the selection process in the present case cannot be said to be arbitrary and unreasonable for reasons stated, the case referred to by the learned counsel for the petitioner is found to be not applicable to the present case. As for the case of *State of U.P & Ors. –Vs- Vindhyavasini Tiwari & Ors* (supra), the facts and circumstances involved in that case are not similar to the one in the present writ petition and therefore, the same is also not found to be applicable.

[12.] After the cancellation of the recruitment process on 03.08.2022, the respondents have initiated fresh process for filling up of various posts under the establishment of the respondent No. 4, including one (1) post of UDC vide the advertisement dated 07.12.2022. It is contended by the learned counsel for the respondents that the petitioner has also responded to the said advertisement.

Having come to the finding that the cancellation of the recruitment process through the notice dated 03.08.2022 cannot be said to be unreasonable or arbitrary, I find no reason to interfere with the advertisement issued on 07.12.2022. The respondents should proceed with the selection process and complete the same as per the schedule chalked out in this regard. In view of the conclusion arrived at, reference to the remaining authorities relied upon by the learned DSGI for the respondents is found to be not necessary.

[13.] In the result, upon due consideration, the writ petition is found to be without any merit and the same is dismissed. No cost.

JUDGE

Comparing Assistant