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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 25.02.2019

Pronounced on: 12.04.2019

+ W.P.(C) 7800/2012

SANTANU DAS

..... Petitioner

Through: Mr. Rajeev Pandey and Mr. Nirmal
Mishra, Advocates.

versus

NATIONAL SCHOOL OF DRAMA & ORS

..... Respondents

Through: Mr. Arun Kumar, Advocate for R-1 &
R-2.

Mr. Balaji Subramanian, Mr. Samar
Bansal and Ms. Ishani Banerjee,
Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, the petitioner seeks setting aside the impugned selection procedure and further selection of respondent no. 3 herein, vide the interview dated 20.02.2012 for the post of Assistant Professor (Extension) in pursuance of the advertisement in December, 2011. Further seeks direction thereby directing the respondent no. 1 & 2 to follow and implement the guidelines of reservation policy for SCs and STs for the

recruitment of teaching faculties in the institutions. The petitioner also seeks directions thereby considering the case of the petitioner after complying the reservation policy for SC/ST for the recruitment of faculties in the institutions amongst the candidates who had applied in response to the advertisement dated December, 2011.

2. Brief facts of the case are that the respondent no. 1 is an autonomous organization under the Societies Registration Act XXI of 1860, fully financed by the Ministry of Culture, Government of India i.e. respondent no.2. The respondent no. 1 is engaged in training which covers every aspect of theatre and in which theory is related to practice. The respondent no. 1 in view of its curriculum recruits teaching faculty for different programmes. Accordingly, the said respondent vide an advertisement in the month of December, 2011 on its website invited applications for the post of Assistant Professor(Extension) under the pay band of ₹ 15600-39100 plus grade pay ₹ 5400 wherein the requisite qualifications and experience of the candidates were mentioned.

3. The petitioner has graduated from National School of Drama in the year 1998 and has been engaged in theatre activities for quite a long period of time. The petitioner has worked as freelancer theatre designer, director

and teacher. He has also worked with National School of Drama in different theatre workshops as teacher and camp director. The petitioner cleared the NET exams conducted by UGC in 1999 December and joined Rabindra Bharti University as Lecturer of set design in Drama Department in April, 2001.

4. Further the case of the petitioner is that he being qualified candidate applied for the post and the respondent no. 1 vide letter dated 16.02.2012 called the petitioner for an interview and accordingly he appeared on 20.12.2012. During the course of interview, the petitioner informed the panel that he belongs to Scheduled Caste category. He inquired about the fact that in the advertisement by the respondent no. 1, there was no mention about the reservation for SC/ST. He further stated that in any case since NSD is an institution fully funded by the Central Government through the Ministry of Culture, the Brochure on SC/ST reservation is applicable to NSD.

5. The petitioner was the only candidate who has been teaching in a university namely Ravindra Bharti University from 2001 on regular basis. The petitioner has a wide experience in theatre workshops and has been working regularly with his own theatre group called Kalyani Kalamandalam.

He has also published books and has done some acclaimed projects.

6. Counsel appearing on behalf of petitioner submits that on 30.03.2012 it has come to the knowledge of the petitioner that the selection procedure has been completed and a candidate namely Amit Grover i.e. respondent no. 3 herein has been selected. Left with no alternative, the petitioner vide an application dated 11.05.2012 under the Right to Information Act, 2005 sought information regarding the list of teaching staff who belong to the Scheduled Casts category alongwith details of position. Accordingly, the respondent no. 1 vide its reply dated 15.06.2012 informed that there was not a single teacher from the Scheduled Caste community. The aforesaid reply of the respondent no. 1 establishes that in such a prestigious institution none of the teachers are from the SC category and cast a serious doubt on implementation of the government reservation policy which is required to be followed by all the government institutions.

7. Learned counsel further submits that the petitioner being not satisfied by the selection procedure, vide an application dated 11.05.2012 under the Right to Information Act, sought the copy of interview performance mark sheet, detail profile of the candidates who had applied for the post and the details of the selectors. Accordingly, respondent no. 1 vide its reply dated

27.06.2012 informed that there is no provision to prepare performance sheet in NSD at all.

8. It is further submitted that the selection of the teacher ought to have been done through a transparent procedure and any interview or assessment can be done transparently and fairly only by recording the observations of the selectors and then judging the most suitable candidate for the post on the basis of those observations. It provides an authenticity to the entire selection process. However, the non-preparation of the performance sheet apparently depicts the arbitrariness and extraneous consideration in the selection procedures. Thus, action of the respondent is in violation of fundamental rights acquainted under Article 14 and Article 16 of the Constitution of India. The respondent cannot curtail rights of citizens which guarantees the right to be treated equal. Article 16 ensures statutory right to the applicant to have equality of opportunity in public employment.

9. The respondent no. 1 has failed to justify the transparency of the selection procedure, in view of the fact that respondent no. 1 did not prepare and maintain any performance sheet of the candidates who appeared in the interview for the post in question. Thus, the whole process of selection is illegal and contrary to public policy and public interest and it is therefore,

liable to be set aside.

10. In case of *Jaskaran Singh vs Punjabi University Patiala and Another*, decided on 15.05.2015 by the Punjab and Haryana High Court, held that if neither grading nor criteria is laid down, then how the performance of the candidates has been assessed by the Interview Board and how a candidate, who has an excellent academic and research record, was found to have been weak before the Interview Board. Accordingly, the Court set aside the selection on the ground that the Selection Committee has failed to adopt any criteria for assessing the respective merits of the candidates and the respondents were directed to make fresh selection by calling all shortlisted candidates for interview, after laying down the criteria. The said judgement has been upheld by the division bench of the aforesaid court in the case of *Babita Rani vs Punjabi University, Patiala and others*, LPA no. 2081/2011 vide order dated 14.11.2011 whereby observed that the selection is to be made only on the performance of the candidates before the Selection Board.

11. Learned counsel for the petitioner further submitted that it was incumbent upon the Interview Committee to have assessed and adjudged all the candidates appearing before it in terms of reasonable and relevant

parameters in the nature of qualifications possessed, work experience, research, publications, participation in conferences, workshops, seminars etc. Nothing of the sort has been done by the Interview Committee while conducting the interview for purposes of selection to the post of Assistant Professor (Extension). Suffice to say, such a process of selection does not inspire any confidence at all. The selection process under question as such cannot be sustained.

12. On the other hand, counsel appearing on behalf of respondent Nos. 1 and 2 submits that the Selection Committee headed by the Chairperson of the NSD society, inter alia comprised of representative of the Ministry of Culture and outside experts besides Director and faculty members of the NSD, interviewed all the candidates, assessed their performance and recommended respondent no. 3, accordingly he was appointed on 23.03.2012 vide letter no. NSD(Admn.)/1220/2011-12.

13. Learned counsel further submitted that in the year 1997, the post based reservation was introduced by the Government and accordingly reservation roster has been introduced with effect from 02.07.1997. After introducing the reservation roster the vacancies arising thereafter are being filled up according to the Government reservation policy. According to the

roster, 6th point in the roster is reserved for SC candidate. As and when the post is filled up, it will go to a candidate belonging to SC community. The Selection Committee for direct recruitment posts could also evolve their own procedure and process for interview of various candidates short-listed for the purpose. The selection was made on the basis of unanimous, consensus decision, recommendations of the Committee. Therefore, neither there is any violation of the fundamental rights of the petitioner nor there is any breach of the Government's reservation policy as contended by the petitioner.

14. In additional affidavit filed by the respondent no. 1, it is clarified that instead of point 6, point 7 is meant for SC candidates. One post for this category is already kept vacant. The respondent no. 1 not being a university, it does not come under the preview of UGC and thus guidelines issued by the UGC are not applicable to the NSD. However, the post graduate diploma in Dramatic Arts awarded by the National School of Drama is duly recognized by the Ministry of Education and Culture, department of education vide notification no. RC.Q.110236/22/11/T-7/1, dated 06.09.1980.

15. Learned counsel for respondent no. 3 submitted that the procedure has been followed by the respondent no. 1 in selection for the post in question.

Under the guise of transparency, the petitioner admitted to make out a case that he was the most suitable candidate. The petitioner is currently working as Associate Professor at Ravindra Bharti University, Kolkata and on a regular post and he is contesting the case for the post of Assistant Professor which is downgraded post. There is no violation of any reservation policy as has been alleged by the petitioner rather the reservation policy has been adhered to as per the government norms as also has been deposed by the respondent no. 1 in its counter affidavit.

16. I have heard learned counsel for the parties and perused the material on record.

17. The respondent no. 1 is an autonomous organisation under the Societies Registration Act- XXI of 1860, fully financed by the Ministry of Culture i.e. respondent no. 2.

18. The petitioner has graduated from the National School of Drama in the year 1998 and has been engaged in theatre activities for quite a long period of time. He has worked as free lancer, theatre designer, director and teacher. He has also worked with National School of Drama in different theatre workshops as teacher and director. The petitioner cleared NET exam conducted by UGC in 1999 December and joined Ravindra Bharti

University as Lecturer of the set design in Drama Department in April, 2001 and continued there till date.

19. The petitioner has a wide experience in theatre workshop and has been working regularly with his own theatre group called Kalyani Kalamandalam. He has also published books and has done some acclaimed projects.

20. As admitted, NSD is an institution fully funded by the Central Government through the Ministry of Culture, therefore, the Brochure on SC/ST reservation is applicable. When the petitioner was not selected for the post in question he made an application dated 11.05.2012 under the Right to Information Act, 2005 and sought information regarding list of teaching staffs who belongs to the SCs category alongwith details of possession.

21. Accordingly, the respondent no. 1 vide its reply dated 15.06.2012 admitted that there was not a single teacher from the SC/ST community. The aforesaid reply of respondent no. 1 establishes that in such prestigious institutions none of the teachers are from the SC/ST, this caste upon a serious doubt of implementation of the government reservation policy which is required to be followed by the government institutions.

22. In addition to above, the petitioner vide application dated 11.05.2012

under the Right to Information Act sought the copy of interview performance, mark-sheet, details of the candidates who had applied for the post and details of the selectors. In reply to the said application dated 27.06.2012, the respondent no. 1 admitted that there is no provision to prepare performance sheet in National School of Drama at all.

23. It is a requirement for every institutions under the Central/State Government, the Selection ought to be done through a transparent procedure and any interview or assessment should be done transparently and fairly only by recording of observations of the Selectors then judging the most suitable candidates for the post on the basis of those observations. However, non preparation of the performance sheet apparently depicts the arbitrariness and erroneous selection procedure. In such a situation the action of any institution including respondent no. 1 here is in violation of fundamental rights enshrined under Articles 14 & 16 of Constitution of the India. The respondents cannot curtail the right of citizen which guarantees the right to be treated equal.

24. Article 16 ensures statutory right to the applicant to have equality of opportunity in public employment. However, respondent no. 1 has failed to justify the transparency of the selection procedure, in view of the fact that

the respondent no. 1 did not prepare and maintain any performance sheet of the candidates who appear in the interview for the post in question. It is pertinent to mention that if neither grading nor criteria is laid down then how the performance of the candidates has been assessed by the Interview Board and how the candidate who has excellent academic and research record, as the petitioner herein, had failed in the assessment before the Interview Board.

25. The selection is to be made only on the performance of the candidates before the Selection Board. It was incumbent upon the interview committee to have assessed and adjudged the candidates appearing before it in terms of reasonable and relevant parameters in the nature of qualifications possessed, experience, research, publication, participation in conferences, workshops, seminars etc., but nothing of the sort has been done in the present case by the interview committee. Thus, such process of selection does not inspire any confidence at all. On this count alone the selection process in question deserves to be quashed.

26. In addition to the above, it is an admitted case of respondent no. 1 that in the year 1997, the post reservation was introduced by the government and accordingly reservation roster has been introduced with effect from

02.07.1997. In the counter affidavit it is admitted that according to the roster, 6th point in the roster is served for SC candidates. Whereas, in the additional affidavit respondent no. 1 has stated that instead of point 6, point 7 is meant for SC candidates. It is further admitted by the respondent no. 1 that one post for this category is already kept vacant and also admitted that there is not a single teacher from the SC/ST community. This fact casts serious doubt on implementation of the government reservation policy which is strongly required to be followed by all the government institutions including respondent no. 1 herein who is fully funded by the Central Government. Thus, the selection process deserves to be quashed on this count also.

27. In view of the above discussions and in the facts and circumstances of the case, I hereby quash the selection process for the post of Assistant Professor (Extension) in pursuance of the advertisement in the December, 2011. Consequently, the selection of respondent no. 3 is set aside.

28. Accordingly, the respondent no. 1 is directed to reprocess the selection process afresh within six weeks from the receipt of this order and select the candidate based upon the assessment to be assessed by the Interview Board. It is further directed that while processing the same the

respondent no. 1 shall implement the reservation policy meant for SCs/STs category.

29. The petition is, accordingly, allowed and disposed of.

(SURESH KUMAR KAIT)
JUDGE

APRIL 12, 2019
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