

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.6808 of 2022

Umakanta Pradhan and Anr. Petitioners

Mr. Bhabani Sankar Tripathy (1,) Adv.

-versus-

Odisha Public Service Commission, Opposite Party

Cuttack and Ors.

Mr. Arnav Behera, Adv.

(for OPSC)

Mr. Pranoy Mohanty, Adv.

(for O.P.2)

CORAM:

DR. JUSTICE S.K. PANIGRAHI

Order

No.

10.

ORDER

27.10.2022

1. This matter is taken up through hybrid mode.
2. The present petition has been filed challenging the selection of Opposite Party No.2 to the post of Associate Professor, Marine Science (Oceanography) pursuant to Advertisement No.6 of 2021-2022 issued by the Odisha Public Service Commission. The petition calls into question and assails the action of the Opposite Party No.3 in selecting Opposite Party No.2 ahead of the Petitioner even though he is ineligible for the said post and therefore, such appointment is liable to be quashed.

I. FACTS OF THE CASE

3. Shorn of unnecessary details, the substratum of matter presented before this Court remains that OPSC had issued advertisement for recruitment to the post of Associate Professor in different State Public Universities by inviting applications from the prospective candidates from 23.07.2021 till 23.08.2021 with 31.08.2021 as the last date of submission of the registered online application. As per the advertisement, there was only 1 (one) post of Associate Professor in Marine Science (Oceanography) under UR category. The educational qualification as indicated in para-4 of the said advertisement has been extracted hereinunder for convenience:

- i. A good academic record, with a Ph.D Degree in the concerned/allied/relevant disciplines.*
- ii. A Master's Degree with atleast 55% marks (or an equivalent grade in a point-scale, whenever the grading system is followed).*
- iii. A minimum of eight years of experience of teaching and/or research in an academic/research position equivalent to that of Assistant Professor in a University, College or Accredited Research Institution/Industry with a minimum of seven publications in the peer-reviewed or UGC journals and a total research score of 75 (Seventy-Five).*

4. The Petitioners having the required eligibility criteria and specific educational qualification applied for the said post and both of them were assigned PPSAN No. 00091661 & 00110319 respectively. The Opposite Party No. 2 was also an applicant for the said post and was assigned PPSAN No. 00110428.
5. Subsequently, the Commission vide Notice No. 7579 dated 22.10.2021 published information concerning document verification of candidates for the post of Associate Professor in Marine Science (Oceanography). Though the initial date for document verification was 30.10.2021, the same was deferred to 09.11.2021 vide Notice No.7595 dated 25.10.2021.
6. After the document verification on 09.11.2021, 5 candidates including the Petitioners and the Opposite party No. 2 were called for interview on 28.02.2022 for the said post vide Notice No. 1538 dated 17.02.2022. The Commission vide Notice No. 2013 dated 28.02.2022 published the name of Opposite Party No. 2 and found him suitable for the post of Associate Professor in Marine Science (Oceanography).

II. SUBMISSION ON BEHALF OF THE PETITIONER

7. It is submitted by Learned Counsel for the Petitioner that the Opposite Party No. 2 does not have the requisite

educational qualification and hence, doesn't satisfy the eligibility criteria for the post of Associate Professor in Marine Science. The Opposite Party No. 2 possesses MSc. in Environmental Science and neither has minimum eight years of experience in teaching/research in an academic/research position equivalent to that of the Assistant Professor in a University/College or Accredited Research Institution/Industry nor possesses specialization in Marine Geochemistry as per the concerned advertisement.

8. Furthermore, it is contended by Learned Counsel for the Petitioner that illegalities have been committed while constituting the Selection Board as the same was not in accordance to the UGC Guidelines and two members of the Selection Board favoured the Opposite Party No.2 for appointment to the post of Associate Professor as they had interest in his selection.

III. SUBMISSION ON BEHALF OF THE OPPOSITE PARTY

9. Per Contra, it is submitted by Learned Counsel for the Opposite Parties that the Petitioners having participated in the selection process under the advertisement issued by Opposite Party No.1 are estopped from challenging the same after having failed to qualify for the said post.

For this reason, the present writ petition deserves to be dismissed *in limine*.

10. It is also contended by Learned Counsel for the Opposite Parties that the Opposite Party No.1 constituted teams of experts who were tasked with verification/scrutiny of the original documents of the candidates. Retired Professors from the broad stream of Science comprised the Selection Board for scrutiny of documents and to verify if a candidate fulfils the eligibility criteria. The candidates were evaluated on the basis of their domain knowledge, research potentiality, presentation, articulation, intangibility and confidence, quality, impact and contribution of the publications, teaching/research experience, API scores etc. Therefore, the Opposite Party No.2 has been selected ahead of the Petitioners because of several publications in the relevant field in peer-reviewed journals or UGC listed journals and his total research score is 249.5 as against 147.0 and 92.6 of the Petitioners No.1 and 2 respectively.

IV. COURT'S REASONING AND ANALYSIS

11. On perusal of the above-mentioned pleadings, this Court is of the view that the petitioners were not selected in the interview as they had low research scores in comparison to the Opposite Party No.2 and therefore,

they were not considered eligible for appointment to the post of Associate Professor in Marine Science (Oceanography). Moreover, the selection committee prescribed the appointment in favour of Opposite Party No.2 because of his established proficiency insofar as the research publications, academic knowledge is concerned. The Court cannot sit as an appellate authority to decide if the eligibility criteria and the corresponding qualifications possessed by the candidates were pertaining or related to the post to which the concerned appointment was made. It is a settled position that the unsuccessful candidates cannot turn back and assail the selection process. The petitioners took a calculated chance and appeared for the interview and only because the result of the interview was not palatable to them, they cannot turn around and challenge the eligibility of the successful candidate and the selection process, as a whole.

12.In the case of *Maharashtra Public Service Commission v. Sandeep Shriram Warade*¹ , the Supreme Court observed:

“The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable

¹ CIVIL APPEAL NO(s). 4597 OF 2019

qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being at par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the Court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the Court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same."

13. The Supreme Court in the case of *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth*² and others observed hereasunder:

"The Court should be extremely reluctant to substitute its own views as to what is wise prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise

² AIR 1984 SC 154

and rich experience of actual day-to-day working of educational institutions and departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded."

14.In the case of ***Ramesh Chandra Shah & Ors vs Anil***

Joshi³, the Supreme Court observed:

"In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents."

15.More appropriate for this present case would be an earlier decision in ***Dr. G. Sarana v. University of Lucknow and Others***⁴, wherein a similar question had come up for consideration before a three-judge bench of the Supreme Court as the petitioner, after having

³ CIVIL APPEAL NOS. 2802-2804 OF 2013

⁴ AIR 1976 SC 2428

appeared before the selection committee and on his failure to get appointed, had challenged the selection result pleading bias against him by three out of five members of the selection committee. He also challenged constitution of the committee. Rejecting the challenge, the Supreme Court had held:

"We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee. This view gains strength from a decision of this Court in Manak Lal's case where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him.

It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point."

16. One of the earliest judgments on the subject is *Manak Lal v. Prem Chand Singhvi*⁵. In that case, the Supreme Court considered the question whether the decision taken by the High Court on the allegation of professional misconduct levelled against the appellant was vitiated due to bias of the Chairman of the Tribunal constituted for holding inquiry into the allegation. The appellant alleged that the Chairman had appeared for the complainant in an earlier proceeding and, thus, he was disqualified to judge his conduct. The Supreme Court held that by not having taken any objection against the participation of the Chairman of the Tribunal in the inquiry held against him, the appellant will be deemed to have waived his objection. Some of the observations made in the judgment are extracted below :

"8. ... If, in the present case, it appears that the appellant knew all the facts about the alleged disability of Shri Chhangani and was also aware that he could effectively request the learned Chief Justice to nominate some other member instead of Shri Chhangani and yet did not adopt that course, it may well be that he deliberately took a chance to obtain a report in his favour from the Tribunal and when he came to know that the report had gone against him he thought better of his rights and raised this point before the High Court for the first time. ...

⁵ AIR 1957 SC 425

9. From the record it is clear that the appellant never raised this point before the Tribunal and the manner in which this point was raised by him even before the High Court is somewhat significant. The first ground of objection filed by the appellant against the Tribunal's report was that Shri Chhangani had pecuniary and personal interest in the complainant Dr. Prem Chand. The learned Judges of the High Court have found that the allegations about the pecuniary interest of Shri Chhangani in the present proceedings are wholly unfounded and this finding has not been challenged before us by Shri Daphtary. The learned Judges of the High Court have also found that the objection was raised by the appellant before them only to obtain an order for a fresh enquiry and thus gain time. ... Since we have no doubt that the appellant knew the material facts and must be deemed to have been conscious of his legal rights in that matter, his failure to take the present plea at the earlier stage of the proceedings creates an effective bar of waiver against him. It seems clear that the appellant wanted to take a chance to secure a favourable report from the Tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point."

17. The aforesaid discussion and observations finds strength from the decision of the Supreme Court in

Union Public Service Commission v. M. Sathiya Priya⁶

wherein the Court held that:

“...the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules and the courts cannot sit as an appellate authority or an umpire to examine the recommendations of the Selection Committee like a court of appeal. The Hon’ble Court further observed that “This discretion has been given to the Selection Committee only, and the courts rarely sit as a court of appeal to examine the selection of a candidate; nor is it the business of the court to examine each candidate and record its opinion. Since the Selection Committee constituted by UPSC is manned by experts in the field, we have to trust their assessment unless it is actuated with malice or bristles with mala fides or arbitrariness.”

18.In *National Institute of Mental Health and Neuro Sciences v. Dr. K. Kalyana Raman*⁷, the Supreme Court held that the expert committee's finding should not be lightly interfered. It was held as follows—

“The function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative. Where selection has been made by the assessment of relative merits of rival candidates determined in the course of the interview of candidates possessing the required eligibility and there is no rule or regulation

⁶ (2018) 15 SCC 796

⁷ 1992 Supp (2) SCC 481

brought to the notice of the Court requiring the Selection Committee to record reasons, the Selection Committee is under no legal obligation to record reasons in support of its decision of selecting one candidate in preference to another. Even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement."

19.In the case of *State of Punjab v. Central Administrative Tribunal*⁸, the High Court observed:

"The Hon'ble Supreme Court has held that the Tribunal/Court cannot sit as Appellate Authority to call for the personal records and itself constitute selection committee. The Hon'ble Supreme Court was conscious of the fact while making such observations that the wide powers available with the selection committee are liable to be abused but that does not in itself justified presumption regarding arbitrary exercise of powers and posed confidence in the selection committee constituted by high ranking responsible officers to doubt that they would act in unfair & partial manner collectively to favour some person and held that where power is vested in high authority there is a presumption that the same would be exercised in a reasonable manner and if the same is made on extraneous considerations then the Courts have ample powers against such arbitrary exercise of power."

⁸ 2020 SCC P&H 1908

20. In view of the above ratio, which is applicable, it is not necessary for this Court to delve further into the allegations and submissions based on assertion of bias and prejudice.

21. The selection made by an authority for appointment is not ordinarily open to judicial scrutiny because whether a candidate is fit for a particular post or not, has to be decided by the duly constituted Appointing Authority/Selection Committee which has the expertise on the subject. The Petitioners allege that they lack the expertise, it is not the function of the Court to hear appeals over the decisions of Selection Committees and to scrutinize the relative merits of candidates. If this Court starts interfering on every such allegation, no selection process can even complete.

22. If a candidate despite being aware of any defect or infirmity in a process of selection appears at the examination for recruitment/interview by taking a calculated chance, and finds the result of such examination/interview not palatable to him, he cannot turn around and subsequently contend that the process of examination/interview was either defective or unfair.

23. The cardinal principle pertaining to service jurisprudence is that it is not within the legitimate

domain of the Court to determine whether the purpose of a statute can be served better by adopting any policy different from what has been followed by the legislature or its delegate and to strike down as unreasonable a regulation or resolution merely on the ground that the policy enunciated and followed therein does not meet with the approval of the court in regard to its efficaciousness for implementation.

24. In the final analysis, this Court is of the opinion that the Writ Petition is devoid of merits for the foregoing reasons and is, accordingly, liable to fail. The challenge in this Writ Petition should be spurned, being hit by the doctrine of approbation and reprobation. The Writ Petition is dismissed. No order as to costs.

25. Interim order passed earlier stands vacated.

(Dr. S.K. Panigrahi)
Judge

B.Jhankar