

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No.4277 of 2015

B.P. Sibasankar Petitioner
Mr. J.K. Lenka, Adv.

-versus-

State of Odisha & Anr. Opposite Party
Mr. H.K. Panigrahi, Adv.
(SAT (Cuttack))

CORAM:

DR. JUSTICE S.K. PANIGRAHI

Order

No.

04.

ORDER

27.10.2022

1. This matter is taken up through hybrid mode.
2. The present petition has been filed challenging the Annexures-6 & 9 dated 08/10/2015 & 03/11/2015 respectively in not shortlisting the candidates for interview to the post of Lecturer in Commerce at the ratio of 1:3 and more and rejecting the claim of the petitioner with respect to his participation in the interview.
3. Shorn of unnecessary details, the substratum of matter presented before this court remain that pursuant to Advertisement bearing No. 05/2013-14 dated 24/06/2013, the Opposite Party invited applications for recruitment to 281 posts of Lecturer in different disciplines in

(Group-A) of O.E.S (College Branch) of Govt. Degree Colleges of the State under the Department of Higher Education in the scale of Rs.15,600-39,100/- carrying academic grade pay of Rs.6000/-.

4. The petitioner, being eligible applied for the post of Lecturer in Commerce. The OPSC issued a corrigendum dated 16/01/2014 notifying that the vacancies have been enhanced to 42 nos. for recruitment to the post of Lecturer in Commerce. Consequently, vide impugned order dated 08/10/2015, it was notified that 28 candidates (including the petitioner) have not been considered by the Commission for interview as they could be shortlisted on the basis of evaluation of their academic career as per para-6 of the Advertisement dated 24/06/2013. The relevant section has been extracted hereinbelow for reference:

"The selection of candidates for recruitment to the posts will be made on the basis of career assessment and viva-voce. The Commission at their discretion may shortlist the candidates to a reasonable number, for conducting interview by making a preliminary selection on the basis of evaluation of their academic career taking into account the requisite educational qualification."

5. It is submitted by Learned Counsel for the Petitioner that out of total of 42 vacancies for the post of Lecturer

in Commerce, only 66 candidates were called for interview. The Commission shortlisted candidates for the post of Lecturer in Commerce in the ratio of 1:1.5 whereas the recruitment to the posts of Lecturer in Anthropology and Economics were carried out in the ratio of 1:3 plus out of the total advertised vacancies.

6. Furthermore, it is contended by Learned Counsel for the Petitioner that the executive decision of the Opposite Party in following two different ratio structures for recruitment to the post of Lecturers in Commerce and Anthropology & Economics is discriminatory and violative of Articles 14 & 16 of the Constitution of India. It is submitted that had the ratio of 1:3 plus been adopted for the recruitment to the posts of Lecturer in Commerce, the petitioner would've got a fair chance in qualifying for the interview.

7. Per Contra, it is contended by Learned Counsel for the State that the Commission had taken a decision in the meeting dated 16.12.1997 that where the number of vacancies is up to 2 (two), the number of candidates to be called for interview may be 5. Where number of vacancies exceed 2, the number of vacancies to be called for interview may be twice the number of vacancies. Moreover, it is also submitted by Learned Counsel for

the State that due to lower rank in the career assessment in comparison to the other candidates, the petitioner was not shortlisted to be called for the interview to the said post.

8. On perusal of the abovementioned pleadings, this court is of the view that when a large number of candidates are available having the basic qualifications prescribed for competing for appointment to a particular post or class of posts and where the available posts are limited, necessarily, the State, therefore, is compelled to make a further assessment of the relative merits of all the competing candidates by some legally permissible method. Assessment of one's academic career such as the one conducted in the present case is one such method. The due assessment of academic careers is a process of filtering or eliminating the less suitable candidates though they possess the basic qualification prescribed by the State in the context of a given post/class of posts and have met the minimum qualifying criteria. Such filtering process can take various forms depending upon the nature of the posts sought to be filled up and the mode of filtering may vary from time to time and also from class to class of the posts sought to be filled up.

9. 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 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.”

10. The Apex Court in the case of ***Maharashtra State Board of Secondary and Higher Secondary Education v.***

¹ CIVIL APPEAL NO(s). 4597 OF 2019

Paritosh Bhupeshkumar Sheth and others² 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 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.”

11. The petitioner participated in recruitment process conforming to the eligibility criteria and method of selection provided in the advertisement dated 24.06.2013. Even though the petitioner was aggrieved by the adoption of a different ratio structure in comparison to other disciplines, he did not espouse their remedy. Instead, he participated in the recruitment process and it was only upon being unsuccessful that he challenged the inclusion of the concerned screening process in the

² 1984 AIR 154

writ petition. This was clearly not open to the petitioner.

The principle of estoppel would operate.

12. The Supreme Court clarified a decision of the Punjab & Haryana High Court in *Rameshwar Nath Moudgil v. State of Punjab*³, wherein it was apparently held otherwise. The facts of the said case were that the eligibility criteria to the post in question were altered retrospectively during the pendency of the process of selection. Such alteration jeopardized the chances of Rameshwar Nath. The Punjab & Haryana High Court held that such a retrospective alteration would violate the provisions of Article 14 & 16 of the Constitution of India. The Supreme Court observed hereunder:

".....the authority which has the power to specify the method of recruitment must be deemed to have the power to revise and substitute the same in the same manner...such an inherent power exists in the authority to alter, vary, change or replace its creation."

13. In the case of *Jai Singh Dalal and Ors. vs State of Haryana and Anr*⁴, the Supreme Court iterated that:

"There is no prohibition in law preventing the State from altering the process of selection in the midstream as long as such an alteration did not render any one of the otherwise eligible

³ W.P (C) 1464 of 1976

⁴ 1993 Supp (2) SCC 600

candidates ineligible to participate in the selection process. All that the alteration in question sought to achieve is to enable some more candidates also to participate in the selection process. The power to make such alteration is within the power of the State."

14. In the present case, the petitioner was not shortlisted owing to his lower rank in the academic career assessment in comparison to other candidates and hence, was not considered eligible to advance into the interview stage of the recruitment process. 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 recruitment process but simply because the result was not palatable to him, he cannot turn around and challenge the method of selection in the recruitment process.

15. The law on the subject has been crystalized in several decisions of the Supreme Court. In *Chandra Prakash Tiwari v. Shakuntala Shukla*⁵, the Supreme Court laid down the principle that

"....when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is

⁵ Appeal (civil) 3441-3446 of 2002

precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable."

16.In the case of **Ramesh Chandra Shah & Ors vs Anil Joshi**⁶, 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."

17.In the case of **Pradeep Kumar Rai v. Dinesh Kumar Pandey**⁷, the Supreme Court held that :

"Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. This, it appears that only when the appellants found

⁶ CIVIL APPEAL NOS. 2802-2804 OF 2013

⁷ CIVIL APPEAL NO.6549 OF 2014

themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted."

18. Much has been argued by the petitioner with respect to the ratio structure adopted for shortlisting candidates for interview to the post of Lecturer in Commerce. According to him, the adoption of a different ratio structure as compared to other disciplines is discriminatory and violative of Article 14 & 16 of the Constitution of India. This court found absolutely no merit in this argument. In the instant case, it was clarified vide Paragraph 6 of advertisement dated 24.06.2013 that the Commission at their discretion may shortlist candidates to a reasonable number. This court is of the opinion that the Commission is placed in a better position to ascertain the method of selection of the candidates and it has every justification to suggest or set priorities in fixation of screening methods in order to filter out the deserving candidates for the interview process.

19. Normally, rules following which the selection has commenced cannot be changed/ altered but nothing prevents the Commission to take measures for screening of candidates, if candidates in large numbers apply for employment and the need to restrict the zone of consideration is felt. Similarly, method of selection for shortlisting could be set without prejudicing the right of any candidate, not based on considerations that are extraneous but based on reasonable and bona fide intention.

20. 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. Since it lacks 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.

21. 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 laid down by the

legislature or its delegate and to strike down as unreasonable a regulation or resolution merely on the ground that the policy enunciated therein does not meet with the approval of the court in regard to its efficaciousness for implementation.

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.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.

(Dr. S.K. Panigrahi)
Judge