
(2008) 05 GAU CK 0003

Gauhati High Court (Agartala Bench)

Case No: None

Samir Sarkar

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision: May 2, 2008

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (2008) 2 GLT 866

Hon'ble Judges: U.B. Saha, J

Bench: Single Bench

Final Decision: Allowed

Judgement

U.B. Saha, J.

Heard Mr. PR. Barman, learned Counsel representing the writ petitioner. Also heard Mr. S. Deb, learned senior Counsel assisted by Mr. P. Dutta, learned Counsel appearing for the respondents-Tripura Public Service Commission, Mr. N.C. Pal, learned Govt. Advocate for the State respondents and Mr. S. Talapatra, learned senior counsel for the respondent No. 5.

2. By this writ petition, the petitioner has sought for a direction for quashing/canceling the recommendation/selection of the Tripura Public Service Commission (for short TPSC) vide Notice No. F. 66(1)-TPSC/94(P-3) dated 22.09.07 issued by the Secretary, TPSC, the respondent No. 2 herein, whereby names of four selected candidates were recommended including the name of respondent No. 5 for appointment to the post of Assistant Professor in Political Science, Group-B Gazetted in the Institution of Advance Studies in Education (for short IASE) under the Directorate of Higher Education relating to Item No. 2 of the TPSC Advertisement No. 04/07. The name of the respondent No. 5 was shown at Sl. No. 4 of the list recommended.

3. The short facts of the case are that the petitioner initially served as part time contract teacher in the Department of Political Science of Ramthakur College, Agartala with effect from 02.01.1999 to 22.09.2003 and as Assistant Professor in Political Science in IASE with effect from 28.02.04 to 23.04.07. On 01.08.07, he joined as Post Graduate Teacher in Political Science under the Directorate of Higher Education, Government of Tripura. As such, he submitted an application for the post of Assistant Professor in Political Science, Group-B, as per Item No. 2, in response to the Advertisement No. 04/07 issued by the Secretary, TPSC and as per call letter dated 08.08.07 issued by the Deputy Secretary, TPSC, appeared in interview on 28.08.07 and thereafter, in order of merit on the basis of marks obtained by the candidates in the interview, the TPSC recommended the names of four selected candidates for appointment to the post of Assistant Professors, Group-B, Gazetted in different subjects in IASE under the Higher Education Department, Government of Tripura and in Sl. No. 4 of the said selection list, the name of Sri Ratan Kumar Das, the respondent No. 5 herein, was recommended for the post of Assistant Professor in Political Science vide letter dated 22.09.07. Having found that the petitioner was not selected/recommended for the said post, he sought for information in 21 different heads regarding the selection process under the Right to Information Act, 2005 (in short RTI Act), whereupon the State Public Information Officer, Public Information Cell, TPSC vide letter dated 22.05.07 furnished the petitioner with one information that in the interview for the post of Assistant Professor in Political Science, the petitioner obtained 69 marks. Having learnt that the respondent No. 5 got 64 marks and was recommended, he prayed to the respondents-TPSC that his name should be recommended instead of respondent No. 5 he having secured higher marks than the respondent No. 5, but the respondents-TPSC did not accede to the request of the petitioner on the ground that the intimation Form No. 3 under RTI Act, 2005 has been issued wrongly giving wrong information about marks obtained by him as he obtained 63 marks only while he was informed by the State Public Information Officer that he secured 69 marks in the interview.

4. Being aggrieved by the action of the respondents-TPSC, the petitioner has assailed the recommendation/selection of the respondent No. 5 by filing this writ petition.

5. Mr. PR. Barman, learned Counsel for the petitioner submits that the petitioner has challenged the selection of Respondent No. 5, mainly on the ground that though he was informed by the State Public Information Officer of the TPSC under RTI Act that he secured 69 marks, but the respondents-TPSC selected the respondent No. 5 for the post of Assistant Professor in Political Science vide impugned Notice dated 22.09.07 (Annexure-0), even though the respondent No. 5 got only 64 marks, which is less marks than the marks secured by the petitioner. Another ground raised by the petitioner is that the respondent No. 5 was not even eligible to appear in the interview for the post of Assistant Professor of Political Science for non-furnishing of no objection certificate from his employer before the respondents-TPSC on the date

of interview as stipulated in the Call Letter and thus, his interview is liable to be declared invalid and the alleged 64 marks shown to have been obtained by the respondent No. 5 should also be ignored and therefore, even if it is presumed that the petitioner being allegedly secured 63 marks though the petitioner did not receive the alleged communication intimating him the alleged correct marks, it cannot be said that the correct marks was communicated to him unless the same is received by the petitioner, and being an eligible candidate in order of merit next below to the respondent No. 5, he is entitled to be selected and recommended for the said post of Assistant Professor instead of respondent No. 5. Non-selection of the petitioner is nothing but an arbitrary and unreasonable action of the respondents TPSC and an unreasonable order is always unfair and violative of provisions of Article 14 of the Constitution for which itself also recommendation/selection of the respondent No. 5 by the impugned notice dated 22.09.07 (Annexure-O) is liable to be quashed. Consequently, it would be proper for the Court to give a direction to the respondent-TPSC to recommend the name of petitioner for the post of Assistant Professor in Political Science under SC category in pursuance to the Advertisement No. 04/07, Item No. 2 of the Advertisement, in place of respondent No. 5, Mr. Barman submits. He also urges referring to Para-10 of the rejoinder to the counter-affidavit filed by the respondents-TPSC that there was no mistake on the part of the respondents-TPSC while provided the information under the RTI Act to the petitioner that he secured 69 marks in the interview, but subsequently, the respondent-TPSC might have manipulated the records to show that the petitioner got only 63 marks in the interview to deprive him from getting the said job.

6. Mr. S. Deb, learned senior Counsel for the respondents-TPSC submits that this is not a case where the respondents-TPSC allowed a candidate like the respondent No. 5 by way of waving a condition of production of no objection certificate, rather it can be said that the respondents-TPSC only extended the time for production of no objection certificate considering the facts that the respondent No. 5 received the call letter just one day before the interview i.e. on 27.08.2007. Unless the respondent No.-5 knew that no objection certificate would be required for appearing in the interview, how he could apply for the same, far from speaking of submission of no objection certificate before the interview, and it is an admitted fact that no mention was there in the advertisement for submission of no objection certificate from the employer of the candidate, he submits. He further urges that how the respondent No. 5 can submit no objection certificate before the respondents TPSC unless the authority issued the said certificate even after submission of application by him and after being applied for the said certificate by the respondent No. 5, while he made a request for extension of time, the respondent - TPSC allowed the same. The production of no objection certificate from the employer of the candidate is not an essential condition for appearing in the interview, rather it is a directory one and general in nature, as the purpose of putting the aforesaid condition is only to

confirm that after selection, an in-service candidate can join the post or should not decline to join the post even after selection. In the instant case, according to him, the respondent No. 5 received the call letter on 27.08.2007 and on that day itself, he applied to the respondents-TPSC for allowing him to appear in the interview and to produce no objection certificate within three days from the date of interview. The authority considering the facts and situation that the call letter was issued on 27.08.2007 and the petitioner received the same a day before the interview and that he applied to his employer for issuance of no objection certificate on that very day, but his employer could not furnish the same within the day itself, he was allowed to appear in the interview. There is no such averment made by the petitioner in his petition that for extension of time to submit no objection certificate by the respondent No. 5, the petitioner was in any way affected or any of his right was violated, he further submitted. While countering the allegations of the petitioner that he got 69 marks in the interview, as informed by the State Public Information Officer of the respondent - TPSC, he further urges that the State Public Information Officer of the respondent-TPSC by way of mistake informed the petitioner that he got 69 marks instead of 63 marks and the said bonafide mistake was subsequently corrected by issuing a fresh Form No. 3 under RTI Act, 2005 in canceling the earlier communication dated 22.09.2007 which was also communicated to the petitioner on 29.09.2007 vide dispatch No. 22117 and from the records placed by the respondents-TPSC before this Court, it would be evident that there was no manipulation done by the respondent-TPSC as alleged by the petitioner. It is a settled position of law that a bonafide mistake can be rectified at any time even without following the principle of natural justice and does not confer any right to any person like the petitioner. In response to the contention of Mr. Roy Barman, inter alia, that the petitioner did not receive the communication intimating him the correct marks, he submits that there is no statutory requirement to communicate to the petitioner except under RTI Act.

7. Mr. Deb relied on and referred to a decision of the Apex Court in the case of [State of Punjab Vs. Khemi Ram](#), wherein the word "communication" fell for consideration and their Lordship held that once the order is issued and it is sent out to the concerned Govt. servant, it must be held to have been communicated to him, no matter whether he actually received it. Mr. Deb also relied some other decisions of the Apex Court wherein their Lordship considered the meaning of word "communication", some of those cases are [State of Punjab and Others Vs. Balbir Singh and Others](#), ; [Bachhittar Singh Vs. The State of Punjab](#), and [S. Pratap Singh Vs. The State of Punjab](#), and the ratio of S. Pratap Singh (supra) which was considered in Khemi Ram (supra) and Balbir Singh (supra) has recently been considered by the Apex Court in the case of [Municipal Corporation of Delhi Vs. Qimat Rai Gupta and Others](#), wherein their Lordship while interpreting the meaning of the word "made" reiterated the ratio in Khemi Ram (supra).

8. Mr. S. Talapatra, learned senior Counsel for the respondent No. 5 while referring the decisions of the Apex Court cited the same decisions referred by Mr. Deb and adopted the same argument. He also contended that furnishing of no objection certificate was not a pre-condition in the advertisement to be eligible a candidate for appearing in the interview and the respondents-TPSC has no right to put any further condition in the call letter except conditions mentioned in the advertisement. However, as and when the respondent No. 5 received the Call Letter and was aware about the fact that he had to produce the no objection certificate from his employer to the respondents-TPSC for appearing in the interview for the post of Assistant Professor in Political Science as SC candidate, he applied for the same to his employer on 27.08.2007 itself i.e. the day he received call letter and being 28.08.2007 was the date of interview, the respondent No. 5 made an application to the respondents-TPSC for allowing him to appear in the interview on condition that he would produce no objection certificate from his employer within three days from the date of interview. Accordingly, the respondents-TPSC allowed the respondent No. 5 to appear in the interview. According to him, the authority who has power to put some conditions in the call letter, the said authority has also power to relax/waive the condition imposed. In the instant case, the respondent-TPSC being the appropriate authority has the power for relaxation/waiving the conditions and they rightly did so. Referring to Annexure-1 of the Counter-affidavit of the respondent No. 5 i.e. the call letter issued by the respondents-TPSC to the respondent No. 5, he tried to show that as the call letter was issued on 27.08.07 and date of interview was on 28.08.07, he applied to his employer on that day itself for no objection certificate and also applied to the respondents-TPSC for allowing him to appear in interview which was accepted by the respondents-TPSC itself. He also contended that it would be evident from the call letter itself that furnishing of no objection certificate is not a mandatory condition, far to an essential condition, rather directory one and a directory condition can always be waived by the authority and to justify his aforesaid argument, he refers to the call letter wherein it is mentioned, "In case you have got any employment after submission of application to the Commission for the above mentioned post, you should submit a "No-objection" certificate from your present employer at the time of interview failing which you will not be allowed to appear in the interview." He submits that there was no fault on the part of the respondent No. 5 and that when the petitioner made some allegations that the respondents-TPSC manipulated the record relating to the marks secured by the petitioner only to help the respondent No. 5, it is the petitioner who has to prove such allegations either by way of producing the relevant paper or evidence. Mere allegations would not be enough to curtail the right of a selected candidate like the respondent No. 5 when the respondents-TPSC themselves by way of filing the affidavit and the relevant records before the Court pleaded that the petitioner got 63 marks and the Respondent No. 5 got 64 marks in the interview. The respondent 5 having secured more marks than the petitioner, recommendation/selection of the respondent No. 5 cannot be called in question

only on the ground of extension of time for production of no objection certificate from his employer.

9. Mr. N.C. Pal, learned Govt. Advocate appearing for the State respondents has not stated anything more except what has been contended by Mr. Deb, learned senior Counsel for the respondents-TPSC.

10. Considering the rival submission of the learned Counsel for the parties as well as the pleadings averred by them, the questions arise for decision in this case are whether the information given by the State Public Information Officer of the Commission to the petitioner that he got 69 marks due to mistake instead of 63 marks can be rectified subsequently and whether the respondents-TPSC has the power to relax or waive the condition mentioned in the call letter for interview and whether the said respondent-TPSC can put any further condition in the call letter except the condition mentioned in the advertisement. By this time, it is settled by the Apex Court that a bonafide error can be rectified at anytime even for such rectification no show cause notice is required. In the case of Chandigarh Administration v. Naurang Singh (1997) 2 SLR 230, the Apex Court observed that an evident mistake cannot constitute a valid basis for compelling the administration to keep on repeating that mistake. This Court has gone through the relevant records placed by the respondents-TPSC pertaining to marks obtained by the candidates appeared in the interview and nothing is appeared to have manipulated in the marks given against the names of the candidates including the present petitioner and the respondent No. 5 It appears from the record that the petitioner secured 63 marks whereas the respondent No. 5 secured 64 marks, meaning thereby the information communicated to the petitioner by the State Public Information Officer of the respondents-TPSC is nothing but a mistake in furnishing the correct information about the marks obtained by the petitioner and the said mistake being corrected by providing correct information to the effect that the petitioner got 63 marks in the interview. More so, when it appears from the record that the correct information relating to securing 63 marks by the petitioner has already been communicated to the petitioner by the State Public Information Officer of the respondent-TPSC, though according to the petitioner, the said communication has no effect being the same was not received by him, the said plea of the petitioner is not required to be answered by this Court as it has already been answered in view of the Khemi Ram (supra), which still stood the test of time to be a good law in view of the recent decision of the Apex Court in Municipal Council of Delhi (supra). There was no wrong on the part of the authority of the RTI Act for apprising the petitioner the correct position of marks really he obtained.

11. On the point of extension of time to submit No objection certificate by the respondent No. 5, this Court is of further opinion that there is a distinction between the essential conditions and general conditions. It would appear from Annexure-M of the writ petition issued in favour of the writ petitioner that the interview was

provisional subject to furnishing no objection certificate and not only that in the call letter of the respondent No. 5 also, the respondent-TPSC, inter alia, stated "Please note that you are required to produce and submit originals/copy(s) the following documents at the time of interview failing which you may not be allowed to appear the Interview Board:

(i) NET/SLET/M.Phil/Ph.D Certificate.

(ii) "No-objection" certificate from your employer allowing you to appear before the Commission for interview for the post as your application has not been routed through proper channel.

(iii) ...

12. It appears that the said conditions of furnishing No objection certificate from the employer of the candidate for appearing in the interview is not an essential condition, but a general condition. An essential condition cannot be waived and relaxed, but the general conditions can always be waived by the authority who put the said condition. Condition is nothing but an obligation. General condition is not a particularized condition, rather a condition as opposite to special, and casual condition is that which depends on chance, meaning thereby that the general and casual condition are not an obligatory one, but the essential condition is always obligatory, one being without fulfillment of the said condition cannot appear in the interview, as the case may be.

13. Conditions and stipulations in the call letter have two types of consequences - (i) the conditions mandatory having penal consequences and (ii) the conditions directory and general in nature without penal consequences. For non-compliance of essential condition, a person will be substantially prejudiced, but for noncompliance of general condition/non-essential conditions, no body will be substantially prejudiced and those conditions can be relaxed and waived by the authority who imposed those conditions in the call letter.

14. Therefore, this Court has no hesitation to hold that the conditions imposed in the call letter by the respondent-TPSC for appearing in the interview for the post of Assistant Professor including the post of Assistant Professor in political science are nothing but a general and/or casual condition and according to this Court, the authority who has the power to put some conditions, has also the power to relax or waive the said conditions, but the said relaxation should not, however, be arbitrary and cause prejudice or injustice to any of the candidate, who applied for appearing the interview. And in the instant case, the respondent-TPSC being the appropriate authority has the power for relaxation/waiving the conditions and what the respondents-TPSC did in the instant case. This Court also has no hesitation to hold that no condition can be imposed in the call letter beyond the condition made in the advertisement. However, as the respondent TPSC imposed condition for furnishing no objection certificate and the respondent No. 5 fulfilled the same within the time

extended by the respondent-TPSC, hence it cannot be held that the respondent No. 5 was ineligible to appear in the interview. His appearance in the interview is valid and he secured higher marks than the petitioner. Consequently, the selection/recommendation of the respondent No. 5 cannot be set aside and issuing a direction to the respondents - TPSC recommending the name of the petitioner does not arise. 15. For the foregoing reasons and discussion, the writ petition is found to be devoid of merit and hence the same is rejected. No order as to costs.