

(2006) 11 GAU CK 0028

Gauhati High Court

Case No: None

Kulen Mishra

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: Nov. 7, 2006**Acts Referred:**

- Constitution of India, 1950 - Article 14

Citation: (2007) 1 GLR 123 : (2006) 4 GLT 573**Hon'ble Judges:** Utpalendu Bikas Saha, J**Bench:** Single Bench

Judgement

U.B. Saha, J.

By this writ petition, the petitioner has assailed the Office Order dated 21.12.1999 (Annexure 4) issued by the Deputy Commissioner, Darrang, Mangaldoi, the respondent No. 2 herein, and Office Order dated 20.01.2000 (Annexure 5) issued by the Chairman, I.M. (D) Tribunal, Mangaldoi, the respondent No. 3 herein.

2. The facts, in short compass, require to be adjudicated upon in this case are that the respondent No. 2 is issued an advertisement in the "Assam Tribune" inviting applications for the post of Stenographer Grade-II and Grade III on usual scale of pay admissible for the grade wise plus other allowances as admissible under the rules. The petitioner applied for the post submitting his testimonials in response to the said advertisement. Having satisfied the petitioner was asked to appear in the written test, speed test in stenography as well as oral interview before the Central Recruitment Committee, 1993 (in short, "CRC") headed by the respondent No. 2. Accordingly, he was selected by the CRC and pursuant thereto, he was appointed as Stenographer Grade III against the vacant post in the office of the respondent No. 3 in the pay scale of Rs. 1,515-2,715 vide office order dated 25.8.1994 (Annexure 2) issued by the respondent No. 2. It is stated in para 7 of the affidavit-in-opposition filed by the respondents that the petitioner was not allowed to join service in the office of the respondent No. 3 and thereafter, in compliance of the order dated

30.9.1994 passed by this court, the petitioner joined in the service on 25.1.1999.

3. The pay scales of the employees of the Government of Assam were revised effective from 1.1.1996 and for fixation of pay scale of the petitioner, the respondent No. 3, vide his letter dated 7.10.1998 (Annexure III) asked the petitioner to produce the certificate of Grade. But the petitioner instead of furnishing the said certificate, requested the respondent No. 3 for allowing him some time to produce the same by his letter dated 8.4.1999. Thereafter, the respondent No. 2 ordered that the scale of pay of the petitioner be modified to the scale of under qualified stenographer, i.e., Rs. 1,125-2,215 from the date of his joining in the service vide Office Order dated 21.12.1999 (Annexure IV). It was further ordered that the excess salary already paid to the petitioner till that date be deducted from his monthly salary @ Rs. 500 per month from January 2000 onwards. However, it was also ordered that the petitioner would be considered for promotion to the scale of Stenographer Grade III as and when he produces the recognized certificate (the certificate of Grade). Subsequent thereto another Office Order dated 20.1.2000 (Annexure V) was issued by the respondent No. 3 that the excess salary already drawn by the petitioner was of Rs. 63,070.00 and the said amount would be deducted from his salary @ Rs. 500 per month in 126 instalments and Rs. 570 in the last instalment.

4. In reply, the respondents have stated, inter alia, that the petitioner has no requisite qualification to be appointed as Stenographer Grade III. However, he has been given chance to produce the certificate of grade. It is also stated that the petitioner has not been awarded any punishment within the meaning of Rule 7 of the Assam Service (Discipline & Appeal) Rules, 1964 (for short hereinafter referred to as Rules). No disciplinary proceeding has been initiated against him. But the excess amount drawn by the petitioner should be refunded. Therefore, the order of deduction from salary of the petitioner for recovery of the excess amount is just and proper and there is no violation of fundamental rights.

5. Mr. L.P. Sarmah, learned Counsel for the petitioner submits that the petitioner was selected by the CRC for the post of Stenographer III after fulfilment of the terms and conditions mentioned in the advertisement and he was rightly appointed in the pay scale of Rs. 1,515-2,715, but the respondent No. 2, all on a sudden, modified the pay scale of the petitioner to the scale of pay of Rs. 1,125-2,215 which was meant for under qualified stenographer with effect from the date of his joining in the service which is violative of principle of natural justice. Therefore, the impugned orders dated 21.12.1999 and 20.1.2000 are nothing but the arbitrary action of the respondents and violative of the provisions of Article 14 of the Constitution. The learned Counsel for the petitioner further submits that the deduction from the salary in installments passed by the respondents-authorities on the basis of the enquiry report submitted by the Sub-Divisional Officer (Sadar) Mongaldoi after being held behind the back of the petitioner is illegal and bad in law. The learned Counsel for the petitioner also submits that both the impugned orders dated

21.12.1999 and 20.1.2000 are of penal consequences and no penal action can be taken up against a person without providing the opportunity of being heard. Accordingly to him, both the impugned orders were passed by the respondent-authorities without giving any notice or any opportunity to the petitioner of being heard and thus are liable to be quashed and the petitioner is entitled to the pay scale of the post against which he was appointed.

6. On the other hand, Mrs. H. Phukan, learned State counsel appearing for the respondents contends that the petitioner was not eligible for selection to the post of Stenographer Grade III as he did not produce the certificate of Grade from a Government recognized institution. She further contends that the selection of the petitioner by the CRC dehors, the terms prescribed in the advertisement so far as educational qualification is concerned. Therefore, the said selection is itself non est and on that ground alone, appointment on the basis of the said selection is illegal and does not create any right to the post and scale and the petitioner could have been terminated as per terms and conditions mentioned in the appointment letter. But the authority respondents before taking any action, an enquiry was made by the Sub-Divisional Officer (Sadar), Mongaldoi and the Sub-Divisional Officer submitted his report on 22.11.1999 and thereafter, the order dated 21.12.1999 impugned in this petition was issued. However, the direction was also issued to consider the case of the petitioner for promotion to the scale of Stenographer Grade III as and when the petitioner produces a recognized certificate. The petitioner has production a certificate from an institution which is not a recognized institution as required as per terms and conditions of the advertisement. Therefore, the selection of the petitioner was contrary to the qualification prescribed in the advertisement as well as the provisions of the Assam Stenographers' Service Rules. But the authorities did not terminate the service of the petitioner considering the fact that the petitioner was selected by the CRC without any fault of him. He was retained in service providing the pay scale of under qualified stenographer and the order of deduction of excess salary paid to the petitioner was rightly passed. As such, the petitioner was not awarded any punishment as alleged in the writ petition. Hence, the writ petition is devoid of merit and liable to be dismissed.

7. The points for decision in this case are whether the petitioner was appointed after proper selection by the CRC and, if not, whether the respondents can allow the petitioner to work in the scale of under qualified stenographer and deduct the salary allowed to him drawn in excess without providing any opportunity of being heard and whether the impugned orders are lawful or not.

8. This Court anxiously considered the rival contentions advanced by the learned Counsel for the parties. After perusal of the writ petition and the affidavit in opposition including the documents annexed thereto, I am of the view that the selection of the petitioner by the CRC is contrary to the qualification prescribed in the advertisement as well as the provisions of Rule 8 of the Rules, as the petitioner

did not produce any certificate of Grade from a Government recognized institution. Before modification of the scale of the petitioner to the scale of under qualified stenographer, i.e., Rs. 11,25-2,215 an enquiry was held by the Sub-Divisional Officer (Sadar) Mongaldoi who submitted his report to the respondent No. 2 on 22.11.1999 (Annexure B to the affidavit in opposition) and after receiving the said report, the respondent No. 2 passed the impugned order dated 23.12.1999 to the effect that the petitioner scale of pay be modified to the scale of under qualified stenographer, i.e., Rs. 11,25-2,215 with effect from the date of joining, which is meant for under qualified stenographer instead of the scale provided him in the appointment letter that is the scale of Rs. 1,515-2,715. Consequent thereupon, the respondent No. 3 issued office order dated 20.1.2000 wherein it was mentioned that on calculation as per D.C's modification order, the excess salary already drawn by the petitioner was amounting to Rs. 63,070.00 and the said amount would be deducted from the salary of the petitioner @ Rs. 500 per month in 126 installments and Rs. 570 would be deducted at the time of last installment.

9. It is stated by the petitioner that he requested the respondent No. 3 to revise his pay scale as paid to other employees under the establishments of the respondent Nos. 2 and 3. But it appears from the affidavit in opposition that the pay scale of the petitioner was also revised at the same time with other employees and the petitioner took his salary in the revised scale in the month of September 1998 and the arrear salary with effect from 1.1.1996 was deposited to the G.P. Fund of the petitioner in the month of March 2000 and the petitioner never requested the respondent No. 3 to revise his scale. For better appreciation, the relevant portion in paras 8 and 9 of the affidavit in opposition are quoted below:

8. The pay scale of Sri Kulen Mishra was also revised at the same time with other employees of IM(D) T, Mangaldoi and he took his salary in the revised scale in the month of September 1998, the arrear salary w.e.f. 1.1.1996 has also been deposited to the G.P.F in the month of March 2000.

9. That the deponent further states that the petitioner never requested the respondent No. 3 to revise his scale, but his scale was revised alongwith other employees of the office staff of IM(D)T, Mangaldoi.

10. Annexure III to the writ petition is the letter of the Chairman, IM(D)T, Mangaldoi, by which the chairman for fixation of the pay scale asked the petitioner to produce the certificate of grade he had already attained. The petitioner did not produce the same. Instead he sought for time to produce the same. Annexure B to the affidavit in opposition is the enquiry report submitted by the SDO, Mangaldoi. It appears from the report that the enquiry officer was in confusion regarding the certificate in stenography produced by the petitioner. In his report he went on to say that it was not known to him whether the said institution from which the petitioner obtained certificate in stenography was a recognized one or not. The contents of the reports are reproduced hereinbelow:

With reference to the subject and reference above, I have the honour to inform you that, I have gone through records relating to appointments of Shri Kulen Misra, as Stenographer, grade III against the vacant post of Stenographer in the office of the Chairman, I.M.D.T., Mongaldoi in the scale of Rs. 1,515-40-1,635-50-1,885-EB-50-2,035-60-2,395-80-2,715 plus other allowance vide D.C.'s Office order No. DPN. 62/93/38, dated 25th August, 1994. This was done as per selection of the Central Recruitment Committee in 1993 against the Vacant post of Stenographer in the office of the Chairman, I.M.D.T., Mangaldoi.

Though the present incumbent the post was selected and subsequently appointed he does not passes the required qualification for the Stenographer Grade III. As per norms gradation of Stenographer are done by a selection Board of Assam Secretariat. On the other hand some Govt. Technical Institutions like Poly Technics/I.T.Fs generally grade the qualified stenographers. Shri Mishra does not possess any gradation as above. At the time of appointment procedure Sri Mishra submitted a certificate from B.K. Bhandari vocational Training Institute run by Assam Seva Samity, Guwahati-16. In the certificate it was mentioned that in short hand his speed was 80(eight) per minute. It is not known whether the said institution is a recognized one or not. Hence, Sri Mishra should have been graded as an under qualified Stenographer and, thus, was eligible for appointment as a under qualified Stenographer only.

11. It is the admitted position that the petitioner was not given any opportunity as required under the principle of natural justice. The enquiry was done behind the back of the petitioner and the petitioner was not provided the enquiry report. He was also not allowed to defend his case. The respondent-authority after receiving the enquiry report passed the impugned orders modifying the scale of the petitioner and for deduction of excess amount drawn by the petitioner in the post of Stenographer Grade III. When this Court issued rule on 2.2.2000 passed an interim order suspending the orders for recovery/deduction, Annexures IV and V to the writ petition. Accordingly, the recovery/deduction has not yet been given effect to meaning thereby that the petitioner is drawing his salary in the scale of pay he was appointed. I am of the view that the respondents were not entitled to pass any order affecting the right of a person like the petitioner in violation of the principle of the natural justice. Though the doctrine of natural justice has no straight jacket formula, its application depends upon the particular facts and circumstances of each of the case. In the instant case, the respondents passed orders of modification of scales and deduction of the excess payment consequent upon the enquiry report held by the Sub-Divisional Officer (Sadar) Mangaldoi behind the back of the petitioner, which is though not punishment, but penal in nature, for such reason, the principle of natural justice is to be followed. For non-observance of the said principle, the orders impugned are bad in law, even if the petitioner was wrongly selected by the CRC and consequent thereto appointed to the post of Stenographer Grade III. Every citizen expects that the State should act like a model employer and its action should be

always lawful. But in the instant case, the action of the State to the petitioner was not like a model employee; rather it acted as like a private enterprise which is really unwanted. The respondent-authorities could have terminated the petitioner, but they did not do so, rather the petitioner was allowed to remain in service but not in the scale he was appointed, but in the scale of under qualified stenographer, i.e., Rs. 1,125-2,215 instead of Rs. 1,515-2,715. The court cannot interfere a selection if the selection is in accordance with the prescribed procedure as mentioned either in the rules or in the advertisement as it is the job of the expert body like the selection committee. But the court can surely look into whether the selection was dehors the conditions mentioned in the advertisement and whether the petitioner fulfilled the requisite qualification prescribed in the rule. It is on the record that the petitioner passed shorthand in English at 80 words per minute on 2.11.1992 from K.K. Vandary Vocational Training Institute under Assam Seva Samity and also passed type writing in English at 40 words per minute on 25.8.1992 from the same institution. According to the State counsel this said institution is not a Govt. recognized institution. But in reply to that, the learned Counsel for the petitioner did not say anything. Therefore, it is difficult to find any definite conclusion whether the petitioner obtained his certificate in stenography from a Govt. recognized institution or not.

12. This being the position, I am of the opinion that the impugned orders are bad in law which are hereby set aside. Respondents are directed to allow the petitioner to produce necessary documents to establish that he obtained the certificate in stenography from a Govt. recognized institution, which was a requirement of the advertisement and, thereafter, if the petitioner fails to produce such certificate, pass necessary orders including the orders of modification of pay scale and deduction of excess amount, if any, after giving him the opportunity of being heard.

13. With the above observations and directions the writ petition is disposed of. There shall not order as to cost.