

(2008) 03 GAU CK 0028

Gauhati High Court (Itanagar Bench)

Case No: None

Nich Raju and Others

APPELLANT

Vs

Arunachal Pradesh Public Service
Commission and Others

RESPONDENT

Date of Decision: March 5, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2008) 2 GLT 858

Hon'ble Judges: Z. Angami, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Z. Angami, J.

By this application filed under Article 226 of the Constitution of India, the petitioners, altogether 12 in number, have sought for reliefs) to the extent that advertisement dated 08.12.2006 and the whole selection process including interview held on 16-17.06.2007 for the post of Assistant Director (Textile & Handicrafts) in pursuance of the advertisement dated 08.12.2006 be set aside. The application was filed on or about 28.06.2007 and the notice of motion on the application was issued by this Court on 29.06.2007. Except in the case of Respondent No. 9, the case of the petitioners was contested by the Respondents as by way of filing their affidavits-in-opposition.

2. For the purpose of considering the application, it may also be considered necessary to make reference to certain facts as disclosed from the pleadings exchanged. The petitioners are stated to have possessed certificate as having qualified for a Diploma in Costume Design and Garment Technology or Handloom Technology. By advertisement dated 08.12.2006, applications were invited from the Arunachal Pradesh Scheduled Tribe (APST) Candidates for filling up of 3(three) posts

of Assistant Director (Textile & Handicrafts) under the Textile & Handicrafts Department of the State. The eligibility as regard the educational qualification is also specified in the said advertisement dated 08.12.2006 and the last date for receipt of the applications by the Arunachal Pradesh Public Service Commission, hereinafter referred to as "the Commission" was also specified as on 17.01.2007. It is the admitted position that in pursuance of the above said advertisement dated 08.12.2006, the written examination was also conducted on 16-17.06.2007.

3. During the course of hearing, Mr. B. Habung, learned Counsel for the petitioners as well as Mr. N. Tagia, learned Standing Counsel for the Commission and also Mr. M. Pertin, learned Counsel for the private Respondent No. 5 and Mr. N. Lowang, learned Addl. Sr. Govt. Advocate were heard.

4. Mr. B. Habung, learned Counsel referring to the averments made in the application submits that the petitioners, being diploma holders in Costume Design and Garment Technology or Handloom Technology are eligible for recruitment to the post of Assistant Director (Textile & Handicrafts) in terms of the Arunachal Pradesh Textile & Handicrafts Service Rules, 1999, hereinafter referred to as the "1999 Rules". Pointing out that the vacancies in the post of Assistant Director (Textile & Handicrafts), in question, having arisen in 1999 and considering that the present exercise of taking selection process is required to be appreciated in the background of earlier litigation that had come up before this Court, the learned Counsel submits that the present selection process for recruitment to the post of Assistant Director (Textile & Handicrafts) is required to be made in terms of 1999 Rules and not in terms of the Rules as amended by the Arunachal Pradesh Textile & Handicrafts Service (Amendment) Rules, 2006, hereinafter referred to as the amendment "Rules of 2006". To support the argument that the recruitment referable to advertisement dated 08.12.2006 is to be made in terms of 1999 Rules in the background of the earlier litigation, the learned Counsel has made a reference to the judgment and order dated 20.11.2002 passed by a Division Bench of this Court in the case of Ms Naz Pertin v. State of A.R. Writ Appeal No. 198 of 2002 wherein this Court has set aside the advertisement dated 08.06.2001 as being contrary to the relevant Recruitment Rules and further observed that it shall be open for the State Government to re-advertise the post for filling up the vacancy in accordance with the provisions of 1999 Rules. The learned Counsel has also made a reference to another judgment and order dated 17.01.2006 passed in the Case of Shri Jhumsor Rime and Anr. v. State of A.P. and Ors. (Wherein the present Respondent Nos. 9 and 10 were impleaded as Respondents) as in WP(C) 424 (AP) 2005. In the said case, this Court, having recorded that the petitioners' claims being confined to promotional quota only no relief can be granted to them in this petition and also taking a view that the impugned order dated 08.07.2005 only discloses that Respondent Nos. 4 and 5 have been appointed on contract/adhoc basis for one year only, had directed that the post of Assistant Director (Textile & Handicrafts) in question, be filled up by issuing necessary public advertisement as soon as possible preferably within 3

months. According to him, the advertisement dated 08.12.2006 is in continuation of the process that may be taken up in pursuance of the judgment of this Court and as such the recruitment to the post of Assistant Director (Textile & Handicrafts) is to be made in terms of the 1999 Rules, which was also in force at the relevant time when the judgments referred to above were rendered by this Court. In support of his argument that 1999 Rules shall be applied to the present recruitment process, the learned Counsel has placed the reliance on the decision of the Apex Court rendered in the Case of [A.A. Calton Vs. Director of Education and Another.](#).

5. Mr. N. Tagia, learned Standing Counsel for the Commission, referring to the factual position that the 1999 Rules was amended by the amendment Rules of 2006 vide notification dated 28.09.2006 [which was published in the State Gazette dated 29.09.2006] and the advertisement dated 08.12.2006 having been issued on the basis of the requisition sent by the State Government for that purpose vide letter dated 16.10.2006, submits that the requisite education qualification as prescribed by the amendment Rules of 2006 is to be applied as already specified in the advertisement dated 08.12.2006. He also submits on the basis of own admission to the extent that the petitioners are not holding the requisite educational qualification as prescribed in terms of the amendment Rules of 2006 and on due consideration of such factual position, he submits that there is no merit on the claim of the petitioners to be eligible for recruitment to the post of Assistant Director (Textile & Handicrafts) in terms of 1999 Rules and it can not be disputed that the amendment Rules of 2006 is already in operation before the advertisement dated 08.12.2006 was published.

6. Mr. M. Pertin, learned Counsel for the private Respondents No. 4 to 11 [except Respondent No. 9] submits that going by testimonial certificates enclosed with the application as showing to possess a Diploma Certificate in Costume Design and Garment Technology or Handloom Technology, the petitioners are not eligible for recruitment to the post of Assistant Director (Textile & Handicrafts) even in terms of 1999 Rules. The petitioners cannot therefore make a legitimate claim that the recruitment process be done in terms of 1999 Rules for the reason that some of the petitioners have not acquired the requisite qualification and some have not obtained the required percentage of marks as prescribed by the 1999 Rules.

Except what is already reflected in the affidavit, the learned Addl. Sr. Govt. Advocate did not make any further submissions with respect to the points raised by the writ petitioners.

7. The petitioners have not challenged the validity of the amendment Rules of 2006. However, to appreciate the submissions of the parties, reference may be made to the relevant portion of 1999 Rules, wherein the required education qualification is prescribed, may be quoted herein below:

(3)(i) For direct recruitment of Asstt. Director (T & H) only such candidate shall be eligible for appearing in the examination who have a Bachelor Degree in Chemical/Dyeing Engineering/Technology/Handloom Technology/Fine Art/Diploma in Fashion Technology/Bachelor's Degree in Printing & Designing Technology with 55% aggregate marks.

For APST candidates 3(three) years diploma with 60% marks in the disciplines mentioned above. "Preference will be given to degree holders."

As earlier mentioned, amendment Rules of 2006 was made by amending the 1999 Rules which also deals with the educational qualifications and reference also maybe made to the relevant part of the amendment Rules of 2006, as may be quoted herein below:

3. In Rule 12(3)(i)(ii) of the Principal Rules for the existing entry the following shall be substituted namely:

(3)(i) For direct recruitment to the posts of Assistant Director (T & H) only such candidates shall be eligible for appearing in the recruitment examination who possess Bachelor Degree in the discipline of Textile/Handloom Technology/Fine Arts/Fashion & Design Technology/Fashion Management from a recognized University.

8. As may be seen from the gazette notification as referred to in the application, the said amendment Rules of 2006 would have come into force from the date of publication in the said gazette notification. It is not disputed that the present advertisement dated 08.12.2006 was made on the basis of the requisition sent by the State Government in the Department of Textile and Handicrafts vide letter dated 16.09.2006. The 1999 Rules speaks of the required educational qualification as also a Diploma in Fashion Technology and it is also indicated that 3 years Diploma with 60% marks for the discipline shall be eligible for the APST candidates. The amendment Rules of 2006 only speaks of a Bachelor Degree in the discipline of Textile/Handloom Technology/Fine Arts/Fashion & Design Technology/Fashion Management from a recognized University. The petitioners are stated to have acquired Diploma in Costume Design and Garment Technology or Handloom Technology.

Without making any further inquiry as to whether the Diploma in Costume Design and Garment Technology or Handloom Technology would come within the meaning of the disciplines as mentioned in the Rules, a reference may be made as to what is disclosed from the certificates enclosed with the application by the petitioners. The marks sheet so enclosed in respect of the petitioners also convey that 1st Class would carry 60% marks, 2nd Class-50% and above and Pass Class- 35% and above. From the facts disclosed, it is seen that petitioner No. 1 has acquired a qualification of diploma only after advertisement dated 08.12.2006 and some of the petitioners have either obtained 2nd class or simple pass, which do not conform with what is

specified in the 1999 Rules. It is explained in the affidavit of Respondent No. 1 to the extent that two candidates, in the light of clarification given by the Respondent No. 2 vide letter dated 30.03.2007 as allowing Science or Arts Graduates with Diploma in Fashion Designing or Garment Manufacturing Technology etc. were provisionally allowed to take examination for the said post. As regard the contention made on behalf of the petitioners to the extent that the present recruitment process is liable to be stalled at this stage in view of the fact that clarification has been sought from the appropriate authority in respect of specific cases as to whether the certificate of a specific Diploma is equivalent to a Bachelor Degree of an Indian University, it may also be noted that no further information has been placed as to the status of the qualification. While making reference to the judgment referred to above, it may only be sufficient to note that the proceeding as in WP(C) 424(AP) 2005 is on the issue of two person having been appointed on contract/ad hoc basis as in relation to the claim of the petitioners for promotion as against the promotional quota.

9. As may be seen from the advertisement dated 08.12.2006, specifying the requisite education qualification, is based on the amendment Rules of 2006, the validity of which has not been challenged. It is not the case that the petitioners have applied for the post in connection with any other advertisement and the impugned advertisement dated 08.12.2006 is to be understood and appreciated along with such other specific advertisement. On going through the decision of the Apex Court referred to above in the case of A. A. Calton (supra), it may also be noticed that the Apex Court had examined as to when the proceeding of the selection process would have commenced for the purpose of applying a statutory provision that came to be amended. What has been observed is that the process of selection commenced from the stage of calling for applications for a post up to the date on which a particular authority would become entitled to make a selection under a particular statutory provision (as it stood then) is an integrated one.

10. In the present case, it is not disputed that the amendment Rules of 2006 had already come into force before the requisition was sent to the Commission by the State Government. By letter dated 16.10.2006, the 1999 Rules along with copies of the subsequent amendment were also forwarded to the Commission. Bearing in mind, the light of the decision of the Apex Court referred to above, that the process of selection would have started as indicated by the impugned advertisement dated 08.12.2006, it must also to be understood that an amendment Rules of 2006 would apply in the case. Therefore, without making any further discussions for the purpose of recording a finding on the different points raised by the counsel for the respective parties, it may only be sufficient to record a finding to the extent that the advertisement dated 08.12.2006 is in conformity with the amendment Rules of 2006. As of today, the said amendment Rules of 2006 is still holding in the field. In the absence of any challenge made with regard to the validity of the amendment Rules of 2006, and going by the meaning of the provision as regard the requisite educational qualification as may be understood from literal construction, it must be

understood that the petitioners are not eligible for recruitment as not having possessed the required educational qualification. Having regard to the factual position as to the commencement of the selection process of direct recruitment as referable to Advertisement dated 08.12.2006 and on consideration of the facts and circumstances of the cases, a view may be taken that the petitioners cannot be held to have acquired any vested legal right to apply for recruitment to the post in terms of the 1999 Rules. Consequently, there would be no legal basis to find fault with advertisement dated 08.12.2006, as sought to be made by the petitioners.

11. For the reasons discussed above, it must be held that the impugned advertisement dated 08.12.2006 does not suffer from any legal infirmities warranting this Court to interfere with the same as prayed for. On having found that the petitioners are not in possession of the required educational qualification in terms of the impugned advertisement dated 08.12.2006 and also amendment Rules of 2006, there is also no legal basis to hold that the petitioners are entitled to have their applications accepted for recruitment to the post of Assistant Director (Textile & Handicrafts) and consequently, there is no basis to interfere with the process of selection connected with the above said advertisement dated 08.12.2006. Accordingly, the application must be held to be devoid of merit and the same is rejected. However, there shall be no order as to costs.