

**TRIPURA PUBLIC SERVICE
COMMISSION**

**IN THE GAUHATI HIGH COURT, AGARTALA BENCH
WRIT APPEAL NO.52 OF 2001 & CONNECTED CASES**

D.D. 5.12.2001

THE HON'BLE MR. JUSTICE P.K. SARKAR

AND

THE HON'BLE MR. JUSTICE H.K.K.SINGH

Sri. Subrata Majumdar ... **Appellant**

Vs.

The State of Tripura & Ors. ... **Respondents**

Selection on the basis of qualification and experience:

Selection of candidates for appointment as Panchayat Officers –Qualification prescribed for the post – (i) Degree of a recognised University and (ii) Training in Rural Development and extension service – 90 candidates had the prescribed qualification and experience – As the Commission had doubt as to the qualification and experience the matter was referred to the Government which held that the said candidates fulfilled the eligibility criteria – After the interview the Commission selected 9 candidates – The petitioners who were among the candidates interviewed were not included in the select list and hence challenged the selection on the ground that the selected candidates did not fulfill the requisite qualification – Single Judge held that 8 selected candidates did not have the Training in Rural Development and quashed the appointment of the said 8 candidates – In Appeal the Division Bench after examining the records held that all the selected candidates fulfilled the requirement of the qualification and hence, allowed the Writ Appeal.

Held:

That if a candidate takes a calculated chance and appears at the interview then only because the result of the interview is not palatable to him, he cannot turn down and subsequently contend that the process of interview was unfair or the selection was not proper or the selected candidates do not fulfill the required qualification. Further held that when the petitioner appeared at the examination without protest and when he found that he would not succeed in the examination he filed a writ challenging the said examination such a petitioner should not be granted any relief.

Case referred:

AIR 1986 SC 1043 – Om Prakash Shukla v. Akhilesh Kumar Shukla

ORDER

These groups of appeals are directed against the common judgment and order passed by the learned single Judge on 12.4.2001 in Civil Rules No.137/1997 and Civil Rules No. 478/1998. Since in these appeals common question of facts and law are involved, we propose to dispose of all these appeals by this common judgment and order.

2. In these appeals, appellants were selected by the Tripura Public Service Commission, hereinafter referred to as 'Commission', for appointment as Panchayat Officer in the Panchayat Raj Department, Government of Tripura pursuant to an advertisement issued by the Commission on 1.11.95. The advertisement indicated that the candidates possessing the following qualifications and experience are eligible for appointment to the said post.

Qualification: Essential:

- (i) Degree of a recognized University.
- (ii) Training in Rural Development and extension service.

The qualification prescribed by the Commission in its advertisement dated 1.11.95 is the same as that indicated in the Recruitment Rules for the post of Panchayat Officer issued by the notification of the Govt. of Tripura in the Panchayth Department vide No.F.I(11-11)-ESTT/PR/87/8413-48 dated 27.11.1998. The Commission received 914 applications and after scrutiny the Commission was of the view that two candidates satisfy the requisite qualification as prescribed in the advertisement and as regards 90 (ninety) candidates, Commission observed that those ninety candidates have training and experience as prescribed in the Recruitment Rules as well as in the advertisement, but they have a doubt whether those qualifications are strictly in accordance with qualifications prescribed in the Recruitment Rules as well as in the advertisement. Consequently, the Commission made a reference to the Government in respect of those ninety candidates seeking the views of the Panchayat Department in respect of the eligibility of the said ninety candidates who were found to have some experience in rural development and extension service and according to the Commission, those training and experience did not strictly satisfy the requirement of the training and experience prescribed in the advertisement. The Govt. by communication under No. F.1(11-11)-ESTT/PR/87/13527 dt. 26.12.1996 informed that the Govt.

had examined the cases of 90 candidates referred by the Commission and the Govt. after perusing the papers of the aforesaid 90 candidates were satisfied and decided that those 90 candidates fulfilled the eligibility criteria as prescribed in the Recruitment Rules as well as in the advertisement and therefore, the Govt. requested the Commission to arrange for interview of the said ninety candidates for the said post of Panchayat Officer. Accordingly, the Commission took interview of all the 92 candidates and in interview, apart from the Chairman and Member of the Commission the Director of Panchayat was also involved as an expert advisor-cum-departmental representative. The interview was taken from 15.1.1997 to 24.1.1997. Out of the 92 candidates 72 candidates reported for interview. The Commission interviewed 69 candidates and three general category candidates were not interviewed as they failed to produce no objection certificate from their present employers. After taking interview of the candidates, the Commission found nine candidates as suitable for appointment to the post of Panchayth Officer under Panchayat Raj Department and prepared the list of selected candidates in order of merit. The Commission also kept a reserve list of five candidates according to merit. Two writ petitioners-respondents in these appeals were also amongst the ninety candidates who were screened for interview for the post of Panchayat Officer and they also appeared before the Interview Board, but they failed to qualify in the interview and were not selected by the Commission. Having failed to get selection for the post of Panchayat Officer, two writ petitioners namely Shri Sankar Chowhan and Shri. Hemkantinath filed two-writ petitions, which were registered as Civ. Rule No. 137 of 1997 and Civil Rule No. 478 of 1998.

3. The writ petitioners challenged the selection of the nine candidates on the ground that selected candidates did not possess the qualification and experience as prescribed in the Recruitment Rules mainly the selected candidates did not have appropriate training in the field of rural development and extension service.

4. After selection by the Commission, the said nine candidates recommended by the Commission were appointed by the Govt. to the post of Panchayat Officer in the year 1997. Learned Single Judge who dealt with these writ petitions quashed the appointment of 8 (eight) candidates, but he did not interfere with the selection and appointment of the respondent Smt. Sanchita Roy who was found to be eligible by the learned Single Judge. The reason for quashing the appointment of the eight selected candidates by the learned Single Judge is that they do not fulfill the requisite qualification as prescribed in the Recruitment Rules or in the advertisement. There is no doubt

about the essential qualification prescribed in item (i) i.e. Degree of a recognized University, but so far the qualification prescribed in item (ii), the learned Single Judge held that eight selected candidates did not have training in rural development and extension service. Accordingly learned Single Judge quashed the appointment of eight candidates who were appointed by the Government as Panchayat Officer on the basis of the recommendation by the Commission.

5. Mr. B. Das, learned Sr. Counsel appearing on behalf of some appellants, Mr.S.Talapatra, learned counsel appearing on behalf of some of the appellants, Dr.N.K.Bhattacharje, learned representing one appellant as well as Mr. U.B.Saha, learned Govt., Advocate for the state of Tripura and Mr.S.Deb, learned senior counsel appearing on behalf of the Commission have resisted the contention of the writ petitioners- respondents and have submitted that there was nothing wrong with the selection process and the marks given in the viva voice test and that the writ petition are devoid of merit and is required to be dismissed and also these present set of appeals should be allowed.

6. Mr. M.K.Bhowmik, learned senior Counsel appearing on behalf of the petitioner- respondents defended the judgment of the learned Single Judge by arguing that the selected candidates did not fulfill the second essential qualification regarding Training and experience in rural development and extension service and therefore, learned Single Judge had rightly quashed the appointment of eight selected candidates.

7. It is an admitted fact that the Commission has found two candidates clearly eligible and as regards other ninety candidates including the writ petitioners the Commission had some doubt whether these 90 candidates fulfilled the requisite qualification prescribed in the Recruitment Rules. The matter has been clarified by the Government and the Government communicated the decision that those ninety candidates fulfilled the qualification regarding training in rural development and extension service, and, therefore, they were clearly eligible for the post of Panchayat Officer and accordingly, requested the Commission to take interview of those 90 candidates. It may be mentioned here that two petitioners who have filed writ petition were amongst the ninety candidates whose cases were also considered by the Govt. and found to be eligible for the post of Panchayat Officer and they were also called for interview and they appeared before the Commission, but they could not secure the selection and thus failed in the interview.

8. The qualification prescribed for the post of Panchayat Officer is (i) Degree of a recognized

University and with regard to this qualification there is no controversy. Second qualification is (ii) Training in Rural Development and extension service. Now regarding training and experience, the Commission has made a reference with the Govt. and Govt. after perusing the documents of the 90 candidates were of the view that they satisfied the requirement of training and experience and accordingly, the Govt. requested the Commission to take their interview. Where in particular candidates fulfill the qualification as prescribed in the Recruitment Rules, framed by the Govt. we are of the view that the interpretation given by the Govt. should be taken as conclusive. We do not find anything that so far training in rural development and extension service is concerned a candidate must have a degree/diploma in Rural Development and extension service.

9. We have examined ninety applications forms along with supporting documents and we have carefully examined the nine candidates who were selected by the Commission. The Commission has produced all the papers in sealed cover. On perusal of papers and documents of the nine selected candidates, we have no hesitation to hold that all these 9 selected candidates have requisite training in rural development and extension service.

10. Mr. Deb, learned senior Counsel appearing on behalf of the Commission submits that the Commission was under impression that a degree or diploma will be required as regards Training in Rural Development and extension service. The Commission have viewed that Smt. Sanchita Roy who has been selected by the Commission for the post of Panchayat Officer is a must degree holder in the subject of rural development from Viswa Bharati and Gopal Ch. Majumdar who appeared in the interview, but failed to get selection for the post has diploma in Social Work (Social Welfare) from Calcutta University. Mr. Deb accordingly submits that on basis of the diploma and post graduate degree of the aforesaid two candidates, the Commission was initially of the view that they strictly fulfill the requisite qualification prescribed in item No (ii) of the essential qualification. Mr. Deb very fairly submits that the Commission omitted to consider for complying with the requirement of the second qualification that no degree or diploma is necessary and that only a training on the subject of rural development and extension service is sufficient in compliance with the second requirement of the qualification prescribed in the Recruitment Rules as well as in the advertisement.

11. On a plain reading of the qualification prescribed in the Recruitment Rules and in the

advertisement, we are clearly of the view that training in rural development and extension service does not necessarily mean that a candidate must be a holder of degree or diploma in the said subject. Training in rural development and extension service for a reasonable period under a competent authority is a sufficient compliance of the requirement of the said qualification. After going through the certificates of the selected candidates, we have no hesitation that all these nine candidates have requisite training in rural development and extension service. We have also examined the papers of the writ petitioners. They were also summoned for interview by the Commission and in fact, out of the 90 candidates, the petitioners are the two candidates who appeared in the interview but failed to get selection and they also satisfied the second requirement as prescribed in the Recruitment Rules.

12. Before dealing with this context, we must keep in view the salient fact that the writ petitioner as well as contesting successful candidates, appellants herein, was all found eligible to be called for oral interview. Up-to this stage, there is no dispute between the parties. The writ petitioners – respondents also appeared at the oral interview conducted by the Commission who interviewed the writ petitioners as well as respondents – appellants concerned. Thus the petitioners took a chance to get them selves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their performance in the oral interview, they have filed these writ petitions. It is now well settled by the Apex Court that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him, he cannot turn down and subsequently contend that the process of interview was unfair or the selection was not proper or the selected candidates do not fulfill the required qualification. In the case of *Om Prakash Shukla vs. Akhilesh Kumar Shukla*, AIR 1986 SC 1043, the Apex Court has clearly laid down the law by a Bench of three learned Judges of the Apex Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in the examination he filed a petition challenging the said examination, the Apex Court held, the High Court should not have granted any relief to such a petitioner. Therefore, the result of the interview test on merit cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately find himself to be unsuccessful. It is also to be kept in view that in this petition or in the appeals we cannot sit as a court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interview not can the writ petitioner successfully urged before

us that they were given a low marks though their performance was better. They also cannot challenge the qualification of the selected candidates as the qualification of the 90 candidates has been examined by the Govt. and Govt. has clearly of the view that they fulfilled the required training and experience so far second conditions of the qualification is concerned. It is for the interview Committee that amongst others consisted of the Chairman and the Members of the Commission and the Director of Panchayat, a departmental representative to judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, assessment on merit has made by such an expert committee cannot be brought in challenge only on the ground that the candidates do not fulfill the requisite qualification of the assessment was not proper or justified and that would be the function of the appellate body and we are certainly not acting as a court of appeal over the assessment made by the Government and Commission. On the aforesaid ground alone the writ petitions are liable to be dismissed.

13. It is difficult to appreciate the contention of Mr. M.K.Bhowmik, learned Counsel appearing on behalf of the petitioner respondents that the selected candidates do not fulfill the requisite qualification. It appears that the Commission had initial some doubt about the qualification of 90 candidates for which a reference has been made to the Government and the Govt., after considering the papers and documents of the ninety candidates referred by the Commission was clearly of the view that those 90 candidates fulfilled the requisite qualifications as prescribed in the Recruitment Rules and accordingly requested the Commission to take interview of those candidates. Therefore, the contention of Mr. Bhowmik is devoid of any merit. When the Govt. is satisfied about the essential qualification of the 90 candidates referred by the Commission, it cannot be urged with any emphasis that these candidates are not eligible to compete for the said post. Mr. Bhowmik very fairly submits that if any of the selected candidates have got requisite certificate regarding training in rural development and extension service, he does not oppose the selection and appointment of such candidates. Apart from satisfaction of the Govt. regarding training and experience in rural development and extension service, we have also gone through the certificate enclosed with the applications by the respective selected candidates and after going through the certificate, we also clearly of the view that these selected candidates have requisite training in rural development and extension service, and therefore, we are completely in agreement with the Govt. that these selected candidates do fulfill the requisite qualification for appointment to the post of Panchayat Officer.

14. We have gone through the judgment passed by the learned Single Judge. It appears that the learned Single Judge took a wrong view that the Recruitment Rules have been relaxed so as to enable the ninety candidates appear before the Selection Board and he has also observed that unless the Recruitment Rules is amended by the Government, no relaxation can be permitted by the Govt. and accordingly, the learned Single Judge held that the candidates did not fulfill the requisite qualification.

15. After going through the papers and documents we are of the view that in the facts and circumstances of the case, the Govt. did not resort to relaxation of qualification. The Govt.'s decision was that the 90 candidates referred by the Commission fulfilled the requisite qualification both degree from a recognized University as well as Training in Rural Development and extension service. Therefore, the observation of the learned Single Judge made against the Commission in Para-12 of the judgment is without any substance. We have also examined the merit list prepared by the Commission produced by Mr. Deb on behalf of the Commission and we find no illegality or error in the marks allotted to the candidates who appeared in the interview test.

16. The observation of the learned Single Judge is that the interview was taken on different dates. Therefore, the Chairman and the Member of the Commission should have signed the papers after each date of interview. In this respect, it must not be over-looked that the Commission has submitted final selection list after taking interviews on different dates and final selection list indicating the marks were signed by the Chairman and the Member of the Commission on 24.1.1997 and we do not find any illegality in such final list, simply because it was signed on 24.1.1997. There is also no challenge that any favour has been shown to any particular candidate by the writ petitioners.

17. Having regard to the facts and circumstances of the case and after hearing the learned Counsel of all the parties and after going through the papers and documents we are clearly of the view that there is no illegality in the selection of the nine candidates by the Commission and their consequent appointments to the post of Panchayat Officer by the Govt. Accordingly, we set aside the order of the learned Single Judge passed on 12.4.2001 in Civ. Rule 137 of 1997 and Civ. Rule 478 of 1998 and dismiss the writ petitions. Appeals are therefore allowed. However, in the facts and circumstances of the case we made no order as to costs.
