

Secy. (Health) Deptt. of Health & F.W. and Another

Vs

Dr Anita Puri and Others

Civil Appeal No. 11453 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

30.08.1996

JUDGMENT

PATTANAİK, J. -

1. Leave granted.

2. This appeal by special leave is directed against the judgment of the Punjab and Haryana High Court dated 27-9-1993 passed in Civil Writ Petition No. 688 of 1993.

3. Respondent 1 filed the writ petition challenging the selection made by the Punjab Public Service Commission for the post of Dental Officers inter alia on the ground that the selection has been made arbitrarily and is contrary to the positive terms of the advertisement indicating preference to be given for higher dental qualification. It was pleaded before the High Court that an advertisement has been issued in the newspaper on 9-9-1991 for 21 posts of Dental Officers out of which 12 posts were meant for general category, 5 for Scheduled Castes, 2 for Backward Class and 2 for Ex-Servicemen. It was stipulated in the advertisement that preference would be given for higher dental qualification and the minimum qualification for the posts was B.D.S. Respondent 1 who had the qualification of M.D.S. claim entitled to be selected on the basis of higher qualification. It was also pleaded that the Public Service Commission acted arbitrarily in awarding 20 marks out of 100 marks for viva voce, 20 marks for general knowledge and only 21/2 marks for higher qualification. The private respondents who contested the proceedings filed their counter-affidavit stating therein that in the absence of any statutory rule governing the mode of selection for the post of Dental Officer, an expert body like Public Service Commission had awarded different marks and evaluated the respective merit of all the applicants and finally selected the meritorious one and, therefore, it cannot be said to be arbitrary. It was also urged that the selection thus made by the Public Service Commission is not amenable to the writ jurisdiction of the High Court. The Division Bench of the Punjab and Haryana High Court came to hold that under the advertisement in question, persons having higher qualification of M.D.S. form a class by themselves and, therefore, they are entitled to be selected for the post on the basis of their qualification and the Public Service Commission acted against the spirit and intention of the appointing authority who had laid down the minimum qualification for the job and indicated preference for higher qualification. By referring to the meaning of the expression 'prefer' in different dictionaries, the High Court also held that such persons having preferential qualification are entitled to be selected and appointed unless they are otherwise held to be not suitable. The High Court also further came to the conclusion that the awarding of different marks by the Public Service Commission is arbitrary and irrational. With these conclusions the writ petition having been allowed and Public Service Commission having been directed to forward the names of the respondents, the State has come up in appeal.

4. Mr Manoj Swarup, the learned counsel for the appellants, contended that in the absence of any statutory rule when the Public Service Commission is required to select candidates on evaluation of their respective merit, it is but natural for the Commission to evolve a procedure of its own. In evolving such procedure marks are awarded in different aspects and judged from that standpoint the allocation of 100 marks in different aspects of the candidates and thereafter evaluation of the respective merit of the candidates after awarding marks on different aspects, cannot be held to be arbitrary and irrational. The learned counsel further contended that when the appointing authority indicated in the advertisement that higher qualification persons will get preference, it does not tantamount to mean that all persons with higher qualification than the minimum eligible qualification should be selected and appointed ipso facto. The only meaning it would convey is that some preference should be given to those persons having higher qualification. That being the position the High Court was totally in error in holding that the Public Service Commission acted against the spirit and intention of the appointing authority. The learned counsel further urged that in the absence of any allegation of mala fide in the process of selection, when discretion has been conferred on the expert body like Public Service Commission for the selection after evaluation of the merit of the candidates, the procedure that has been followed in the case cannot be faulted with. The High Court, therefor, was in error in annulling the selection made.

5. The learned counsel appearing for Respondent 1 on the other hand argued with force that the High Court was wholly justified in holding that the person with higher qualification has to be selected and appointed unless he is otherwise found unsuitable and that was the true intention and spirit of the advertisement and, therefore, there is no justification for this Court to interfere with the conclusion of the High Court.

6. Having heard the learned counsel for the parties at length and on examining the terms and conditions of the advertisement referred to by the High Court in its judgment, we find sufficient force in the contentions of the learned counsel appearing for the appellant.

7. Admittedly, in the advertisement which was published calling for applications from the candidates for the posts of Dental Officer it was clearly stipulated that the minimum qualification for the post is B.D.S. It was also stipulated that preference should be given for higher dental qualification. There is also no dispute that M.D.S. is a higher qualification than the minimum qualification required for the post and Respondent 1 was having that degree. The question then arises is whether a person holding a M.D.S. qualification is entitled to be selected and appointed as of right by virtue of the aforesaid advertisement conferring preference for higher qualification? The answer to the aforesaid question must be in the negative. When an advertisement stipulates a particular qualification as the minimum qualification for the post and further stipulates that preference should be given for higher qualification, the only meaning it conveys is that some additional weightage has to be given to the higher qualified candidates. But by no stretch of imagination it can be construed to mean that a higher qualified person automatically is entitled to be selected and appointed. In adjudging the suitability of person for the post, the expert body like Public Service Commission in the absence of any statutory criteria has the discretion of evolving its mode of evaluation of merit and selection of the candidate. The competence and merit of a candidate is adjudged not on the basis of the qualification he possesses but also taking into account the other necessary factors like career of the candidate throughout his educational curriculum, experience in any field in which the selection is going to be held, his general aptitude for the job to be ascertained in course of interview, extracurricular activities like sports and other allied subjects, personality of the candidate as assessed in the interview and all other germane factors which the expert body evolves for assessing the suitability of the candidate for the post for which the selection

is going to be held. In this view of the matter, the High Court in our considered opinion was wholly in error in holding that a M.D.S. qualified person like Respondent 1 was entitled to be selected and appointed when the Government indicated in the advertisement that higher qualification person would get some preference. The said conclusion of the High Court, therefore, is wholly unsustainable and must be reversed.

8. Coming to the second limb of the reasoning advanced by the High Court it is to be seen that the Public Service Commission had fixed 100 marks for the purpose of selection which were bifurcated (sic) as under :

#1. Academic achievement 20 marks As per essential qualification
2. Higher qualification 21/2 marks
3. Gold Medal 21/2 marks
4. Sports 10 marks
5. Experience : 1 mark for each year subject to maximum 5. 5 marks
6. (i) Professional knowledge and aptitude 20 marks for the job (ii) Viva voce 20 marks (iii) General knowledge 20 marks -----Total 100 marks -----##

9. The question for consideration is whether such sub-division of marks by the Commission on different facets and awarding only 21/2 marks for higher qualification can be said to be arbitrary ? Admittedly, there is no statutory rule or any guideline issued by the Government for the Commission for the purpose of evaluation of merit of the respective candidates. When the Public Service Commission is required to select some candidates out of a number of applicants for certain posts, the sole authority and discretion is vested with the Commission. The Commission is required to evolve the relative fitness and merit of the candidate and then select candidates in accordance with such evaluation. If, for that purpose the Commission prescribes marks for different facets and then evaluates the merit, the process of evaluation cannot be considered to be arbitrary unless marks allotted for a particular facet is on the face of it excessive. Weightage to be given to different facets of a candidate as well as to the viva voce test vary from service to service depending upon the requirement of the service itself. In course of the arguments before us the learned counsel for Respondent 1 had submitted that the awarding of 20 marks for viva voce and 20 marks for general knowledge out of 100 marks must be held to be on the face of it arbitrary giving a handle to the Public Service Commission to manipulate the selection and, therefore, the High Court had rightly come to the conclusion that it was arbitrary. We are unable to accept this contention. This Court in the case of *Ajay Hasia v. Khalid Mujib Sehravardi* [(1981) 1 SCC 722 : 1981 SCC (L&S) 258], while considering the case of selection, wherein 33% marks was the minimum requirement by a candidate in viva voce for being selected, held that it does not incur any constitutional infirmity. As has been stated earlier the expert body has to evolve some procedure for assessing the merit and suitability of the applicants and the same necessarily has to be made only by allotting marks on different facets and then awarding marks in respect of each facet of a candidate and finally evaluating his merit. It is too well settled that when selection is made by an expert body like the Public Service Commission which is also advised by experts having technical experience and high academic qualification in the field for which the selection is to be made, the courts should be slow to interfere with the opinion expressed by experts unless allegations of mala fide are made and established. It would be prudent and safe for the courts to leave the decisions on such matters to the experts who are more familiar with the problems they face than the Court. If the expert body considers suitability of a candidate for a specified post after giving due consideration to all the relevant factors, then the court should not ordinarily interfere with such selection and evaluation. Thus considered, we are not in a position to agree with the conclusion of the High Court that the marks awarded by the Commission was arbitrary or that the selection made by the Commission was in any way vitiated.

10. In the aforesaid premises, we set aside the judgment of the Division Bench of the Punjab and Haryana High Court and allow this appeal. The writ petition filed by the respondents stand dismissed, there will be no order as to costs.