

MADHYA PRADESH HIGH COURT

Praveenkumar Trivedi

Vs.

Public Service Commission

Misc. Petn. No. 1342 of 1986
(P.D. Mulye and R.K. Verma, JJ.)

19.09.1986

JUDGMENT

P.D. Mulye, J.

1. The petitioner, who is a practicing Advocate at Indore, principally on the Labor Side, has filed this petition under Arts. 226 and 227 of the Constitution in the matter of selection of Presiding Officer, Labor Court, by the respondent-Public Service Commission.
2. The petitioner, who is practicing as an Advocate since 1979 and has also worked as Law Superintendent (Prosecution) in M. P. S. R. T. C. from 25-11-1980 to 7-1-1982 applied for the post of Presiding Officer, Labor Court as per advertisement issued by the respondent Annex.-1 in which the minimum qualifications for the post of Presiding Officer, Labor Court have been mentioned along with other conditions.
3. The Public Service Commission, Madhya Pradesh, advertised four posts of Presiding Officer. Labor Court out of which two were to be selected from the general category and one was reserved for a Scheduled Caste candidate and another for a Scheduled Tribe candidate. Accordingly, admittedly, as per the reply of the respondent-Public Service Commission, in all they received 75 applications out of which 68 were from the general category. 3 were from Scheduled Caste and 4 from Scheduled Tribe. Out of these 75 candidates, for two general posts, 57 general candidates and for one Scheduled Caste and one Scheduled Tribe post one candidate each from these categories were found eligible for interview as per the minimum qualifications prescribed in the advertisement. Undoubtedly the petitioner also fulfilled the minimum prescribed qualifications and his application was found in order.

But the respondent, vide their memo dated 18th August. 1986 Annex.-3 informed the petitioner that the petitioner cannot be called for interview for the following reason :

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4. The petitioner being aggrieved by the said memo has filed this petition to quash Annex.-3 as he could not be prohibited from being called for the interview for the post of the Presiding Officer, Labor Court, as admittedly the selection for these posts was to be made by interviewing the eligible candidates.

5. In reply to the show cause notice the respondent has contended that since the number of eligible candidates in the general category was too large viz. 57, the Commission decided to call only those general candidates who possess First Class in LL.B. and/or on LL.M. By following this criterion for two general posts. the Commission called six general candidates among whom one candidate is First Class in LL.B. and LL.M., and five candidates having first class in LL.B. No criterion has been adopted for reserved category as the number of eligible applicants themselves was very limited i.e. only one each in Scheduled Caste and Scheduled Tribe. Thus, in short, the respondent-Commission has adopted a reasonable and fair criterion. Therefore, if a candidate does not come within the criterion fixed by the Commission for being called for interview. the Commission cannot help. Further, according to the respondent, in the "instructions issued to the candidate" along with the application form, it was made quite clear that the Commission will have the right to decide and limit the number of candidates to be called for interview. Further according to the respondents, it was clearly mentioned in the advertisement that the prescribed Educational Qualifications are minimum and mere possession of the same does not entitle a candidate to be called for interview, as where the number of applications received in response to the advertisement is large and it will not be convenient or possible for the Commission to interview all those candidates, the Commission may restrict the number of candidates for interview to a reasonable limit on the basis of qualifications and experience higher than the minimum prescribed in the Advertisement.

6. Therefore, relying upon the decision reported in *Omprakash v. State*,¹ the respondent has contended that no illegality or arbitrariness or any mala fide act has been committed by the respondent, as alleged by the petitioner in determining the criterion whereby the petitioner got excluded from the list of candidates called for

interview. Further according to the respondent the advertisement has been issued according to the requisition received from the Government and it is according to the M. P. Labor Judicial Service (Gazetted) Recruitment Rules, 1965 of the Labor Department. Thus, the Public Service Commission having the jurisdiction to fix a suitable and reasonable criterion to limit the number of applicants called for interview when the number of applications received is very large in comparison to the available vacancies, no restriction can be placed upon this power as the petitioner has no legal right to be called for interview and the rejection letter has been rightly issued.

7. The petitioner by his counter-affidavit dated 9-9-86 has submitted that the Public Service Commission has been calling for interview much larger number than the present one, as in the previous selections for the same posts 45 candidates were interviewed. This fact was not denied or controverted on behalf of the respondent.

8. The learned counsel for the petitioner Sri G. M. Chaphekar did not dispute the proposition laid down in the decision reported in 1978 MPU 136 (FB) (supra), but he submitted that this decision itself has decided question No. 6 referred to it for its opinion as under :

"Q-6: Whether the Public Service Commission can fix any criterion other than those given in the advertisement on the fulfillment of which a candidate is eligible for appointment?

Ans : The Public Service Commission has unfettered right to evolve its own method or modus operandi for selection of most suitable candidates and for that purpose it may fix any criterion, subject to the eligibility fixed by the Statute or by the Government being satisfied. The Commission will be within its rights to classify the numerous applications into certain categories and to call for interview only those candidates, who come within certain specified categories."

9. The learned counsel for the petitioner, therefore, submitted that S. 8 of the M. P. Industrial Relations Act. 1900 deals with Labor Courts, which is as under :

"8. Labor Courts.-(1) The State Government shall, by notification, constitute one or more Labor Courts having jurisdiction in such local area or areas as may be specified in such notification.

(2) The Labor Court shall be presided over by a single person to be appointed by the State Government with the approval of the Chief Justice of the High

Court.

(3) A person shall not be qualified for appointment as a Presiding Officer of a Labor Court unless -

(a) he has held any judicial office in India for not less than three years; or

(b) he has held any office in the Labor Department not below the rank of a Labor Officer for a period of not less than five years and is a law graduate; or

(c) he has practiced as an Advocate or a pleader in Madhya Pradesh for a total period of not less than five years: or

(d) he is or has been a Presiding Officer of Labor Court constituted under any law.

(4) Notwithstanding anything contained in this section any person who before the coming into force of this Act has been a Presiding Officer of any Labor Court constituted under the Bombay Industrial Relations Act, 1946 as adapted by the Madhya Bharat Industrial Relations (Adaptation) Act. Samvat 2006 (31 of 1949) for a period not less than three years shall unless otherwise directed by the State Government, continue to be the Presiding Officer of such Court :"

10. The learned counsel for the petitioner, therefore, submitted that according to sub-s. (3) of S. 8, which is quoted above four criteria have been prescribed for appointment as a Presiding Officer of a Labor Court. He, therefore, submitted that when the Statute itself has prescribed these categories which have got to be taken into consideration while selecting candidates for the post of Presiding Officers, Labor Courts. the Public Service Commission cannot eliminate or do away with any of the categories prescribed therein and evolve its own category as has been done in the present case whereby the Public Service Commission has decided to call for interview from the general category one candidate who is first class in LL.B. and LL.M., and five candidates having first class in LL.B. The learned counsel for the petitioner further submitted that the Public Service Commission could no doubt restrict the number of candidates to be called for interview from each of the categories as defined in sub-s. (3) of S. 8 quoted above if the number for any of those categories was too large. But it cannot give a complete go-by and ignore those candidates who are found eligible in one or more of the categories prescribed in that section. The learned counsel further submitted that the respondent-Public Service Commission in their reply have deliberately not stated that out of the 57 candidates from the general category how many candidates satisfy one or more of the requirements of the aforesaid category for these posts.

11. The learned counsel for the petitioner, therefore, submitted that despite there being specific provision in the Statute if any Judicial Officer has held that office for more than three years or if a Presiding Officer of a Labor Court has been working on that post for number of years or an Advocate or Pleader who has been practicing for more than 5 years and especially on the Labor side having sufficient experience of the Labor laws and despite the fact that the work of such Judicial Officer or Presiding Officer of the Labor Court is quite satisfactory, such a person cannot be deprived of from being called for the interview and thus being eliminated though he fulfils the requirements of the categories specified therein merely because he has not obtained first class degree in LL.B., by adopting a category which is not in conformity with the Statutory requirement. It is only in the case of a person who has held any office in the Labor Department not below the rank of a Labor Officer for a period of not less than 5 years and is a law graduate, that it is specifically provided that such a person must be a law graduate. though of course it cannot be disputed that normally a Judicial Officer or a Presiding Officer of the Labor Court is a law graduate.

12. The learned counsel for the petitioner, therefore, submitted that 57 candidates from the general category who have been found eligible cannot be said to be too large or excessive so that the Public Service Commission cannot interview these candidates within a specified time because of the fact that the Public Service Commission will have to devote many days in interviewing these candidates.

13. The learned counsel for the petitioner, therefore, submitted that the criterion adopted by the Public Service Commission is arbitrary, unreasonable and unfair apart from the fact that it is not in conformity with the Statutory requirements mentioned above, though he did not dispute that the Public Service Commission has an unfettered right to recommend only those candidates who are found most suitable amongst the number of candidates interviewed by them considering the number of vacancies required to be filled up for a particular post and that merely by selection made by the Public Service Commission a candidate cannot claim any right to the post for which he is selected as the Commission has only an Advisory function to perform. He, therefore, submitted that as the petitioner fulfils the Statutory requirement, the petitioner is entitled to be called for interview.

14. On the other hand the learned Government Advocate Sri Kulshreshta submitted

that as only two posts of Presiding Officer of the Labor Court from the General category are to be filled in they have called six candidates which is three times more and, therefore, the discretion exercised by the Public Service Commission in calling only six candidates cannot be said to be arbitrary, unreasonable or mala fide as it is within the powers of the Public Service Commission to make a preliminary selection and restrict the number of candidates to be called for interview as has been held in the decision referred to above on which he has placed reliance. He, therefore, submitted that the Public Service Commission having adopted a particular criterion no valid grounds are made out by the petitioner to interfere with the impugned order Annex. 3 in exercise of the writ jurisdiction as the petitioner's right, if any, is not infringed in any way. He, therefore, submitted that the Public Service Commission was perfectly justified in restricting the number of candidates to be called for interview from the general category especially when according to the instructions issued to the candidates this position was made quite clear. He, therefore, submitted that the petition deserves to be dismissed on this short ground alone.

15. After hearing the learned counsel and after considering the facts and circumstances of the case we are of opinion that this petition deserves to be allowed. It is no doubt true as has been held in the decision reported in 1978 MPLJ136 (FB) (supra) that the Public Service Commission has every right to restrict the number of candidates to be called for interview on the basis of an implied power depending on the facts and circumstances of each case. It cannot be disputed that if the number of candidates is too large compared to the number of posts required to be filled in, the Public Service Commission can certainly make a preliminary selection from amongst those candidates who have applied and then call for interview only those candidates by adopting a particular criterion. But that criterion must be in conformity with the Statutory provisions. Sub-sec. (3) of S. 8 of the M.P. Industrial Relations Act, quoted above, makes it abundantly clear that who is qualified to be appointed as a Presiding Officer of the Labor Court. Therefore, the Public Service Commission contrary to this provision cannot evolve its own criteria whereby candidates fulfilling the conditions mentioned in that section could be eliminated from being called for interview by completely ignoring those categories. In our opinion the 57 candidates who have been found eligible from the general category do not appear to be too large or excessive so that the Public Service Commission would find it difficult to interview these candidates which will take many many days.

16. The Public Service Commission is a highly responsible body and in its internal working can be trusted to discharge their duties with due regard to high propriety, impartiality and fairness to all concerned. Therefore, it cannot and should not ignore the Statutory requirement for filling up a particular post and cannot adopt a criterion whereby candidates fulfilling the Statutory requirements are thus eliminated from being even called for interview and should give no cause to create an apprehension in the minds of the candidates that a particular criterion has been purposefully adopted so that certain favored candidates may be benefited thereby, which may shake their confidence in the procedure adopted by the Commission, as in the present case.

17. In the result, the petition succeeds and is allowed. The impugned order Annex.- III dated 18th August. 1986 is quashed and set aside and the respondent-Public Service Commission is directed to call all the 57 (fifty- seven) candidates found eligible from the general category for interview including the petitioner for the post of Presiding Officer Labor Court. Costs as incurred.

Petition allowed.

Cases Referred.

1. 1978 MPLJ 136: AIR 1978 Madh Pra 59 (FB)