

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH NAHARLAGUN

1. WP(C)663(AP)2017

Shri Tanu Nirin,
S/o Shri Taya Nirin
P.O & P.S Dumporijo, District: Upper Subansiri,
Daporijo, Arunachal Pradesh. +9436299173

.... Petitioner

-Versus-

1. The Secretary,

Women & Child Development, ICDS,
Govt. of A.P. Itanagar.

2. The Director,

Women & Child Development (ICDS),
Govt. of A.P. Naharlagun.

3. The Deputy Director, ICDS Department

Upper Subansiri District: Daporijo
Arunachal Pradesh.

4. The Chairman-cum-Circle Officer,

DC office, Daporijo
Interview Board.

5. Miss Tutu Nasi,

Outreach Worker, ICDS Office,
Daporijo, District: Upper Subansiri,
Daporijo, Arunachal Pradesh.

..... Respondents

Advocates:

For the petitioners: Mr. M. Pertin, Sr. Adv
Mr. K. Dabi
Mr. J. Dulom

Mr. L. Perme
Mr. K. Dubey
Mr. D. Tatak

For the respondents: Mr. S.Tapin, Senior Government Advocate
Mr. P. Bui (For Respondent 5)
Mr. K. Saxena (For Respondent 5)
Mr. T. Nima (For Respondent 5)

:::BEFORE:::

HON'BLE MR. JUSTICE SONGKHUPCHUNG SERTO

Date of hearing : 15.02.2018

Date of Judgment: 15.02.2018

JUDGMENT & ORDER (ORAL)

Heard Mr. M Pertin, learned Sr. counsel for the petitioner. Also heard Mr. S Tapin, learned Senior Government Advocate, appearing on behalf of the State Respondents. None has appeared on behalf of the respondent No. 5.

2. This is an application under Article 226 of the Constitution of India, praying for issuance of appropriate writ or order or direction quashing the notification No. DRJ/DD(ICDS)/DCPU-01/2017/, dated 12.07.2017 issued by the Deputy Director (ICDS), District ICDS cell, Women and Child Development , Daporijo, Upper Subansiri District, A.P., as far as, it relates to Outreach Worker given at serial number 8, of the notification and to direct the state respondents to appoint the petitioner in the said post.

3. On 19.01.2018, this matter was called out for hearing but none appeared on behalf of the respondent No. 5, therefore to give another chance to her it was directed that the case be listed today(15.02.2018) for hearing. Since, no one has appeared on behalf of respondent No. 5, today also the matter is heard in her absence.

4. Facts and circumstances leading to the filing of this writ petition are briefly narrated as follows; Vide advertisement No.DRJ/DD (ICDS/JJB-CWC-24/10-11), dated 29.05.2017, the office of the Deputy Director (ICDS) Daporijo, Upper Subansiri District, invited applications from interested candidates belonging to Upper Subansiri District, for filing up of (8) different post including one post of Outreach Worker. In response to the advertisement, among others, the petitioner and the respondent No. 5, in the writ petition applied for the post and after necessary process were completed, a walk in interview was held on 12.07.2017, in the office of the Deputy Commissioner (Daporijo) by a DPC, constituted of the C.O, Daporijo, as Chairman, District, Art and Culture Officer and Deputy Director (ICDS) as members. After DPC proceedings were over the result was declared on 12.07.2017, vide notification No.DRJ/DD(ICDS/DCPU-01/2017-18, by the office of the Deputy Director (ICDS), District Cell, Daporijo, Upper Subansiri district. In that result the name of the respondent No. 5, appearing at serial No. 8 of the result was declared as eligible for appointment for the post of Outreach Worker and the name of the petitioner appeared in the waiting list column. Aggrieved by the result declared in respect of the post of Outreach Worker, petitioner submitted a representation before the Deputy Commissioner, Daporijo and the Deputy Commissioner directed the Deputy Director (ICDS), Upper Subansiri District, to submit a report on the matter which was conveyed to the later Vide letter dated 10.08.2017, by the C.O. The report as required was submitted by the Deputy Director (ICDS) on 18.10.2017, to the Deputy Commissioner, Upper Subansiri District. The sum and substance of the report is that none of the candidates had the requisite three years experience and knowledge relating to Women and Child Protection at the community level, so they were assessed on the basis of their education qualification and their skills in speaking English language and based on that the respondent No. 5, was found to be the best among them and therefore recommended for appointment. It was also further stated that the petitioner's experience certificate submitted by him were found to be not related to Women and Child Protection at the community level. As such, he was not eligible and his complaint is without any basis. Not satisfied, the petitioner has come to this Court by filing the instant petition challenging the selection process and praying as stated above.

5. The case of the petitioner as submitted by Mr. Pertin, learned senior counsel is that the respondent No. 5, did not have the other required qualifications mentioned in the advertisement dated 29.05.2017 that is;

"Should have at least three years experience and knowledge of work on Women/Child protection issues at the community level".

Therefore, her application should have been out rightly rejected but, instead, she has been recommended for the post of Outreach Worker. Hence, the selection process is illegal and it deserves to be quashed and set aside. Mr. Pertin, also submits that there are no Recruitment Rule for the post of Outreach worker as yet. However, considering the requirement of the job the authorities have incorporated the above qualification as requisite qualification. Therefore, the Selection Board has no power to recommend the person who does not meet the requirement of the post as mentioned in the advertisement. Mr. Pertin, also submitted that the Selection Board should stick to the qualifications given in the advertisement and if no one was found qualified no interview should have been held. In support of his submission, Mr. Pertin, referred to the judgement of honorable Supreme Court which are given here below along with the relevant Paragraphs particularly referred to :

(II). ASHOK KUMAR SHARMA AND OTHERS Vs CHANDER SHEKAR AND ANOTHER, Reported in (1997) 4 SSC 18

"6. The review petitions came up for final hearing on 3.3.1997. We heard the learned counsel for the review petitioners, for the State of Jammu & Kashmir and for the 33 respondents. So far the first issue referred to in our Order dated 1.2.1995 is concerned, we are of the respectful opinion that majority judgment (rendered by Dr. T. K. Thommen and V. Ramaswami, JJ.) is unsustainable in the law. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judge with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the

*authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualification after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the proposition affirmed in *Rekha Chaturvedi v. University of Rajasthan*. The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error of apparent on the face of the record. In our opinion, a clear error of Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview."*

(II). Secretary, A.P. Public Service Commission Vs. B. Swapna and Others., Reported in (2005)4 SCC 154

"14. The High Court has committed an error in holding that the amended rule was operative. As has been fairly conceded by learned counsel for Respondent 1 applicant it was the unamended rule which was applicable. Once a process of selection starts, the prescribed selection criteria cannot be changed. The logic behind the same is based on fair play. A person who did not apply because a certain criterion e.g. minimum percentage of marks can make a legitimate grievance, in case the same is lowered, that he could have applied because he possessed the said percentage. Rules regarding qualification for appointment if amended during continuance of the process of selection do not affect the same. That is because every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the rules showing the intention to affect existing rights the rule must be held to be prospective. If the rule is expressed in a language which is fairly capable of either interpretation it ought to be considered as prospective only".

*"15. Another aspect which this Court has highlighted is scope for relaxation of norms. Although the Court must look with respect upon the performance of duties by experts in the respective field, it cannot abdicate its functions of ushering in a society based on rule of law. Once it is most satisfactorily established that the Selection Committee did not have the power to relax essential qualification, the entire process of selection so far as selected candidate is concerned gets vitiated. In *P.K Ramachandra Iyer Vs. the Union of India* this Court held that once it is established that there is no*

power to relax essential qualification, the entire process of selection of the candidate was in contravention of the established norms prescribed by advertisement. The power to relax must be clearly spelt out and cannot otherwise be exercised”.

After having submitted and stated above Mr. Pertin further submitted that the certificates of experience filed by the respondent No.5 in her affidavit in opposition were issued after the date of interview which was held on 12.07.2017 . Therefore, they are of no relevance. According to the learned counsel the certificate of the eligibility should be that of which the last date of the submission of the forms or applications. In support of those submission Mr. Pertin, cited above in, ***ASHOK KUMAR SHARMA AND OTHERS Vs CHANDER SHEKAR AND ANOTHER Reported in (1997) 4 SSC 18, Paragraph No. 6.***

6. Mr. Tapin, learned senior Government Advocate concedes that the DPC /selection board, have not recommended as per the requisite qualifications given in the advertisement but to meet the exigencies of the service and in the public interest the candidates were assessed based on their academic certificate and their communication skills in English as given in the advertisement. Mr. Tapin, also submitted that since no Recruitment Rule has been framed as yet for the post, the DPC was justified in having done so in the exigency of the service and in public interest. Further Mr. Tapin, submitted that the submission of the learned Senior counsel ,Mr. Pertin, that the selection board without any authority had changed the rules of the game during the process of the DPC, was not pleaded in the pleadings, therefore that submission cannot be accepted while considering the merit of the case.

7. I have considered the facts and circumstances of the case and the submissions of the learned counsels representing the parties, including the principle of law laid down by the Apex Court in the cases cited by them. Before the conclusion is drawn, it would be appropriate to reproduce the relevant portion of the advertisement. Therefore, the same given here below:

**GOVERNMENT OF ARUNACHAL PRADESH
OFFICE OF THE DEPUTY DIRECTOR (ICDS) DISTRICT ICDS CELL, DAPORIJO
UPPER SUBANSIRI DISTRICT**

No.Drj/DD(ICDS)/JJB-CWC-24/10-11

Dated Drj the 31 May 2017

ADVERTISEMENT

In pursuance of the Govt. order No. WCD-1/2016(E) Dated 17th Jan" 2017 applications are invited from interested/bonafied candidates of Upper Subansiri District for filling up of the following contractual post under the Dist child Protection unit/society, Upper Subansiri Distt. The details of the post and eligibility criteria for the post given below:-

Sl. No.	Name of the post	No. of post	Fixed per month	Age minimum qualification	Other required Qualification	Other required qualification
1	2	3	4	5	6	7
7	Outreach worker	01	Rs.8000/-	25-45	Class XII passed or equivalent, good communication in English Language	Should have at least 3 years experience and knowledge of working on Women/Child Protection Issues at the community level

Interested candidate may submit their application and bio-data (with contact No.) along with all the supporting document to the Deputy Director (ICDS) cell, upper Subansiri, District, Daporijo.

The eligible candidates will be intimated to appear for a walk in interview on 12th July 2017. After security of the application and documentation as per the criteria mentioned in the above Govt. order.

The last date of receipt of applications will be on 30th June" 2017 till 1700 hrs.
The candidate must be a resident of Upper Subansiri District only.

Sd/-
A.K. Singh,
Deputy Commissioner
Upper Subansiri distt.
Daporijo

8. Of the eligibility criteria given in the advertisement, the one given in column No. 7, is relevant in this case. It is admitted fact that none of the candidates including the petitioner and the respondent No. 5 were qualified for the post of Outreach Worker as they failed to meet the requisite qualification given in column No. 7, of the advertisement. Therefore, the only issue that needs to be determined is whether the Selection Board or the Departmental Promotion Committee (DPC), had the power to change the requisite qualification in such a situation when the candidates meeting the full eligibility criteria were not available, in the exigency of the service and in public interest. I am of the view that, the DPC or the Selection Board constituted for selection to the said post would have no authority or power to change the eligibility criteria unless they were empowered to do so. Because, eligibility criteria or qualifications are determined by the department or appointing

authorities who require the service of persons for a particular job, which necessarily entails certain educational qualifications and work experience to meet the requirement of the job. Therefore, if the DPC/Selection board change or relax such eligibility criterias the very purpose of the interview or the selection process would be negated. Besides, Selection Board's limited duty is to assess the persons or the candidates as per the requirement of the appointing authority or the department, which has requisitioned their service. As often stated by the Courts and which gained the status of a principle of law by now, rules of the game cannot be changed once the game has started. Because, to do so, would necessarily infringe on the right of other citizens who would have otherwise been qualified and therefore, would have applied for the same, had they known that such rules can be changed. On this, Mr. Pertin, learned senior counsel has referred to the judgment of the Supreme Court and the same is squarely applicable in this case. The submission of the learned Senior Govt. Advocate, Mr. Tapin, that change of rule of the game was not pleaded in the writ petition, therefore, as per the rule of pleadings the same cannot be pleaded at this stage, I am afraid, does not carry much force as the same cannot be applied in this case because in the contrary , the same has been impliedly pleaded in the writ petition particularly at Paragraph No. 11.

9. In view of what has been stated above, I am of the considered view that selection process is illegal and not as per the settled principles of law. Therefore, the result of the DPC, notified by the Office of the Deputy Director (ICDS) Daporijo, Upper Subansiri District vide order No. DRJ/Deputy Director(ICDS)/DCPU-01/2017-18, dated 12.07.2017, and the appointment order of the private respondent No. 5 issued in pursuant thereto are quashed and set aside.

To make it clear the said result is quashed and set aside only in respect of the post of Outreach Worker.

With this, the writ petition stands **disposed of**.

JUDGE

Victoria Jumbi Yabii