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Pradeep Kumar Ray Vs. the Director General, Prasar Bharati and Others

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Court : Orissa

Decided On : Oct-21-2014

Appellant : Pradeep Kumar Ray

Respondent : The Director General, Prasar Bharati and Others

Judgement :

ORISSA HIGH COURT, CUTTACK OJ.No.10317 OF 2000 In the matter of an application under Articles 226 and 227 of the Constitution of India. -------Pradeep Kumar Ray Petitioner Versus The Director General, Prasar Bharati & Others For petitioner Opp. Parties - M/s. K.L. Sharma & G.P. Tripathy, For opp. Parties - Ms. B. Dash, (Opposite party no.2) ---------- PRESENT:THE HONBLE DR. JUSTICE B.R. SARANGI ----------Date of hearing: 16.10.2014 : Date of judgment : 21.10.2014 ----------DR. B.R. SARANGI, J.By this writ application the petitioner seeks a direction to the opposite parties to declare the Practical Test and interview held at Aakashvani, Cuttack on 22nd December, 1998 for selection to the post of Instrumentalist (Violinist Player), Prasar Bharati, Broadcasting Corporation of India, Aakashvani, Jeypore, Dist-Koraput the same having been made in violation of the recruitment Rules, vide Annexure-15, since the Selection Committee was No.constituted in consonance with the said Rules. He further seeks a direction to the opposite parties to declare him selected and 2 appoint him as Instrumentalist (Violinist Player) in Prasar Bharati, Aakashvani, Jeypore.

2. The short fact leading to filing of the writ application is that the petitioner is a highly qualified, trained and experienced musician in the instrument violin. in Hindustani Classical and Light Music with his Sangeet Alankar. qualification which is equivalent M.A. in Music and training on the basis of which he has reached the pinnacle of success in playing such instrument. The opposite parties floated an advertisement in The Samaj., a daily Odia Newspaper, bearing Advertisement No.DAVP- 690 (586) 94 for a single post of Instrumentalist (Violin Player) as per item (2) of the advertised post, at All India Radio (Aakashvani), Jeypore, Orissa, vide Annexure-8. Having satisfied the requisite qualification, the petitioner applied for the said post and after due scrutiny, he was called upon to appear before the Selection Committee for practical test and interview .at 11 a.m. on 26th March, 1997, vide Call Letter dated 18.03.1997 (Annexure-10). Pursuant to that, he appeared before the Selection Committee on the scheduled date.

3. Since the result of selection was No.published for about one and half years, the petitioner approached this Court by filing a writ application bearing OJ.No.12629 of 1998 seeking a direction for declaration of result of selection. On being noticed, the opposite parties entered appearance and filed their counter affidavit stating that complaints were received for selection and appointment 3 in posts other than Violin Player and the complainants alleged that they were prevented by outsiders from appearing in the selection and interview as scheduled was cancelled. But this Court on consideration of the contentions raised by the parties quashed the order under Annexure-11 to that writ application. The operative portion of the order passed by this Court is as follows: Xx xx xx Shri Panda has made available to us a copy of the enquiry report. We have gone though the same and we do No.find any illegality in the aforesaid finding of the enquiry officer. In fact, he has suggested for quashing of the process of recruitment. The authorities have accepted the aforesaid report and have fixed the interview at Cuttack in the month of January, 1999. Shri panda, learned counsel for the opposite parties, on instruction submits that the proposed interview will be confined to the petitioner and the other candidate from Nagpur only to whom necessary intimation will be sent. For the aforesaid reason, we are of the opinion that the opposite parties have rightly cancelled the selection process in question. As such, we are No.inclined to admit this writ application and dispose of the same. Since Shri Panda on the basis of

instruction submits that interview for the post of Instrumentalist (Violin Player) will be confined to the petitioner and the other candidate from Nagpur, the petitioner will No.be prejudiced. Xx xx xx Xx xx xx. Pursuant to the order passed by this Court in Annexure-11, the petitioner received a telegram to attend the fresh interview to be conducted at Cuttack on 21.12.1998. Since there were two applicants, the other applicant was directed to appear on 22.12.1998 for practical test and interview at All India Radio, Cuttack on 22.12.1998. The Selection Committee was constituted as mentioned in paragraph-13 of the writ petition as follows: 4 4.

1. Mr. Hrusikesh Pani, Station Director, Prasar Bharati (Broadcasting Corporation of India), Aakashvani, Cuttack 2. Dr. Damodar Hota, Singer, recently upgraded as an A Grade Artist and an approved Casual Artist of All India Radio, Cuttack (resident of Bhubaneswar, as Expert and Outside Assessor.

3. Sri Umesh Chandra Kar, Tabla Player and approved casual artist of All India Radio, Cuttack (resident of Bhubaneswar) as Expert and Outside Assessor.

4. Sri Santanu Mohapatra, Music Composer and approved casual artist of All India Radio, Cuttack (resident of Bhubaneswar) as Expert and Outside Assessor.

5. Sri H.C. Verma, Departmental Representative. The constitution of such Selection Committee was objected to by the petitioner, but in spite of that he was compelled to appear before such Selection Committee. Since the other candidate from Nagpur, opposite party no.3 never came to appear in the said selection/interview, the petitioner being the sole eligible candidate, he ought to have been declared selected followed by his appointment order. That having No.been done, the petitioner made a claim before the appropriate authority and the latter having No.paid any heed to that, finding no other alternative, he moved this Court by the present writ application.

5. Mrs. B. Dash, learned counsel for opposite party no.2, strenuously urged that the Selection Committee has been duly constituted and therefore, any selection or interview conducted by 5 such committee is in conformity with the provisions of law and therefore the same may No.be interfered with by this Court.

6. After hearing the learned counsel for the petitioner and on going through the records, it appears that in Annexure-15, Recruitment Rules for various posts of All India Radio has been framed where Clause-9 deals with composition of Selection : Selection Committee Committee which reads as follows: 9.Composition of Selection Committee 7. (i) Recruiting Authority (ii) Two outsider assessors Or (i) Recruiting Authority (ii) One Department Representative (iii) Three outside assessors.

. As per the above provision, the Selection Committee may constitute three members or five members in which recruiting authority is one of the member and so far three members Selection Committee is concerned, it may require two outside assessors along with recruiting authority. So far five member committee is concerned, along with the recruiting authority one department representative and three outside assessors should be the members of such committee. Since the recruitment has been made for the post of Instrumentalist (Violin Player), Aakashvani, Jeypore, DistKoraput , as per the Rules, the Station Director of the said Center being the recruiting authority should be one of the members either in the three member committee or five member committee. Thus, 6 the mandatory requirement of the Rules is that either two outside assessors or three outside assessors should be called to be the members of the Selection Committee. So far as three member Selection Committee and five member Selection Committee are concerned, in paragraph-13 of the writ application, it is stated that the Selection Committee had five members where Hrusikesh Pani, Station Director was treated as the recruiting member and three outsiders were members namely one Dr. Damodar Hota, Sri Umesh Chandra Kar and Sri Santannu Mohapatra, the departmental representative being one Sri H.C. Verma. The three outsider members belonged to All India Radio, Cuttack and also they were all Artists of said Centre. So far as the departmental representative was concerned, Sri H.C. Verma was an Engineer of Cuttack Centre. Therefore, as the selection to the post of Instrumentalist (Violin Player) was required for the Aakashvani, Jeypore, Dist-Koraput, the Station Director of the said Centre was a member of such Selection Committee.

8. Referring to paragraph-16 of the counter affidavit filed by the opposite party no.2, it is submitted that as per the standing practice, when the Chairman remains absent from duty for some reason or other, another officer of equal rank has to preside over the selection committee as Chairman. It is stated that in the instant case, the Station Director of Aakashvani, Jeypore being absent, and the Station Director of Aakashvani, Cuttack being the Zonal Head, 7 presided over the Selection Committee as Chairman-cum-member. Therefore, continuance of Mr. H.C. Verma as member of Selection Committee was No.vitiated. It is stated that in absence of Director of Jeypore Centre, the Station Director, Cuttack being the Zonal Head acted as Chairman of the Selection Committee. So far other three members were concerned, none of them was having the required qualification in Violin to appreciate the expertise of the petitioner and more so none of them were outsider, rather they were all Artists of Aakashvani, Cuttack Centre. So far as Mr. H.C. Verma was concerned, he being an Engineer having had no knowledge in music was incorporated as one of the members of the Selection Committee. In paragraph 17 of the counter affidavit, it is stated that an outside assessor. means any expert out of the department/All India Radio but it does No.mean any expert from out of the State. Therefore, the analogy of opposite party no.2 in his counter affidavit explaining the position of outside assessor. in absence of any express provision available under the Rules is vague. In common parlance, the words outside assessor. mean that the member must have some knowledge on the subject itself and must belong to an outside recruitment area. Since the post related to the Aakashvani, Jeypore, Dist- Koraput and if the Station Director, Jeypore would have been the Chairman and he would have called upon three other members for selection, then Mr. H.C. Verma could have been considered as an outside assessor. As the selection was conducted by the Station Director, Cuttack with the assistance of the 8 three of its own Artists as members, it can never be construed that they were outside assessors. and more so, none of the said there members was having any expertise in the field in which the selection process was to be undertaken, meaning thereby none of these members had any qualification in the subject of Violin.

9. In the aforesaid facts and circumstances, it appears that the Selection Committee, constituted for selection and practical test of Instrumentalist (Violin

Player) was No.in conformity with the provisions of Rules governing the field, vide Annexure-15. Therefore, any step taken by such illegal Selection Committee canNo.sustain. Accordingly, the practical test and interview held at Aakashvani on 22.12.1998 canNo.be sustained and the same is set aside.

10. So far as declaring the petitioner selected for the post of Instrumentalist (Violin Player) pursuant to practical test and interview held at Aakashvani, Jeypore, Dist-Koraput dated 22.12.1998 could No.be made in view of the fact that this question was considered in the earlier writ application in which this Court had directed to conduct a fresh selection.

11. In that view of the matter, the opposite parties are directed to conduct a fresh practical test and interview for the post of Instrumentalist (Violin Player) which should be confined to the petitioner and opposite party no.3 pursuant to advertisement issued 9 by properly constituting a Selection Committee in accordance with Rules. The entire exercise shall be completed within a period of three months from the date of communication of this judgment.

12. With the above observation and direction the writ application is disposed of. Dr.B.R. Sarangi, J.Orissa High Court, Cuttack The 21st October, 2014/ Ajaya

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