

**Anil Kumar Vs. State of Rajasthan and ors.**

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**Court :** Rajasthan

**Decided On :** Feb-18-2008

**Reported in :** RLW2008(4)Raj2933

**Judge :** Sangeet Lodha, J.

**Appellant :** Anil Kumar

**Respondent :** State of Rajasthan and ors.

**Disposition :** Petition allowed

**Judgement :**

**Sangeet Lodha, J.**

1. In this writ petition, the petitioner has assailed validity of an appointment accorded to the respondent No. 5 on the post of L.D.C. in Jai Narayan Vyas Girls Senior Secondary School, Jodhpur, a non-government educational Institution, recognized by the State Government (hereinafter referred to as 'the respondent Institution') and has sought declaration that being validly selected, he was entitled to be appointed on the said post in the respondent Institution. The petitioner has sought further directions for his appointment on the post of L.D.C. in the regular pay scale and regularisation of his services from the date of his initial appointment in the regular pay scale admissible to the post of L.D.C. The petitioner has also sought direction against the respondents No. 1 to 3 not to stop grant-in-aid

admissible for the post of LDC in the respondent Institution.

2. Briefly stated facts of the case are that the respondent No. 4 is a Non Government Educational Institution governed by the provisions of the Rajasthan Non-Government Educational Institution Act, 1989 (in short 'the Act of 1989' hereinafter) and the Rajasthan Non-Government Educational Institution (Recognition, Grant-in-aid and Service Conditions etc.) Rules, 1993 (in short 'the Rules of 1993' hereinafter). The petitioner was interviewed for appointment on the post of L.D.C. by the Selection Committee constituted for the purpose and having been found suitable was accorded appointment on the said post vide order dated 18.1.94 issued by the Manager of the respondent Institution for a period of six months or till the selection is made after advertisement of the post, whichever is earlier. In pursuance of the appointment order dated 18.1.94 the petitioner joined his duties on 20.1.94. The regular process of selection for appointment on the post of L.D.C. was undertaken by the respondent Institution and the names of the suitable candidates were requisitioned from the Employment Exchange, Jodhpur. The names of the petitioner and the respondent No. 5 were also forwarded by the Employment Exchange. The Selection Committee consisting of Shri Krishna Rao Kalla, Shri. Mohan Lal Vyas, Smt. Rita Dixit and Smt. Girja Sharma was constituted. Shri Krishna Rai Kalla and Mohan Lal Vyas were the representatives of the Managing committee of the respondent Institution, Smt. Girja Sharma was the representative of the Department of Education and Smt. Rita Dixit is the Head Mistress of the respondent Institution. It is submitted that the norms of selection were settled amongst all the members of the Selection Committee. All the candidates including the petitioner were interviewed by the Selection Committee and thereafter type test of Hindi & English was also conducted. It is stated that in the selection, petitioner was found suitable but the representative of the Department of Education, Smt. Girja Sharma was interested in another candidate Shri Ramprasad Bora, respondent No. 5 herein, therefore, so as to extend favour to him, she took away the copies of Hindi & English type test and got. them assessed at her own level. In the merit list prepared by the Selection Committee, the petitioner was placed at Sr. No. 1, one Shri Gajanand was shown at Sr. No. 2 and the respondent No. 5 herein, Shri Ramprasad Bora was shown at Sr. No. 3, however, the department's nominee respondent No. 6 herein, did not agree with

unanimous decision of other members of the Selection Committee regarding the forms fixed for awarding of marks to the respective candidates. Vide communication dated 12.8.94 issued by District Education Officer (Girls), Jodhpur, the respondent institution was informed that the departmental representative who had participated in the selection after taking proceeding in accordance with the Rules has selected Shri Ramprasad Bora for appointment on the post of L.D.C, therefore, the selection proceedings drawn by the departmental representative recommending the name of Shri Ramprasad Bora may be sent after due signatures of other members of the selection committee for approval. Vide communication dated 23.8.94, the respondent Institution apprised the respondent No. 3 that the action of the department representative is not correct and accordingly, informed that the entire selection proceedings has been cancelled and the fresh proceedings are being taken for selection. However, vide communication dated 29.9.94 while justifying the recommendation made by the departmental representative, the respondent No. 3 directed the respondent institution to comply with the order of the department and accord appointment to the respondent No. 5.

The respondent Institution refused to comply with the directions issued by the respondent No. 3 and submitted that the, right of appointment is vested with the Management Committee of the Institution and the Department of Education is empowered only to accept or reject the recommendation of the Selection Committee, therefore, it cannot interfere with the decision taken by the Management Committee. However, vide communication dated 25.10.94, the respondent No. 3 again insisted for compliance of directions issued vide communication dated 29.9.94. In these circumstances, vide communication dated 23.11.94, the respondent Institution while explaining the entire selection process in terms of the Rules of 1993 requested the respondent No. 2 to grant approval for appointment of the petitioner, who was the candidate duly selected by the Management Committee of the respondent Institution, However, vide communication dated 19.1.05 issued by the Chief Accounts Officer, Primary & Secondary Education, Rajasthan, Bikaner, the respondent Institution was informed that the proceedings taken by the departmental representative and the District Education Officer (Girls), Jodhpur are just and proper, therefore, the appointment

may be accorded to Shri Ramprasad Bora forthwith.

3. A reply to the writ petition has been filed on behalf of all the respondents, however, during the pendency of the writ petition, the respondent No. 5 has expired. The learned Counsel appearing on behalf of respondent No. 5 submits that after the death of the respondent No. 5 even if, the writ petition fails, no relief can be extended to his legal representative, therefore, they are not interested in pursuing the matter any further. Accordingly, learned Counsel prayed that his name may be deleted from the array of respondents.

4. In the reply filed on behalf of respondents No. 1 to 3 and 6, it is stated that Smt. Girja Sharma, the representative of Department of Education was not interested in any candidate for did show show any favour to any person. However, it is not denied that Smt. Girja Sharma, the respondent No. 6 herein, had taken away the copies of Hindi & English type test and got them assessed on her own from the Lecturer said to be expert in the subjects. However, it is stated that the copies were got assessed as aforesaid, with the consent and concurrence of other members of the Selection Committee. It is submitted that the Management Committee by itself was not authorised to prepare its own merit list without signature of the departmental representative. It is submitted that the merit list prepared by Smt. Girja Sharma was approved by the Dy. Director (Women) as well the Director, Primary and Secondary Education, Rajasthan Bikaner. It is submitted that so far as eligibility qualification for the appointment on the post of LDC in the recognized aided education Institution is concerned, the same shall be governed by the Rajasthan Subordinate Offices (Ministerial Staff) Rules, 1957 (in short 'the Rules of 1957' hereinafter) but, in view of the Rule 45 of the Rules of 1993, a person who has not attained the age of superannuation in any government office can also be appointed in non-government educational Institution, therefore, the bar of the age under the Rules of 1957 cannot operate against the grant of appointment in non-government educational Institution. It is submitted that the selection committee, before the selection had taken a decision that 5 marks will be kept for interview and after holding the interview the aggregate of total marks granted by all the members of the selection committee shall be divided by 5 and average thereof will be taken and it was further decided that the marks obtained in

the Secondary Examination, Hindi & English type test of 50 marks each shall be taken into account and the total marks obtained shall be divided by 2 while preparing the merit list. It is submitted that the departmental representative has applied the aforesaid norms laid down and accordingly made the recommendation for appointment of respondent No. 5 who stands at Sr. No. 1 in the merit list which is just and proper. It is submitted that norms formulated by the members of the Selection Committee prior to interview was perfectly correct and the departmental representative was justified in assessing the marks in accordance with the said formula and recommend the name of respondent No. 5 according to his place in merit.

5. The respondent No. 4 in its reply has supported the case of the petitioner and reiterated the stand taken by it in the correspondence with the Department of Education referred supra.

6. It is relevant to note at this stage, that while issuing show cause notice as to why the petition may not be admitted, vide order dated 14.2.95, this Court was pleased to grant an interim order in favour of the petitioner in terms that 'the petitioner's services shall not be dispensed with and respondent No. 5 shall not be appointed as L.D.C. in the Institution until further orders.' After hearing all the parties, vide order dated 4.8.97, the aforesaid interim order was confirmed by this Court until final decision of this writ petition,' therefore, the petitioner is continuing in service of the respondents till this date.

7. It is contended by the learned Counsel for the petitioner that the action of the respondent Nos. 1 to 3 in directing the respondent Institution to appoint respondent No 5 on the post of LDC is ex-facie illegal for the reason that he was not validly selected candidate. It is submitted that respondent No. 5 was not even eligible for appointment on the post of LDC inasmuch as, at the relevant time when the names were requisitioned from the Employment Exchange, the respondent No. 5 had already crossed the maximum age prescribed for direct recruitment on the post of LDC. It is submitted that in the select list prepared by three members of the Selection Committee, other than, the departmental representative, the petitioner is placed at Sr. No. 1, however, so as to extend undue advantage and

favour the respondent No. 5, the departmental representative has manipulated the record and in violation of the norms laid down for the selection, the marks obtained by the respective candidate in qualifying examination has been taken on percentage basis whereas, the marks in the type test have been taken on actual basis. It is submitted that if the marks are calculated on the basis of the criteria laid down by the Selection Committee then, the respondent No. 5 could not have been placed at Sr. No. 1 in the merit list. It is submitted that as per-provisions of Rule 27 of the Rules of 1993, the Management Committee is required to forward the list of selected candidates with its recommendations to the competent authority, who in its turn in exercise of the power conferred by Rule 28 of the Rules of 1993 may approve the selection or reject the same for which the reasons are required to be recorded in writing. It is contended by the learned Counsel that the departmental representative had no authority whatsoever to prepare the select list on its own and recommend the name of the respondent No. 5 for appointment to the competent authority. The learned Counsel urged that the respondents No. 1 to 3 have acted absolutely without jurisdiction in directing the Management Committee of the respondent Institution to appoint respondent No. 5 accepting the recommendation made by the departmental representative unilaterally. The learned Counsel further submitted that the respondent No. 5 has already expired and the petitioner is continuing in service of the respondent Institution since 18.1.94, therefore, even otherwise, he is entitled to be regularised on the post of LDC.

8. The learned Counsel appearing on behalf of the respondent No. 4 while supporting the petitioner submitted that before the selection criteria for awarding the marks was laid down by the Selection Committee which has been placed on record as Annexure R4/4. It is submitted that the departmental representative had no authority to take away the sheets of Hindi & English; type test and got them evaluated on her own, but even if, the marks which have been awarded in the type test to all the candidates who have appeared before the Selection Committee are taken to be correct then too, according to the norms laid down in the merit list prepared by the Selection Committee, which is placed on record as Annexure R 4/2, the petitioner stands at Sr. No. 1, therefore, the Management Committee has rightly recommended the name of the petitioner for appointment on the post of

LDC in the respondent Institution. It is submitted that the action of the departmental representative amounts to undermining the authority of other members of the Selection Committee which is in clear violation of the provisions of the Rules of 1993.

9. I have considered the rival submissions and perused the record.

10. It is to be noticed that as the provisions of Rule 25 of the Rules of 1993, the recruitment of employees in recognised Institution is required to be made on merit, either after open advertisement in a local daily newspaper having a wide circulation or from amongst the candidates sponsored by the Employment Exchange. As per Rule 26(b) of the Rules of 1993, the qualification for the recruitment on the various post shall be as prescribed by the government for similar category of employees in the government educational institution except for the post of Organising Secretary for which, the qualification has been prescribed in the Rule 26(b) itself. As per clause 26(d), the Selection Committee for recruitment in recognised Institution other than colleges, shall consist of followings:

- (1) Two representatives of the Managing Committee;
- (2) Head of the concerned Institution;
- (3) One officer nominated by Director of Education.

11. It is not in dispute that the Selection Committee was constituted adhering to the provisions of Rule 26(d) of the Rules of 1993. As per Rule 26(g), the Selection Committee after having interview all the candidates, shall prepare a list of candidates arranging them in order of merit and submits its recommendation for appointment to the Management Committee is required to forward the list of selected candidates with the recommendation alongwith information in the prescribed pro-forma to the competent authority for its approval within a period of fortnight of the selection.

12. As per Rule 28 of the Rules of 1993, the competent authority may after due consideration either approve the recommendation of the Management Committee or reject the same for reasons to be recorded in writing.

Thus, the conjoint reading of the provisions of Rule 27 and 28 of the Rules of 1993 marks it abundantly clear that the departmental representative is only one of the member of the Selection Committee and he has no authority whatsoever to prepare the merit list and recommend the name of any candidate for appointment on any post on his own. The recommendation for appointment can only be made by the Selection Committee. Suffice it to say that the competent authority acquires the jurisdiction to approve or reject the names of the persons if they are forwarded by the Management Committee. Thus, the impugned action of the respondents in directing the respondent Institution to accord appointment to the respondent No. 5 on the basis of the recommendations made by the departmental representative unilaterally and unauthorisedly is avowedly arbitrary and violative of the mandate of the Rules of 1993.

13. As per the provisions of Rule 26(b) referred supra, the qualification for appointment in the recognised Institution shall be as prescribed by the government for similar category of employees in government educational institution, therefore, if a person is not qualified for appointment under the relevant service Rules for appointment on similar category of post in the government education institution then, he shall not be eligible to be appointed in the recognised institution. Therefore, the respondent No. 5 who was a retired employee and had already crossed the maximum age limit prescribed under the Rules of 1957 was not entitled to be considered for appointment on the post of LDC on account of being age barred. The respondents are not justified in consideration his candidature for appointment on the ground that under Rule 45 of the Rules of 1993, an employee other than teachers, may be continued in the service of the recognised institution upto the age of 60 by the State Government. The entitlement of an employee to continue in service upto the age of 60 years shall not make him entitle for recruitment to the post if he is of the age less than 60 inasmuch as, the minimum and maximum age for recruitment having been prescribed under the relevant Rules, the same cannot be permitted to be deviated. The relaxation in the age can also be permitted only if it is specifically provided in the relevant recruitment Rules specifically. Therefore, I have no hesitation in holding that the action of the respondents No. 2 & 3 in insisting for the appointment of the respondent No. 5 notwithstanding that he was disqualified to be appointed being age barred apparently

lacks bona fide.

14. The respondents No. 2 & 3 have taken the stand that the merit list prepared by the departmental representative was in conformity with the criteria laid down by the Selection Committee before proceeding with the selection however, no document showing that any such selection criteria as suggested by the respondents No. 1 to 3 in their reply said to have been laid down by the Selection Committee, has been placed on record. To the contrary, the respondent No. 4 has produced on record the selection criteria laid down by the selection committee as Annexure R 4/4, of course, that does not bear the signature of the departmental representative. But then, it is not the case set out by the respondents that the said criteria, laid down is irrational or not just and proper. Therefore, if on the basis of rational criteria laid down, the Selection Committee has prepared the merit list then, the respondents were not justified in declining to approve the same and insist upon the appointment of respondent No. 5 on the basis of the recommendation made by the departmental representative unilaterally according to the criteria evolved by her ignoring the norms laid down by the majority of the members of selection committee. The respondents have not been able to point out any such infirmity or illegality in the selection process adopted by the selection committee having an effect of vitiating the selection.

15. Lastly, it is pertinent to note that in the first instance, the petitioner was appointed vide order dated 18.1.94 after due selection by the Selection Committee for a period of six months or till the regular selections are made and thereafter, he has continued in service for all these years by virtue of interim order passed by this Court, therefore, after a lapse of more than 12 years, it will be unjust to bring his services to an end, more so when, according to the recommendations made by the Selection Committee of the respondent Institution, he stands at Sr. No. 1 in the merit list. Thus, on the totality of the facts and circumstances of the case noticed above, the petitioner cannot be denied appointment on the post of LDC. The petitioner is discharging duties of the post of LDC. The petitioner is discharging duties of the post of LDC in the respondent Institution for all these years, therefore, he cannot be denied salary in the regular pay scale admissible to the post of LDC.

Admittedly, grant in aid is sanctioned by the respondents for the post of LDC in the respondent Institution, therefore, the respondents are under an obligation to release the grant admissible to the said post to the respondent Institution.

16. In the result, the writ petition succeeds, it is hereby allowed.

17. It is declared that the petitioner is validly selected for the appointment on the post of LDC. Accordingly, the respondent Institution is directed to accord him appointment on the post of LDC in the regular pay scale admissible to the post. The petitioner shall be entitled for payment of salary in the regular pay scale admissible to the post throughout for the period he has discharged the duties of the post of LDC. The respondents No. 1 to 3 are directed to take necessary steps and release the grant in aid to the extent permissible under the Rules of 19S3 within a period of three months from the date of this order. The entire arrear after working out the difference shall be paid to the petitioner within a period of one month thereafter. No order as to costs.

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