

Gopal Dass Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Sep-29-2003

Reported in : 2004(1)JKJ256

Judge : Permod Kohli, J.

Acts : [Constitution of India](#) - Articles 16 and 226

Appeal No. : SWP No. 1550/2003

Appellant : Gopal Dass

Respondent : State and ors.

Advocate for Pet/Ap. : Ajay Abrol, Adv.

Disposition : Petition dismissed

Judgement :

Permod Kohli, J.

1. Selection/appointment of private respondents as Lecturer 10+2 Urdu in School Education Department made vide impugned Order No. PSC/DR/Lect+2/Urdu/98 Dated 6.2.2003 has been questioned in the present petition. In addition to this, a further direction is sought by the petitioner seeking his own appointment as 10+2 Lecturer on the basis of his name being in the waiting list at Sr.No. 1.

2. The process for selection was initiated vide advertisement Notice No. 9-PSC of 2001 dated 18.5.2001, whereby applications for the post of Lecturer (10+2) Urdu in School Education Department were invited from various categories including Scheduled Caste Category. Petitioner belongs to Scheduled caste Category. There were three vacancies reserved for the category in the advertisement notice. All the candidates were subjected to screening test conducted on 2.12.2001. Petitioner is said to have qualified for the same. He was called to participate in the interview held from 7th to 21st December 2002 at Jammu. He appeared for interview. The list of selectees was declared vide impugned order, whereby 20 candidates have been selected in General Category, three in Scheduled Caste category, to which the petitioner belongs, and also in other categories. A waiting list of candidates belonging to different categories was also notified and petitioner figures at Sr.No. 1. The claim of the petitioner is that he is M.A. in Urdu with B.Ed., whereas private respondents are lesser in merit than the petitioner. The second ground of challenge is that the selection of private respondents is in violation of law laid down by the Full Bench of this Court in 'Dr. Inder Prakash v. State and Ors.' In addition to this, what is argued is that the selection has been made only on the basis of interview which is impermissible and violative of Articles 14 & 16 of the Constitution.

3. It is settled proposition of law that the Court cannot sit as a Court of Appeal over the decision of the Selection body. The Court can only examine the manner in which the selection has been made. Merely because petitioner has better academic merit does not ipso facto nullify the selection. The law laid down in Inder Prakash case by the Full Bench has no application to the facts and circumstances of the present case. Petitioner participated in the process of selection and after having failed to make the mark cannot challenge the selection on the ground that the selection is bad, unless it is established that the selection is violative of either constitutional mandate or other statutory provisions or is the result of malafide etc. There is no allegation of malafide against any member of the selection body. The Court cannot substitute its own view for the selection body. There is no merit in this contention.

4. As regard the question that the selection has been made only on the basis of interview is concerned, the issue is no more res Integra The Apex Court in case 'Leeladhar and Ors. v. State of Rajasthan', AIR 1981 SC 1777, has held as under:

'.....that the object of any process of selection for entry into public service is to secure the best and the most suitable person for job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So, open competitive examination has come to be accepted and almost universally as the gateway to public services. But the question is how should the competitive examination be devised The competitive examination may be based exclusively on written examination or it may be based exclusively on oral interview or it may be a mixture of both. It is entirely for the Government to decide what kind of competitive examination would be appropriate in a given case. To quote the words of Chinnappa Reddy. J. 'In the very nature of things it would not be within the province or even the competence of the court and the court would not venture into such exclusive thickets to discover ways out, when the matters are more appropriately left.' To the wisdom of the experts. It is not for the court to lay down whether interview test should be held at all or how many marks be allowed for the interview test. Of course the marks must be minimal so as to avoid charges of arbitrariness, but not necessarily always. There may be posts and appointments where the only proper method of selection may be by a viva voce test. That is why rigid rules cannot be laid down in these matters and not by courts. The expert bodies are generally the best judges. The Government aided by experts in the field may appropriately decide to have a written examination followed by a viva voce test.'

5. In the present case selection has been made only on the basis of interview which is not impermissible. Where the selection is made only on the basis of interview, the question of excessive marks being fixed does not arise at all. It is only where the interview follows the written test, the percentage of marks in interview becomes relevant. The object of keeping percentage in such a situation is not to frustrate or nullify the outcome of written examination. This issue does not arise in the present case. There is no merit in this argument of learned counsel for

the petitioner.

6. As regard the claim of the petitioner that he should be appointed being at Sr.No. 1 in the waiting list, no relief can be granted to the petitioner as person in the waiting list has no right to seek appointment. This question has been set at rest in case of 'Modem Lal and Ors. v. State of J&K; and Ors.', AIR 1995 SC 1088, wherein the Apex Court has specifically ruled that selection/appointment can be made only against the advertised vacancy.

7. In view of the above, there is no substance in the petition and the same merits dismissed along with connected CMP. I order accordingly.

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