

Gauhati High Court

Kenjum Riba And Ors. vs State Of Arunachal Pradesh And ... on 9 May, 2002

Equivalent citations: (2003) 1 GLR 169

Author: R Mongia

Bench: R Mongia, I Ansari

JUDGMENT R.S. Mongia, C.J.

1. The appellants, 11 in number were appointed as Peon-cum-Mali/ Mali-cum-Chowkidar (Group D post) against clear vacancies after being interviewed by an Interview Board. They were so appointed by the order dated 30.3.2001. The appointment orders were issued by the Deputy Commissioner. However, the services were terminated by a simple order dated 2.7.2001 by the Deputy Commissioner stating that "the services of the newly appointed Peon-cum-Mali/ Chowkidar-cum-Mali are discontinued with effect from 1st July, 2001 vide Deputy Commissioner's revocation order No. 5985 dated 27.6.2001." This order of termination was made the subject-matter of challenge in Writ Petition (C) No. 947(AP)/ 2001. The main ground of attack was that the impugned order of termination had been issued in violation of the principles of natural justice. The pleas taken by the Respondents were that (i) there had been no proper advertisement for the posts in question and (ii) that the Interview Board was not properly constituted as required by the Government Order dated 24.3.1999. It was on these two grounds that the impugned order of termination was passed.

2. The learned counsel for the appellants drew our attention to a document regarding appointment of Group-D staff lying vacant for sometime. In the said document, it was mentioned that the said posts could not be advertised due to shortage of time and the closure of educational institutions on account of summer vacation with effect from 17.4.2001. It was further mentioned that as per the codal formalities of Group-D staff selection and delegation of powers of Education Officers an Interview Board was being constituted with the following Officers:

(1) Deputy Commissioner as the Chairman, (2) Shri P. N. Roy, Principal, Govt. Hr. Secondary School, Yingkiong, (3) Shri T. Mize District Library Officer, (4) Shri A. C. L. Srivastava, District Training Organisers.

3. The approval of the Deputy Commissioner was sought to conduct the interview without advertisement with the above mentioned members. This, according to the learned counsel, was duly approved by the Deputy Commissioner and interviews were held by the Interview Board as constituted and ultimately even the appointment orders were issued by the Deputy Commissioner. From the above, one fact is clear that the selection was sought to be made without advertisement as it was stated that educational institutions were going to be closed on account of summer vacation with effect from 17.4.2001. It may be observed here that the Deputy Commissioner had approved the aforesaid constitution of the Interview Board and holding of the interview without advertisement on 19.3.2001 and interviews were held either on 19th or 20th March, 2001, results sheets were produced on 21st March, 2001 and the appointment orders were issued on 30th March, 2001. Admittedly, in this case no advertisement was issued and it was stated that it was put up only in the Office Notice Board. It had further been stated that as per the Government order dated 24th

March, 1999, Recruitment Board for selection of Group-D posts in the Department of Education was required to be constituted with the following persons are Chairman and Members :

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| (a) Deputy Commissioner - | Chairman |
| (b) Dy. Director of School Education - | Member / Secy. |
| (c) One Group 'A' Officer of the APST Cadre - | Member |
| (d) An Officer to be coopted by Deputy Commissioner | Member |

4. In the affidavit-in-opposition filed on behalf of the Respondents before the learned Single Judge, it was stated that on verbal complaint, the Deputy Commissioner scrutinised the entire matter and found the aforesaid irregularities, inasmuch as, no proper advertisement was issued and the Interview Board that was constituted was also not in accordance with the Government Order dated 24th March, 1999. It was in this circumstances that the appointment orders were cancelled.

5. Learned counsel for the appellants argued that the Deputy Commissioner having approved the constitution of the Interview Board on 19.3.2001 and he himself issuing the appointment orders, now it would not lie in the mouth of the same person to say that the procedure which was followed and the Interview Board so constituted were not in accordance with law. This is admitted that no advertisement was issued and only it was put up in the office Notice Board regarding the filling up of the posts and that the constitution of the Interview Board was not in accordance with Government Order dated 19th March, 1999.

6. The questions that arise are (i) should under the aforesaid circumstances principles of natural justice be adhered to ? and (ii) Are the appointments valid with the aforesaid defects as pointed out?

7. Our answer to the first question is that if it is admitted that there had been no advertisement and the constitution of the Interview Board was not in accordance with the Government order dated 24.3.1999 then the question of giving any opportunity under the rules of natural justice would not arise. The appointment given under such circumstances are not valid. Is the Deputy Commissioner above all ? Answer is no. It is not understood as to why did he approve the holding of the Interview Board without advertisement. The papers were put up to him on 19.3.2001 and the schools were to close down on account of summer vacation with effect from 17.4.2001. Hence the posts could have easily been advertised. The Deputy Commissioner should have been careful in granting approval to hold the interview without advertisement. Such appointments without giving opportunity to the other desirous candidates would be violative of the Article 16 of the Constitution. So far as the second question is concerned, the approval that may have been accorded by the Deputy Commissioner to the constitution of the Interview Board cannot supersede the Government Order or the notification laying down the constitution of the Board. Admittedly, the Board approved by the Deputy Commissioner was not in consonance with the constitution of the Board as envisaged by the order 24.3.1999 (supra).

8. We do not find any merit in the submission of the learned counsel for the appellants and while upholding the judgment of the learned Single Judge, we dismiss the appeal.

9. Before parting with the judgment, we would like to record that we do not appreciate the way the Deputy Commissioner has acted in this case. The Deputy Commissioner should have been more cautious while approving the suggestion to interview the candidates without advertisement and further he should have given a thought that the interview board which was being approved by him was not in consonance with the Government order. These observations be conveyed to the concerned Deputy Commissioner by the State Government.