

**(2011) 12 GAU CK 0060**  
**In the Gauhati High Court**  
**Case No : Writ Appeal No.95 of 2009**

Adhar Barman and Ors.

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

---

**Date of Decision :** 08-12-2011

**Acts Referred:**

**Citation :** (2012) 5 GLR 247

**Hon'ble Judges :** A.K.Goel, C.J. and Ujjal Bhuyan, J

**Bench :** Division Bench

**Advocate :** Mr. A.S. Choudhury , I. Hussain for the appellants.??Mr. U.K. Nair for the respondents., Advocates appearing for Parties

---

## Judgement

Ujjal Bhuyan, J.—This writ appeal is directed against the judgment and order of the learned Single Judge dated 3.6.2008 passed in WP(C) No. 166 of 2008 and other connected cases.

2. The facts necessary for adjudication of the present appeal may be briefly stated at the very out set.

An advertisement dated 20.1.2007 was issued by the Director of Sports and Youth Welfare, Assam inviting applications for filling up a few posts of Physical Instructor for High/Higher Secondary schools in the State. The said advertisement was published in the leading newspapers of the State on 28.1.2007. Though the number of vacancies proposed to be filled up were not specifically mentioned in the advertisement, detailed stipulations were mentioned therein with regard to the conditions of eligibility and the format in which the selection was proposed to be held. Pursuant to the said advertisement 250 applications were received. But after scrutiny, 206 call letters were issued. In all 186 candidates appeared in the selection. There were certain candidates who had become qualified after the advertisement was issued but before the date of selection. They were also allowed to take part in the selection process. The written test which was originally scheduled on 14.7.2007 was subsequently held

on 22.7.2007. However, the physical aptitude test was held as per schedule on 15.7.2007 and 16.7.2007.

3. A selection committee consisting of the Director, Sports and Youth Welfare, Government Assam, the Deputy Secretary to the Government of Assam, Sports and Youth Welfare Department, Deputy Director and Assistant Director in the Directorate of Sports and Youth Welfare was formed. The selection committee in turn constituted another body to conduct the physical aptitude test. The interview was conducted by the members of the selection committee. Prior to the selection, the selection committee in its meeting held on 21.5.2007 decided the marking pattern as under :

Written Test: 100 Marks.

Physical Aptitude Test: 40 Marks.

Viva voce : 10 Marks.

But it was also decided by the selection committee in that meeting that the marks secured by each candidate in each of the three tests would be converted to percentage form and that the sum total of the 3(three) percentages would be taken as the actual marks secured.

4. On completion of the selection process, a select list of 80 candidates was prepared. But the same was not published. Instead, the list of the selected candidates was sent to the concerned authority for police verification.

5. It was at this stage that a batch of writ petitions were filed before this court challenging the selection made and the appointments proposed to be made on the basis of such selection. The present appellants were also petitioners in the aforesaid batch of writ petitions.

6. The learned Single Judge after a detailed and exhaustive scrutiny of the entire selection process interfered with the selection of 2 candidates bearing Roll Nos. 21 and 127 who were respondent Nos. 45 and 61 in WP(C) No, 1892 of 2008. The reasons for interference with the selection of the said two candidates have been set out in detail in paragraphs 21 and 28 of the impugned judgment, The learned Single Judge also found that two officers who were members of the selection committee had abused the powers vested in them but left it to the decision of the disciplinary authority of the two officers as to what further action including criminal and departmental proceeding should be taken against them. Beyond the above, the learned Single Judge declined to grant any further relief to the petitioners in the said batch of writ petitions.

7. We have heard Mr. A.S. Choudhury, learned senior counsel for the appellants and Mr. U.K. Nair, learned counsel for the respondents.

8. Mr. Choudhury, learned senior counsel submits that in the face of the admission by the authorities themselves about anomalies taking place in the selection process, all the answers scripts should have been examined but the

learned Single Judge chose to examine only about 20 odd answer scripts as a result of which the interference by the court came to be confined to only two of the selected candidates. He submits that the answer scripts of the appellants also should have been examined. Considering the magnitude of the anomalies detected, the learned senior counsel submits that the entire select list should have been quashed and fresh selection ordered. He, therefore, submits that on the basis of the findings arrived at by the learned Single Judge himself, the entire selection process should be interfered with and the authority should be directed to go for fresh selection which would be in the public interest.

9. The above submission of Mr. Choudhury has been resisted by Mr. Nair, learned counsel for the respondents, He relies on the judgment of the learned Single Judge and submits that no case for further interference in the selection process beyond that which was carried out by the learned Single Judge is called for. In his reply, Mr. Choudhury submits that the authority committed a mistake in allowing candidates who were not qualified at the time of advertisement to participate in the selection process and that in the facts and circumstances of the present case, the whole selection, process should be reexamined.

10. The rival submissions made at the Bar have received the due and anxious consideration of the court.

11. From an examination of the case records, it is seen that the learned Single Judge had embarked upon an elaborate and exhaustive scrutiny of the entire selection process. He had called for the answer scripts of all the candidates who had appeared in the selection and painstakingly perused all the answer scripts along with the result of the selection process as made available to the court.

12. Therefore, the contention of the learned counsel for the appellants that instead of examining all the answer scripts, only a handful were examined and that the answer scripts of the appellants should also have been examined is not borne out by the record. We are unable to accept the said submission in view of the findings recorded by the learned Single Judge particularly in paragraph 16 of the judgment, the relevant portion of which is quoted hereunder :

"16....., the court had thought it fit to impose upon itself the responsibility of making a detailed scrutiny of the answer scripts of all the candidates and the result of the selection as a whole i.e. in all the three segments and the cumulative effect thereof. Such an exercise had become indispensable in the present case on account of the facts and events that had confronted the court. The task also appeared to be possible because the required scrutiny had to be confined only to one hundred eighty six candidates. The court had, accordingly, called for the answer scripts of all the candidates who had appeared in the selection. The said answer scripts have been duly perused by the court along with the cumulative result of the selection as made available."

13. The course of action adopted by the learned Single Judge cannot be faulted and in the opinion of this court was the correct approach. In paragraph 15 of the

impugned judgment, the learned Single Judge pointed out that interference with the selection of a large number of candidates ought to be made by the court only after reaching the highest degree of satisfaction that the selection if allowed to remain on record will amount to travesty of justice and any doubt in the matter has to go in favour of the selected candidates. The relevant portion of para 15 is as under :

"15....., Even if the selections are found to be marred by gross irregularities an attempt must be made by the court to identify and separate the good part of the selection from the bad and salvage the acceptable part. Only in a situation where severance is not possible the court will proceed to nullify the selection as a whole."

As has been discussed above, the approach of the learned Single Judge is based on sound principles and in the facts of the present case was the most appropriate course of action that could have been adopted.

14. Regarding the justification in interfering with the selection of only two candidates, the learned Single Judge noted that the discrepancies as noticed and even after correction did not have any effect on the final selection made inasmuch as it did not have the effect of making any unselected candidate entitled to selection. The learned Single Judge on a detailed scrutiny of the selection process found that the anomalies barring the two candidates whose selection were interfered with did not in any way fundamentally effect the entitlement of the unselected candidates or the placement of the selected candidates in the select list in question. Therefore, after identifying the bad part of the selection which was interfered with, the learned Single Judge rightly separated the acceptable part of the selection and salvaged the same. Regarding the allegation that candidates not qualified at the time of advertisement were allowed to participate in the selection process, the learned Single Judge held in paragraph 27 of the judgment as under :

"27.....Regarding the action of the respondents in allowing candidates who had not acquired the requisite eligibility on the date of the advertisement, it is the pleaded case of the Respondents that 5/6 candidates who had applied, though were not eligible on the date of the advertisement, had acquired such eligibility before the commencement of the selection process. If that was so, in view of the very limited number of applications received, the court will not find any fault with the action of the Respondents in allowing 5/6 candidates who had become eligible, in the meantime, to appear in the selection."

The learned Single Judge in the course of the deliberation himself observed that the course of action adopted in this case was a departure from the restraints that the court normally exercises in evaluating the merits of a selection for appointment in public office. However, keeping in mind the larger public interest and to uphold the public faith in such selection process, the learned Single Judge took the pain to carry out such an indepth exercise.

15. For all the aforesaid reasons, we see no reason to interfere with the findings of the learned Single Judge. The writ appeal is accordingly dismissed. No cost.