
(2019) 07 GAU CK 0007
In the Gauhati High Court
Case No : Writ Petition (C) No. 5597 Of 2011

Alaka Saikia Das & 3 Ors

APPELLANT

Vs

State Of Assam And 2Ors

RESPONDENT

Date of Decision : 15-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 07 GAU CK 0007

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : S.A. Ahmed, A. Ali, D. Saikia, B. Ahmed, N. Upadhayay

Final Decision : Dismissed

Judgement

1) Heard Mr. S.A. Ahmed, the learned counsel for the petitioners and Mr. N. Upadhayay, the learned Standing Counsel, Irrigation Department.

2) By this writ petition filed under Article 226 of the Constitution of India, the petitioners are seeking appointment in the establishment of the Superintendent Engineer, Irrigation Department, Guwahati Project Circle in the posts as indicated hereinafter. The petitioner no.1 is seeking appointment in the post of Junior Assistant. The petitioner no.2 is seeking appointment in the post of Junior Assistant. The petitioner no.3 is seeking appointment in the post of Section Assistant. The petitioner no.4 is seeking appointment in the post of Power Pump Operator.

3) The learned counsel for the petitioner has submitted that pursuant to an advertisement published in newspapers on 28.08.2010, applications were invited for recruitment in respect of vacancy in Grade-III posts of Junior Assistant, Section Assistant, Tracer and Power Pump Operator under the District Level Offices in Irrigation Department. The advertised vacancies were as under (i) Junior Assistant - 35; Section Assistant - 70; Tracer - 10; and Power Pump Operator - 25. As per the said advertisement, a written test of 100 marks was

envisaged for the subjects of English (35 marks), Mathematics (35 marks) and General Knowledge (30 marks) for the said posts and it was provided that successful candidates would be called for viva voce test carrying 30 marks. The result of written test was declared on 07.06.2011. It is submitted that all the four petitioners were short listed as successful candidates and they were called oral interview. As per the final select list published in the newspaper on 08.10.2011, the Chief Engineer, Irrigation Department (respondent No.2) had announced selection of 28 candidates for the post of Junior Assistant; 42 candidates for the post of Section Assistant; 5 candidates for the post of Tracer and 21 candidates for the post of Power Pump Operator. The learned counsel for the petitioners has submitted that having advertised recruitment for a total number of 140 vacant posts in four category as indicated herein before, the respondents had no power to cancel any post after the selection process had begun. It is submitted that there were no anomaly in the conduct of examination and that to their knowledge, no enquiry of any kind had stalled selection and appointment for the remaining 43 numbers of vacant posts. Hence, the learned counsel for petitioners has submitted that as there were still 43 vacancies to be filled up, this was a fit and proper case for issuing direction to the Irrigation Department to appoint the petitioners in any of these 43 vacant posts of Junior Assistant, Section Assistant, Tracer and Power Pump Operator. It is also submitted that the reservation of vacancies for SC, ST(P), ST(H), OBC, MOBC, PH and Women have not been indicated in the final select list. Accordingly, the learned counsel for the petitioners has submitted that the selection process was dehors the reservation policy and that there were anomalies in the selection process, and that the selection process was not undertaken in a transparent manner.

4) The learned Standing Counsel for the Irrigation Department has referred to the affidavit- in- opposition filed on behalf of the respondent no.1, the Secretary to the Govt. of Assam, Irrigation Department. It is submitted that the stand of the Government was that after the vacancies was advertised on 28.08.2010, some in-service Grade-IV employees under the Irrigation Department had filed writ petitions before this Court. In respect of vacancies arising in respect of Section Assistant, it is submitted that there is no specific service rules in force, however, the Irrigation Department was following the promotion pattern envisaging 10% of total vacancies occurring in a calendar year kept for promotion to (i) qualified Grade-IV employees who have completed 15 years of continuous service as Khalasi and read upto Class-VII, and (ii) for employees who have completed 10 years of continuous service and have read upto Class- X. Accordingly, another selection process was initiated for filling up additional posts on promotion for departmental candidates over and above the posts advertised on 28.08.2010 by direct recruitment.

5) It is submitted that against the 140 numbers of vacant posts advertised, 43 posts were allotted to Autonomous Bodies like the Bodoland Territorial Council and North Cachar Hills Autonomous Council for filling up vacancies arising within

their jurisdiction and, as such, the respondents had declared results only in respect of 97 posts available to them. In this regard, the learned counsel for the respondents has placed reliance on the Minutes of Meeting held on 08.11.2010 in the Office of the Chief Engineer, Irrigation Department. It is further submitted that selection was absolutely on merit and there was no scope of appointing the petitioners.

6) It is also submitted that during the selection process, due weightage was given to the "reserved category" candidates i.e. SC, ST(P), ST(H), OBC, MOBC, PH and Women in the final select list notwithstanding that in the newspaper advertisement such particulars were not provided. By referring to the Minutes of the Selection Committee Meeting held on 27.09.2011 (Annexure-C to the Affidavit- in- opposition), it is submitted that it was decided that "while preparing the final select list proper weightage is given to the reserved category candidate as published in the advertisement as available in the list prepared under zone of consideration against the Roster point vacancy in District level offices."

7) It is seen that the respondents have been able to demonstrate that the selection process is not vitiated on the ground that it was unfair, or was not conducted in a transparent manner. In fact the fairness of the recruitment process is not in challenge in this present writ petition. It is seen that the respondents have been able to justify why they had declared results only in respect of 97 out of 140 posts advertised, by clarifying that the remaining 43 posts were allotted for appointment by the Bodoland Territorial Council and by North Cachar Hills Autonomous Council for the vacancies which fell under its exclusive domain. Therefore, there is no scope for issuing any direction to the respondents to consider the candidature of the petitioners and to appoint them to the vacant posts of Junior Assistant, Section Assistant, Tracer and Power Pump Operator pursuant to the advertisement dated 28.08.2010. Moreover, merely because the public notice/advertisement containing the roll numbers of the selected candidates does not indicate that the reserved category candidates were given due weightage, the selection process cannot be said to be vitiated because in this case, the petitioners have not assailed the select list on the ground that undeserving general candidates were appointed in the posts earmarked for the reserved category candidates.

8) Accordingly, none of the four petitioners are found entitled to any relief in this writ petition. Hence, this writ petition stands dismissed, and the rule issued by order dated 05.11.2014 stands discharged in terms of this order.

9) No cost.