
(2011) 07 GAU CK 0044
In the Gauhati High Court
Case No : Writ Appeal No. 40 of 2009

Ali Hussain & Ors.

APPELLANT

Vs

State of Assam & Ors.

RESPONDENT

Date of Decision : 27-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (2011) 5 GLT 404

Hon'ble Judges : Madan B.Lokur, C.J. and A.K.Goswami, J

Bench : Division Bench

Advocate : Advocates appeared for the Appellants: Mr. A.S. Choudhury, Sr. Advocate, Mr. I. Hussain, Mr. A. Maleque, Mr. R. Ali, Mr. H. Ahmed, Ms. N.N. Ahmed, Ms. S. Kanungoe., Advocate appeared for the Respondent: Mr. R.Adhikari., Advocates appearing for Parties

Judgement

A.K. Goswami, J.—This Writ Appeal is presented against the judgment and order dated 28.08.2008 passed by a learned Single Judge in WP(C) No. 702/2008 directing the State of Assam to operate the select list dated 13.10.2003 prepared for the Forest Guards to the extent of 18 posts only, while directing the other posts included in the advertisement dated 02.02.2008, to be filled up by the State in accordance with law. The learned Single Judge by the aforesaid judgment had also come to a finding that the recruitment to the posts of Forester GradeI was abandoned by the State as no vacancy in the said posts was available.

2. At the outset, it will be relevant for the purpose of adjudication of this case to briefly notice the facts which have culminated in filing of the present appeal :

3. Some time in the year 1999, requisitions were made from various Employment Exchanges within various Forest Divisions under the Western Assam Zone for the purpose of filling up of different GradeIII and GradeIV posts. These posts were to be filled up through a regular selection process consisting of written examination followed by oral interview and tests of physical endurance. It

appears that in connection with recruitment process for filling up the posts of Forester GradeI and Forest Guard including Game Watchers, first of the writ petitions was filed in 1999, being W.P.(C) No. 2322/99. This Court, by an order dated 01.02.2001, disposed of the said writ petition with the direction that the Principal Chief Conservator of Forest, Assam would determine the vacancy in GradeIII and GradeIV posts under the Forest Department falling under the Bodoland Autonomous Council (BAC) area and, thereafter, by considering the various recommendations of the BAC, pass necessary orders. W.P.(C) No. 410/2002, on the other hand, was filed praying for a direction to complete the process of appointment to the posts of Forester GradeI and Forest Guard falling outside the BAC area. This Court issued certain directions vide order dated 23.01.2002, as a result of which, the Zonal Selection Board, Western Zone had prepared a select list which was published on 13.10.2003. The publication of the select list dated 13.10.2003 formed the basis of three writ petitions which came to be filed before this Court which are numbered as WP(C) No. 9241/2003, WP(C) No. 9808/2003 and WP(C) No. 10318/2003, While WP(C) No. 9241/2003 assailed the select list dated 13.10.2003 published by the Chief Conservator of Forests, Assam in respect of different GradeIII and GradeIV posts under Western Assam Zone, WP(C) No. 9808/2003 and WP(C) No. 10318/2003 were filed seeking directions from this Court to give effect to the select list.

4. The aforesaid three writ petitions were taken up together for disposal and by an order dated 09.08.2005, while dismissing WP(C)No. 9241/2003, this Court allowed the other two writ petitions, namely, WP(C) No. 9808/2003 and WP(C) No. 10318/2003, with a direction that the select list dated 13.10.2003 be acted upon, provided the same was still in force. The aforesaid order dated 09.08.2005 was put to challenge in Writ Appeal No. 567/2005. The writ appellate Court by an order dated 03.10.2005 concurred with the reasonings and findings given by the learned Single Judge and, accordingly, dismissed the Writ Appeal so filed.

5. Significantly, instead of acting upon the select list dated 13.10.2003, an advertisement dated 02.02.2008 was published in the newspapers inviting applications for filling up of posts of Forester GradeI, Forest Guard and Game Watchers alongwith some other posts. For the post of Forester GradeI, the advertisement notified 73 posts. Resultantly, number of writ petitions came to be filed challenging the said advertisement dated 02.02.2008. Contentions were advanced on behalf of the writ petitioners that there could have been no justification for issuing the advertisement dated 02.02.2008 in the teeth of the judgment of this Court dated 09.08.2005 in WP(C) No. 9241/2003, WP(C) No. 9808/2003 and WP(C) No. 10318/2003, as confirmed by the judgment and order dated 03.10.2005 in WA No. 567/2005.

6. The Principal Chief Conservator of Forests, Assam, by filing an affidavit, had sought to justify the issuance of the advertisement dated 02.02.2008 by taking a plea that no final list was prepared and the recruitment process, in fact, had not come to a logical end. In other words, the respondent authorities and refused to

recognize the select list dated 13.10.2003 which was the subject matter of dispute in WP(C) No. 9241/2003, WP(C) No. 9808/2003 and WP(C) No. 10318/2003. Such a plea was considered to be wholly untenable by the learned Single Judge as it ran contrary to the directions issued by this Court in the earlier round of litigations. Consequently, the writ petitions were allowed and the advertisement dated 02.02.2008 was interfered with.

7. The learned Single Judge, as has been noted earlier, recorded that the selection process in respect of Forester GradeI was aborted as there was no vacancy available. It is in this context, the learned Single Judge directed operation of the select list dated 13.10.2003 only in respect of posts of Forest Guard to the extent of 18 posts, as the recruitment for the posts of Forest Guard for Western Zone was initiated only for 18 posts. The learned Single Judge also directed that the rest of the posts in the advertisement dated 02.02.2008 may be filled up by the State in accordance with law. This Writ Appeal is directed against the finding of the learned Single Judge that the recruitment process for posts of Forester GradeI was abandoned.

8. We have heard Mr. A. S. Choudhury, learned senior counsel for the appellants and Mr. R.K. Adhikari, learned State counsel.

9. The main thrust of argument of Mr. Choudhury is that at no point of time, the Government had taken the plea that there was no vacancy for the posts of Forester GradeI. The learned senior counsel for the appellants has also argued that the finding of the learned Single Judge that there are no vacancies is perverse and, therefore, the appellants are entitled to be appointed in the available vacancies in terms of the select list dated 13.10.2003.

10. The learned State Counsel, on the other hand, supported the impugned judgment. He has also submitted that recruitment process initiated with the advertisement dated 02.02.08 having come to an end with appointments being given to the selected candidates, amongst others, in the posts of Forester GradeI, this Writ Appeal, in absence of such appointed candidates, is not maintainable. According to him, there are no vacant posts of Forester GradeI and, therefore, the writ appellants cannot be accommodated in the posts of Forester GradeI, on the basis of the select list dated 13.10.2003.

11. It would appear that on 04.03.2009, this Court directed the State Counsel to file an affidavit disclosing as to when the decision was taken by the State to abandon the process of recruitment to the post of Forester GradeI, which was initiated in the year 1999. On 23rd March, 2009, an affidavit was filed by the Commissioner and Secretary to the Government of Assam, Environment and Forest Department, though wrongly stating that the affidavit was filed on behalf of the Principal Chief Conservator of Forests, Assam. One affidavit was also filed on 08.04.2009 by the Principal Chief Conservator of Forests, Assam. It is to be noted that in none of these two affidavits, it has been spelt out when the decision was taken by the State to abandon the process of recruitment to the

post of Forester GradeI. In the said two affidavits, it was only indicated that no vacancies were available for the Forester GradeI "as observed and ordered" by the Court.

12. In his affidavit, the Principal Chief Conservator of Forests, Assam had once again reiterated that final select list by the Chairman, Central Committee, was not published. It was also sought to reinforce that the select list dated 13.10.2003 had become time barred and was not in force any more. It is, however, to be noticed that the State had not preferred any appeal against the judgment and order dated 28.08.2008, which has given rise to the present appeal at the instance of the candidates who were aspirants for the posts of Forester GradeI. By filing a reply affidavit to the affidavit filed by the Commissioner & Secretary to the Government of Assam, Environment and Forest Department, the writ appellants have sought to demonstrate that at least 7 vacancies of Forester GradeI were available and pleading that, to that extent, the State respondents are answerable to disclose as to what has happened to the aforesaid 7 posts. The availability of 7 vacant posts is sought to be traced by the writ appellants on the basis of a chart which was enclosed to a letter dated 25.01.1999 issued by the Divisional Forest Officer, Dhubri Division, depicting availability of 7 vacant posts of Forester GradeI, as on 15.12.1998. This letter dated 25.01.1999 was addressed to the Employment Exchange, Dhubri.

13. Subsequent to the judgment of the learned Single Judge dated 28.08.2008, a fresh advertisement dated 08.09.2008 was also issued. By an application filed by the appellants on 02.11.2009, the appellants informed this Court that the respondent authorities had declared/published the names of the selected candidates for appointment, who had applied and appeared pursuant to the advertisement dated 02.02.2008/05.02.2008 and 08.09.2008/09.09.2008, in the 17th December issue of the Assam Tribune. It was also brought on record that appointment letters had been issued to the selected candidates. By filing the said application which was registered as Misc. Case No. 3503 of 2009, the appellants had prayed for suspending the operation of the select list published on 17.12.09 and for restraining/prohibiting the authorities from permitting the selected candidates to join and also for directing the respondent authorities to keep five posts vacant for the appellants. It is to be noted that while considering the said application on 23.12.2009, the prayer for interim order was rejected with the observation that the appeal was required to be heard at an early date.

14. It is significant to note that the appellants have not brought on record the selected candidates who have since been appointed as Forester GradeI. In view of the above subsequent developments, it was incumbent on the part of the appellants to have impleaded the said selected and appointed candidates as Forester GradeI, as respondents in this appeal. According to us, they are necessary parties for disposal of this appeal, inasmuch as, valuable rights have accrued to such selected and appointed candidates. Situated thus, the question as to whether there was a conscious decision taken by the State respondents to

abandon the process of selection of Forester Grade I in the year 1999, becomes academic, as in absence of the appointed candidates, no relief can be granted to the appellants.

15. In view of the aforesaid, we find no merit in this appeal and, accordingly, same is dismissed.

16. No costs.