

(2015) 06 GAU CK 0070

In the Gauhati High Court

Case No : WP(C) Nos. 7245 of 2013, 967 and 1028 of 2014

Amir Uddin Laskar and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 09-06-2015

Acts Referred:

Citation : (2015) 2 GLD 545 : (2015) 3 GLT 726

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : R. Devi, A.R. Tahbildar, J. Kalita and S.J. Deka, for the Appellant; P.S. Deka, State Counsel, M. Choudhury, SC, A. Sarif and B. Ahmed, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Biplab Kumar Sharma, J—All the writ petitions involving the same set of facts and pertaining to the same issue have been heard analogously

and are being disposed of by this common judgment and order. The petitioners in these writ petitions are Additional Mandals/Patowaries, who

were appointed during the period 1994 to 2007. During that period, they were engaged in resettlement operation in various districts of Assam.

Considering their length of service, the Government of Assam, in Revenue and Disaster Management Department, vide its Annexure-C circular

letter, dated 11.02.2009 conveyed the decision of the Government for absorption of the Additional Mandals/Patowaries in their respective

districts, where settlement operation was operated. Such absorption was to be made against the available vacancies already approved by the

Finance (SIU) Department. It was further provide that if sufficient vacant posts were not available in the respective districts, the remaining

Additional Mandals/Patowaries might be absorbed against the vacancies of the nearest neighbouring districts by issuing necessary orders. The

circular letter was addressed to the Director of Land records and Survey. Pursuant to the said circular letter, the Director of Land Records issued

the order, dated 25.02.2009 towards the absorption and posting of the Additional Mandals/Patowaries.

2. It so happened that since all the Additional Mandals/Patowaries could not be accommodated, in their respective districts as they were given

posting in other districts. It is submitted that out of 243 Additional Mandals, while 114 Additional Mandals could join their respective posts upon

absorption, 129 Additional Mandals could not join their respective places of posting because of the local resistance.

3. Being confronted with the aforesaid situation, the Government of Assam in Revenue and Disaster Management Department, vide its Annexure-

C circular letter, dated 01.06.2009, conveyed the decision that those who could not join in their respective place of posting, although were

absorbed upon withdrawal of their services from the establishment of the respective Settlement Officers in the respective districts, should

immediately be redeployed to their original posts of Additional Mandals. The decision, so conveyed, was as per the order of the Governor of

Assam.

4. When the matter rested thus, the Government of Assam in the aforesaid department, issued the impugned Office Memorandum, dated

23.09.2013 laying down the following conditions:

1. Wherever vacancies of Mandal/Patowary arise in a district, the Deputy Commissioner/Appointing Authority will call for applications to fill up

the same as per the existing Rules & Procedures.

2. Not only the RCCC trained candidate, but also the Addl. Mandal/Patowary will be free to apply through their employer viz S.O./A.S.O. against

the advertisement issued by the Deputy Commissioner/Appointing Authority.

3. Due weightage and preference shall be given by Selection Committee to the Addl. Mandal/Patowary depending upon the length of service

rendered by him/her.

4. Relaxation/condonation of over-age in respect of Addl. Mandal/Patowary, if necessary, shall be allowed as a matter of policy.

5. Protection of pay of the Addl. Mandal/Patowary on appointment as Mandal/Patowary in D.C's. permanent establishment will be granted as per rules in force.

6. This cancels earlier Notifications No. RLR. 92/95/Pt./163, Dtd. 11.02.2009 and No. RSS. 748/208/7, Dtd. 19.09.2008 issued by Revenue &

D.M. Department.

7. In the event of closure of settlement operation, all staff including Addl. Mandal will be retrenched. On retrenchment, every retrenched personnel

will be governed by the already existing policy of Govt. for absorption of retrenched personnel communicated vide Personnel (B) Department's

O.M. No. ABP. 47/78/16, Dtd. 30.06.79 read with O.M. No. ABP. 278/77/136(A), Dtd. 16.07.1979.

8. There may be inter-district transfer of Mandal/Amin only in exceptional cases, as the Mandals/Amins are appointed by the DCs (in districts

other than 6th Schedule Area) and their cadre/gradation are maintained district-wise only.

5. By the said OM, the earlier circular letters, dated 11.02.2009 and 19.09.2008 were notified to have been cancelled.

6. As discussed above, by the circular letter, dated 11.02.2009, policy decision of the Government was conveyed towards absorption of the

Additional Mandals and subsequent thereto, they were also given posting. Since some of them could not join because of local resistance the

circular letter, dated 01.06.2009, for their redeployment, had to be issued.

7. So far as the notification, dated 19.09.2008 as mentioned in the impugned OM, is concerned, the same is a circular letter, addressed to the

Deputy Commissioners of the districts requiring them to submit the list of vacant posts and also the probable vacancies of Lat Mandals.

8. Pursuant to the impugned OM, dated 23.09.2013, the Deputy Commissioners of Cachar and Hailakandi issued the impugned advertisements,

dated 21.11.2013, 12.02.2014 and 15.02.2014 inviting applications for filling up the posts of Additional Mandals.

9. According to the petitioners, they having already been absorbed, they cannot be made to appear again in the selection process pursuant to the

impugned O.M. and the advertisements. According to them, out of the 243 absorbed Additional Mandals, 114 having already been joined, the

remaining 129 Additional Mandals cannot be treated differently.

10. I have heard Ms. R. Devi, learned counsel for the petitioners, involved in all the writ petitions. I have also heard Mr. P.S. Deka, learned State

Counsel and so also Mr. M. Choudhury, learned Standing Counsel, representing the Revenue and Disaster Management Department. I have also

heard Mr. A. Sharif and Dr. B. Ahmed, learned counsel representing the private respondent.

11. While Ms. R. Devi, learned counsel representing the petitioners submits that the petitioners cannot be treated differently on the strength of the

impugned OM. Both Mr. A. Sharif and Dr. B. Ahmed, representing the private respondents, submit that merely because the petitioners were

appointed as Additional Mandals, they cannot claim for automatic absorption. According to them, the petitioners may be entitled to some

weightage because of their past experience, but they have to face the selection process.

12. Mr. P.S. Deka, learned State counsel submits that the term ""Absorption"" does not connote automatic absorption in service without any

selection. However, he does not dispute that out of 243 Additional Mandals, who are absorbed and given posting, 114 Additional Mandals have

already joined and are rendering their services, but the remaining 129 could not join because of local resistance.

13. Mr. M. Choudhury, learned Standing Counsel, Director of Land Records, confirming the aforesaid provisions, submits that a policy decision

has been adopted to conduct selection for absorption of the Additional Mandals. However, he also admits that out of the 243 absorbed Additional

Mandals, while the 114 could join their respective places of posting, the remaining 129 involving the present petitioners could not join because of

the local resistance.

14. I have given my anxious consideration to the submissions made by the learned counsel for the parties and I have also considered the relevant

materials. There is no dispute that the petitioners were working as Additional Mandals during the period from 1994 to 2007. Considering their long

length of service and experience, a policy decision was taken for their absorption and consequently, an order was issued under the authority of the

Governor of Assam pursuant to such absorption. The petitioners were also given

posting; however, unfortunately, they could not join because of the local resistance. It was in such circumstances, the Government decided to redeploy them for their gradual absorption in their respective districts. In the meantime, some of the aggrieved Additional Mandals approached this Court by filing writ petitions, one of which is WP(C) No. 982/2011. In the said writ petitions, 9 Additional Mandals from the district of Dhubri were involved. The writ petition was disposed of by order, dated 06.09.2012, directing consideration of the case of the petitioners for regular absorption against the existing vacancies in Dhubri district. The required exercise, so directed, was to be completed within a period of 3 months. Some other writ petitions were also disposed of following the said judgment and order. A review petition being RP No. 1/2013 was filed in respect of the said judgment and order. It is submitted that the said review petition was disposed of without interfering the judgment and order. Thus, the judgment and order, dated 06.09.2012, passed in WP(C) No. 982/2011 attained finality.

15. The petitioners having already been absorbed pursuant to the policy decision of the Government, the said position could not have been altered with the issuance of impugned OM, dated 23.09.2013 under the signature of the Commissioner and Secretary to the Government of Assam, Revenue and Disaster Management Department against the earlier policy decision issued in the name of the Government of Assam. The impugned OM, dated 23.09.2013, has been issued under the signature of the Commissioner and Secretary and not in the name of the Governor.

16. Because of the peculiar situation arising out of the inability of the petitioners to join their respective places of posting because of the local resistance, they were redeployed with the stipulation that they would be absorbed in their respective districts whenever vacancies would arise. On the other hand, the Additional Mandals, who could join their respective places of posting, have already scored a march over the petitioners and the petitioners are still waiting their practical absorption.

17. While the subsequent OM, dated 23.09.2013, may be a valid policy decision, but the same would be applicable in respect of the Additional Mandals appointed subsequently and shall not be applicable to those Additional Mandals, who are appointed during the period 1994 to 2007 and

were also absorbed and redeployed.

18. In view of the above, while not interfering the OM, dated 23.09.2013, these writ petitions are disposed of directing the respondents to absorb

the petitioners in their respective districts against available vacancies of Additional Mandals. The remaining available vacancies shall be filled up

through the process of selection for which the impugned advertisements have been issued.

19. Before taking recourse to the selection, the respondent shall ascertain the vacancy position and absorb the left out Additional Mandals, who

have been redeployed. The remaining vacancies shall be fulfilled for which the impugned advertisements have been issued. The respondents may

determine the proportionate ratio towards filling up the posts of Mandals by way of absorption of left over Additional Mandals, i.e., the petitioners

and direct recruits. At this stage, Ms. R. Devi, learned counsel for the petitioners submits that the vacancies of Mandals in Cachar district and

Hailakandi district are required to be clubbed together having regard to the fact that as against the 38 vacancies of Mandals in the district of

Hailakandi only 17 number of Additional Mandals are there and as against the 18 vacancies in Cachar district, 28 number of Additional Mandals

are available. The respondents may consider that aspect of the matter while accommodating the petitioners.