

(2018) 09 GAU CK 0023
In the Gauhati High Court
Case No : Civil Writ Petition No.1169 Of 2011

Anjan Mitra And 3 Ors

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 10-09-2018

Acts Referred:

Citation : (2018) 09 GAU CK 0023

Hon'ble Judges : Nelson Sailo, J

Bench : Single Bench

Advocate : S Banik, DP Borah

Final Decision : Disposed Off

Judgement

1. Heard Mr. S Banik, the learned counsel for the petitioners and Mr. DP Borah, the learned Standing Counsel for the Health Department appearing for the official respondents. Although the private respondent Nos. 4 to 36 have filed their affidavit-in-opposition, the learned counsel representing them is absent today.

2. Facts of the case in brief is that pursuant to an Advertisement issued by the Principal-cum- Chief Superintendent, Silchar Medical College and Hospital, Silchar (respondent No.2) in the year 2008 for various posts under the establishment of the respondent No.2, the four petitioners responded to the Advertisement by submitting their respective applications. The petitioner Nos. 1, 2 and 3 applied for to Grade-IV post and , Store â?"Keeper whereas the petitioner No.4 applied for the Grade-IV post and Ward Boy. Their applications were accepted and accordingly, they participated in the selection process. While they were expecting publication of a select list by the respondent authorities but no such list was published. Instead, it came

to their knowledge that a number of persons have been appointed without publication of the select list. Aggrieved, they approached this Court by filing the present writ petition. However, this Court dismissed the writ petition vide order dated 05.02.2015 for non-joinder of necessary parties to the writ petition i.e. the persons who were selected.

3. Against the dismissal of the writ petition, the petitioners preferred Writ Appeal No.90 of 2015 which was disposed vide order dated 06.05.2015

granting liberty to the petitioners to implead the selected candidates in the writ petition. Accordingly, private respondent Nos. 4 to 36 came to be impleaded in the writ petition.

4. Appearing for the petitioners, Mr. S Bank draws the attention of this Court to paragraph-No. 5 of the affidavit-in-opposition of the respondent No.3,

wherein, it is specifically stated that the list of selected candidates as per the exact number of vacancies was prepared and duly published at the

Departmental Board on 31.10.2012. He submits that contrary to this stand, the document annexed in support of the statements is in fact only a list of

candidates appointed against the vacant posts under the establishment of the respondent No.2 and the same is also undated. He submits that the

private respondent Nos. 4 to 36 have also annexed their respective appointment letters which in fact was issued on 29.12.2010. He therefore, submits

that if the private respondents were appointed on 29.10.2012, the select list could not have been published on 31.12.2010. He further draws the

attention of this Court to Annexure-4 of the affidavit-in-opposition filed by the private respondents which is similar to the document annexed by the

respondent No.3 in his affidavit-in-opposition. The only difference is that in respect of the select list of the other posts such as LD Assistant, Lab

Assistant, Chowkidar etc. there is an initial with a date given as 03.10.2011. Therefore, the stand of the official respondents that select list was

prepared and published on 31.12.2010 is highly improbable and unacceptable. He thus submits that the petitioners having established the fact that the

State respondents without publishing the select list appointed the private respondents in a most irregular way, Court may make interference.

5. Mr. DP Borah, the learned Standing Counsel by relying upon the affidavit in-opposition filed by the respondent No.3 on 23.05.2011 submits that

prior to publication of the list in the Departmental Notice Board on 31.12.2010,

the respondent authorities duly prepared a list of the selected candidates as per the number of vacancies that was available and therefore, the appointment orders of the selected candidates were issued on

29.12.2010. In support of his submission, the learned counsel has produced a select list prepared on 28.12.2010. He thus submits that there is nothing wrong with the selection process and the claim of the petitioners being without any substance, the writ petition should be dismissed.

6. I have heard the submissions of the learned counsels for the rival parties and I have perused the materials available on record including the affidavit-in-opposition of the private respondent Nos. 4 to 36.

7. What can be noticed is that from the Advertisement issued by the respondent No.2, no particular date is discernible. However, the applicants who

were interested to apply for the posts, as shown in the Advertisement were required to submit their applications on or before 15.07.2008. Accordingly,

the petitioners submitted their applications either on 14.07.2018 or 15.07.2018 i.e. before the last date fixed and they were allowed to participate in the

selection process against the posts which they had applied. Now the question is as to whether the appointment of the private respondents was

preceded by the publication of select list by the respondent authorities. A perusal of the respective appointment orders of the private respondents as

annexed by them in their affidavit "in-opposition filed on 15.02.2018 would go to show that their appointment orders were all issued on 29.10.2012.

If 29.12.2010 was the date of issuance of the appointment order, the select list could not have been published on 31.12.2010 as maintained by the

respondent No.3 in the affidavit "in-opposition dated 23.05.2011. Although no conclusion can be arrived at with a date given at Annexure-4 of the

affidavit "in-opposition of the private respondents, what can be noticed is that there is a signature with a date 03.01.2011. While appointment orders

were issued on 29.12.2010, the select list pertaining to the posts of LD Assistants, Lab Attendants, Chowkidar etc. in absence of anything to the

contrary could not have been certified on 03.01.2011 since it was a same process of selection. Furthermore, the select list dated 28.12.2010 produced

by the learned Standing Counsel for the Health Department also does not inspire the confidence of this Court inasmuch, as it neither appears to be an

abstract from any records maintained by the Department concerned nor does it

bear any pagination so that the same can be connected to any particular file of the official respondents.

8. For all the aforesaid reasons, I find merit in the writ petition. The selection process undertaken by the official respondents lacks transparency as

they have been unable to show that due process was followed in making the selection for the various posts under the establishment of the respondent

No.2. As may be noticed, the selection process was undertaken sometime in the year 2008 and thereafter, appointments were made in the year ending

2010. Therefore, despite the above finding, it will not be fair to dislodge the appointed candidates from their respective posts. However, as the

petitioners have been able to make out their case, I am of the considered view that they deserve to be accommodated in any suitable posts under the

establishment of the respondent No.2.

9. In that view of the matter, official respondents, more particularly, the respondent Nos. 2 and 3 are directed to consider and appoint the four

petitioners against any available vacancy under the establishment of the respondent No.2 as per their qualification. It is also made clear that in the

event, the petitioners have already crossed the minimum age limit, the same shall not be an impediment to appoint them against suitable posts. The

exercise as directed shall be completed at the earliest and not beyond the outer limit of 3(three) months from the date of receipt of a certified copy of

this Order. The select list dated 28.12.2010 Â produced by the learned Standing Counsel, Health Department shall be retained in the file and record

and marked as Annexure- X for identification.

10. Writ petition is accordingly disposed of.