
(2020) 11 GAU CK 0039
In the Gauhati High Court
Case No : Writ Petition (C) No. 5691 Of 2019

Anupom Borgohain

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 25-11-2020

Acts Referred:

Citation : (2020) 11 GAU CK 0039

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : P J Phukan

Final Decision : Allowed

Judgement

1. Heard Mr. PJ Phukan, learned counsel for the petitioner, Mr. K Gogoi, learned standing counsel for Higher Education Department, Mr. P Kataki,

learned counsel for the authorities in the Governing Body of Sivsagar College as well as Mr. J Abbas, learned counsel for the respondent No.7 Smti

Rakhi Moni Gogoi.

2. Both the writ petitioner and the respondent No.7 Smti. Rakhi Moni Gogoi participated in a selection process pursuant to an advertisement dated

29.12.2015 published in the Assamese daily "Dainik Jagaran", which was issued by the Principal/ Secretary of Sivsagar College inviting

applications from candidates for one post of Assistant Professor of Political Science of Sivsagar College along with some other posts. For the present

writ petition, we are concerned with the post of Assistant Professor, Political Science. It is an admitted position of fact that the Selection Committee

constituted for the purpose had made certain recommendation for selection of the appropriate candidate on 24.02.2016. The said recommendation

made by the Selection Committee was placed before the Governing Body of Sivsagar College on 29.02.2016 and the Governing Body as required

under the Rules, had approved the recommendation of the Selection Committee.

3. The respondent No.7 Smti. Rakhi Moni Gogoi instituted WP(C) No.2615/2016 raising a claim that in the marks allotted by the Selection Committee,

there ought to have an addition of four marks in her favour and at the same time two marks ought to have been deducted from the writ petitioner Sri.

Anupom Borgohain. The said writ petition was given a final consideration by the order dated 06.02.2019. Paragraphs 3, 4 and 5 of the order dated

06.02.2019 in WP(C) No.2615/2016 are extracted as below:-

â??The petitioner along with others vied for the post of Assistant Professor in Political Science Department of Sibsagar College. The selection by

way of interview was held on 24.02.2016. However, the Minutes of the selection process as well as the recommendation of the Selection Committee

are yet to be made available to the Governing Body for its approval. The petitioner made an application under the Right to Information Act seeking

information regarding the marks awarded to the candidates. She came to learn that 4 marks in the head of experience has not been awarded to her

whereas the respondent no.14 has undeservingly been given the benefit. According to the petitioner, such discrepancy in the award of marks in the

head of experience has gone to materially affect the outcome of the selection.

It is seen that any recommendation of the Selection Committee is yet to be evaluated by the Governing Body. No exercise has yet been undertaken

towards approving or disapproving any recommendation of the Selection Committee. If the allegation made by the petitioner appears to be correct,

there is no gainsaying that the Governing Body must appropriately take necessary action in the matter. Further, any approval by the Governing Body

will again undergo a further scrutiny process before the Director of Higher Education, Assam. There are, indeed, checks and balances in evaluating

any recommendation made by the Selection Committee.

In view of the above and having regard to the fact that the Governing Body of Sibsagar College is yet to take a decision in the matter, this Court while

holding the writ petition as being premature, makes a direction to the Governing Body of Sibsagar College to assess and evaluate any recommendation

made by the Selection Committee having regard to the guidelines framed by the

State Government and also having regard to the records of the selection. Let the required exercise be completed by the Governing Body as expeditiously as possible, preferably within a period of 2 (two) weeks

from the date of receipt of any recommendation of the Selection Committee.â??

4. A reading of the aforesaid extracted portion of the order makes it discernible that it was presented before the Court that the recommendation of the

Selection Committee was not made available before the Governing Body for its approval and the Governing Body had not evaluated and approved the

recommendation of the Selection Committee and further that no exercise was undertaken by the Governing Body for either approving or disapproving

the recommendation of the Selection Committee. In the circumstances, the Court passed a conditional order that having regard to the fact that the

Governing Body of Sivsagar College was yet to take a decision in the matter, therefore, a direction was issued to the Governing Body to assess and

evaluate the recommendation made by the Selection Committee within a period of two months thereof, meaning thereby that the Governing Body to

reassess the recommendation of the Selection Committee by attending to the claims made by the respondent No.7 Smti. Rakhi Moni Gogoi.

5. Admittedly as it had already been noticed that as on 06.02.2019 when the order was passed by the Court in WP(C) No.2615/2016, the Governing

Body on 29.02.2016 had already approved the recommendations of the Selection Committee, which was held on 24.02.2016. In other words, as on

06.02.2019 when the order was passed by this Court, the Governing Body had already approved the recommendations of the Selection Committee.

Apparently, the respondent No.7 Smti. Rakhi Moni Gogoi had made incorrect submissions before the Court to have the order dated 06.02.2019 by

wrongly stating that the Governing Body was yet to take a decision on the recommendations of the Selection Committee held on 24.02.2016 and the

direction was passed by this Court on the premises of such incorrect fact, which required the Governing Body to reassess the recommendations of the

Selection Committee. We are of the view that such direction made in favour of respondent No.7 Smti Rakhi Moni Gogoi on an incorrect presentation

of the fact would not entail the said respondent No.7 to the benefit of the order dated 06.02.2019. Further, the order itself makes it clear that the

direction was given on the premises that the incorrect fact stated was accepted

to be true.

6. The law in this respect has been settled by the Supreme Court in (1994) 1 SCC 1 (S.P Chengal Varaya Naidu vs- Jagannath and others)that if

any order has been obtained by any person by committing fraud, the said order can be reversed or a different view can be taken in any other

proceeding even if such order had been confirmed by the Supreme Court also. Applying that principle, we are taking a different view as regards the

order dated 06.02.2019 after having noticed of the correct facts of the case.

7. Be that as it may, even the Governing Body of the Sivsagar College misdirected itself in the name of complying with the order of the Court dated

06.02.2019 and re-convened the Selection Committee meeting again on 25.03.2019 to find out if there was any irregularity. In other words, the

Governing Body had re-convened the Selection Committee to review its own earlier decision, which again would be an act impermissible under the

law. We again clarify that there was no such direction of this Court even on the wrong acceptance of the fact requiring the Selection Committee to be

re-convened by requiring them to review the earlier decision. Further, in the communication dated 05.08.2019, certain Enquiry Committee being

constituted by the Governing Body had also been referred. It is difficult to understand as to from where the concept of Enquiry Committee has come

up. It is not the requirement of the order of this Court dated 06.02.2019.

8. From the aforesaid points of view as the Governing Body has misdirected itself as regards the order dated 06.02.2019 of this Court in WP(C)

No.2615/2016 as well as taking into consideration that the said order was on the basis of wrong factual depiction being made by the respondent No.7,

we hold the contents of the communication dated 05.08.2019 to be unsustainable. As the Selection Committee had already made its recommendation

on 24.02.2016 and it was approved by the Governing Body of Sivsagar College on 29.02.2016, the same be now brought to its logical end by doing the

further requirements as may be admissible under the law.

9. Consequently, the letter dated 16.11.2019 issued by the Deputy Director of Higher Education, Assam also stand interfered. As there is a

requirement of the Rules that the Director of Higher Education, Assam is the ultimate authority for either approving or not approving the selection

process, the Director may apply his own mind, including the allegations that may

have been raised by the respondent No.7, and a wholesome view on the matter and pass a reasoned order thereon.

10. The requirement of passing the reasoned order be done within a period of two months from the date of receipt of a certified copy of this order.

In terms of the above, the writ petition stands allowed.