

(1998) 06 GAU CK 0017
In the Gauhati High Court
Case No : Civil Rule No. 1861 of 1996

Apurba Kumar Das and Others	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 12-06-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (1998) 2 GLT 434

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : B.K. Goswami, B.M. Sarma and I. Goswami, for the Appellant; A.C. Borbora, G.K. Bhattacharjee and A.S Choudhury, for the Respondent

Judgement

A.K. Patnaik, J.—In this application under Article 226 of the Constitution, the Petitioners have challenged the legality and validity of the select list of candidates for Village Level Extension Workers for pre-service training for the Barpeta District of the State of Assam.

2. The case of the Petitioners in this writ petition is that an advertisement was issued by the Director of Agriculture, Assam inviting applications from the candidates who are inclined to serve in agriculture department in rural areas of Assam for admission into one year Village Level Extension Workers (for short "VLEW") training course commencing in the year 1995-96 in three (3) training institutes located in Arunachal (Cachar), Kahikuchi (Kamrup) and Naltali (Nagaon). As per the said advertisement published in the local English Daily "the Sentinel" of 18th November, 1994, applications were to be submitted to the District Agricultural Officer of the respective districts on or before 31.12.94 and the candidates were to appear in the written test and interview. The said advertisement, however, stated that the candidates having rural background will be given preference and that selection of the candidates will be subjected to usual reservation in favour of the reserved categories of candidates such as SC, ST(H), ST(P), OBC and others as per the Govt. Rules and orders issued from

time to time. The said advertisement further stated that the selected candidates will have to undergo one year pre-service VLEW training in any of the three institutes of Assam and on successful completion of training course, the candidates will be eligible for recruitment as VLEW anywhere in the State of Assam against the vacant posts that may arise from time to time, but the training would not give any guarantee for absorption in the Government job and is not to be treated as commitment as such. Pursuant to the said advertisement, the Petitioners amongst others applied to the District Agricultural Officer, Barpeta and they were asked to appear in the written test held on 19.2.95. They were thereafter called for an interview before the District Selection Committee held on different dates from 22.6.95 to 29.6.95. The District Selection Committee which comprised of Respondent Nos. 4 to 10 then prepared a panel list of 202 candidates for pre-service VLEW training for Barpeta District on the basis of the results of the written test and oral interview. All the Petitioners were included and placed in different positions according to their merit in the said panel list of 202 candidates. Thereafter, the said panel list for Barpeta District was sent to the Director of Agriculture, Assam, at Guwahati. The Director of Agriculture, Assam, then sent a final select list dated 16.3.96 of 26 candidates and in the said final list the names of Respondent Nos. 11 to 15 who were not included in the said panel list prepared by the District Selection Committee of Barpeta District and the names of Respondent Nos. 16 to 26 who were placed below the Petitioners in order of merit in the panel list prepared by the District Selection Committee, Barpeta, found place, but the names of the Petitioners did not find place. Aggrieved by the said final select list dated 16.3.96, the Petitioners have moved this Court under Article 226 of the Constitution for quashing the said final list and for directing the Respondents to prepare a fresh final select list from the panel list of candidates prepared by the District Selection Committee of Barpeta District strictly on the basis of merit and subject to usual reservation in favour of the reserved categories of candidates as per the Government rules and order issued from time to time.

3. An affidavit-in-opposition has been filed by the Respondent No. 2, the Director of Agriculture, Assam stating, inter alia, that after the preparation of the panel list, the District Agricultural Officer, Barpeta, submitted a select list of 202 candidates to his Directorate but it was found that the select list was not prepared by maintaining the 20 points Roster of reservation and that some urban candidates were included contrary to the terms of the advertisement. The said select list was, therefore, re-casted and as there were initially only 13 vacancies for Barpeta District, only 13 candidates in order of merit subject to the reservation in the 20-point Roster were included in the select list prepared by the Directorate, but the vacancies for Barpeta District increased from 13 to 26 by March, 1996 and accordingly, a comprehensive select list of 26 candidates was prepared by the then Director of Agriculture, Assam, and sent to the District Agricultural Officer, Barpeta, by the impugned letter dated 16.3.96. It has been specifically stated in Paragraph 20 of the said affidavit-in-opposition that

although the position of some of the candidates were within 26 posts in the panel list preference was given to the candidates from rural background in place of urban candidates. A separate affidavit-in-opposition has been filed by Respondent Nos. 11 to 15 and 17 to 26.

4. At the hearing, Mr. B.M. Sarma, learned Counsel for the Petitioners, submitted that all the Writ Petitioners were selected by the District Selection Committee of the Barpeta District comprising of responsible officers of the Government of Assam on the basis of their marks in the written examination and in the interview, but they were not included in the impugned final select list dated 16.3.96 prepared by the Director of Agriculture, Assam, and instead Respondent Nos. 11 to 15 who were not even included in the panel list prepared by the said District Selection Committee of Barpeta District and Respondent Nos. 16 to 26 who had secured less marks than the Petitioners in the written test and in the interview were placed in the said impugned final select list dated 16.3.96 prepared by the Director of Agriculture, Assam. According to Mr. Sarma, the impugned final select list is arbitrary and violative of the fundamental rights of the Petitioners under Articles 14 and 16 of the Constitution and is liable to be quashed.

5. Mr. A.C. Borbora, learned Counsel for the State Respondents, submitted on the basis of the records produced by him that the candidates mentioned against serial Nos. 1 to 13 in the impugned final select list prepared by the Director of Agriculture, Assam have been selected strictly in order of merit subject to reservation for the reserved categories of candidates as per 20 point Roster of the Government, but beyond serial No. 13 of the impugned final select list dated 16.3.96, the order of merit of candidates has not been followed. He said that the records revealed that candidates with lower marks have been included while the candidates with higher marks have been excluded and even some candidates who were not amongst the 202 candidates selected and placed in the panel list by the District Selection Committee, Barpeta District, have been included. Mr. Borbora stated that all this was done for the reasons stated in the affidavit-in-opposition filed by the Respondent No. 1, but a fresh select list will perhaps have to be prepared after taking into account the merit of the candidates and the reservation for the reserved categories of the candidates as per Government orders and rules issued from time to time. He, however, pointed out that the 26 candidates named in the impugned final selection list dated 16.3.96 have in the meanwhile completed their training but their appointment as VLEW has not been made because of the interim order passed by this Court.

6. Mr. A.S. Choudhury learned Counsel for the private Respondents Nos. 11 to 16, relying on the affidavit filed by the several Respondents submitted that the Respondent Nos. 11 to 15 were not complete outsiders but were also candidates who had taken the written examination and had appeared in the interview. However, they were not selected by the District Selection Committee, Barpeta District, despite the fact that they had rural background which were to be given

preference as per the terms of the advertisement and instead some urban candidates were selected by the District Selection Committee. He further pointed out that even 20-point Roster for the reserved categories of candidates was ignored by the District Selection Committee, Barpeta District. In the circumstances, Mr. Choudhury stated, the Director of Agriculture, Assam, had no option but to recast the list of selected candidates in accordance with the terms of the advertisement and the policy of the reservation of the State Government and that no illegality has been committed by the Director of Agriculture, Assam, in preparing the impugned final select list dated 16.3.96. So far as the Respondent Nos. 17 to 26 are concerned Mr. Choudhury stated that they were in fact included in the list of 202 candidates selected by the District Selection Committee, Barpeta District, and that there was absolutely no illegality in the said Respondents being selected by the Director of Agriculture, Assam, and placed in the impugned final select list dated 16.3.96. Finally, Mr. Choudhury contended that since the private Respondents Nos. 11 to 26 have pursuant to their selection already completed training, the Court should not for humanitarian consideration quash their selection and should instead allow the State Government to appoint the private Respondents as VLEW.

7. Mr. G.K. Bhattacharjee, learned Counsel appearing for the Respondent Nos. 27 to 35 submitted that admittedly the Respondent Nos. 27 to 35 were the first nine candidates in order of merit and had been selected not only by the District Selection Committee, Barpeta District, but also by the Director of Agriculture, Assam and were placed in the impugned final select list dated 16.3.96. Mr. Bhattacharjee contended that since the selection of the said Respondent Nos. 27 to 35 was purely on the basis of their merit and since the said Respondents have already completed the training this Court should not interfere with their selection and should instead allow the State Government to appoint them as VLEW.

8. There is no dispute between the parties that the Respondent Nos. 27 to 35 had secured higher marks than the Petitioners and the Respondent Nos. 11 to 26 in their written examination and interview taken together and conducted by the District Selection Committee, Barpeta District and on the basis of the results had been placed in serial Nos. 1 to 13 of the select list of candidates prepared by the said District Selection Committee, Barpeta District. No exception, therefore, could be taken to the inclusion of the Respondent Nos. 27 to 35 in the final select list dated 16.3.96 prepared by the Director of Agriculture, Assam. Since on the basis, of their final selection by the Director of Agriculture, Assam, they were sent for pre-service VLEW training, the state Respondents may appoint the said Respondent Nos. 27 to 35 as VLEW in the vacancies meant for the Barpeta District if they have successfully completed the said training and are eligible for recruitment as VLEW.

9. The dispute in this writ petition is with regard to selection of Respondent Nos. 11 to 26 who had secured lesser marks than the Petitioners in the written examination and interview taken together conducted by the District Selection

Committee, Barpeta District. The case of the Respondent Nos. 11 to 26 as urged by Mr. Choudhury as well as case of the State Respondents in the affidavit-in-opposition filed by the Respondent No. 2, the Director of Agriculture, Assam, is that the District Selection Committee while preparing the select list of 202 candidates had included therein several urban candidates and had ignored the 20-point Roster for reservation for reserved categories of candidates contrary to the terms of the advertisement.

10. The advertisement published in "The Sentinel" dated 18th November, 1994, inviting application for VLEW training course is extracted hereinbelow.

ADMISSION

Applications are invited in Standard form published in schedule IX of the Assam Gazette from Male citizen of India as defined in the Article 5.8 of the Constitution of India who are inclined to serve for Agriculture development in the rural areas of Assam for admission in to one year pre-service VLEW training course commencing in the year 1995-96 in three training institutes located in Arunachal (Cachar), Kahikuchi (Kamrup) and Naltoli (Nagaon).

Total No. of candidates to be selected for the plains district of the State is 200. The district-wise break-up of allotment of seats will be available with the Jt. Director of Agriculture of the zone and the District Agricultural Officers of the District.

The minimum requirements in selection of candidates are as below:

I. The candidates should not be less than 18 years and more than 36 years of age on 1st January, 1995 usual relaxation of age in case of candidates belonging to SC/ST(P)/ST(H) will be applicable as per Govt. orders issued from time to time.

II. The minimum qualification for appearing in the interview is HSSLC/PU/Pre-degree from recognised Board of Higher Secondary Council or University. Preference will be given to candidates of science discipline.

III. Candidates must apply to the District Agricultural Officers of his district through local Employment Exchange and he will have to appear before a selection committee at district level as and when asked for.

IV. Candidates belonging to SC/ST/OBC should furnish necessary caste certificates from recognised authority.

V. Candidates will be required to submit permanent residential certificate alongwith the applications.

VI. Selection of candidates will be subjected to usual reservation in favour of reserved categories of candidates such as SC/ST(H)/ST(P)/OBC and others as per Govt. rules and orders issued from time to time.

VII. Applications alongwith one copy of passport size recent photograph and other certificates and testimonials duly attested by a Gazetted officer should be

submitted to the District Agricultural Officers of the respective districts on or before 31.12.94. No TA and DA will be admissible for appearing in the interview or written test.

VIII. Candidates having rural background will be given preference.

IX. The selected candidates will have to undergo one year pre-service VLEW training course in any one of the three institutes of Assam. On successful completion of the training course, candidates will be eligible for recruitment as VLEW anywhere in the State of Assam as against vacant post that may arise from time to time.

X. Only a limited number of candidates will be called for interview after preliminary scrutiny of the applications.

XI. Selected candidates will receive stipend of Rs. 200/- (Rupees two hundred) per month during the training period.

However, this training does not give any guarantee for absorption in Govt. job and not to be treated as a commitment as such.

On a reading of the advertisement extracted above, I find that Paragraph VII of the said advertisement states that candidates having rural background would be given preference. The said paragraph did not mean that urban candidates were not to be selected at all but meant that candidates having rural background would be given preference. Paragraph VII of the said advertisement, however, indicated that an interview or written test was to be conducted and paragraph X further states that only a limited number of candidates would be called for interview after preliminary scrutiny of the applications. Thus, as per the terms of the advertisement, the merit of the candidates determined on the basis of the results in written test and interview was to be considered for selection. Further since rural background of the candidates could not be given preference at the written test, such rural background of the candidates was to be given preference at the time of interview and the respective District Selection Committees were, therefore, required to take into consideration the rural background of the candidates at the time of interview and award marks accordingly.

11. The District Selection Committee for Barpeta District comprised of responsible officers of the district, namely, the Jt. Director of Agriculture, Barpeta, as its Chairman, District Agricultural Officer of Barpeta District, EAC, Barpeta, Member, Bodoland Autonomous Council, Kokrajhar, Employment Officer, Barpeta, District Election Officer, Barpeta, SMS (District Level) District Agricultural Officer and the Sub-Divisional Agricultural Officer, Pathsala. It is difficult to hold that such responsible officers of Barpeta District entrusted with the task of selecting candidates for VLEW training course were totally ignored about the aforesaid terms of the advertisement and did not at all take into consideration the rural background or the urban background of the candidates while awarding marks for the interview. The Director of Agriculture, Assam, while

making final list of candidates of Barpeta District appears to have presumed that the rural background of the candidates was not taken into consideration by the District Selection Committee for the Barpeta District while awarding marks. This presumption of the Director of Agriculture, Assam, was based on the stand taken by him in the affidavit-in-opposition that some urban candidates were also included in the select list of 202 candidates prepared by the District Selection Committee, Barpeta District. But as has been held above, the said stand is erroneous because the advertisement did not anywhere state that urban candidates were not to be selected at all but only stated that rural background of the candidates would be given due preference.

12. Regarding the other contention of the Director of Agriculture, Assam, in his affidavit-in-opposition as well as that of the Respondent Nos. 11 to 26 that 20-point Roster for reservations of reserved categories was ignored by the District Selection Committee, Barpeta District, there is no dispute between the parties that as per the terms of the advertisement and, in particular, paragraph-VI thereof the selection of candidates was to be subjected to usual, reservation in favour of the reserved categories of candidates as per Govt. orders and rules issued from time to time. In case, therefore, the District Selection Committee, Barpeta District had not strictly followed the Govt. orders and rules regarding reservation in favour of the reserved categories of candidates, the Director of Agriculture, Assam was right in following the said Govt. orders and rules and correcting the select list prepared by the District Selection Committee, Barpeta District.

13. Having held that the Director of Agriculture, Assam, making the final select list dated 16.3.96 proceeded on the wrong premises that the rural background of the candidates was not considered by the District Selection Committee, Barpeta District and that urban candidates were not to be selected of all, the Court would normally quash the selection of Respondent Nos. 11 to 26 who had secured less marks than the Petitioners in the written test and interview taken together. But there is no material before this Court to establish that the said Respondent Nos. 11 to 26 were included in the impugned final select list dated 16.3.96 prepared by the Director of Agriculture, Assam on account of any fraud on the part of the said Respondent Nos. 11 to 26 and I am not inclined at this late stage to quash the selection of the said Respondent Nos. 11 to 26 when they have already completed their VLEW training and are awaiting their appointment. This is not to say that the Petitioners are not entitled to relief. The Director of Agriculture, Assam has not taken into consideration the marks secured by the Petitioners in the written examination and in the interview and their position in order of merit in the select list prepared by the District Selection Committee, Barpeta District on grounds which have not appeared to the Court to be convincing and the rights of the Petitioners under Article 14 of the Constitution against arbitrary selection of candidates have been violated. The State Government has to make good this illegality and accommodate such of the candidates who were entitled to be selected for VLEW training course in terms of the advertisement according to

their position of merit in the panel list prepared by the District Selection Committee of Barpeta District. As a matter of fact, the Director of Agriculture, Assam in his affidavit-in-opposition has stated that the prayer for quashing the impugned select list dated 16.3.96 should be rejected because any addition or alteration to the list can still be made without disturbing the candidates who are included in the said list.

14. In the result, the writ petition is allowed and the Respondent Nos. 1 and 2 are directed to prepare a fresh select list of 26 candidates for VLEW training course from the panel list of 202 candidates prepared by the District Selection Committee, Barpeta District and sent to the Director of Agriculture, Assam by the District Agriculture Officer, Barpeta District on the basis of results of the candidates in the written examination and interview. Such fresh selection will be made by the Respondent Nos. 1 and 2 subject to the usual reservation for reserved categories of candidates as per Govt. order and rules issued from time to time as indicated in the advertisement. The fresh selection will be completed by the Respondent Nos. 1 and 2 within a period of two months from the date of receipt of a certified copy of this judgment which shall be filed by the Petitioners before the said Respondents. In case in such fresh select list prepared by the Respondent Nos. 1 and 2 any of the Respondent Nos. 11 to 35 who have completed the VLEW training by now are not included, they will not be in any way disturbed and they may be considered by the Respondent Nos. 1 and 2 for appointment as VLEW in case they are eligible for such appointment. It is needless to say that the Petitioners and other candidates selected by the Respondent Nos. 1 and 2 pursuant to direction contained in this order will be sent for the VLEW training and will be also considered for appointment as VLEW after completion of the training if they are found eligible for such appointment.

15. With the aforesaid observations and directions, the writ petition is disposed of. But considering the facts and circumstances of the case, the parties shall bear their own costs.