

(2002) 02 GAU CK 0022

In the Gauhati High Court

Case No : Writ Petition (C) No's. 147 (AP) and 148 (AP) of 2000

Ashok Kumar Yadav

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 08-02-2002

Acts Referred:

Citation : (2002) 02 GAU CK 0022

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : P.K. Tiwari, for the Appellant; G. Deka and T. Pertin, for the Respondent

Final Decision : Allowed

Judgement

B. Lamare, J.—Heard Mr. P.K. Tiwari, learned counsel for the petitioners and Miss Geeta Deka, learned Govt. Advocate for the State respondents in both the writ petitions. Mr. T. Pertin, learned counsel entered appearance on behalf of respondent No. 3.

2. These 2 (two) writ petitions have arisen out of the notice dated 15.11.1999 issued by the Arunachal Pradesh Public Service Commission (for short "APPSC") recommending for appointment to the posts of Assistant Engineer (Civil) the Irrigation and Flood Control Department of the Govt. of Arunachal Pradesh (for short "IFCD") and the same question of facts and law are involved. Hence both writ petitions are disposed by this common judgment.

3. The case in short compass is that by advertisement dated 23.3.1999, the APPSC have invited application for recruitment to the post of Assistant Engineer in the IFCD. In the said advertisement, it is mentioned that out of 22 posts to be filled up, 18 posts are reserved for Arunachal Pradesh Scheduled Tribe (for short "APST"). On completion of the recruitment process, the APPSC has published the list of 22 candidates by notice dated 16.11.1999 (Annexure-P of the writ petition). Before the recruitment process could be completed, the Govt. of

Arunachal Pradesh by letter dated 8.11.1998 addressed to the Secretary APPSC. Itanagar has requested for recommendation of 10 more qualified candidates to facilitate in filling up the subsequent vacancies. In compliance with the letter, the APPSC has recommended another 10 names of the candidates alongwith the said notice dated 16.11.1999 (Annexure-P-2).

4. According to the said recommendation made by the APPSC in the select list, out of 22 selected candidates, 18 belongs to APST and remaining 4 candidates were general candidates. The name of the petitioner Shri Ashok Kr. Yadav was shown at serial No. 8 and the name of Shri Sanjoy Kr. Srivastava was shown at serial No. 14 of the select list.

5. The letter of offer of appointment dated 15.2.2000 was issued to both the petitioner by the Deputy Secretary (IFCD), Govt. of Arunachal Pradesh and all formalities as required in the said letter of offer of appointment were duly completed. The petitioner Shri Ashok Kumar Yadav was also released from his previous appointment but in the case of the petitioner Shri Sanjoy Kumar Srivastava who was serving in the Govt, of Arunachal Pradesh, he is not required to obtain the released order as his service will continue under the same Government.

6. Despite completion of formalities as required in the offer of appointment to the posts of Assistant Engineer (Civil) in IFCD, Arunachal Pradesh, the petitioners were not appointed by the State respondents. The petitioners, therefore, have approached this Court for issue of a writ of mandamus to the respondents 1, 2 and 3 to appoint them according to the select list.

7. The respondent Nos. 1 and 2 contested the claim of the petitioners and filed affidavit in opposition. In paragraph 8 of the said affidavit in opposition, the State respondents have stated as follows :-

"The names of the candidates appearing in the select list against sl. Nos. 1 to 4 were the unreserved candidates. Out of these 4 candidates, 2 APST candidates secured unreserved quota by way of their merit and the said two candidates were given appointment against un-reserved quota. The said procedure has been followed as per standing instruction of the Govt. of India, Department of Personnel and Training vide No. 36012/13/88-Estt (SCT) dated 22.5.1989. As per the said instruction, the SC/ST candidates who were selected on their own merits without relaxed standards alongwith candidates of other communities will not be adjusted against the reserved share of vacancies. It has further been laid down that the reserved vacancies will be filled up separately from amongst the eligible SC/ST candidates who are lower in merit than the last candidate on the merit list but otherwise found suitable for appointment even by relaxed standards, If necessary. Thus, appointments have been made by following the due process of law whereby 2 candidates under ST category have been appointed against the general vacancy as these two candidates were above the petitioner in the Select list."

Also in paragraph 13 of their said affidavit in opposition, the State respondents have also stated as follows :-

The appointment have been made by following the due process of law and by the principles laid down in the Govt. Notification dated 24.9.1990 and the Notification by the Central Govt. dated 22.5.1989. As per the State Govt. Notification dated 24.9.1990. 80% of Group "B" posts for direct recruitment are reserved for APST candidates and as such the application of 100 point roster does not arise."

8. The APPSC, respondent No. 3 has also filed affidavit in opposition. In the affidavit In opposition the APPSC admitted that out of the 22 candidates, the name of the petitioner Shri Ashok Kr. Yadav is at serial No. 8 and that Shri Sanjoy Kr. Srivastava is at serial No. 14.

9. Against the affidavit in opposition filed by the State respondents, both the petitioners filed their affidavit in reply. In the reply affidavit, the petitioners have stated that the R.R. is applicable for selection. In the Instant case, the Recruitment Rules for the post of Assistant Engineer (Civil) of Rural Works Department has been adopted by the IFCD vide Notification dated 9.12.1997 issued by the Under Secretary (IFCD), Govt. of Arunachal Pradesh, Itanagar (Annexure-A/1). In their affidavit in reply, the petitioners also stated that as per Schedule of the RR, 50% of posts are to be made by direct recruitment as per 100 point roster, and as per the reservation policy made by the State Govt. vide their Notification dated 24.9.1990. According to this notification for reservation, the roster system was also published by the State Govt. by Office memorandum dated 26.3.1991. According to the petitioner, following the model of this 100 point roster indicated in the said office memorandum, the petitioner whose position was at serial No. 8 and serial No. 14 respectively are entitled to be appointed for these said posts in the select list.

10. Heard learned counsel for the parties and also perused the records,

11. Mr. P.K. Tiwari, learned counsel for the petitioners submits that the petitioners have been selected and their position being at Sl. No. 8 and Sl. No. 14 in the Select list are entitled to be appointed. More so, when the letter of offer of appointment was issued to the petitioners and thereafter all formalities for their appointment were completed as required by the respondents, Mr. P.K. Tiwari, further contended that the petitioners have been recruited according to the Recruitment Rules by following the 100 point roster as per RR and the Govt. reservation policy, the petitioners are entitled for appointment. The learned counsel also contended that after issue of letter of offer of appointment, the petitioners have a right to be appointed even after expiry of the period of the Select list. Lastly, Mr. Tiwari contended that the contentions of the petitioners are that the instruction of the Govt. of India, Department of Personnel and Training issued vide No. 36012/13/88-Estt (SCT) dated 22.5.1989 is not applicable in these cases when there is a specific provision in the Recruitment Rules by following 100 point roster. Further, he contended that the said notification relates

to the filling up of reserved posts in recruitment through the Union Public Service Commission.

12. Miss. Dekka, learned Govt. Advocate appearing for the State respondents submitted that since 2 of the APST candidates were amongst the serial Nos. 1 to 4 in the list, these two candidates were treated to have qualified on merits and are placed as general candidates and were given appointment against the general quota and not on APST quota. This was done by following the Central Govt. of India's instruction dated 22.5.1989. Miss. Dekka further submitted that due to the above appointment, 2 APST candidates have been given appointment against the unreserved quota. Since the petitioners cannot be appointed, in their place, 2 candidates from the list kept in panel, i.e., respondent Nos. 4 and 5 were appointed.

13. Mr. T. Pertin, learned counsel for the respondent No. 3 submitted that the selection made by the APPSC was done according to the Recruitment Rules applicable. The learned counsel further contended that the 10 candidates in the panel list are meant only for the posts which will fall vacant and not for the existing vacant posts mentioned in the advertisement.

14. Before going further into the merits, it is pertinent to point out that the selection of 22 candidates by the APPSC as per the advertisement is not disputed. The position of the petitioners are at serial No. 8 and serial No. 14 respectively of the Select list of 22 candidates is also not disputed. The offer of appointment to the petitioners and completion of all formalities as required by the respondents has also been completed. The question to be decided now is only as to whether the selection was made according to the Recruitment Rules and the prescribed reservation policy of the State Govt. if so, whether the stand taken by the State respondents that the Govt. of India's instruction dated 22.5.1989 is applicable in the instant case or not.

15. According to the State Government's notification dated 24.9.1990, 80% of Group "B" posts for direct recruitment shall be reserved for APST candidates. The said notification read as follows :-

"Government of Arunachal Pradesh Organisation and Methods Department
Itanagar

NOTIFICATION No. OM. 13/90 Dated Itanagar the 24th Sept 1990

In exercise of the powers conferred by clause (4) of Article 16 of the Constitution of India, the Governor of Arunachal Pradesh is pleased to order that 80% (Eighty per cent) of the Group "B1" posts which are filled up by direct recruitment shall be reserved for Arunachal Pradesh Scheduled Tribe Candidates.

This notification shall come into force with immediate effect.

Sd/- Matin Dai

Chief Secretary to the Government of Arunachal Pradesh, Itanagar."

Following the above Government notification, the office memorandum dated 26.3.1991 setting a model of 100 point roster indicating the point of reservation as per the above State Government notification dated 24.9.1990 was published. The office memorandum and the 100 point Model Roster read as follows :-

"Government of Arunachal Pradesh Organisation and Methods Department
Itanagar

No. OM. 13/90 Dated Itanagar the 26th March 91.

NOTIFICATION

Consequent upon reservation of 80% of the Group "B" posts to be filled up by Direct Recruitment, as notified vide Govt. notification of even No. of 24.9.1990, the ratio of reservation of Direct Recruitment of Group "B" post shall be 4:1. To facilitate proper implementation of the Govt. decision in this respect, a Model 100 Point Roster indicating the point of reservation is appended herewith for strict compliance by all concerned.

A new Roster in the similar manner shall be drawn up on exhaustion of all the points of the old Roster.

This Roster system shall come into force w.e.f. the date of Govt. notification issued vide Govt. notification of even No. dated 24.9.1990.

Sd/- Matin Dai Chief Secretary, Govt. of Arunachal Pradesh, Itanagar."

" 100 Point model roster of Direct Recruitment for appointment to the post of Group "B" where Recruitment Rules provides 80% reserved and 20% unreserved.

Point in the Roster Whether Reserved or Unreserved Point in the Roster Whether Reserved or Unreserved

(1) (2) (3) (4)

1. Reserved 51. Reserved
2. Reserved 52. Reserved
3. Reserved 53. Reserved
4. Reserved 54. Reserved
5. Unreserved 55. Unreserved
6. Reserved 56. Reserved
7. Reserved 57. Reserved
8. Reserved 58. Reserved
9. Reserved 59. Reserved
10. Unreserved 60. Unreserved

11. Reserved 61. Reserved
 12. Reserved 62. Reserved
 13. Reserved 63. Reserved
 14. Reserved 64. Reserved
 15. Unreserved 65. Unreserved
 16. Reserved 66. Reserved
 17. Reserved 67. Reserved
 18. Reserved 68. Reserved
 19. Reserved 69. Reserved
 20. Unreserved 70. Unreserved
 21. Reserved 71. Reserved
 22. Reserved 72. Reserved."

16. The above 100 Point Roster was made in accordance with the Recruitment Rules issued by the IFCD vide notification dated 9.12.1997 by which the Recruitment Rules for the post of Assistant Engineer (Civil) of Rural Works Department was made applicable to the IFCD. Therefore, a reading of the said reservation policy and 100 Point Roster along with the Recruitment Rules will show that the 100 Point Roster as indicated in the office memorandum dated 26.3.1991 (Annexure-A/4 to the writ petition) and the 100 Point Model attached to the said office memorandum are applicable in the instant case. The contention of the State respondents that the Government of India's instruction contained in the office memorandum No. 36012/13/88-Estt (SCT) dated 22.5.1989 is applicable in this case cannot be accepted.

17. Now the next question is that whether after issued of the offer of appointment the petitioner have acquired right to be appointed. In the case of Bidhan Chandra Chakma v. The Chief General Manager, State Bank of India, North Eastern Circle & Others, reported in (1987) 2 GLR 389, this Court held thus :-

"The action was illegal as the Bank was estopped from denying the appointment to the petitioner by the purported withdrawal of the offer of appointment after he resigned his previous job and produced his release certificate."

The above decision was also followed in the case of Lourembamibem Lal Devi v. State of Manipur and Anr. reported in 2000 (3) GLT 545, wherein this Court held thus:-

"After issue of letter of offer of appointment to the petitioner expiry of the validity period of the select list not to affect the petitioner's right to be appointed-

Promissory estoppel is applicable."

Considering the above decision, the petitioners having received offer of appointments have acquired the right to be appointed and the respondents are estopped from not giving them appointment.

18. Now the next question is whether a direction for their appointment can be made at this stage. From the records, the selection was made on 16.11.1999 and the writ petition was filed before this on 8.5.2000. The Apex Court in the case of Purushottam Vs. Chairman, M.S.E.B. and Another, held thus :-

The right of the appellant to be appointed against the post to which he has been selected cannot be taken away on the pretext that the said panel has in the meantime expired and the post has already been filled up by somebody else. Usurpation of the post by somebody else is not on account of any defect on the part of the appellant, but on the erroneous decision of the employer himself."

In the above case, the Apex Court however, made clear that the appointment to be made would be prospective in nature.

19. Similarly, in the case of the State of U.P. Vs. Ram Sawrup Saroj, the Apex Court held thus :-

" The plea that a list of selected candidates for appointment to the State Services remains valid for a period of one year only is primarily a question depending on facts and yet the plea was not raised before the High Court. Secondly, we find that the select list was finalised in the month of November 1996 and the writ petition was filed by the respondent in the month of October 1997, i.e., before the expiry of one year from the date of the list. Merely because a period of one year has elapsed during the pendency of litigation, we cannot decline to grant the relief to which the respondent has been found entitled by the High Court."

In view of the above decisions of the Apex Court, I am of the considered view that the petitioners are entitled to be appointed even after the expiry of the select list due to pendency of this case.

20. The next point of contention is that whether appointment can be made from panel list which was made on the request of the State Government vide letter dated 8.11.1999. A bare perusal of the advertisement shows that the selection was to be made for 22 vacant posts of Assistant Engineer (Civil) Group "B" in the IFCD, out of which 18 posts are for APST and 4 posts are for general candidates. From the facts and circumstances discussed above, out of 22 selected candidates in select list, 20 candidates were appointed and the petitioners were denied appointment. Instead, the respondents 4 and 5, whose names appeared in the panel list were appointed. As discussed above, this Court has come to the conclusion that the 22 candidates were selected according to the Recruitment Rules and the 100 point roster and that Central Govt. Office Memorandum dated 22.5.1989 is not applicable in this case. The petitioners are therefore entitled to be appointed. The State respondents are not entitled to make appointment from

the panel list without exhausting the select list.

21. In the case of Biswajit Choudhury v. State of Tripura and Ors. reported in 2001 (3) GLT 177, this Court held thus :-

"The selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed which can be enforced by a Mandamus."

22. In view of the observations and discussions made above, I find merit in these writ petitions. Accordingly, both the petitions are allowed.

23. For the aforesaid reasons the respondents 1 and 2 are directed to issue appointment letters to the petitioners to the post to which they were selected within a period of 2 (two) months from the date of receipt of the copy of this order by the respondents 1 and 2.

24. In the result, the appointment of respondents 4 and 5 are hereby set aside and quashed.

With the above directions, both the writ petitions are disposed of.