

(1986) 05 GAU CK 0012

In the Gauhati High Court

Case No : Civil Rule No. 670 of 1985

Assam Judicial Service Association and Another

APPELLANT

Vs

Chief Justice, Gauhati High Court and Others

RESPONDENT

Date of Decision : 28-05-1986

Acts Referred:

Constitution of India, 1950 — Article 229

Gauhati High Court (The High Court of Assam, Nagaland, Meghalaya, Manipur and

Tripura) Appointment, Condition of Service and Conduct) Rules, 1967 — Rule 6, 7, 7(1)

Citation : (1986) 2 GLR 330

Hon'ble Judges : S. Haque, J;K.N. Saikia, J

Bench : Division Bench

Advocate : J.M. Choudhury and G. Bhattacharjee, for the Appellant;

Final Decision : Dismissed

Judgement

K.N. Saikia, J.—The writ Petitioners, namely, Assam Judicial Service Association, Gauhati hereinafter called "the Association" and its Secretary, impugn the appointment of Respondent No. 5, Shri Bhabani Prasad Saikia, as the Registrar (Inspection and Enquiry) of the Gauhati High Court vide Notification No. HC. V-52/84 8419/Estt dated 9th July, 1984 (Annexure-V to the petition) which was published in the Assam Gazette of August 8, 1984. It is not a petition filed by any unsuccessful candidate for the post. The petition was filed as far back as on 9.11.84. At one stage, on 20.12.84, the learned Counsel for the Petitioners prayed for time so that the Association might decide whether the application should be pressed or not and the prayer was allowed. After several adjournments for the same purpose the learned Counsel for the Petitioner has now amended the petition and has moved it to day. Meanwhile the original Respondent No. 6, whose appointment as Registrar (Administration) was also challenged in the petition has retired and hence his name has been deleted.

2. Mr. J.M. Choudhury, the learned Counsel for the Petitioners, submits that the post of Registrar (Inspection and Inquiry) for the Gauhati High Court was created

vide Government letter No. J.N. 268/81/85 dated 2nd July, 1984 (Annexure IV to the petition) which states:

I am directed to convey the sanction of the Governor of Assam to the creation of a post of Registrar (Inspection and Inquiry) for the Gauhati High Court in Grade I of the Assam Judicial Service in the scale of pay of Rs. 2000-75-2300-EB-75-2600/- p.m. plus other allowances as admissible under the rules and one post of Steno, Grade II in the scale of pay of Rs. 670/35/845/EB/35/1020/EB-40/1500/- p.m. plus other allowances as admissible under rules upto 28.2.85 with effect from the date of entertainment.

The expenditure is debatable to the head "214-Admn. of Justice-2.B-High Court (b) Estt. I-Salary (charged)", in the budget for the year 1984-85.

This issues with the concurrence of Finance Department conveyed vide their u.o. No. FC(III) 1748/84 dated 8.5.84 and No. PC(III) 1934/84 dated 26.6.84.

Necessary amendment in the Assam Judicial Service will be made in due course.

Mr. Choudhury submits that to his knowledge the consequential amendment in the Assam Judicial Service has not yet been made. This means that at the time of appointment of Respondent No. 5, the Assam Judicial Service Rules did not include the post of Registrar (Inspection and Inquiry), Mr. Choudhury admits that the Gauhati High Court (The High Court of Assam, Nagaland, Meghalaya, Manipur and Tripura) Services (Appointment, Conditions of Service and Conduct) Rules, 1967 (shortly, "the High Court Service Rules") framed in exercise of the powers under Article 229 of the Constitution of India, governed this appointment. Prior to the creation of the post of Registrar (Inspection and Enquiry), the High Court services consisted of both the Gazetted and Non-Gazetted posts. In class I of Gazetted Officers the posts were Registrar I and Registrar (Admn.) 1. With the creation of the instant post for the High Court, it would be included in High Court Service, Gazetted rank. The Registrar's post was admittedly filled up by a member of the Judicial Service. But at the relevant time those Rules were not amended to include the post of Registrar (Inspection and Enquiry). If it was so included, the appointments therein would have been required to be made under those Rules; but that itself would not have made the incumbent a member of the High Court Service unless he was also appointed to the High Court Service by the Hon'ble the Chief Justice under the High Court Service Rules.

3. Under Rule 6(a) of the High Court Service Rules, all appointments to the posts in the service of the High Court Gazetted rank and all promotions shall be made by the Hon'ble the Chief Justice "in his absolute discretion". Mr. Choudhury admits that in the matter of appointments to the posts in the Service of the High Court, Gazetted rank, the Hon'ble the Chief Justice is vested with power to make appointments in his absolute discretion; but submits that as the instant post was created, vide Annexure IV, in Grade I of the Assam Judicial Service, none else than members of the Assam Judicial Service Grade I can be appointed to the post and as Respondent No. 5 did not belong to Assam Judicial Grade I, he was

not eligible to be appointed to that post. However, the instant appointment was not in Assam Judicial Service but in High Court Service. Mr. Choudhury also admits that under Rule 7(1) of the High Court Service Rules the Registrar as well as the Registrar (Administration) shall be either a member of the State Judicial Service Grade I; or a practicing Advocate of not less than ten years" standing at the Bar; or any other person, considered suitable by the Hon"ble the Chief Justice, including those who had served in the State Judicial Service Grade I and retired. Thus while submitting that the post Registrar (Inspection and Enquiry) will come under Rule 7, namely, Gazetted Officers in the High Court Service, Mr. Choudhury submits that the Chief Justice's discretion must necessarily be restricted inasmuch as only members of the Assam Judicial Service Grade-I are eligible and selection has to be made only out of such members.

4. We are not inclined to accept the submission that the discretion of the Hon"ble the Chief Justice in the matter of appointing Gazetted Officers in the High Court Services should be so restricted as submitted by Mr. Choudhury even if the post is included in the Judicial Services Rules. Under Rule 7 the Registrar as well as the Registrar (Administration) and the Registrar (Inspection and Enquiry) shall be either a member of the State Judicial Service Grade I; or a practising Advocate of not less than ten years" standing at the Bar; or any other person considered suitable by the Hon"ble the Chief Justice, including those who had served in the State Judicial Service Grade I and retired. Thus, under this Rule three categories of candidates have been made eligible, namely, (i) a member of the State Judicial Service Grade I, or (ii) a practising Advocate of not less than ten years" standing at the Bar, or (iii) any other person considered suitable by the Chief Justice, including the retired personnel of Assam Judicial Service Grade I. The third, category includes State Judicial Service Grade I, retired persons but they do not cover the entire category. Person other than retired persons of State judicial Service Grade I will also be eligible under this category. The discretion as to out of which category the appointment shall be made is left to the absolute discretion of the Hon"ble the Chief Justice. Again from among the candidates belonging to each of the categories the selection of the suitable person is also left to the absolute discretion of the Hon"ble the Chief Justice.

5. The word discretion when applied to public functionaries means a power or right conferred upon them by law of acting officially in certain circumstances according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others, As applied to an individual public officer it means power to act in an official capacity in a manner which appears to be just and proper under the circumstances.

6. In *Padfield v. Minister of Agriculture* (1968) A.C. 997, the proposition of unfettered discretion of the Minister was rejected by the House of Lords. In *Brown v. Amalgamated Engineering Union* (1971) 2 Q.B. 175 (190) Lord Daning M.R. underlined the above decision of the House of Lords saying:

The decision of a statutory body is never unfettered. It is discretion which is to

be exercised according to law. That means at least this: the statutory body must be guided by relevant consideration and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand, No matter that the statutory body acted in good faith; Nevertheless, the decision will be set aside. That is established by *Padfteld v. Minister of Agriculture, Fisheries and food* which is a landmark in modern administrative law.

7. However, in the instant case the High Court Rules themselves expressly confer absolute discretion on the Hon"ble the Chief Justice in the matter of appointments to the High Court Services. The express provision may not be curtailed by general principles on which the provision was not based. It was for very good reasons that the High Court Service Rules conferred such a discretion on the Hon"ble the Chief Justice. The word "absolute" means complete; perfect; final, without any condition or incumbrance, unconditional; complete and perfect in itself; without relation to or dependence on other things or persons. (See Black s Law Dictionary). As Rule 6 speaks of "absolute discretion" we have to understand it in that sense. As the maxim goes, *loquendum ut vulgus; sentiendum docti*"- We must speak as the common people; we must think as the learned. The rule is that when words are used in a technical sense they must be understood technically; otherwise, when they may be supposed to be used in ordinary acceptance. "A verbis legis non est recedendum." The words of a statute must not be departed from. A Court is not at liberty to disregard the letter of a statute, in favour-of a supposed intention. In *Bradbury v. Enfield Borough Council* (1967) 1 WLR 1311 it has been held that even though a Court is satisfied that, the legislature did not contemplate the consequences of an enactment, a Court is bound to give effect. to its clear language. It is settled law that where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature. As Rule 7 confers absolute discretion on the Hon"ble the Chief Justice no exception can be taken in selecting one of the categories namely, "any other person" to which Respondent No. 5 belonged. He did not belong to the other two categories.

8. The next question is that of selection of Respondent No. 5. As we have already alluded, this is not an application by any unsuccessful candidates; there is, therefore, no question of any discretion against any other candidates.

9. As regards the post having been created in Grade I of the Assam Judicial Service by Annexure IV, admittedly it has not yet been included in the Assam Judicial Service Grade I by amendment of the Judicial Service Rules. The view of the Association that this post is an accretion to the judicial service is appreciated. But for consolidation of the position the Judicial Service Rules have to be amended. The mere creation of the post is not the final step in that regard. If the Judicial Service Rules are amended; appointments therein shall have to be made in conformity therewith. But that was not the stage at the time of the impugned

appointment. Admittedly those Rules have not yet been amended.

10. In *Haobam Nongyai Singh Vs. Oinam Tomba Singh and Others*, interpreting Rule 7(1) of the High Court Service Rules it has been held that in the Assam Judicial Service Rules of 1952 as well as of 1967 also, the post of the Registrar was shown as being borne on the Judicial Service Senior Grade I. It was contended that the above Rule would not apply if a retired person was appointed as a Registrar. Their Lordships repelled that contention and held that there was nothing in the wording of the rule to support such an interpretation. "The rule clearly means that whoever is the Registrar, will be a member of the State Judicial Service (Senior). The Petitioner, on his appointment, became such a member and he was thus born on the State Judicial Service." In *M. Gurumoorthy v. The Accountant General* AIR 1971 SC 1890 their Lordships of the Supreme Court upheld the view that the Government had the authority to sanction the post. But it could not interfere with the choice of the incumbent which undoubtedly was to be of the Chief Justice under Article 229 of the Constitution. Their Lordships further "held that exclusive power is conferred on Chief Justice by Clause (1) read with Clause (2) of Article 229 not only in the matter of appointments but also with regards to prescribing the conditions of service of officers and servants of a High Court by Rules. This is subject to any legislation by the State Legislature but only in respect of conditions of service. The powers conferred on the Chief Justice under Clause (1) of Article 229 cannot be abridged or modified in the matter of appointment. The approval of the Governor in the matter of Rules is confined only to sub-rules as relate to salaries, allowances, leave or pension. All other rules in respect of conditions of service do not require his approval.

11. The Respondent No. 5 has been appointed temporarily. If in the case the Judicial Service Rules are amended so as to close the door from other categories to the post subsequent appointments therein will need consideration in consonance therewith. As the matter stood at the time of the temporary appointment no exception could be taken to it either for selecting the category other than that of Judicial Service and practising Advocates, or for selecting the Petitioner for the post from the category of any other persons including retired judicial service Grade I personnel.

12. Respondent No. 5 was admittedly serving as the Deputy Registrar of Gauhati High Court, which is also included under the Gauhati High Court Service Rules. It cannot, therefore, be said that the expression "any other persons" has been utilised for selecting a person who had nothing to do either with the State Judicial Service or with the High Court services.

13. Mr. Choudhury has not disputed that the post of Registrar (Inspection and Enquiry) is covered by Rule 7 of the High Court Service Rules.

14. This petition is accordingly found to be without merit and it is rejected at the threshold.