

(1999) 06 GAU CK 0006
In the Gauhati High Court
Case No : Civil Rule No. 3321 of 1993

Assam Sachivalaya Seba Santha and Others	APPELLANT
Vs	
Secretary, Assam Legislative Assembly and Others	RESPONDENT

Date of Decision : 24-06-1999

Acts Referred:

Assam Legislative Assembly (Secretariat) Recruitment and Condition of Service Rules
— Rule 9(6)
Constitution of India, 1950 — Article 14, 15(1), 16, 16(1), 16(2)

Citation : (1999) 3 GLT 320

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : P.G. Baruah, for the Appellant; K.H. Choudhury, D.C. Mahanta and O.A. Laskar, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Sarma, J.—This writ application has been filed with the prayer that Rule 9(6) of the Assam Legislative Assembly (Secretariat) Recruitment and Condition of Service Rules should be struck down. The Rules were made in exercise of the powers conferred by Clause 3 of Article 187 of the Constitution of India and the Rules were made by the Governor of Assam after consultation with the Speaker of Assam Legislative Assembly. The portion of the Rule 9(6) which is prayed to be struck down reads as follows:

9(6) Secretary to the speaker: By promotion from the post of Committee Officer or Superintendent. The person possessing degree of Bachelor of law of a recognised University may be given preference. The Speaker may also fill up the post from any other source and the tenure of office of the person so recruited shall be co-terminus with the office of the Speaker.

2. The portion of the Rule which is prayed to be struck down provides that the speaker may also fill up the post from any other source and the tenure of office of the person so recruited shall be co-terminus with the office of the Speaker. As

pointed out by the Apex Court in R.L. Bansal and others Vs. Union of India and others, Respondents) and reiterated in subsequent decision, the law is as follows:

21. Now it is true that Rules made under the proviso to Article 309 of the Constitution being legislative in character can not be struck down merely because the Court thinks that they are unreasonable--and they can be struck down only on the grounds upon which a legislative measure can be struck down.

3. In the case of State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., Respondents in paragraph-43 the Supreme Court has pointed out as follows:

The power of Parliament or for that matter, the State Legislature is restricted in two ways. A law made by Parliament or the legislature can be struck down by Courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part-III of the Constitution or any other constitutional provision. There is no third ground.

When a statute is impugned under Article 14 what the Court has to decide is whether the statute is so arbitrary or unreasonable that it must be struck down. At best a statute upon a similar subject which derives its authority from Anr. source can be referred to, if its provisions have been held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context. We proceed to examine the provisions of the said Act upon this basis.

4. A bare perusal of the writ application will show that challenge to the rule does not come within the above.

5. Next coming to the question of violation of fundamental rights and/or any other provision of the Constitution, the question of violation of Article 14 does not arise. In S.G. Jaisinghani Vs. Union of India (UOI) and Others, the Supreme Court has pointed out in paragraph-9 as follows:

9. The relevant law on the subject is well settled. Under Article 16 of the Constitution, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state or to promotion from one office to a higher office thereunder. Article 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Article 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows that there can be a reasonable classification of the employees for the purpose of appointment or promotion. The concept of equality in the matter of promotion can be predicted only when the promotees are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the differences between the said two sources, and the said differences have a reasonable relation to the nature of the office or offices to which recruitment is made, the said recruitment can

legitimately be sustained on the basis of a valid classification. Dealing with the extent of protection of Article 16(1) of the Constitution, this Court observed in *The General Manager, Southern Railway Vs. Rangachari*,

It would be clear that matters relating to employment can not be confined only to the initial matters prior to the act of employment. The narrow construction would be confine the application of Article 16(1). What Article 16(1) guarantees is equality of opportunity to all citizens in respect of all the matters relating to employment illustrated by us as well as to an appointment to any office as explained by us. The three provisions Article 16(1), Article and Article 14, 15(1) form part of the same constitutional Code of guarantees and supplement each other. If that be so, there would be no difficulty in holding that the matters relating to employment must include all matters in relation to employment both prior, and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of such employment.

The Court further observed in that case:

Article 16(2) prohibits discrimination and thus assures the effective enforcement of the fundamental right of equality of opportunity guaranteed by Article 16(1). The words, in respect of any employment used in Article 16(2) must, therefore, include all matters relating to employment as specified in Article 16(1). Therefore, we are satisfied that promotion to selection posts is included both under Article 16(1) and (2).

6. Accordingly there is no merit in this writ application and the same shall stand dismissed.

7. I have heard Shri P.G. Baruah, learned Advocate for the Petitioner, Shri Laskar, learned Advocate for the Respondent No. 1, Shri Choudhury, learned Advocate for the Respondent No. 3 and Shri Mahanta, learned Advocate for the Respondent No. 2.