
(2003) 04 GAU CK 0019
In the Gauhati High Court
Case No : S.A. No. 59 of 1998

Assam State Electricity Board and Others APPELLANT
Vs
Phani Dhar Kalita and Others RESPONDENT

Date of Decision : 08-04-2003

Acts Referred:

Citation : (2003) 2 GLR 417 : (2003) 2 GLT 696

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : B.D. Das, for the Appellant; T.C. Khetri, for the Respondent

Final Decision : Allowed

Judgement

I.A. Ansari, J.—1. This second appeal has arisen out of the judgment and decree dated 6.3.1998, passed by the learned Civil Judge (Sr. Division), Sonitpur, Tezpur, in Title Appeal, Appeal No. 24/94, setting aside the judgment and decree, dated 9.5.1994, passed by the learned Munsiff No. 1, Tezpur, in Title Suit No. 72 of 1989 and decreeing the suit of the plaintiffs.

2. The respondents-plaintiffs instituted Title Suit No. 72/89 aforementioned seeking, inter alia, declaration that the office order No. EE/DED DKJ/E-10/89/427, dated 24.7.1989, passed by the defendant No. 4, namely, Executive Engineer, Dhekiajuli, purporting to cancel the selection list of 1985 prepared in respect of the posts of Sahayak, Peon, Cook-helper in the Assam State Electricity Board (hereinafter referred to as "the ASEB") is null and void non est in law and inoperative against the plaintiffs, the case of the plaintiffs being, briefly stated, thus : The plaintiffs, who are educated unemployed youths, underwent selection test held by the defendant, No. 4 aforementioned, vide his letter, dated 29.7.1985. The plaintiffs were selected and their names appeared in the select list, which was prepared in December 1985. The plaintiff No. 1, 2, 3, 4, 5 and 7 secured 42nd 43rd, 44th 45th and 46th position in the select list. The plaintiff No. 2 secured second position in the category of selected candidates

meant for the post of Mali, the plaintiff No. 6 received second position in the category of selected candidates meant for the posts of Cook-helper and plaintiff No. 7 secured 7th position in the category of the selected candidates meant for the posts of Peon, all the posts being of Grade-IV. After preparation of the list, the defendant No. 4 took long time in appointing the selected candidates and whenever the defendant Nos. 3 and 4 were approached by the plaintiff, the plaintiffs were given assurance that they would be appointed. Even the Minister of Power and the Chairman of the ASEB had assured the petitioners that they would do something in the matter, but at the same time, informed the plaintiff that the Government had stopped further appointment for some time. The defendant No. 4 appointed one Shri Sonaram Bodo on 8.8.1968, but the plaintiffs, despite having been given repeated assurances for appointments, were ignored. As the plaintiff did not receive any appointment, they instituted the suit.

3. The defendants contested the suit by filing their written statement their case being, in brief, thus : The defendants denied that they had ever given any assurance to the plaintiffs that they would be appointed. The defendant No. 4, as appointing authority of Dhekiajuli division of the ASEB, appointed some of the selected candidates in order of preference from the select list as per availability of the vacancies and requirements of the division, but could not appoint all the selected candidates as there was neither vacancy nor requirement of so many persons in the said division. The selection had taken place only for Dhekiajuli division of the ASEB. As per practice and general norms, more candidates than existing vacancies were selected. The selection made at a time, remains valid for one year only from the date of its approval by the Chairman of the Board. The select list was approved by the Chief Engineer of the ASEB by his letter dated 19.12.1995, and the Zonal Selection Committee approved the same on 21.5.1987. The Zonal Selection Committee recommended for extension of the validity of the list by three months, i.e., up to 7.10,1987. In appointing Sonaram Boro, the ASEB did not commit any illegality inasmuch as he belongs to Scheduled Tribe and his appointment is in conformity with the Government policy. Such a select list remains valid for one year, but in the present case, select list had been kept extended for a period longer than one year. By letter, dated 3.7.1989, the Personal Manager of the ASEB had informed the plaintiffs that the select list prepared in 1985 stood cancelled.

4. The learned trial Court framed the following issues :

1. Whether there is any cause of action for the suit ?
2. Whether the suit is maintainable in the present form ?
3. Whether the suit is barred by limitation ?
4. Whether the suit is bad for non-jointer of parties ?
5. Whether the Office Order No. EE.DED/(OK)/E-10/89/427 dated 24.7.1989 of the Executive Engineer, Dhekiajuli the defendant No. 4 preparing to cancel the

selection list of 1985 as null and void, in operative against the plaintiffs ?

6. To what relief, if any, the parties are entitled ?

7. Whether the selection list of the Dhekiajuli Electrical Division of the Board have any relation to the Tezpur Electrical Circle and whether the appointment of Shyam Chandra Nath and Reba Saikia have any effect on the same ?

5. Both the parties to the suit adduced evidence and in course of time the learned trial Court, vide its judgment and decree, dated 9.5.1994, aforementioned, dismissed the suit. The plaintiff preferred Title Appeal No. 24/94 aforementioned, which was allowed as indicated hereinabove. The impugned decree accordingly followed and the defendants have, now, come up before this Court with the present second appeal.

6. This second appeal was admitted for hearing on the following substantial questions of law :

(i) Whether inclusion of a candidates named in the merit list confers any right to be appointed against the vacancies, which remained unfulfilled after process of selection is finally closed ?

(ii) Whether any person below the position of the plaintiffs in the merit list has been appointed causing discrimination ?

7. I have perused the relevant records. I have heard Mr. D. Bhattacharya, learned counsel for the appellants-defendants, and Mr. T.C. Khetri learned counsel appearing on behalf of the plaintiffs-respondents.

8. It has been submitted by Mr. Bhattacharya, learned counsel for the appellants-defendants, that no select list can be treated to be valid for ever and as per general practice, the ASEB was justified in informing the plaintiffs that the list was no more valid as a period of more than one year had elapsed since the preparation of the select list in 1985. This apart, points out Mr. Bhattacharya, there was no vacancy in Dhekiajuli division of the ASEB for which the selection process had been undertaken and since no more vacancies were available to accommodate the candidates from the select list, the defendants acted legality by cancelling the select list. It is also submitted by Mr. Bhattacharya that a select list, even in the absence of any rules and/or policy decision, can remain valid only for a reasonable period and hence, it was wholly incorrect, on the part of the learned first appellate Court, to hold to the effect that the defendants were bound to make appointments from the select list until the time the select list stood exhausted.

9. It is further submitted by Mr. Bhattacharya that inclusion of a candidate's name in the select list does not vest in him or her any right to demand appointment if the vacancies are lawfully filled up and no more vacancies or requirement for filling up of such vacancies exists.

10. Support for his above submissions is sought to be derived by Mr.

Bhattacharya from the decisions in Bhabita Prasad and Ors. v. State of Bihar and Ors., reported in 1995 Supp. (3) SCC 268 , State of U. P. and others Vs. Harish Chandra and others, and N. Mohanan Vs. State of Kerala and Others, .

11. Controverting the above submissions made on behalf of the appellants-defendants, Mr. Khetri, learned counsel for the plaintiffs-respondents, has submitted that no select list can be arbitrarily cancelled. In the case at hand, points out Mr. Khetri, the validity of the select list had not expired and that is why, the defendants had no authority to cancel the list, It is incorrect to suggest, contends Mr. Khetri, that the validity of the select list stood expired after one year from the date, when the select list was finalised. The cancellation of the select list was according to Mr. Khetri, wholly arbitrary.

12. It is also pointed out by Mr. Khetri that according to the written statement of the defendants, a select list comes into force, when the Chairman of the Board gives his approval. In this regard, submits Mr. Khetri, there is no material on record to show the date on which the select list had received approval of the Chairman; hence, the defendants had failed to show, contends Mr. Khetri as to when the select list became valid and since when it could be treated as invalid. This apart points out Mr. Khetri, the letter cancelling the select list give no indication at all that the authority, who had cancelled the select list, had the power to do so.

13. In support of his above submissions. Mr. Khetri has referred to the decisions in Prem Prakash Vs. Union of India (UOI) and Others, , Madan Lal and Others Vs. State of Jammu and Kashmir and Others, , Munna Roy Vs. Union of India (UOI) and Others, , and Shri Pradip Kumar Das v. Union of India (1985) 2 GLR 459 .

14. Before entering into the merit of the rival submissions made before me on behalf of the parties, it needs to be pointed out that it is trite that a select list does not remain valid for ever and the period for the validity of select list can be fixed by enactment or executive instructions. This apart, a careful reading of the decision of the Apex Court in N. Mahannan (supra) shows that a select list can remain valid only for a reasonable period of time. This reasonable period may, however, differ from case to case.

15. Referring to the case of Babita Prasad and Others Vs. State of Bihar and Others, , the Apex Court in the case of N. Mahannan (supra) observed thus : "Though the life of panel was not prescribed, it was directed to be confined to a reasonable time. A long waiting list cannot be kept in infinitum in view of the principle of "infinitum in jure reprobator".

16. In N. Mahannam (supra), the Apex Court has further reiterated that when the panel was too long and it was intended to last indefinitely barring future generations for two decades from being considered in the vacancies arising much later, such a panel must be allowed to stand good on record.

17. In the case of Babita Prasad and Others Vs. State of Bihar and Others, , the

Apex Court has clearly laid down the position of law on the above aspect of the matter in the following words :

"We find force in the submission of Mr. Sibal that the purpose of the panel prepared in the instant case was only to finalise a list of eligible candidates for appointment. The panel in the instant case was too long and was intended to last indefinitely barring the future generations for decades from being considered in the vacancies arising much later. In fact, the future generations would have been kept out for a very long period had the panel been permitted to remain effective till exhausted. A panel of the type prepared in the present case cannot be equated with a panel which is prepared having correlation to the existing vacancies or anticipated vacancies arising in the near future and for a fixed time and prepared as a result of some selection process. As is apparent the names of some of the teachers in the panel have existed for more than 16 years. A panel of this nature, in our opinion, cannot be treated as conferring any vested or indefeasible right to the teachers to be appointed as laid down by the Constitution Bench in Shankarsan Das case." (emphasis is supplied)

18. From what has been pointed out above, it become abundantly clear that while it is true that a select list cannot be arbitrarily cancelled, the fact remains that a select list cannot remain valid for ever and must not be allowed to remain alive beyond a reasonable period of time. What will constitute a reasonable period may, however, depend, as already indicated hereinabove, on the facts and circumstances of each case.

19. Coupled with the above, in the case of N. Mahannan (supra) the Apex Court, by referring to the case of Shankarsan Dash Vs. Union of India, , observed as follows :

"A Constitution Bench has held that mere inclusion of the name in the list of selected candidates does not confer any right upon any candidate to be selected unless the relevant rules so enacted."

20. In the case at hand, the total number of vacancies to be filled up under the selection process was, admittedly, not announced by the ASEB, when the selection process was started. However, the defendants' clear assertion in the written statement is that all the vacancies in the Division concerned had been filled up and there was no more requirement for appointment of any one in Grade-IV in the said Division. There is, it may be emphasized, nothing in the evidence on record to show that the contrary to what the defendants had so asserted, there remained any vacancy in the posts of Grade-IV in the said Division after the appointments as per the select list had taken place and before the said Sonaram Boro was appointed nor is there any evidence on record to show that there remained any requirement in the ASEB Division concerned for the posts of Grade-IV after the selection process came to end as indicated hereinbefore.

21. Situated thus, it is clear that even if no fixed period was mentioned in

respect of the validity of the said select list, yet the fact remains that since appointments had already been made out of the select list, which was prepared as far back as in 1985, and no further vacancies or requirements existed as mentioned hereinabove, the select list, in question, could not have been treated as valid for ever and no directions could have been given to the defendant to the effect, as has been done by the learned appellate Court, that the candidates must be appointed out of the select list until the same stood exhausted nor could have the defendants been given the direction that no further selection process can be initiated until the time the said list stood exhausted. In such a situation, no court could have held that the cancellation of the select list was arbitrary or void and/or inoperative.

22. In the case of Madan Lal and Others Vs. State of Jammu and Kashmir and Others, , it has been pointed out that the period of survival of a select list is subject to dual limitations, namely, that if a select list is prepared in excess of specified number of vacancies, appointments from the list can be made only against the specified number of vacancies and once the vacancies are filled up, the list shall be treated as exhausted notwithstanding the fact that the statutory period of the life of the select list has not expired.

23. In the light of the law laid down in the Madanlal (supra), it is clear that even if the total number of vacancies to be filled up was not specified, when the selection process was started, yet after the vacancies have been filled up, no more requirements of posts exists and the selection process becomes as old as 3/4 years, select list prepared pursuant to such a selection process cannot be treated as valid for ever and must not be allowed to remain in force beyond a reasonable period. Hence, it is impermissible in law to direct the respondents to continue to treat the select list as valid until the same gets exhausted.

24. While dealing with the above aspects of the matter, it is important to note that the name of Sonaram Boro, who was appointed as Sahayak on 8.8.1988, appeared, admittedly, at Sl. No. 41 of the select list, whereas the plaintiffs appear in the select list below the said Shri Sonaram Boro. In this view of the matter, it cannot be said that the plaintiffs were discriminated against. Moreover, two wrongs cannot make one right. Even if the order of Sonaram Boro's appointment as Sahayak was not legal, this cannot become a ground for the Court to insist that the defendants repeat the wrong inasmuch as the select list, as indicated hereinabove, could not have been treated as valid for ever.

25. I may pause here to point out that the mere fact that an authority has passed a particular order in the case of a person similarly situated cannot be a ground for the Court to issue similar direction in favour of another person on the plea of discrimination even if the order in favour of other the person is found to be contrary to law or not warranted in the facts and circumstances of his case. Noticing that the High Courts, in exercise of their writ jurisdiction, have been passing orders, as has been done by the learned Appellate Court in the present case, to remove discrimination and thereby asking the authorities concerned to

repeat the illegality, the Apex Court has expressed its anxiety on such approach has succinctly laid down the position of law in this regard, in Chandigarh Administration and another Vs. Jagjit Singh and another, , in the following words :

"8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances. We think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed on illegal/ unwarranted order, it does not entitle the High Court to compel the authority to repeat the illegality over again and again. The illegal/ unwarranted action must be corrected if it can be done according to law - indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong order in accordance with law - but even if the cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving-effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other persons case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. It is not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course being exceptional situations, would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each

case must be decided on its own merits, factual and legal, in accordance with relevant legal principles, (emphasis is added)

26. Though the above observations of the Apex Court relate to exercise of writ jurisdiction, the fundamental principles underlying therein apply to all suits and proceedings including a suit of present nature. Hence, even if the appointment of Sonaram Boro is arbitrary, it cannot furnish a valid ground for the Court to insist upon the respondents to repeat their arbitrary acts and stick to the select list until the same gets exhausted.

27. Mr. Khetri has referred to Prem Prakash Vs. Union of India (UOI) and Others, to show that injustice was meted out to the plaintiff by denying to give them the appointments sought for. To the facts of the case at hand, the decision in Prem Prakash (supra) is not applicable at all inasmuch as the select list cannot be treated as valid in the circumstances as indicated hereinabove and the mere fact that Sonaram Boro aforementioned had been appointed from the said list does not mean that the said list shall be treated as valid until the time all persons appearing in the list stand appointed nor can the Court insist that all future appointments must be made from such a list only. To the case at hand, therefore, the reference made by Mr. Khetri to the decision in Madan Lal and Others Vs. State of Jammu and Kashmir and Others, , is also not applicable and it is, in fact, contrary to what the plaintiffs seek to establish.

28. As far as Mr. Khetri's reliance on Munna Roy Vs. Union of India (UOI) and Others, is concerned, it may be noted that this case lays down that there can be no arbitrary cancellation of select list. In the case at hand, nothing could be pointed out on behalf of the plaintiffs, to show that the cancellation of the select list was arbitrary inasmuch as the select list of 1985 cannot for the reasons as have been discussed hereinabove, be treated to be valid up to 1989.

29. Though Mr. Khetri has referred to Shri Prodip Kumar Das v. Union of India (1985) 2 GLR 459, this case has no application to the facts of the present case inasmuch as it is not a case of the plaintiffs that more vacancies than what case inasmuch as it is not a case of the plaintiffs that more vacancies than what had been filled up were advertised for selection and or appointment and/or existed or exist.

30. The fact that an otherwise invalid list has been acted upon for giving appointment to someone in the select list cannot be treated as a ground for appointment of those others too, who figure in the select list. Reliance placed, in this regard, by Mr. Bhattacharya, therefore, on the decision in State of U. P. and others Vs. Harish Chandra and others, is not at all misplaced.

31. What, thus, crystallizes from the above discussion is that the plaintiffs had no legal, indefeasible or vested right to seek or demand appointment on the strength of the select list, in question, and the learned first appellate Court gravely erred in law in giving such a relief sought for by the plaintiff-respondents. Viewed from this angle, the impugned decree cannot be allowed to

stand good on record.

32. In the result and for the reasons discussed above, this second appeal succeeds. The impugned judgment and decree are accordingly set aside and the decree passed by the learned trial Court is hereby restored and maintained.

33. Parties are, however, left to bear their own costs.