
(2015) 09 GAU CK 0008

In the Gauhati High Court

Case No : W.P.(C) Nos. 1860, 3523, 2689, 1773, 2253, 1771 of 2008 and 3712 of 2009

Atul Chandra Saikia and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:

Citation : (2015) 4 GLT 1137

Hon'ble Judges : Hrishikesh Roy, J.

Bench : Single Bench

Advocate : A.B. Choudhury, J.P. Sarma, I. Rafique, S.A. Choudhury, S. Dey, J.I. Borbhuiya, F. Begum, L. Mohan, S. Roy, A.S. Choudhury, S. Seal, I. Hussain, R. Ahmed, R. Islam, R. De, N. Mitra, D. Devi, B. Ahmed, N. Haque, S.K. Deori, H.I. Choudhury and K. Uddin, Advocates, for the Appellant; S.K. Talukdar, SC and P. Hazarika, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Hrishikesh Roy, J.—Heard Mr. A.B. Choudhury, the learned Senior Counsel for the petitioners in the WP(C) No. 1860/2008. The petitioners in the WP(C) No. 3523/2008 are represented by the learned Counsel Mr. J.I. Borbhuiya. The submission on behalf of the petitioners in the WP(C) No. 2689/2008 is advanced by Dr. B. Ahmed, the learned Counsel. Mr. R. De, the learned advocate represents the petitioners in the WP(C) No. 1773/2008, WP(C) No. 1693/2008 and WP(C) No. 3712 respectively. But the advocates are absent for the petitioners in the WP(C) No. 2253/2008 and WP(C) No. 1771/2008 although their names are shown in the cause list. The departmental authorities are represented by the learned Counsel Mr. S.K. Talukdar and Mr. P. Hazarika. The selected candidates were arrayed as respondents in the WP(C) No. 3523/2008 and newspaper notice was also published for them to appear in the proceeding but there is no representation from their side. The process of selection and appointment to 464 posts of surveillance workers (Grade-III post) under the Directorate of Health Services, Assam, is under challenge in these proceedings.

Some of the petitioners were engaged earlier as DDT sprayers (Grade-IV post) and also as surveillance workers under the Malaria Eradication Programme and these seasonal workers claim weightage for their experience, in the impugned recruitment. The basic contention of the petitioners is that district wise selection should have been undertaken for the vacancies in each district and according to them, the centralized selection made by the Director, is contrary to the applicable norms.

2. The specific contention of the petitioners in the WP(C) No. 3523/2008 is that merit was ignored and candidates with lower score than the petitioners were appointed. The second plea of this group is that although 30 was the pass mark for the written test, many who had secured the threshold mark, were not called to appear in the viva voce test.

3. The bona fide of the selection process is questioned in the WP(C) No. 3712/2009 by projecting that even before the select list was published in the newspaper on 22.4.2008, a number of selected candidates reported for joining in the Hailakandi District but after they submitted their joining reports, they were deputed for duty in other districts because of which the service of the appointed surveillance workers was not available in the Hailakandi district.

4. In order to project that selection was manipulated by the Members of the Selection Committee, the petitioners rely on the Chief Minister's Vigilance Cell Case No. 2/2015 registered on 30.4.2015 against some officials of the Health Directorate to contend that since several fake appointments were made in the Jorhat and Lakhimpur districts, the present recruitment process is also clouded.

5.1 On the other hand, Mr. S.K. Talukdar, the learned Counsel for the Health Department submits that the selection was made on merit and in order to show that recruitment was made bona fide, the departmental lawyer projects that the written examination was conducted by the examiners of the Dibrugarh University, who had set the question papers and also evaluated the answers scripts. Therefore it is argued that manipulation of the selection by the official respondents, is not at all possible.

5.2 Referring to the legal provisions for recruitment of surveillance workers, Mr. Talukdar submits that centralized recruitment is envisaged under the Vector Borne Disease Control Programme Service Order, 2006 and district wise selection is not prescribed by the service guidelines.

5.3 The departmental lawyer submits that the petitioners have structured their case on wrong premises by comparison of marks for dissimilar categories and he produces the selection records to project that only the most meritorious performers in each category was selected.

5.4 Mr. Talukdar further submits that the selection and recruitment was made through a transparent and bona fide process involving the Dibrugarh University and selection was made on merit and he argues that the contention made to the

contrary by the petitioners are entirely based on surmises and conjectures.

6. Under the erstwhile National Malaria Eradication Programme of the Central Government, the posts of surveillance workers, spray workers, vaccinators, field workers and superior field workers were created and these staff were engaged for implementation of the Malaria Eradication Programme, which is now re-named as the National Vector Borne (NE) Disease Control Programme (hereinafter referred to as "the Disease Control Programme"). The surveillance workers under the Disease Control Programme are expected to keep vigil for Vector Borne Diseases in their jurisdictional area and also educate people on how malaria can be avoided.

7. The process of recruitment for the vacancies of surveillance workers was started in the year 2005 but noticing the anomalies in the selection process, the process was cancelled and the Government ordered for fresh advertisement on 4.9.2006, for de novo selection. Thereafter advertisement was issued on 3.2.2007 for the 464 posts of surveillance workers, by the Director of Health Services and the petitioners offered their candidatures. A two stage selection process with written test of 100 marks and viva voce with 25 marks, was made the basis of selection.

8. Some of the candidates who had participated in the abandoned selection process initiated in the year 2005, challenged the cancellation order and also the fresh process of selection. Another group claimed weightage for their experience as seasonal workers in the Malaria Eradication Programmes. Eventually a bunch of writ petition with the lead case i.e. WP(C) No. 5162/2006 (Bhaban Mohan and another vs. State of Assam and others) was disposed of on 23.2.2007 whereby this Court directed the State, to specify the extent of preference/weightage to be given to the DDT sprayers, in the process of selection of field workers/superior field workers, in pursuant to the advertisement dated 29.09.2006.

9. Following the selection process initiated through the advertisement dated 3.2.2007, the candidates appeared in the written test on 26.8.2007 at Guwahati and thereafter the viva voce was conducted in the ratio of 3:1 i.e. 3 candidates for each vacancy and the Roll Numbers of the selected candidates was hung up in the Director's office on 11.4.2008 but this List was published in the newspaper only on 22.4.2008.

10. The petitioners were unsuccessful and they challenge the legality of the recruitment by contending that centralized selection is illegal and the recruitment of surveillance workers must be made through localized selection process in each district. In support of such contention, the petitioners' Counsel rely on the Vector Borne Disease Control Programme Service Order, 2006 (hereinafter referred to as "the Service Order 2006"); the Assam District Wise Population Pattern Reflection. In service (In Class III and Class IV Posts) Act, 1994 (hereinafter referred to as "the District Wise Population Act 1994") and also the Assam Public Services (Direct Recruitment to Class-III and Class-IV Posts) Rules, 1997

(hereinafter referred to as "the Recruitment Rules 1997") to argue that centralized selection is not envisaged for the post of surveillance workers and the recruitment must be made by a District Selection Board in each district.

11. The cadre strength of surveillance workers is notified as 1697 in the Service Order 2006 and the Director of Health Services is made the "appointing authority" under Section 2(a) A "District Selection Board" under Section 2(b) is envisaged for direct recruitment to Grade-III posts and the process of recruitment is specified under Section 6 of the Service Order 2006. Responsibility for assessing the available vacancies and making the selection is entrusted to the "appointing authority" by Section 6 of the Service Order 2006 and composition of the four Member Selection Board headed by the Director of Health Services, is given in Section 11 of the Service Order 2006. Besides the Director, other three Members of the Selection Board are Guwahati based officers and conspicuously Section 11 doesn't provide for a member from the District Health authorities.

12. But there appears to be some contradiction vis-?-vis the "Selection Board" specified in Section 11 with the "Board" as defined under Section 2(b) of the Service Order 2006 since the definition section envisages a "District Selection Board". However if one examines the method of recruitment prescribed under Section 6 as well as the composition of the "Selection Board" given under Section 11 coupled with the fact that the Director of Health Services is the "appointing authority" under Section 2(a), it is difficult to comprehend and reconcile the concept of District wise selection for the post of surveillance workers, under the Service Order 2006, as is canvassed by the petitioners.

13. At this stage, it would be necessary to notice the impact of the Recruitment Rules 1997 and the District Wise Population Act 1994 since these two enactments are pressed home by the learned lawyers to argue for district wise selection. Direct recruitment to Class-III and Class-IV posts are regulated under the District Wise Population Act 1994 and the "principles of appointments" stipulated under Section 4 makes it absolutely clear that qualification and standard can't be compromised, to ensure the reflection of the population pattern of the district, in the matter of recruitment. Thus upon proper analysis and interpretation it can be concluded safely that the legislative intent was not to over-emphasize the population pattern in the district and the merit of the candidates must get precedence because of the "principle of appointment", stipulated by the District Wise Population Act 1994.

14. In so far as the Recruitment Rules 1997 is concerned, the Rules come into play only when Service Rules/Executive Orders are absent and the Rules are not to be applied universally for all recruitments because of the bar of Rule 3(2)(i) in those situations, where recruitment is governed by Service Rules/Executive Orders. In view of the limited scope for application of the Recruitment Rules as restricted by Rule 3, and since Executive Orders in the shape of the Vector Borne Disease Control Programme Service Order, 2006 govern the recruitment process of surveillance workers, this Court of the firm view that the concept of district

wise selection for such posts can't be imported, on the strength of the District Wise Population Act 1994 and the Recruitment Rules 1997. Thus the centralized process of recruitment as specified under Section 11 of the Service Order 2006, is found to be consistent with the legal provisions. On the basis of the above discussion in the preceding paragraphs, I hold that centralized process is the legal mode of recruitment for the post of surveillance workers.

15. Now the impact of the common judgment of this Court in the WP(C) No. 5162/2006 Bhaben Mohan and other group cases has to be assessed. Here the High Court was considering the process of appointment to a number of posts such as field workers, superior field workers, surveillance workers, laboratory technicians, laboratory assistants, drivers etc. under the Health and Family Welfare (A) Department. But although those writ petitioners were from different categories, the eventual Court direction was for considering preference/weightage only for the posts of field workers/superior field workers. In fact the specific direction given in paragraph 36 of the judgment of 23.2.2007 doesn't refer to the process of appointment for the post of surveillance workers. Therefore I hold that preference/weightage can't be claimed for the post of surveillance workers, on the strength of the judgment in Bhaben Mohan (supra).

16. The next issue to be considered is whether any illegality was committed in the centralized recruitment process since the unsuccessful candidates argue that the selection was not made on merit. The relevant averments alleging unmerited selection is available in the WP(C) No. 3523/2008 and therefore the merit of these averments have to be assessed. On 7.11.2007 the Selection Committee prescribed 30 as the pass mark in the written test and the petitioners 11 - 47 in the WP(C) No. 3523/2008 contend that although they had secured 30 or more in the written segment, they were not called for the viva voce test. But on 7.11.2007 itself, the same committee passed the resolution No. 7, fixing the 1:3 ratio or in other words they resolved to call 3 times the number of vacancies, for the viva voce test. The selection record shows that the requisite 1:3 ratio figure was reached at a much higher cut off marks. For instance for the general category male candidates, the cut off mark was 71% and for the MOBC male category the cut off mark was 69%, in the written test. Therefore only those who scored high marks and who came within the zone of consideration (in the ratio of 1:3), were called for the viva voce test and this is how many candidates who may have secured the pass mark of 30, were overlooked for the viva voce segment. But when we examine the issue in the context of the 1:3 ratio as was resolved on 7.11.2007 by the selection committee, the exclusion of some for the viva voce test who may have secured the pass mark of 30, can't be said to be illogical.

17. To project unmerited selection, averments are made in paragraph 21, 22 & 23 of the WP(C) No. 3523/2008 where it is alleged that candidates with lesser marks were selected. But it appears that the comparison of marks is made amongst unequals of different categories and that is how, incorrect projection is

made by the petitioners. For instance, the marks of the 4 general category male candidates are reflected in paragraph 16, to compare them with marks secured by the selected female candidates, whose names are reflected in the next paragraph. Similarly the 6th petitioner is projected as an OBC category candidate and her marks are compared with selected female candidate of OBC category. Likewise in the ST(P) category, the case of 5th petitioner is highlighted, but here the comparison is made with selected female candidates of ST(P) category. In the present selection exercise, reservation for OBC, ST, SC category to the extent of 49% of the total vacancies was already earmarked. But within the reserved and open categories, horizontal reservation for woman (30%) and disabled category was also envisaged and selection was made by applying the criteria of both vertical and horizontal reservation. Therefore the comparison of marks of a male in the general category with the female candidate in the same category, doesn't reflect the selection of a lesser merited person. Since horizontal reservation for woman to the extent of 30% was prescribed, a female candidate with lesser score certainly has a greater chance for recruitment, if compared with a male candidate of the same category. Thus comparison of marks of male candidates in the open and ST category, with female candidates of these two categories do not establish unmerited selection, because of horizontal reservation prescribed for woman candidates. So far as the 6th petitioner Binapani Roy is concerned, although she is projected to be of the OBC category, she was considered as a general category candidate as can be seen from the selection records and therefore comparison of her marks with selected female candidate of OBC category can't be made the basis for conclusion that unmerited selection was made by the authorities.

18. The petitioner refer to the registration of the Chief Minister's Vigilance Cell Case No. 2/2015 against the then Director of Health who was the Chairman of the selection board. A reading of the FIR produced by the petitioners' counsel shows that the allegation therein relates to the issuance of fake appointment orders without advertisement or selection, to appoint pharmacists, vaccinators, laboratory injector, BCG technician, surveillance workers, ward boys, dressers, drivers etc. in the Jorhat and Lakhimpur districts and these allegations may have no connection with the recruitment process impugned here. A prima facie reading of this FIR doesn't suggests that this criminal case was registered in connection with the appointments of 464 surveillance workers in pursuant to the advertisement dated 3.2.2007 and therefore I do not find any basis to draw any negative inference for this selection process, on the basis of that criminal case.

19. Before parting with the records, another point raised by the petitioners is required to be considered. It appears that the Roll numbers of the selected candidates was published in the newspapers only on 22.4.2008 but some of the selected candidates reported for joining 2/3 days before the newspaper advertisement was issued. But it appears from the selection records produced by the departmental lawyer that the select list was prepared on 9.4.2008 and a letter was sent on 11.4.2008 to the Director of information and public

information, to publish the select list in three leading daily newspapers of the State. It further appears that the select list was pasted in the Notice Board of the Director's office on 11.4.2008 and that is how a few successful candidates could collect the appointment letters before the newspaper publication of the select list on 22.4.2008. The late publication in the newspaper can best be explained by the Director of Information and Publicity and on this count, no illegality can be assumed as there is a logical explanation for early reporting by few selected candidates. Thus in my perception, the appointment followed the select list and not vice versa, as is suggested by the petitioners.

20. From the selection records produced in Court by the departmental lawyer, it appears that the cut off mark for male and female candidates in any category is not the same because 30% posts were reserved for woman. The entire selection records were made available for perusal by the lawyers for the unsuccessful petitioners and although they had ample time to examine the records, they failed to bring forth a single instance of a lesser merited candidate securing appointment on the strength of the impugned selection process. Moreover the Dibrugarh University had conducted the written examination and no allegation is made against the evaluation process. Thus inescapable conclusion must be drawn that the selection was made on merit.

21. Moreover since centralized recruitment was envisaged under the Service Order 2006, the non-selection of expected number of candidates from a given district can't by itself make the process illegal. While on this point, since a specific plea was made in respect of the vacancies in Hailakandi district the court is informed that 46 posts of surveillance workers is sanctioned for Hailakandi district and at present 29 persons are working in that district. But the 12 persons appointed in year 2008 in Hailakandi District are missing but they are reportedly posted in Nalbari/Nagaon/Barpeta and Kamrup, which are their home districts. Such information is obtained by the petitioners in the WP(C) No. 3712/2009 through their RTI application and the information reflects that as on 22.1.2009 all 12 persons are posted in the home districts and more importantly, not in their respective place of appointment in Hailakandi district. The deployment of surveillance workers can be made in exigencies of service but at the same time, it is the responsibility of the appointing authority to ensure that no undue favour is shown to any appointee. Such discriminatory postings send a wrong signal to those who expect fair treatment from the hands of the State authorities and in fact this is one factor because of which the bona fide of the appointing authority is suspected by the unsuccessful candidates. Therefore this aspect must be appropriately addressed by the authorities to ensure that no special favour is shown in posting of the surveillance workers to deny the appointee's service at the place, where they were originally appointed. Hence necessary re-consideration on the place of posting of the 12 appointees of Hailakandi district is ordered to be made by the Director within 4 weeks of receipt of this order. It is ordered accordingly.

22. The recruitment process for the surveillance workers was initiated through advertisement of the vacancies and the method of selection prescribed by the Service Order 2006 was followed by the authorities. The norms of selection were decided beforehand and only after evaluation of the merit of the candidates, appointments were given by notifying the select list. The process in my perception was fair and transparent and no legal infirmity is seen with the exercise undertaken by the respondents. In view of the above decision, I hold that selection was made on merit as per law and the petitioners are disentitled to any relief and therefore these cases are disposed of accordingly. No cost.