
(2006) 03 GAU CK 0106

In the Gauhati High Court

Case No : Writ Petition (C) No's. 81 and 5886 of 1999 and 1892 of 2000

Babita Sarma and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 17-03-2006

Acts Referred:

Citation : (2006) 2 GLT 335

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : B.D. Das, H.K. Sarma and R. Ali, for the Appellant; U.K. Goswami, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—All the three writ petitions have been heard together. Since the facts involved are more or less same and the reliefs sought for by the Petitioners are also same, they are being disposed of by this common judgment and order.

2. The writ Petitioners offered their candidatures for appointment as Assistant Teacher in L.P. and M.E. Schools under Barhampur constituency in the district of Nagaon. The advertisement was issued in December, 1996 inviting applications for appointment of 7500 Assistant Teachers in M.E./L.P. Schools. According to the Petitioners they appeared in the interview conducted for the selection and did well.

3. As per the statements made in the writ petition, the select list was published and notified in the Notice Board of the office of the Respondent No. 3 on 15.11.99, but the Petitioners could not collect the same and the select list was removed from the Notice Board. Repeated requests made by the Petitioners before the authorities to supply the copy of the select list failed to evoke any response. Thus, it is the case of the Petitioners that they are not aware of the date of the selection and as to whether they were selected or not.

4. Referring to the appointments made in favour of the private Respondents, the

Petitioners have contended that the Petitioners being much more meritorious than the private Respondents, they could not have been ignored for appointment. Further contention raised is that the Selection Board, which conducted the selection, was re-constituted at a later stage and the same was in violation of the rules. Another ground urged in the writ petition towards assailing the action of the Respondents is that the entire selection was politically motivated, since the relatives of the members of the Selection Board were picked up for the selection.

5. It is on the aforesaid contentions raised in the writ petition, the Petitioner have made the prayer for a direction to the Respondents to provide the Petitioners with the copy of the select list alongwith the marks obtained by the candidates. Further prayer made is to set aside the select list if the same is found to be illegal. Thus, from the second prayer, it will be seen that the task of declaring the select list as illegal or otherwise has been thrust upon the writ Court without discharging initial burden, which normally lies with the party assailing the selection.

6. Mr. B.D. Das, learned Counsel for the Petitioners made his submission in tune with the averments made in the writ petition. On the other hand, Mr. U.K. Goswami, learned Standing Counsel, Education Department submits that no relief can be granted to the Petitioners on the basis of the vague and indefinite statements made in the writ petitions. He also submits that in view of the long lapse of time and also in view of the fact that the select list has already expired, the Petitioners are not entitled to any relief.

7. I have considered the rival submissions made by the learned Counsel for the parties. The ground on which, the writ petitions are based towards assailing the appointments of the private Respondents and the task of declaring the select list as illegal thrust upon the Court without discharging the initial burden for the same are as follows:

(i) The Constitution of the Selection Board was changed after the selection was conducted.

(ii) Selections and appointments were made on political consideration providing employment opportunity to the near relatives of the members of the Selection Board.

(iii) The private Respondents being inferior in merit than the Petitioners they could not have been selected and appointed.

8. Although, sweeping remarks have been made that the entire selection and the subsequent appointments were made on of political consideration, neither the members of the Selection Board nor the appointees are parties to the proceeding. In case of alleging malafide and/or colourable exercise of power in the matter of selection, the persons concerned must be brought on record. In the instant case, not to speak of such persons being party to this proceeding, even

they have not been named. The same is the position relating to the purported illegal appointees. Except the private Respondents none of the selected candidates and appointees are party to this proceeding.

9. The contentions in respect of the appointments of the private Respondents, are not relating to any political affiliation on their part, but on the ground of they being lesser meritorious than the Petitioners. In this respect also the Petitioners cannot succeed. It is not the case of the Petitioners that the private Respondents were not eligible to appear in the selection. If the private Respondents were eligible for sitting in the selection, their merits were to be judged by the Selection Board alongwith all the eligible candidates. If on the basis of their performance in the selection, the private Respondents were selected and appointed, I am of the considered opinion that no fault can be attributed to the official Respondents.

10. As regards the prayer for the Petitioners to declare the select list as illegal, same cannot be done on the basis of the scanty materials and on the basis of the vague and indefinite assertions made by the Petitioners. Further as the selected candidates and the members of the Selection Committee are not party to this proceeding, no order can be passed adversely affecting their interest. Even if the private Respondents and for that matter, some others were appointed illegally, same cannot give rise to any right to the Petitioners for their appointments inasmuch as same will not be by way of setting wrong to right but would mean to give rise to another illegality. The Petitioners will have to establish their case on their own merit and not on the basis of purported illegalities committed by the Respondents.

11. As noticed above, the alleged illegality could not be pinpointed by the Petitioners and the writ petitions are based on vague and indefinite statements without any concrete materials so as to come to a definite conclusion that the entire selection process was vitiated.

12. In view of the above, I do not find any merit in the writ petitions and they are dismissed. There shall no order as to costs.

13. Writ petitions are dismissed.