

(2022) 05 GAU CK 0015

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 1678, 1988 Of 2022

Bahar Uddin Barbhuiya

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 13-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2022) 05 GAU CK 0015

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : M H Ahmed, N. Sultana, D. Nath

Final Decision : Dismissed

Judgement

1. Heard Mr. M.H. Ahmed, learned counsel for the petitioners as well as Mr. D. Nath, learned Additional Senior Government Advocate for the State respondents.
2. As the issue to be decided in both the writ petitions are the same, the two writ petitions are being disposed of by this common judgment and order.
3. The petitioners are aggrieved at not being able to take part in the selection process for recruitment to the post of Constables in the Assam Industrial Security Force (AISF) Battalion under the Director General of Civil Defence (DGCD) & Commandant General of Home Guards (CGHG), Assam in terms of the Advertisement dated 13.12.2017.
4. The petitioners' case is that in terms of the Advertisement dated 13.12.2017, for recruitment to the post of Constables in the AISF Battalion under the DGCD & CGHG, only Special Police Officers (SPOs) were allowed to participate as candidates in the selection process. The petitioners who are working as Home Guards have made a prayer to allow them to participate in the selection process, on the ground that they could not have been discriminated from participating in the selection process.

5. The petitioners' counsel submits that the SPOs who are allowed to participate in the selection process are also Home Guards and just because the petitioners are not SPOs, the respondents cannot discriminate against the petitioners. He further submits that in a similar case being WP(C) No.6921/2021, this Court vide order dated 03.02.2022 directed the State respondents to permit the petitioners therein, who were home-guards, to take part in the selection process in terms of the Advertisement dated 13.12.2017. He accordingly submits that a similar direction should be passed in the present case.

6. The petitioners' counsel submits that though the petitioners have prayed for setting aside the impugned advertisement dated 13.12.2017, Notice/Addendum dated 27.10.2021 and the Advertisement dated 8.06.2020, the petitioners do not wish to press the prayer for setting aside the impugned Advertisements. Further, the Advertisement dated 8.06.2020 had already been challenged in WP(C) No.6921/2021 and this Court in its order dated 03.02.2022 passed in WP(C) No.6921/2021 did not interfere with the Advertisement dated 08.06.2020.

7. In support of his submission that relief can be granted at a belated stage, even though the selection tests have been concluded, the petitioners' counsel has relied upon the judgment of the Apex Court in the case of Zenit Mataplast Private Limited vs. State of Maharashtra & Others reported in (2009) 10 SCC 388, which is to the effect that the Court may grant interim relief at a belated stage, where the case of a party is based on fundamental rights guaranteed under the Constitution and the applicant has not been negligent in pursuing the case.

8. Mr. D. Nath, learned Additional Senior Government Advocate for all the respondents submits that though the petitioners are similarly placed as the petitioners in WP(C) No.6921/2021, the present writ petition should be dismissed in view of the fact that by the time the petitioners herein had approached this Court, the Physical Efficiency Test (PET) and Written Test had already been undertaken/completed. He submits that only the results have to be declared and appointments of the selected candidates who took part in the selection process have to be made on the basis of marks secured in the PET and the Written Test. The Counsel for the respondents further submits that the petitioners being fence-sitters, they cannot be allowed to ride piggyback on the orders passed by this Court in a similar case, especially when there is delay and laches.

9. Mr. D. Nath also submits that there are 92 vacancies in AISF Battalion No.-I and 214 vacancies in AISF Battalion No.II, for which a recruitment process would be held in future. He submits that the petitioners can be allowed to participate in the said recruitment process for filling up the vacancies in the above two AISF Battalions, in terms of the order dated 03.02.2022 passed in WP(C) No.6921/2021, as and when the Government respondents initiates the process for recruitment.

10. I have heard the counsels for the parties.

11. The brief facts of the case is that the respondents issued an Advertisement dated 13.12.2017 for recruitment of Constables from SPOs into the AISF Battalions under DGCD & CGHG, Assam. The last date for submission of applications was 26.12.2017 midnight. The petitioners' grievance is that while the SPOs, who are also from the Home Guards Organization, were allowed to participate in the selection process, Home Guards who are not SPOs, like the petitioners, could not participate in the selection process.

12. In WP(C) No.6921/2021 (Saynul Haque & 7 Others vs. State of Assam & 4 Others), this Court vide order dated 03.02.2022 directed the respondents to permit the petitioners therein to take part in the PET and Written Test, in pursuant to the Advertisement dated 13.12.2017. This Court had allowed the petitioners in WP(C) No.6921/2021 to take part in the selection process due to the allowance given by the Director General of Civil Defence & Home Guards, Assam in his affidavit-in-opposition in WP(C) No.6921/2021, which is reproduced below :

"9. That with regard to the statements made in paragraph 16 of the writ petition, the deponent states that Home Guards are raised and trained as per provision of Home Guards Act & Rules, 1947 amended in 2015. They are volunteers in nature and whenever they are called for duty they were paid duty allowances at the rate approved by Govt. The petitioners are not barred to submit their candidature for the posts of constables provided they are Home Guards and they need to qualify PET as prescribed in the advertisement. So the question of violation of natural justice does not arise."

13. This Court thereafter had directed the respondents to permit the petitioners to take part in the selection process on the ground that it was apparent that the Government was willing to allow the petitioners therein to participate in the selection process. The operative part of the order dated 03.02.2022 passed in WP(C) No.6921/2021 is reproduced below as follows :

".....

Situated thus and with the consent of both the parties, I dispose of this writ petition with a direction upon the respondent Nos. 2 and 3 to permit the petitioners to take part in the PET. Subject to the result of the PET, the petitioners shall be allowed to take part in the written test and other levels of tests as envisaged by the advertisement notice dated 13-12- 2017.

....."

14. The petitioners herein are no doubt similarly situated as the petitioners in WP(C) No.6921/2021. Accordingly the petitioners herein would have to be treated similarly as the petitioners in WP(C) No.6921/2021. However, the petitioners in the present two writ petitions have approached this Court, to take part in the selection process, pursuant to the Advertisement dated 13.12.2017, by filing their writ petitions only on 04.03.2022 and 11.03.2022, whereas the

selection process has been concluded by the respondents in February, 2022. In fact the Written Test was over on 27.02.2022.

As the petitioners have approached this Court only after the written test has been completed, this Court is of the view that the petitioners have missed the bus for taking part in the selection process.

15. In the case of State of Uttar Pradesh vs. Arvind Kumar Srivastava, reported in (2015) 1 SCC 347, the Apex Court has held that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. However, this is subject to well recognized exceptions in the form of laches and delay as well as acquiescence. Those persons who did not challenge the wrongful action and woke only when their counterparts have succeeded in their efforts, would be treated as fence-sitters and laches and delay or the acquiescence, would be a valid ground to dismiss their claim. The relevant paragraph 22 in the case of State of Uttar Pradesh vs. Arvind Kumar Srivastava (supra) is re-produced below :

"22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

22.1 Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2 However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3 However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like

scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

16. In the facts of these two cases, this Court is of the view that the petitioners' case is hit by laches and delay in approaching this Court, inasmuch as, the advertisement for filling up the post was published on 13.12.2017, while they approached this Court only in the month of March, 2022. On the other hand, PET had already been concluded and the written test had also been conducted on 27.02.2022, for those candidates who were successful in PET. No reasons have been given by the petitioners for the delay in filing the writ petitions. As such, by following the judgment of the Apex Court in the case of Arvind Kumar Srivastava (supra), this Court is of the view that the petitioners being fence-sitters, besides there being delay and laches in approaching this Court, their prayer for allowing them to participate in the selection process cannot be allowed. It is also noticed that the prayer in the present two writ petitions and in WP(C) No.6921/2021 are the same. However, this Court had disposed of WP(C) No.6921/2021 with the consent of the parties, permitting the petitioners therein to take part in the selection process. Thus the judgment in WP(C) No.6921/2021 was not a judgment in rem, with an intention to give benefit of the said direction to all similarly situated persons, whether they approached the Court or not. Further, this Court is of the view that the facts in Zenit Mataplast Private Limited (supra) being different from the facts of this case, the said decision is not applicable to the facts of this Case.

17. In view of the reasons stated above, this Court finds that as the petitioners have not approached this Court prior to the written test being conducted, this Court is not inclined to exercise its discretion in the present case.

18. The writ petitions are accordingly dismissed. Interim order passed earlier stands vacated.