
(2008) 05 GAU CK 0076
In the Gauhati High Court
Case No : Writ Petition (C) No. 441 of 2007

Beena Borah

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 09-05-2008

Acts Referred:

Assam Secondary Education (Provincialised) Service Rules, 1982 — Rule 7, 7(1)
Constitution of India, 1950 — Article 14

Citation : (2009) 1 GLT 637

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : A.K. Goswami and S. Banik, for the Appellant; U.K. Goswami, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—By means of this writ petition filed on 25.01.07, the Petitioner seeks implementation of the purported select list dated 24.11.99 prepared for appointment of Assistant Teachers in the particular constituency in the District of Sonitpur, Assam. Prior to that she had filed W.P. (C) No. 5420/01 which was disposed of by order dated 04.08.01 providing consideration of her representation for appointment.

2. Employment notice inviting applications to fill up about 1000 posts of "Graduate Teachers" in the provincialised High Schools/High Madrassa Schools in various districts of Assam was issued in the year 1996. It is the case of the Petitioner that in response to the said employment notice she had offered her candidature. Interview was conducted in the year 1997 and the select list for the particular constituency, i.e. Gohpur LAC in the district of Sonitpur, was prepared on 24.11.99.

3. Altogether 15 candidates, 8 in the main list and 7 in the waiting list were included in the select list. The name of the Petitioner appeared at serial No. 7(a). Generally and normally the task of the Selection Board in any selection is to

select the candidates in order of merit and not to indicate the place of posting and/or the vacancies against which the selected candidates are to be appointed. However, the copy of the select list annexed to the writ petition (Annexure-II) indicated the names of the school to which the selected candidates were to be appointed. In the "Remarks" column there was also indication regarding posting on transfer of regular incumbent and to appoint the selected candidates. So far as the Petitioner is concerned, the remark was "subject to conversion of post by the Government". The school to which the Petitioner was to be appointed subject to conversion of post was indicated as Dubia Higher Secondary School, Dubia, Sonitpur. It is not understood as to how the selection committee could take recourse to such unusual function contrary to rules.

4. The Inspector of Schools, Sonitpur District Circle (SDC), Tezpur by his Annexure-III letter dated 26.11.99 requested the Director of Secondary Education, Assam for conversion of Sanskrit Post (Classical) in Dubia Higher Secondary School to a general post. There was no indication that such conversion was required to accommodate the Petitioner. It may be mentioned here that the copy of the letter was endorsed to the Private Secretary to the Speaker of the Assam Legislative Assembly for his appraisal. Conversion of the post of Sanskrit (Classical) to a general graduate post was accorded and the same was conveyed vide Annexure-IV letter dated 02.03.01. In turn same was conveyed by the Deputy Director of Secondary Education, Assam to the Inspector of Schools, SDC vide Annexure-V letter dated 03.03.01. However, when the Petitioner was not appointed, she approached this Court by filing the aforesaid writ petition, i.e. W.P. (C) No. 5420/01. As noted above, the writ petition was disposed of providing for disposal of the representation submitted by the Petitioner on 20.07.01.

5. The order dated 04.08.01 having not been complied with, the Petitioner filed contempt case No. 351/02. However, same was closed by order dated 18.01.07. The Petitioner although mentioned about the closure of the same by order dated 18.01.07, but has not disclosed the detail of the said order.

6. In the meantime, the Govt. of Assam in the Education Department issued notification dated 03.12.03 conveying the policy decision not to act upon any select list and/or proceeding of selection prior to 01.04.01. The Director of Secondary Education, Assam by his Annexure-IX letter dated 19.10.05 requested the Govt. to clarify the position relating to expiry of the list in question, validity of which had already expired. Thereafter the Commissioner and Secretary to the Govt. of Assam in the Education Department passed the impugned Annexure-X order dated 27.12.06 expressing the inability of the Govt. to appoint the Petitioner as was claimed by her. Hence this writ petition.

7. The Respondents have filed their affidavit in opposition justifying the impugned order.

8. I have heard Mr. A.K. Goswami, learned Sr. Counsel assisted by Mr. S. Banik,

learned Counsel for the Petitioner as well as Mr. U.K. Goswami, learned Standing Counsel, Education Department. According to Mr. Goswami, learned Counsel for the Petitioner since there was ban on appointment, the Petitioner could not be appointed and as soon as the conversion of the post was approved by the Govt., the Petitioner ought to have been appointed. On the other hand, Mr. U.K. Goswami, learned Standing Counsel, Education Department justifying the impugned action on the part of the Govt., submitted that after long 9 years of publication of the select list, the Petitioner cannot pray for any mandamus for her appointment as Assistant Teacher.

9. The Petitioner was an aspirant for appointment as graduate teacher. As per the classification made in the Assam Secondary Education (Provincialised) Rules, 1982 as well as the Assam Secondary Education (Provincialised) Service Rules, 2003, "graduate teacher" and "Classical teacher" are stated to be in two different categories. The post of Sanskrit pertains to classical category. The Petitioner was an aspirant for the post of graduate teacher and not classical teacher and thus naturally the post meant for classical teacher (Sanskrit) was not included in the advertisement. This is precisely the reason as to why the conversion of the post of classical category (Sanskrit) to that of general category was required for appointment of the Petitioner. The selection committee also made a remark to that effect specifying that the appointment of the Petitioner would be subject to conversion of the post.

10. If the Sanskrit post was to be included in the category of graduate teacher so as to include the same in the purview of advertisement and selection, same ought to have been done before the advertisement and selection. The post which was not included in the purview of selection, could not have been converted after selection for appointment of the Petitioner. As noted above, the task of the selection committee was to select the candidates and not to act as the appointing authority. The selection committee not only selected the candidates, but also indicated their place of posting. It also provided for transfer of regular incumbent to accommodate the selected candidates. In case of the Petitioner the remark was that her appointment would be subject to conversion of the post. Thus, although she was selected, she was not selected against any particular post in the category of graduate teacher.

11. Apart from the above, it is a settled law that as in the case of dereservation of posts, in case of conversion of post, also such conversion must be before any action set to motion for selection. At the time of selection and/or inclusion of the name of the Petitioner in the purported select list, no post was available for her appointment. Her appointment was dependent on conversion of the post. Any subsequent conversion of the post after the selection would mean existence of the post after selection. If the post was not within the purview of selection at the time of advertisement, such post cannot be filled up by a selected candidate and that too by way of conversion.

12. When the select list was published, no vested right had accrued to the

Petitioner. Subsequent conversion of the post could not have created any vested right in favour of the Petitioner. Any order passed which is against the rules also cannot create any vested right.

13. At the time of selection, the Assam Secondary Education (Provincialised) Service Rules, 1982 was holding the field. As per the requirement of Rule 7, before the end of each year, the appointing authority is to make assessment of the likely number of vacancies to be filled up by direct recruitment during the next year in different institutions. The selection Board shall make selection of the candidates and thereafter shall furnish to the appointing authority the list of the candidates in order of preference. It was none of the business of the Selection Committee to select the candidates for appointment upon conversion of the post. The particular procedure laid down in the Rules could not have been flouted by the selection committee. If any relaxation in the procedure was required to be followed, such relaxation ought to have been obtained from the competent authority before initiating the selection.

14. The task undertaken by the selection committee not covered by the Rules was violative of Article 14 of the Constitution of India. An illegal act cannot be made legal by later ratification of the same. The task of the Selection Board was to conduct selection for selecting the candidates against advertised post. However, it recommended the Petitioner for appointment subject to conversion of the post. In the case of *Ayurvidyan Prasarak Mandal v. Mrs. Geeta Bhaskar Pendse* reported in 1992 (1) SLJ (SC) 26, the Apex Court confronted with the plea that although the selection was conducted not as per the Rules, but the same having been approved by the University, irregularity if any, should be deemed as condoned, refused to accept the plea inter alia on the ground that the University could not have acted in breach of the Rules and such approval was illegal and ineffective and cannot validate the appointment.

15. In the instant case, the plea of the Petitioner is that since she was included in the select list, may be not against any post, but subject to conversion of the post and such conversion having been accorded by the Govt. may be after selection, she has an indefeasible right for appointment. At the first instance, the Petitioner could not have been selected in anticipation of conversion of post without there being any actual conversion and inclusion of post in the advertisement. Secondly such conversion was also after expiry of the list.

16. As per the Rule 7(1)(f), the select list shall remain valid for one year from the date of publication unless the Govt. extends the validity of the list for further period in the public interest in consultation with the Board. The select list was published on 24.11.99 and thus it expired on 23.11.2000. There is nothing to show that the Govt. in consultation with the Board had extended the validity of the list beyond 23.11.2000. Thus irrespective of Govt. notification dated 03.12.03 conveying the policy decision of the Govt. that any select list and/or selection process prior to 01.04.01 cannot be acted upon, the select list in question stood expired on 23.11.2000 by operation of Rule 7(a)(f) of the Rules.

17. Be it stated here that the Govt. Notification dated 03.12.2003 has been upheld by the Division Bench of this Court by order dated 10.01.2007 passed in Writ Appeal No. 08/2008. Conversion of the post was done vide Annexure-IV letter dated 02.03.01 much after expiry of the list on 23.11.2000. Such conversion of post, as noted above, also cannot create any right in favour of the Petitioner inasmuch as, at the time of conducting the selection the post was not within the purview of the selection. Apart from the above, law is well settled that mere inclusion of the name of the candidate in the select list does not give any right to be appointed. The Petitioner was included in the select list conditionally, i.e. subject to conversion of the post. Thus, it cannot be said that any vested right was created in her favour.

18. The person, who is selected, does not on account of being empanelled alone acquire any indefeasible right of appointment. Empanelment is at the best a condition of eligibility for purpose of appointment and by itself does not amount to selection or create a vested right to be appointed, unless the relevant service rule says to the contrary.

19. As has been held by the Apex Court in Madan Lal and Others Vs. State of Jammu and Kashmir and Others, the actual appointments to the posts have to be confined to the posts for recruitment to which requisition is sent by the Govt. Such merit list will have a maximum life of one year from the date of publication or till all the required appointments are made, whichever event happens earlier. The moment the advertised vacancies are filled in from the merit list, the list gets exhausted, or if during the span of one year from the date of publication of such list all the vacancies are not filled in, the moment the year is over, the list gets exhausted. In either event, thereafter if further vacancies are to be filled, or remaining vacancies are to be filled in, after one year, the fresh process of recruitment is to be initiated giving a fresh opportunity to all open candidates to complete.

20. Mr. A.K. Goswami, learned Counsel for the Petitioner in his argument also emphasized on legitimate expectation and equality under Article 14 of the Constitution of India. Both the concepts, if accepted, will be misplaced in the instant case. The claim based on merely legitimate expectation without anything more, cannot ipso facto give a right. For legal purposes, expectation is not the same as anticipation. Legitimacy of an expectation can be inferred only if it is founded on the sanction of law. Even if it is accepted that there was any improper permission, that may render such permission vulnerable, but it cannot come to the aid of the Petitioner. Two wrongs do not make a right. The Petitioner cannot claim that since something wrong has been done in Anr. case; direction should be given for doing Anr. wrong. In such matters, there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution cannot be pressed into service in such cases.

21. For the aforesaid reasons, I do not find any infirmity in the decision of the Govt. Consequently, no interference is called for with the impugned order dated

27.12.06 (Annexure-X) passed by the Commissioner, Govt. of Assam in the Education Department rejecting the claim of the Petitioner for appointment in respect of the selection conducted in 1999. Consequently, the writ petition stands dismissed, without, however, any order as to costs.