

(2004) 02 GAU CK 0041
In the Gauhati High Court
Case No : Writ Petition (C) No. 2859 of 2003

Bhaben Kalita and Others

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 09-02-2004

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2004) 3 GLR 69

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : Dipashree Sinha, for the Appellant; GA Assam, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—By this writ petition a prayer has been made for appointment of the petitioners as Fireman in the State Fire Service Organization, Assam. According to the petitioners, the respondents by an advertisement issued in the year 1997 invited application from the eligible candidates for recruitment of Fireman. By accepting their candidature, they were called for written test scheduled to be held on 10.11.1997 by a letter, dated 24.10.1997. Nothing has been stated in the said petition as to whether the petitioners could qualify in the writ examination and whether were invited for oral test. However, a statement has been made that pursuant to the call letters issued to them for the written examination, they all appeared in the selection process conducted by the respondents. According to their averments made in the writ petition they appeared in a physical test and were declared to be selected. They were also informed that they would be medically examined on a date to be fixed by the Selection Board. They kept on waiting for their turn, however, nothing has been intimated to them.

2. When the matter rested thus, then Secretary to Govt. of Assam in the Home and Political, etc., Department, Shri M. K. Barooah, addressed a letter to the director, Fire Service Organization, Pan Bazaar, Guwahati stating that although

the petitioner were selected for the post of Firemen pursuant to the written test held on 10.11.1997, no order relating to medical test, verification etc. had been issued. This letter gives an impression that the petitioners were selected for appointment as Fireman.

The contents of the said letter dated 20.4.2000 is quoted below :

"This is to inform you that Sri Bhaben Kalita, Parmeshwar Kalita and Tilak Kalita had appeared for written test held on 10.11.1997 and were selected for the post of Fireman, but till this date no verification Medical test order has been issued. Kindly look into this matter for favour of consideration."

3. The petitioners have annexed a copy of a representation stated to be made in 1999 urging for their appointment as Fireman. However, there is no indication as to what the petitioners did after their aforesaid representation and the aforesaid letter of the Secretary to the Govt. of Assam, Home and Political, etc. Department. However, some statements have been made that they were called for medical test and their finger prints, etc., were obtained. It is the case of the petitioners that such actions of the department would necessarily go to show that they were selected for appointment as Fireman and the continued silence on the part of the respondents in not taking any action regarding the appointment of the petitioners is arbitrary and illegal. Thus, this writ petition has been filed seeking a mandamus directing the respondents to appoint the petitioners in the aforementioned post.

4. An affidavit in opposition has been filed on behalf of the respondents sworn by the Director, Fire Service Organization. The stand taken in the said affidavit is that the assertion of the petitioners that they have been selected in the said selection process is not correct. It is the case of the respondents that pursuant to the said selection, a select list was prepared and published on 8.12.1997 wherein the names of the petitioners did not find place meaning thereby that the petitioners were not selected. The respondents have also produced a copy of the waiting list published on the same date wherein also the names of the petitioners except the petitioner No. 2 did not find place. However, strangely enough referring to the aforesaid letter written by the Secretary to the Govt. of Assam, Home and Political, etc., Department, it has been stated in the affidavit that the petitioners had gone to the Secretary seeking favour and accordingly the said Secretary had given the aforesaid letter and that after getting the letter from the said Secretary, it was decided to consider their candidature though their names did not appear in the select list, but it was too late to consider their candidatures due to ban imposed by the Govt. Thus, the petitioners were not selected for appointment as aforementioned.

5. I have heard Ms. D. Sinha, learned counsel for the petitioner and Mr. P. K. Mahanta, learned senior State counsel appearing for the respondents. The learned counsel for the petitioner submits that since the petitioners were selected for appointment as Fireman which is evident from the above quoted

letter, the respondents could not have denied to consider the case for the petitioners of their appointment and thus interference of this Court is required in exercise of power under Article 226 of the Constitution of India. On the other hand, Mr. Mahanta, learned senior State counsel appearing for the respondents, submits that when it is found that the petitioners were not selected for appointment as Fireman which will be evident from the aforesaid two select lists, there is no question of issuance of any appointment orders in favour of the petitioners. As regards the recommendations made by the Secretary to the Govt. of Assam, Home and Political, etc., Department, Mr. Mahanta submits that he is not aware as to under what circumstances such a letter was issued. Referring to the stand in the affidavit, Mr. Mahanta submits that when the names of the petitioners did not find place in the select list, there is no question of issuance of such letter and consideration the case of the petitioners for appointment does not arise.

6. I have given my anxious consideration to the submissions made by the learned counsel for the parties and have perused the materials on record. This writ petition has been filed after 6 (six) years of the selection which was finalized way back in December, 1997. No recruitment rules relating to appointment as aforementioned has been relied upon by either of the parties. It is common knowledge and practice that the select list prepared by the State Govt. for any service remains valid for a period of one year if not further extended. There is no indication in the writ petition as to why there is delay of six years in approaching this Court. On this very fact, the writ petition is liable to be dismissed. However, there is another aspect of the matter which requires consideration of this Court. The admitted position is that the petitioners were not selected for appointment as Fireman as is evident from the two select lists produced before this Court by the respondents and also as per the averments made in the affidavit in opposition to which there is no any rejoinder. Thus the averments made in the affidavit in opposition go unrefuted. In spite of this position, strangely enough the secretary to the Govt. of Assam, Home and Political, etc., Deptt., Mr. M. K. Barooah had issued the above quoted letter giving an impression that the petitioners were selected for appointment. For what reason such a course of action was adopted by the said Secretary is not known. Even after stating that the petitioners were not selected for appointment as Fireman a stand has been taken in the affidavit that the said letter of the Secretary was taken into consideration and the case of the petitioners were sought to be considered for appointment which could not be done only due to ban on appointment/promotion. Thus, a contradictory stand has been taken in the said affidavit.

7. The aforesaid Secretary to the Govt. of Assam, Home and Political, etc., Deptt., could not have issued such a letter in favour of the petitioners whose names were not included in the select list. It was not his business to issue such a letter favouring the petitioners being an IAS officer and holding the rank of Secretary to the Govt. of Assam. It is clearly unbecoming on the part of the Director State Fire Service Organization, Assam to state in the affidavit that although the

petitioners were not selected for appointment, their case was under consideration on the basis of the letter of the said Secretary to the Govt. of Assam. If such approach adopted by the responsible officers like the said Secretary to the Govt. of Assam, Home and Political etc. Deptt. and the Director, State Fire Service Organization, Assam are allowed to be perpetuated, there will be chaos and arbitrariness leading to violation of the Article 14 of the Constitution of India. From the above an inference can be drawn that an undue favour was sought to be given to the petitioners by the said Secretary to Govt. of Assam and the said Director, State Fire Service Organization wanted to act upon on that basis. This is really a sorry state of affair with the State administration.

8. In view of the above, this writ petition is dismissed.

9. A copy of this order shall be served on the Chief Secretary, Govt. of Assam bringing to his notice to the aforesaid case so that he can take an appropriate action on the said Secretary to Govt. of Assam, Home and Political etc. Deptt. and the Director, State Fire Service Organization, Assam as per rules after giving them the opportunity of being heard. Mr. Mahanta, learned Senior Govt. Advocate shall furnish a copy of this order to the Chief Secretary for his follow up action in terms of the above order. The Registry will also send a copy of this order to the Chief Secretary, Assam immediately.