
(2001) 10 GAU CK 0006

In the Gauhati High Court

Case No : Civil Rule No's. 5982 and 6242 of 1996

Bhupen Kr. Bhattacharyya

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 10-10-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 1 GLT 269

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : B.K. Sharma and S. Sharma, for the Appellant; Govt. Advocate, for the Respondent

Judgement

P.G. Agarwal, J.—Heard Mr. B.K. Sharma, learned Counsel for the Petitioner and Mr. M. Bhuyan, learned Counsel for the Petitioner in C. Rule 5982/96. Also heard Mr. G. Uzir, learned Counsel for the Respondent No. 6 and the learned Govt. Advocate.

2. As common question of facts and law are involved, the petitions were heard analogously and they are being disposed of by this common judgment.

3. The facts leading to the present writ petition in brief are that pursuant to a requisition sent by the State of Assam to the Assam Public Service Commission, for short APSC, for selection of persons to the posts of Assistant Soil Conservation Officer under the State of Assam, as advertised and published in the Assam Tribune dated 8.9.95, the three writ Petitioners along with Ors. participated in the said selection process. While the process was going on, the State of Assam informed the Commission that there are five additional vacancies in the cadre of Asstt. Soil Conservation Officer. Thereafter, the APSC vide Annexure-8 dated 8th May, 1996 recommended the name of 5 persons in order of preference and Anr. list of 5 persons in the waiting list. Accepting the said recommendation, the Govt. of Assam was pleased to appoint all the five persons recommended by the APSC vide Annexure-9 dated 31st July, 1996. It may be

mentioned here that the three writ Petitioners before us were placed at S1. No. 3, 4 and 5. The writ Petitioners accordingly joined their service. In the meantime, one Majharul Islam (who was later on impleaded as Respondent No. 6 in Civil Rule No. 5982/96 vide order dated 5.5.97) instituted Civil Rule No. 3291/96 praying for a direction to the Respondent State not to fill up all the post of Asstt. Soil Conservation Officer as per the recommendation of the APSC except the two posts which were advertised vide Advertisement No. 6/95. The said Majharul Islam was appointed under Regulation 3(f) and as such he prayed for a direction not to oust him from service. The Petitioner in the said civil rule filed a Misc. Case No. 1271/96 which was disposed of by this Court vide order dated 19.9.96 and this Court gave the following direction:

In the circumstances stated above the interim order dated 10.7.96 passed by this Court directing that the Petitioner shall not be ousted from service is vacated. But it is directed that out of the candidates recommended by the APSC only two candidates in order of merit shall be appointed to the two vacant posts of Assistant Soil Conservation Officer advertised by the APSC on the basis of the requisitioned received from the concerned department and the remaining 3 (three) posts will not be filled up. Since this order has been passed directing the authorities not to fill up the remaining 3 (three) posts of Assistant Soil Conservation Officer which have not been advertised by the APSC, it will be open for the authorities to pass appropriate orders appointing persons temporarily or on ad-hoc basis in the said 3 (three) posts so that the work of the department does not suffer and while passing such orders, the authorities may also consider continuing the Petitioner on such ad-hoc or temporary basis as Assistant Soil Conservation Officer.

It is also made clear that it will be open for the authorities to fill up the aforesaid remaining 3 (three) posts after advertising the same. The misc. case is disposed of in terms as stated above.

4. The said Civil Rule No. 3291/96 was never pressed and it was disposed of by this Court vide order dated 12.11.96 in the following terms:

In view of the order passed on 19.9.96 in Misc. Case No. 1271/96, this petition has virtually been disposed of. No further order, as such, is called for. It be considered on record as disposed of.

5. Pursuant to the above direction, the State of Asmara terminated the services of the writ Petitioner vide order dated 28th November, 1996, whereupon the writ Petitioners have approached this Court in the present writ petition.

6. This Court passed the interim order on 6.12.96 in favour of the writ Petitioner Bhupen Kr. Bhattacharjee in the following terms:

Regarding interim order, I have heard Shri Phookan, learned Counsel for the Petitioner. The Petitioner is a duly selected candidate and he was placed at S1. No. 3. Further, the admitted position is that before the recommendation was

made the Commission asked the Government what was the number of vacancies and the Commission was informed that there are five vacancies and accordingly, the recommendation was made for five persons. The Petitioner being placed at S1. No. 3 has a right to be appointed and accordingly he was appointed. But on 28th November, 1996 the service of the Petitioner has been terminated on the strength of an order dated 19.9.96 passed by this Court in Misc. Case No. 1271/96 (Civil Rule No. 3291/96).

7. In Prem Singh and Others Vs. Haryana State Electricity Board and Others, the Supreme Court has pointed out that:

State can deviate from advertisement and make appointments to posts falling vacant thereafter in exceptional circumstances - Court may mould the relief to strike out a just balance between the interest of State and the interest of person seeking relief.

8. That case also has been riled on by the Division Bench of this Court in a case reported in 1996(3) GLT 323 (Santanu Baruah and Ors. v. State of Assam and Ors.).

In the present case, it is the admitted position is that Petitioner herein is a highly qualified candidate with brilliant academic career and he was selected by the APSC and his position was at S1. No. 3, At that point of time there were five vacancies as communicated by the Government to the Commission vide Annexure-8. On 15th March, 1996 the Govt. wrote to the Department as follows:

I am directed to invite a reference to your letter quoted above and to say that at present there are 5 (five) vacant post of Asstt. Soil Conservation Officer.

That being the position, in terms of the judgment of the Apex Court and in terms of the decision of Division Bench of this Court as quoted above, I pass an interim order suspending the Atmexure-16, the order dated 29th Nov 96 passed by the Principal Secy to the Govt. of Assam Soil Conservation Department, Dispur and direct that the Petitioner Sri Bhupen Kr. Bhattacharyya shall be taken back in service immediately with all his service benefits.

9. An identical order was passed in Civil Rule No. 6242/96 on 18.12.96 in favour of the writ Petitioners Sri Pradip Dutta and Sri Pankaj Baruah.

10. It is submitted that in view of the above interim order all the three writ Petitioners are still continuing in their job. teamed counsel for the Respondent No, 6, Mazharul Islam further submits that he has no instruction from his client. However, in the order dated 19.9.96, passed in Misc. Case No. 1271/96 arising out of Civil Rule No. 3291/96 it is clear that the said Mazharul Islam is no more in service.

11. Learned, counsel for the Petitioners have therefore submitted that the writ petition be disposed of in terms of the interim order as quoted above. From the documents it is seen that during the pendency of selection process, the

Commission was informed about the occurrence of further three vacancies and in view of the fact that large number of candidates, around 118 candidates were interviewed by the Commission, the Commission recommended the name of 5 persons against the 5 posts which were lying vacant at that time. There is no allegation against the selection process. It may be mentioned here that Shri Bhupen Kr. Bhattacharyya was serving as Project Scientist in the State of Arunachal Pradesh and after resigning his job there, he joined the above post on being appointed by the State Govt. It is also submitted that the 3 writ Petitioners before us were not made a party in Civil Rule No. 3291/96, although they being the selected candidates and also appointed in the meantime were adversely affected by the order passed by the Court on 19.9.96. In the case of Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, the Apex Court observed: .

A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the person who would be vitally affected by its judgment being as Respondent.

The above observations were reiterated in the case of All India SC & All India SC and ST Employees Assn. and Another etc. Vs. A. Arthur Jeen and Others etc.,

12. In all India SC & ST (supra), the Apex Court had the occasion to examine the matter regarding non-notification of the vacancies by the concerned authority and the Apex Court did not disturb the direction of the High Court to issue appointments to the candidates included in the panel of selected candidates. In this case the appointments were made by the State Govt. but had to be subsequently terminated in view of the direction passed in the Misc. Case No. 1271/96. This Court vide interim order dated 6.12.96 and 18.12.96 granted relief to the Petitioners suspending the order of termination and with a positive direction to take back the Petitioners. Pradip Dutta and Pankaj . Baruah are working as Asstt. Soil Conservation Officer for the last 5 years and more. Hence, no interference in the letter of appointments of the writ Petitioners is called for. The writ petitions stand disposed in terms of the interim direction/order passed by this Court on 6.12.96 and 18.12.96. The writ Petitioners shall be allowed to continue with their job as per the letter of appointment.