
(2011) 10 GAU CK 0009

In the Gauhati High Court

Case No : Writ Petition (Civil) No. (SH) 32 of 2010

Bikendra Hajong & Ors.

APPELLANT

Vs

State of Meghalaya & Ors.

RESPONDENT

Date of Decision : 25-10-2011

Acts Referred:

Citation : (2011) 5 GLT 363

Hon'ble Judges : S.C.Das, J

Bench : Single Bench

Advocate : Advocate appeared for the Petitioners: Mr. B. Bhattacharjee.,
Advocate appeared for the Respondents: Mr. N. D. Chullai, Sr. GA, Advocates
appearing for Parties

Judgement

S.C. Das, J.—In this writ petition under Article 226 of the Constitution of India, the three petitioners challenged the select list of candidates dated 23.12.2009, for the post of Assistant Teachers (herein after mentioned as AT) in the Government Lower Primary School (herein after mentioned as LPS), Dadenggri SubDivision, West Garo Hills District, Meghalaya (AnnexureVII) and prayed for quashing the said list for not following the State reservation policy and also for not preparing the select list in order of merit.

2. I have heard learned counsel Mr. B. Bhattacharjee for the writ petitioner and learned senior G.A., Meghalaya, Mr. N.D. Chullai. I have also meticulously examined the writ petition with the documents annexed and the counter affidavit filed by respondent No.3. Respondent Nos. 1,2 and 4 have chosen to remain absent.

CASE OF THE PARTIES IN BRIEF:

3.1 Petitioners, interalia stated that they belonged to Schedule Tribe community of the State of Meghalaya and passed ClassXII examination under Central Board of Secondary Education/Meghalaya Board of Secondary Education and that they have successfully completed the State Eligibility Test (herein after mentioned as

SET) and therefore, were eligible for appointment to the post of AT in Government LPS.

3.2 The State Government adopted a reservation policy in respect of appointment to the posts and services vide Memo No. PER/272/72/32 dated 16.6.1973 (AnnexureIII) and thereby ensure 40% reservation for Khasi and Jaintia Schedule Tribe, 40% for Garo Schedule Tribe and 5% for other ST and SC in respect of posts and services under the State, Public Undertakings and Government Aided Institutions. As a result, the policy altogether meant for 85% reservation for the ST and 15% of the vacancies were open for General category candidates.

3.3 Respondent No.4, vide advertisement published in the local newspaper, namely, the Shillong Times, dated 18.12.2008, in pursuance of Government Notification No. EDN. 360/85/PU1/428 dated 24.11.2008 invited application from the eligible candidates for the post of AT in the Government LPS and pursuant to such advertisement the petitioner applied for the post of AT in Government LPS in Dadenggri SubDivision, West Garo Hills District, Meghalaya and as they fulfilled all eligibility criteria, their names appeared in the list of candidates called for interview vide general notice published in "The Shillong Times" dated 13.8.09 and the date of interview for Dadenggri SubDivision was fixed on 24.8.2009 onwards. The names of the petitioners appeared in S1. Nos. 148,201 and 327 respectively. Copies of the general notice dated 13.08.2009 and list of eligible candidates were annexed as AnnexureV and VI respectively. The petitioners accordingly appeared in the interview on 25.8.09,26.8.09 and 28.8.09 respectively and as stated, they performed to their best of their ability and were expecting to be selected for the post of AT in the Government LPS.

3.4 After completion of personal interview respondent No.3 published a select list dated 23.12.09 of 76 candidates alongwith another 33 candidates in waiting list. On scrutiny of the select list (AnnexureVH), the petitioners found that the list was not prepared in order of merit and it was prepared in gross violation of State reservation policy and separate list was not prepared for the reserved category candidates and unreserved category candidates. Out of 76 successful candidates 36 belonged to general category, appeared in SI. Nos. 13, 14, 17, 18, 19,21,22,23, 24, 26, 28, 29, 31, 32, 33, 36, 37, 38, 39, 44, 45, 49, 50, 51, 52, 53, 54, 58, 59, 60, 63, 64, 66, 67, 71 and 75 of the select list and as a result the State reservation policy was ignored and the possibility of the petitioners to be selected was mired. If the State reservation policy was followed, out of the total vacancy of 76 posts, general category candidates would avail only 11 posts and reserved category candidates would avail 65 posts. The respondents given goodbye to the State reservation policy and also did not prepare the select list in order of merit and therefore the petitioners prayed for quashing the impugned select list dated 23.12.09 and also prayed for directing the respondents to prepare a select list in accordance with the State reservation policy and in order of merit of the candidates.

4. Respondent No.4, while challenging the writ petition inter alia, stated that recruitment to the post of AT, in the local medium schools, was specifically for SubDivisions only and in the vacancies in Garo medium schools and Assamese medium schools only locals were considered and hence question of reservation was not applicable as because 100% of posts were filled up from among the locals only which means it was more than the vacancies reserved under reservation policy. It was further stated that in the local medium schools within the subdivision, there were no Khasi and Jaintia who applied for the posts and hence the posts were filled up with only Garo candidates for Garo medium schools and local residents including other tribes for Assamese medium school and all the vacancies were given to only local residents of the subdivision. Similar recruitment was done for other subdivisions also where local candidates were only considered. Hence 40% reservation was not applicable as all the 100% posts had to be given to the locals only. The select list was prepared as per the marks obtained by each of the candidates as allotted to them by the selection committee in the SubDivisions. All the posts were filled up only by the locals and there were no outsider candidates who competed for the posts as those were local medium schools. As per existing State policy primary schools were/local medium schools and the candidates not knowing local language could not be appointed. 54% post were given to the local Garo candidates and 49% to other ST and local minority community. The petitioners participated in the selection process knowing fully well about the procedure adopted by the authority and they were also given liberty for appeal within 60 days but they did not challenge the selection process and after being failed to get selected they filed the case and as such the writ petition should be dismissed.

5. FACTS ADMITTED UNDISPUTED:

(a) The respondent No.4 vide advertisement published in "The Shillong Times" dated 18.12.08 issued in pursuance of the Government Notification No. EDN, 360/85/Pt.D/428 dated 24.11.08 invited applications from the eligible candidates for the post of AT in the Government LPS (AnnexureIV).

(b) The petitioners belonged to ST category having educational qualification ClassXII passed and fulfilled all eligibility criteria, applied for the post of AT of Government LPS and their names included in the list of eligible candidates for interview for the posts of AT at Government LPS and they faced interview conducted by the respondents.

(c) That the State Government published a reservation policy vide Memo No. PER/272/72/32 dated 16.06.93 (AnnexureIII) and thereby ensure reservation in respect of all posts and services under the State, Public Undertaking and Government Aided Institution, 40% for Khasi and Jaintia ST, 40% for Garo ST and 5% for other ST and SC of Meghalaya and 15% were open for other general category candidates.

(d) After the interview process was over a select list of 76 candidates alongwith a

wait list of 33 candidates was published on 23.12.09 (AnnexureVII).

(e) Out of 76 successful candidates 40 were of reserved category and 36 were of general category.

6. POINTS TO BE DETERMINED:

(a) Whether the select list of successful candidates was prepared in order of merit ?

(b) Whether the State reservation policy was followed ?

(c) Whether the select list was liable to be quashed ?

7. DECISION ON POINTS FOR DETERMINATION AND REASONS THEREOF:

7.1 Advertisement was made for recruitment to the post of AT in the Government LPS and the eligible candidates were invited to appear in the interview for filling up of the vacant posts. Indisputably, the petitioners being eligible candidates appeared in the selection process. The contention of the petitioners was that they have been deprived as the State reservation policy was not followed.

Respondent No,4 contended that the posts were meant for local medium schools in the subDivision i.e. Garo medium and Assamese Medium schools and those were supposed to be filled up with the local candidates only and therefore all the local candidates were selected for the posts.

Now let us see whether such contention of the respondent was inconformity with the advertisement made for filling up of the posts. AnnexureIV is the advertisement dated 18.12.08, runs as follows:

"In pursuance of Government Notification No. EDN.360/85/Pt 11/428 dated 24th November, 2008 applications in a standard form are invited from the citizen of India for appointment to the post of "Asstt. Teachers" in the Government Lower Primary Schools in the scale of pay of Rs. 3450803930EB9046501005650/ per month.

Eligibility and Education Qualification : (1) Education Qualification:

a) HSSLC or PreUniversity Passed candidate who have cleared SET during 200607

or

b) BA/B.Sc./B.Com passed candidate of any recognized University established by an Act of Parliament or State Legislature having secured a minimum of 45% marks.

or

c)

Person who have successfully completed the course of training for L.P. School teachers conducted by DIET, Norma Training (NTC), Basic Training Centre (BTC),

Chera Teachers Training Centre (CTTC) and obtained the Junior Teachers Training Certificate/Diploma in Elementary Teacher Education (DETE) or Diploma in Education (D.EDy CPE Course conducted by 1GNOU. d) Person who possess the minimum qualification (HSSLC/PUC) prescribed for appointment of L.P., School Teacher who have been teaching in the Government L.P. Schools for a continuous period of less than 5(five) years as on 24.11.2008 are also eligible to apply provided they entered service within the prescribed age limit of 27 years. S(32 year for SC/ST) as on 25.11.2003. (2) Age:

Candidates should not be less than 18 years of age and more than 27 years of age (32 years for SC/ST) on the 1 st day of December, 2008.

Applications should be submitted to the office of the undersigned alongwith the photocopy of the following documents duly attested by a gazetted officer:

- (1) Two passport size photocographs (one to be pasted on the application form).
- (2) Birth Certificate or/HSLC/SSLC Certificate/Admit Card as proof of age.
- (3) Photocopy of HSSLC/PreUniversity Certificate/MarkSheets.
- (4) Photocopy of BA/B.Sc./B.Com./B.Ed. Certificate and MarkSheets.
- (5) Photocopy of Diploma/Certificates issued by DIET/BTC/CTTC/NTC's etc.
- (6) Last date for submission of applications ... 9th January 2009.

Candidates found eligible and qualified for the post shall have to appear for the personal interview to be conducted by the Selection Committee as constituted by the Government on the date and venue to be notified later.

Candidates canvassing directly or indirectly in any form shall be liable to be disqualified.

Sd/

(Shri M. GB. Marak)

Deputy Inspector of Schools.

West Garo Hills, Dadenggre."

7.2 A bare reading of the above advertisement makes it clear that there was no stipulation that only local candidates will be considered for the posts of AT in the Government LPS. What was contended by the respondent No.3 in the counter affidavit was that it was Government Policy that the post in the local medium schools should be filled up only by the local candidates but in support of that contention respondents produced no scrap of paper to justify it. Respondents did not dispute that AnnexureIH was/is the State reservation policy and while AnnexureIII was in force, it was the duty of the respondents to goby it in letter and spirit. Since the respondent contended that they have followed any other Government policy for recruitment to the posts of AT in Government LPS, burden

was on them to prove that there was any other policy formulated by the Government besides the reservation policy (AnnexureIII). In the absence of any such materials, this Court has no other alternative but to arrive at a conclusion that the respondents adopted a selection process to their own whims and violated the existing State reservation policy. It was not disputed that out of 76 selected candidates, 36 were not belonging to ST community. The statements made in para 11 of the writ petition specifying the category of candidates selected, was not disputed specifically and under such circumstances, it was quite clear that the respondents given goodbye to the State reservation policy and selected the candidates according to their own whims which cannot survive and is liable to be interfered.

7.3 On the other issue, regarding the merit list of the candidates it was clear that the select list was prepared simply considering the local status of the candidates and not according to merit. There was nothing in the advertisement that only the local candidates will be eligible for consideration and based on locality, selection will be made. The absence of any such stipulation the preparation of the select list by the respondents cannot stand. Further, the impugned select list was not prepared showing separately the different reserved and unreserved category of candidates according to their merit. It was submitted by learned senior GA. that the select list has already been given effect to and if it is now interfered, the entire process will be topsyturvy. It was the duty of the respondents to adhere to the state policy and also to follow the spirit of advertisement made by them. While they have violated the State policy and not given due regard to the advertisement made by them, the select list cannot stand and is liable to be quashed.

8. Accordingly, the select list of candidates dated 23.12.09 (AnnexureVII) stands quashed. Writ petition is disposed of accordingly.