
(2003) 01 GAU CK 0058
In the Gauhati High Court
Case No : Writ Appeal No. 519 of 2002

Biren Saikia and Another	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 30-01-2003

Acts Referred:

Citation : (2003) 2 GLT 329

Hon'ble Judges : P.P. Naolekar, C.J.; Amitava Roy, J

Bench : Division Bench

Advocate : A.M. Majumdar, N. Saikia, A. Borah, R. Goswami, S. Sarmah and S. Kalita, for the Appellant; Govt. Advocate, M.U. Mahmud, P.K. Talukdar, J.L. Sarkar and S. Deka, for the Respondent

Final Decision : Dismissed

Judgement

P.P. Naolekar, C.J.—Brief facts of the case are that in the year 1983 an interview was conducted by the State Selection Committee for recruitment to the post of Sub-Inspector of Schools. The Selection Committee recommended names of the candidates selected for appointment to the post of Sub-Inspector of Schools in order of merit. Pursuant to the said recommendation of the State Selection Committee the Petitioner and the Respondent Nos. 3 and 4 were appointed to the post of Sub-Inspector of Schools in the year 1984. The appointment letters were issued by the authority to different candidates on different dates and according to the appointment letters issued the persons so selected have joined duties. On 25.04.89 a provisional draft seniority list of Sub-Inspector of Schools was issued and circulated and later on a final gradation list was published on 01.09.89. Thereafter on 10.12.96 a provisional seniority list was issued and circulated and on 16.12.97 the final seniority list of Sub-Inspector of Schools was published. Sri Biddytjyoti Purkayastha, the Respondent No. 3 in the present appeal, has challenged the gradation list dated 01.09.89, provisional seniority list dated 10.12.96 and the final seniority list dated 16.12.97 in Civil Rule No. 4672/98 on the allegation that the draft seniority list dated 25.04.89 was

prepared on the basis of merit, but the Government while preparing the final seniority lists dated 01.09.89, 10.12.96 and 16.12.97 have given a complete go bye to the merit list of the selected candidates and the seniority list was prepared on the basis of date of joining of the candidates.

2. Learned Single Judge of this Court has accepted the contentions raised by the Petitioner and by judgment and order dated 09.05.2000 has issued the following directions:

5. It is thus clear from the aforesaid instructions that where candidates have been appointed pursuant to a merit list prepared by the appointment authority, their seniority is to be fixed in order of merit provided they have joined within the time allowed by the Appointing authority for joining. On a bare perusal of the impugned gradation lists dated 1.9.89, 10.12.96 and 16.12.97, it appears that the dates of joining of the candidates appointed in the year 1984 have been taken into consideration for the purpose of determination of seniority of persons who were appointed pursuant to a common selection and the order of merit as determined by the State Selection Committee has been ignored. Following the aforesaid decision of the Supreme Court in the case of Smti. Dipika Devi v. Sri Bhaba Kanta Hazarika(supra) I dispose of this writ petition with the direction that the Respondents will prepare a fresh gradation seniority list of the candidates including the Petitioner, appointed in the year 1984 as Sub-Inspector of Schools on the basis of common selection and in the said seniority list the Petitioner and other candidates appointed in the year 1984 will be given their position in order of merit in which they were recommended by the selecting authority provided they had joined within the time allowed for joining. The said gradation list will be prepared as directed within a period 2 months from the date of receipt of the certified copy of this order by the Director of Elementary Education, Assam. I further direct that the Petitioner will be given all consequential service benefits including promotion in accordance with the relevant rules or instructions to higher post on the basis of seniority in such fresh gradation list. Such consequential service benefits will be given to the Petitioner within 2 months from the date of preparation of fresh gradation list as directed above.

3. As per directions issued by the Court, the Government has undertaken an exercise of preparation of the final seniority list and the final seniority list was prepared and published on 07.02.2001 which was the subject matter of the writ petition (W.P.(C) No. 943/2001) in the present proceedings. It is the case of the Petitioners in the present proceedings that the seniority list published on 07.02.2001 has been prepared on the basis of the draft seniority list dated 25.04.89 and the Government has not taken into consideration the directions issued by this Court in Civil Rule No. 4672/98. It appears that the during the period when the matter was pending consideration for preparation of seniority list, the record of the selection of the year 1983 was lost and, therefore, the Government has relied upon the draft seniority list prepared on 25.04.89 for preparation of the final seniority list dated 07.02.2001. It is contended by the

learned Counsel for the Appellant that the seniority list dated 07.02.2001 has not been prepared on the basis of merit as directed by the Court as is clear from the correspondence between the government officials that the merit selection list and other records has been lost, and, therefore, the foundation made for preparation of the final seniority list on the basis of draft seniority list dated 25.04.89 is not in accordance with law nor in accordance with the directions issued by this Court. The learned Single Judge dismissed the writ petition holding that on comparison of the draft seniority list dated 25.04.89 and the final seniority list dated 01.09.89, 10.12.96 and 16.12.97 it appears that the draft seniority list was prepared on the basis of merit and that being the case, if the Government has relied upon the draft seniority list in the eventuality of the record being lost, the final seniority list dated 07.02.2001 substantially complied with the directions issued by this Court.

4. It may be seen that draft seniority list dated 25.04.89 was the first in time. The learned Single Judge while disposing of the writ petition. Civil Rule No. 4672/98, has categorically recorded the fact- "Thereafter on 25.04.89, the Joint Director, Elementary Education, Assam Circulated a provisional gradation list of Sub-Inspector of Schools in order of merit on the basis of the recommendation of the State Selection Committee and invited objections representations etc. to the said gradation list." The statement of fact in the judgment clearly indicates that at the time when the first petition was filed the learned Single Judge was quite aware of the fact that the provisional seniority list was prepared on 25.04.89 on the basis of merit of the candidates selected. In the peculiar facts and circumstances when the record of the selection of the candidates for the post of Sub-Inspector of Schools has lost and is not available, the Government's action on relying upon the draft seniority list dated 25.04.89 for preparation of the final seniority list dated 07.02.2001 cannot be said to be an illegal exercise of power by the Government. The only document available with the Government is the draft seniority list dated 25.04.89, which has been held by the Court in Civil Rule No. 4672/98 as a seniority list prepared on the basis of merit and no illegality has been committed by the State in preparation of the seniority list dated 07.02.2001. We do not find any good or sufficient ground to take a different view of the matter what has been taken by the learned Single Judge. As a consequence thereof the appeal is dismissed. However, there shall be no order as to costs.