

(1954) 12 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 2878 of 1993

Bulbuli Borthakur (Adhyapak)

APPELLANT

Vs

Assam Public Service Commission

RESPONDENT

Date of Decision : 01-12-1954

Acts Referred:

Advocates Act, 1961 — Section 17, 49, 49(1)
Assam Legal Service Rules, 1962 — Rule 36, 8(1), 8(2), 8(3), 8(4)
Constitution of India, 1950 — Article 14, 16, 226

Citation : (1995) 1 GLR 211

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : B.K. Sarma and M.K. Chowdhury, for the Appellant; P. Prasad, Government Advocate, J. Phukan and D.N. Chowdhury, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Patnaik, J.—In this writ petition under Article 226 of the Constitution of India, the Petitioner has prayed for quashing the recommendation in favour of Respondent No. 3 by the Assam Public Service Commission in its letter dated 3rd September, 1993 (Annexure-B) for the post of Grade-IV of the Assam Legal Service and for directing the Government of Assam, Judicial Department to appoint the Petitioner to the said post.

2. The brief facts of the case as stated in the writ petition is that by an advertisement published on 24th Sept" 92, the judicial Department of Govt. of Assam invited applications for two posts in Grade-IV of the Assam Legal Service and in the said advertisement the qualification for the raid post was as follows:

Qualification : A candidate must be an Advocate enrolled under the Advocates Act, 1961, who has been practising as such for at least 3 years standing, as a Chief language Officer of the Legislative Deptt. holding a degree in law and having 3 years experience as such officer or with 2 years experience as such officer if he has previous experience as an Advocate for at least 3 years, or a

Language Officer of the Legislative Deptt. holding a Degree in Law and having 5 years experience as Language Officer if he has previous experience as an Advocate for at least 4 years. Amongst others the Petitioner and the Respondents No. 3 applied for the aforesaid posts and 28 candidates including the Petitioner and the Respondent No. 3 appeared in interview conducted by the Assam Public Service Commission (in short the APSC) on 30-7-93 and the APSC in its letter dated 3rd Sept' 93 recommended Shri P. Kalita and the Respondent No. 3 for Appointment to the said two posts of Grade-IV of the Assam Legal Service. In the said letter dated 3-9-94 the Petitioner and one Munin Ch. Baruah were placed in the waiting list in order of preference.

3. The Petitioner's case in this writ petition is that as per the aforesaid advertisement an advocate who has been practising for atleast 3 years is eligible for being Considered for appointment, but the Respondent No. 3 has not been practising as an Advocate for the period of 3 years, but has been serving under the Assam Financial Corporation, Guwahati since August, 1993. Accordingly his name should not have been recommended at all for the second post of Grade-IV, Assam Legal Service and the Petitioner being in the 1st position of the waiting list as recommended by the Assam Public Service Commission, is entitled to be considered for appointment to the said post by the State Government. By a representation dated 2nd October, 1993 (Annexure-C) the Petitioner brought this fact about the ineligibility of the Respondent No. 3 to the notice of the Chief Minister of Assam and requested him to cancel the selection of the Respondent No. 3 and consider her case but the said representation did not yield any results. Hence this writ petition.

4. When the writ petition was moved on 6.10.94 this Court issued rule and suspended the aforesaid recommendation of the APSC in the letter dated 3-9-93 (Annexure-B). But thereafter in the applications filed by the Respondent No. 3 numbered as Misc. Case No. 897/93 and Misc. Case No. 898/93, it was brought to the notice of the Court that prior to the interim order dated 6-10-03 the Respondent No. 3 had joined in the Grade-IV of the Assam Legal Service as Junior Legislative Counsel and Under Secretary to the Govt. Of Assam, Legislative Department, and by order dated 3-12-93 this Court classified that the stay order so far as Respondent No. 3 is concerned will not operate.

5. In the application filed by the Respondent No. 3 numbered as Misc. Case No. 898/93, the Respondent No. 3 has denied the averments in the writ petition that the Respondent No. 3 was not a practising Advocate for 3 years and has stated that the Respondent No. 3 was enrolled as an Advocate under the Advocates Act, 1961 on 12-9-86 and was continuously practising as an Advocate in Nalbari Courts for about 5? years prior to his joining in the Assam Financial Corporation, as Assistant Manager (Legal) w.e.f. 11-3-92. He has also stated that as such Assistant Manager (Legal) of Assam Financial Corporation, he was allowed by the Corporation to attend to the Corporation cases in the Courts and as such he was attending to the Corporation cases in the different Courts till his appointment as

Junior legislative Counsel and Under Secretary to the Govt. of Assam under the order dated 30-9-93. Along with the said application in Misc. Case 898/93, the Respondent No. 3 has annexed true copies of the certificate of the enrolment of the Respondent No. 3 as an Advocate with the Bar Council of Assam, Nagaland, Meghalaya, Manipur and Tripura dated 12th Sept'86 (Annexure- 12), a certificate issued by the Secretary, Nalbari Bar Association that he has been practising as an Advocate from 15-9-86, as well as a certificate dated 6-11-93 (Annexure-4) issued by the Secretary of the Assam Financial Corporation to the effect that during the service of the Respondent No. 3 in the Corporation as Assistant Manager (Legal), he was entrusted with drafting of documents and other legal paper, legal inspection and opinion and attending court cases of the Corporation, preparation and filing case records and making correspondence on the legal matters of the Corporation.

6. At the hearing of the writ petition, Mr. B.K. Sharma, learned Counsel for the Petitioner, submitted that on a plain reading of the advertisement (Annexure-A) under which applications were invited for the two posts of Assam Legal Service only an Advocate who "has been practising" as such Advocate for atleast 3 years on the date of the application for the post is qualified for appointment to a Grade IV post of the Assam Legal Service. Mr. Sharma submitted by a reference to Cassell's Students' English Grammar that the expression "has been practising" would cover only those Advocates who were practising on the date of submission of the application for appointment and would not cover the case of an Advocate who had in the past practised for 3 years but was not practising on the date the application for the post was submitted by him. Mr. Sharma pointed out that the aforesaid language in the advertisement relating to the qualification has been taken from the Assam Legal Service Rule 1962 as amended by the Assam Legal Service (Amendment) Rules 1990. The aforesaid rule being a statutory rule, the golden rule of literal construction of statute should be adopted by the Court as indicated in Chapter-2 of Maxwell on the Interpretation of Statutes 12th Edition. On such literal interpretation of the aforesaid Sub-rule 4(i) of Rule 8 of the Assam Legal Service Rule 1962, since the Respondent No. 3 has not been practising as Advocate for atleast 3 years, although he may have practised as an Advocate for 3 years in the past, he is not eligible for being considered for appointment to Grade-IV of the Assam Legal Service.

7. Mr. D.N. Chowdhury, learned Counsel for the Respondent No. 3, on the other hand, submitted that prior to the amendment of the Assam Legal Service Rules 1962 by the Assam Legal Service (Amendment) Rules 1990, Sub-rule 4 of Rule 8 provided that for recruitment to Grade-IV of the service, an Advocate of a High Court or a pleader of a District Court who has practised as such for atleast 3 years or a Judicial Officer of atleast 3 years was qualified. He further submitted that the memorandum placed before the Cabinet on the basis of which the Cabinet of the Assam Government took the decision to amend Sub-rule 4 of the aforesaid Rule 8 by the said Amendment Rules of 1990 would show that Sub-rule 4 was sought to be amended only with a view to make Chief Language Officer

and Language Officer of the Legislative Department eligible for appointment for Grade-IV post of the Assam Legal Service and accordingly by the Amendment Rules of 1990 Sub-rule 4 of Rule 8 was substituted making Chief Language Officer and a Language Officer of the Legislative Department qualified for appointment to Grade-IV post of the Assam Legal Service and as such the Amendment Rules of 1990 did not intend to amend Sub-rule 4 of Rule 8 in any other manner. Mr. Chowdhury also submitted that the expression "has been practising" should be construed as "has practised" in consonance with Sub-rules 1, 2, and 3 of Rule 8 as well as Clauses (ii), (iii) and (iv) of Sub-rule 4 as otherwise Sub-rule 4 of Rule 8 would be discriminatory and violative of Articles 14 and 16 of the Constitution. Mr. Chowdhury also brought to my notice Rule 49 of the rules made by the Bar Council of India u/s 49(1)(c) of the Advocates Act, 1961 which permit Law Officers of Public Corporation and Central and State Government such as the Respondent No. 3 to be enrolled as an Advocate under the Advocates Act, 1961. Mr. Chowdhury has relied upon the passage on "Ironing out The Creases" at page 11 of Lord Denning's "The Discipline of Law" and submitted that in the present case the court should iron out the crease and interpret the expression "has been practising" as "has practised". He further cited the decisions of the Supreme Court in the case of K.P. Varghese v. I.T.O. wherein the Apex Court has held that where the plain meaning of a statute results in any injustice and unconstitutionality, courts must have recourse to the purpose which the Legislature had in enacting a provision. Mr. Chowdhury also relied on the decision of the Supreme Court in Union of India and Others Vs. Filip Tiago De Gama of Vedem Vasco De Gama, wherein the Supreme Court held that where the literal meaning would lead to unjust result violative the Article 14 of the Constitution, the Court should avoid it and adopt a construction which would advance the object and purpose of the provision.

8. In the reply Mr. Sharma submitted that different qualifications have been prescribed for different categories of persons who are eligible to be considered for appointment and it is settled law that a person belonging to one class cannot be compared with persons belonging to another class for the purpose of finding out as to whether the impugned provision is discriminatory. Accordingly, the grammatical and literal interpretation of the amended Sub-rule 4 of Rule 8 suggested by him would not lead to any discrimination violative of articles 14 and 16 of the Constitution.

9. The point for consideration therefore is what is the object and intent of Sub-rule 4 of Rule 8 of the Assam Legal Service Rules 1962 as amended by the Assam Legal Service (Amendment Rules) 1990? The said Sub-rule 4 of Rule 8 is quoted herein below:

Any person appointed directly to a post in the service must be qualified in the following manner....

(4) In relation to recruitment to Grade-IV of the service....

(i) An Advocate enrolled under the Advocates' Act, 1961 who has been practising as such for at least 3 years; or

(ii) A Judicial Officer of at least 3 years' standing; or

(iii) A Chief Language Officer of the Legislative Department holding a Degree in law and having 3 years' experience as such officer or with 2 years' experience as such officer if he has previous experience as an Advocate for at least 3 years" or

(iv) A Language Officer of the Legislative Department holding a Degree in Law and having 5 years' experience as such officer or 2 years' experience as Language Officer if he has previous experience as an Advocate for at least 4 years.

As per aforesaid rule, four categories of persons are qualified for recruitment to Grade-IV of the Assam Legal Service namely an Advocate enrolled under the Advocates Act, 1961, a Judicial Officer, a Chief Language Officer in the Legislative Department and a Language Officer of the Legislative Department. The aforesaid sub-rule further prescribes the minimum experience that each one of these categories of persons must have to be qualified for appointment to Grade-I V of the service. If he is an Advocate enrolled under the Advocates Act, 1961, he must have an experience of 3 years practice. If he is a Judicial Officer, he must have atleast 3 years service. If he is a Chief Language Officer of the Legislative Department he must have 3 years experience as such officer, or 2 years experience as such officer in addition to experience as Advocate for atleast 3 years. If he is a Language Officer of the Legislative Department he must have 5 years experience as such officer or two years experience as Language officer in addition to 4 years experience as an Advocate. This is the true intent and object of Sub-rule 4 of Rule 8 read as a whole.

10. The strict grammatical interpretation of Sub-rule 4 of Rule 8 of the Assam Legal Service Rules 1962 as amended by the Assam Legal Service (Amendment) Rules 1990, suggested by Mr. Shrama, in my opinion, does not bring out the aforesaid true intent and object of the aforesaid sub-rule, which is mat an Advocate should have the experience of atleast 3 years practice for being qualified to be recruited to Grade-IV of the Assam Legal Service. Thus, the strict grammatical construction of Sub-rule 4 of Rule, 8 that at the time of the application for the post, the Advocate should have been, practising for 3 years is at variance with the aforesaid object and intent of the rule making authority. Mr. Sharma's submission that the golden rule of statutory interpretation is strict literal interpretation is not entirely correct. At page 43 of Maxwell, on Interpretation of statutes, 12th Edition, it has been stated:

The golden rule The so-called "golden rule" is really a modification of the literal rule. It was stated in this way by Parke B, "It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention

of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further.

(emphasis supplied).

11. In the present case, the Respondent No. 3 is not a Judicial Officer. He is also not a Chief Language Officer or Language Officer of the Legislative Department. His case is that he is an Advocate enrolled under the Advocates Act 1961 and he has filed a true xerox copy of his certificate of enrolment as Annexure-2 to the application numbered as Misc. Case No. 898/93 which would show that he has been enrolled on the 12th of Sept '86 to be an Advocate and that his name was entered in the roll of Advocate maintained by the Bar Council of Assam, Nagaland, Meghalaya, Manipur and Tripura u/s 17 of the Advocates Act 1961. No materials have been placed before me by the Petitioner to show that the said enrolment of the Respondent No. 3 as an Advocate under Advocate Acts 1961 has either been suspended or cancelled and, on the contrary, Rule 49 of the rules may by the Bar Council of India u/s 49(i)(c) of the Advocates Act 1961 and Rule 36 of the Rules for enrolment of Advocates with the Bar Council of Assam show that Law Officers of the Central Government or the State Government or a Body constituted by a statute or a Public Corporation can be enrolled as an Advocate under the Advocates Act 1961. Hence in the absence of material to the contrary it is difficult to hold that the Respondent No. 3 ceased to be an Advocate enrolled under the Advocates Act 1961 when he joined as an Assistant Manager (Legal) Assam State Financial Corporation on 11-3-92, Further, it appears from the certificate issued by the Secretary, Nalbari Bar Association annexed in Misc. Case 898/93 as annexure-3 and the certificate issued by the Secretary of the Assam Financial Corporation as annexure-4 in the said Misc. case that he has been practising in the Nalbari Bar since 15th Sept' 86 till he was appointed as the Assistant Manager (Legal) w.e.f. 11 the March, 1992. He thus has an experience of more than 5 years as an Advocate.

12. Since I have held that the Respondent No. 3 was an Advocate enrolled under the Advocates Act 1961 and had the experience of 3 year practice as such advocate as required by Sub-rule 4 of Rule 8 of the Assam Legal Service 1962 as amended by the Assam Legal Service (Amendment) Rules 1990, there is no infirmity in the recommendation of the Assam Public Service Commission dated 3-9-90 (Annexure-B), The writ petition accordingly has no merits and is dismissed. There shall be no order as to cost.