
(2010) 11 GAU CK 0026
In the Gauhati High Court
Case No : Writ Petition (C) No. 1434 of 2006

Chandra Dhar Dev Sarma

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 15-11-2010

Acts Referred:

Assam Public Service Commission (Limitation of Functions) Regulations, 1951 —
Regulation 3(F)
Constitution of India, 1950 — Article 226

Citation : (2011) 128 FLR 445

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : B. Choudhury, R. Islam and R. De, for the Appellant; M. Gogoi, S.C.,
for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—Heard Mr. R. Islam, learned Counsel for the Petitioner, and Ms. M. Gogoi, learned Standing counsel, Education Department, for the Respondent Nos. 1 and 2.

2. The Petitioner was, vide order, dated 8.6.1995, passed by Respondent No. 2, namely, Director of Secondary Education, Kahilipara, Guwahati, appointed, temporarily, under Regulation 3(F) of the Assam Public Service Commission (Limitation of Functions) Regulations, 1951, as a Subject Teacher, in Mathematics, for a period of four months or until the time the post is filled up by the Assam Public Service Commission (in short, "APSC") by "selection in order of merit". The service of the Petitioner was, thereafter, extended from time to time. While the Petitioner was so working, an advertisement was published by the APSC inviting applications for filling up of posts of Subject Teacher in Government Higher Secondary Schools. Though the Petitioner had applied for selection and also appeared in the interview held on 3.6.1996, he was not selected and his name was not recommended by the APSC for regularization of

his service as against the post of the Subject Teacher.

3. The Petitioner, then, impugned his omission from the selection made by the APSC by filing a writ petition under Article 226 of the Constitution of India, which gave rise to Civil Rule No. 4442 of 1996. An interim order was passed in the said writ petition, on 12.9.1996, directing the Respondents not to oust the Petitioner from service. By order, dated 18.9.2001, the said writ petition was disposed of with direction to the Respondent No. 2, namely, Director of Secondary Education, Kahilipara, Guwahati, to consider the case of the Petitioner's regularization if permissible in law. While so disposing of the writ petition, the Court made its interim order, dated 12.9.1996, absolute. The Petitioner has, thus, continued in the said post till date.

4. What emerges from the above discussion is that there has never been any direction issued by the Court to the Respondents to regularize Petitioner's service. The Court had merely directed consideration of the Petitioner's case for regularization, if otherwise permissible in law and till such time that such consideration takes place, the Petitioner shall not be ousted from his temporary service. In short, thus, the Petitioner's appointment was inherently temporary in nature and is continued to be so.

5. On 1.9.2004, when the APSC invited applications for filling up four posts of Subject Teacher of Mathematics to be appointed in the Government Higher Secondary Schools, the Petitioner, once again, applied for his selection. The APSC, on interview, did not, however, select the Petitioner, though it recommended the names of as many as 24 candidates. Aggrieved by the fact that though he had been working for more than 10 years as a Subject Teacher, he had crossed the age limit and yet his service has not been regularized, the Petitioner has filed this writ petition, under Article 226 of the Constitution of India, seeking issuance of appropriate writ (s) commanding the Respondents to regularize the service of the Petitioner.

6. While considering the present writ petition, it needs to be noted that the Petitioner's appointment was inherently temporary in nature and the same was subject to his selection "in order of merit" by the APSC. The Petitioner has not been selected on the basis of interviews held so far. Nothing has been mentioned in the writ petition and nothing could be submitted, on behalf of the Petitioner, to show that the interview had not been conducted in accordance with law and/or that the outcome of the interview, otherwise, calls for interference. When the Petitioner has appeared in the process of competition, i.e., the interview held, and he has failed, the question of directing his service to be regularized does not arise inasmuch as such a direction would be wholly against the law. A person, who participates in the selection process and does not get selected on merit, cannot be directed to be recommended for appointment unless his case is covered by the statutory provisions making reservation or policy of reservation.

7. In the case at hand, notwithstanding the fact that the Petitioner has been

working as a Subject-Teacher of Mathematics, the facts remains that he has been so working by the order of the Court and not on his own merit and that, on merit, he has been found wanting. He cannot, therefore, be directed to be regularized by depriving a candidate, who would, otherwise, be entitled to be appointed. Any direction, as has been sought for by the Petitioner, would be nothing but arbitrary and illegal.

8. Situated thus, it is clear that the Petitioner has not been able to make out any case warranting this Court's exercise of its extra-ordinary jurisdiction under Article 226.

9. In the result and for the foregoing reasons, the prayer for regularization, made by the Petitioner, is hereby rejected. The interim order, passed in this case, on 8.3.2006, shall accordingly stand vacated.