

(2023) 06 GAU CK 0080
In the Gauhati High Court
Case No : Writ Appeal No. 36 Of 2019

Charulata Kalita

APPELLANT

Vs

State Of Assam And 6 Ors

RESPONDENT

Date of Decision : 27-06-2023

Acts Referred:

Assam Secondary Education (Provincialised) Service Rules, 2003 — Rule 8(4), 13

Citation : (2023) 06 GAU CK 0080

Hon'ble Judges : Sandeep Mehta, CJ;Mitali Thakuria, J

Bench : Division Bench

Advocate : B.Chetri, N.J. Khataniar, N. Das, N.N.B. Choudhury, S. Borthakur

Final Decision : Allowed

Judgement

S. Mehta, CJ

1. The instant intra-Court writ appeal is directed against the judgment dated 25.01.2019 passed by the learned Single Judge whereby the writ petition, being, WP(C) 2555/2017 filed by the appellant herein challenging the selection process and the consequent appointment of the respondent No.7 on the post of Principal of A.K.H.S. Institution in the district of Kamrup, was dismissed.

2. The appellant/writ petitioner herein was one of the aspirants for the said post. She participated in the selection process which was undertaken by the School Selection Committee through viva-voce. In the panel of short listed candidates, the name of the appellant/writ petitioner figured at Sl. No.3, i.e. the last position whereas the respondent No.7 figured at Sl. No.1. The appellant filed the writ petition laying challenge to the process of selection on the ground that there was violation of the rules in composition of School Selection Committee and so also about the eligibility of the respondent No.7 to be considered for the post of Principal. The learned Single Judge dismissed the writ petition by the judgment dated 25.01.2019 which is assailed in this appeal.

3. We have heard the submissions advanced by Mr. B. Chetri, learned counsel

representing the appellant and have gone through the impugned judgment and the record. The advertisement for selection against the post of Principal of A.K.H.S. institution was published on 09.06.2016. The selection was to be conducted in accordance with the Rule 13 of the Assam Secondary Education (Provincialised) Service Rules, 2003 (hereinafter referred to as "2003 Rules") read with the guidelines dated 23.06.2016 issued by the Director of Secondary Education. The viva-voce was conducted by the School Selection Committee on 08.11.2016 and the matter was kept pending at the level of the department. The appellant/writ petitioner claims that she was not aware about the outcome of the selection process undertaken by the School Selection Committee. In the intervening period, the in-charge Principal retired from service on 31.03.2017 and thus, the appellant/writ petitioner was allowed to hold the charge of the post of Principal. The appellant/writ petitioner claims that she had raised her voice regarding the anomalies in the school fund and thus, the School Management Committee was annoyed with her and hence, she was not treated fairly in the selection. The pleaded case of the appellant/writ petitioner in the writ petition was that she came to know on 18.04.2017 that the respondent No.7 had been selected for the post of Principal and was going to be appointed and thus, she submitted representations dated 19.04.2017 and 24.04.2017 to the Deputy Commissioner and the Inspector of Schools, respectively raising a voice against the illegality in the process of selection.

However, when no response was forthcoming to her complaints/representations, the appellant/writ petitioner filed the captioned writ petition wherein an interim order was passed on 03.05.2017 allowing the petitioner to continue in the arrangement previously made as in-charge Principal of the said school.

A formal order dated 02.05.2017 was issued by the Director of Secondary Education appointing Smti Purabi Bharali Das, respondent No.7 in the writ petition as well as in the appeal, as the Principal on regular basis pursuant to the recommendation of the State Selection Board. The order dated 02.05.20217 was brought on record of the writ petition and was put to challenge through an additional affidavit.

4. The contention of the petitioner before the Writ Court was that the School Selection Committee has to be composed in terms of Rule 8(4) of the 2003 Rules, which reads as follows:-

"(4) The School Selection Committee for selection of Principal, Post Graduate Teacher/Graduate Teacher and Non-teaching Staff of School shall be as follows:-

Chairman : The President of Managing Committee;

Member : (i) The Vice-Principal/ a Post Graduate Teacher in case of Higher Secondary School or Assistant Headmaster/Senior most Graduate Teacher in case of High School;

(ii) One parent to be nominated by the Managing Committee;

Member Secretary : The Principal/Headmaster of the School.”

It was contended that there was violation of the mandate of the aforesaid rule in constituting the School Selection Committee because there was no Vice Principal, Headmaster or senior faculty member in the school and role of the first member of the School Selection Committee was played by a Subject Teacher, who also acted as the Member Secretary, which as per the petitioner vitiated the proceedings of the School Selection Committee. However, the allegation of the petitioner regarding non-holding of appropriate qualification by the Respondent No.7 was vague.

5. The learned Single Judge, after considering the contentions of the parties and the material placed on record, held that right from the date of interview till the date of filing of the writ petition, there was not even a whisper regarding violation of the Rules in the composition of the School Selection Committee. It was further held that as the Principal in-Charge himself was an aspirant for the post advertised, the role of the Member Secretary had to be performed by someone else and accordingly, a Subject Teacher was appointed as the Member Secretary. The learned Single Judge held that the doctrine of necessity saved the situation and in absence of allegation of mala fides, interference on that count was not warranted. Accordingly, the writ petition was dismissed by the judgment dated 25.01.2019.

6. Mr. B. Chetri, learned counsel for the appellant has drawn the Court’s attention to the Office Memorandum/order dated 15.06.2016 issued from the office of the Director, Secondary Education, Assam clarifying the query as to who would discharge the function of the School Selection Committee as Member Secretary in case the in-charge Principal of the school is the candidate for the post of Principal of the said school. It has been provided in the said clarificatory order that in such cases, the Inspector of Schools will notify a Post Graduate Teacher having Masters degree with B.Ed. or the senior-most Graduate Teacher having Masters degree with B.Ed. to exercise the function of Member Secretary of the School Selection Committee to be constituted under the Rules of 2003 amended in 2012. It has been further indicated in the said order that if there is no Post Graduate Teacher having Masters degree with B.Ed., a senior teacher having Masters degree only would be preferred.

Mr. Chetri urged that the composition of the School Selection Committee in the questioned selection process was in gross violation of the Rule 8(4) of 2003 Rules because one Shri Rupak Deka, Vice President of the School Management & Development Committee (SMDC) played the role of the first Member. One Smt. Binapani Mahanta, Subject Teacher was appointed as the Member Secretary. It was thus contended that the two constituents of the selection committee, namely, the first Member and the Member Secretary, were inducted in gross contravention of Rule 8(4) of the 2003 Rules and hence, the recommendation of the Selection Committee was non est. It was further submitted that the appellant could not have entertained the remotest idea about the composition of the

committee before participating in the interview/viva-voce and hence, she could not be expected to challenge the same beforehand. It was further contended that the appellant came to know only in the month of April, 2017 that the respondent No.7 had been selected and was going to be appointed as the Principal whereupon she immediately protested by filing the representations dated 19.04.2017 and 24.04.2017 and when no proper response was forthcoming, the writ petition came to be filed. It was further submitted that the contention of the respondents that the Vice President, while being inducted as a member, only acted as an observer and did not participate in the evaluation process, is also unacceptable because he has signed the result sheet in the capacity of the Vice President of the SMDC. It was contended that presence of extraneous elements in the Selection Committee vitiates the proceedings and hence, the bar of estoppel cannot be applied to oust the justified claim of the appellant.

7. In support of his contentions, Mr. Chetri has placed reliance on the Supreme Court judgment in the case of Dr. (Major) Meeta Sahai vs. State of Bihar and others, reported in (2019) 20 SCC 17 wherein it was held that the principle that a candidate cannot challenge the selection process after participating therein is differentiable in so far as a candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. Where candidate alleges misconstruction of statutory rules and the discriminating consequences arising therefrom, the same cannot be condoned merely because the candidate has partaken in it because the constitutional scheme is sacrosanct and its violation is impermissible. It was further held that it is possible that the candidate may not have the locus to assail incurable illegality or derogation of provision of Constitution, unless he/she participates in selection process.

8. Reliance in support of the contention that the composition of the Selection Committee was illegal, was placed by Mr. Chetri on the Single Bench judgments of this Court in the cases of-

(i) Biren Das (Dr.) vs. Tezpur University and others [WP(C) No.2468/2003, decided on 23.07.2003];

(ii) Malinee Goswami vs. The State of Assam [WP(C) No.941/2013, decided on 13.06.2014]; and

(iii) Kshireswar Borah (Dr.) vs. State of Assam and others [WP(C) No.4225/2014, decided on 16.02.2015]

Mr. Chetri thus urged that the approval of appointment of the respondent No.7 as the Principal of the school was made acting upon the recommendation of an illegally constituted body and thus, the ratification of such illegal recommendation by the State Selection Committee would not save the process, which is vitiated as being in violation of the rules.

9. Per contra, Mr. S. Borthakur, learned counsel representing the private respondent No.7, the selected candidate, placed reliance on the Supreme Court

judgment in the case of Madan Lal and others vs. State of J&K and others, reported in (1995) 3 SCC 486 and urged that the appellant having participated in the selection process, is estopped from challenging the same on the ground that the composition of the selection committee was contrary to the rules.

Reliance was also placed on a Division Bench judgment of this Court in the case of Sri Bhabesh Das vs. The State of Assam and others [WA No.323/2016, decided on 05.06.2017] and it was contended that in an identical situation, the learned Division Bench held that merely because the Selection Committee was not constituted with the senior-most Graduate Teacher of the school as one of its Members, the selection would not be automatically vitiated. It was held that the senior-most Graduate Teacher impliedly means and includes the available senior-most teacher of the school and as the senior-most teacher recused himself from being a Member of the Selection Committee, the inclusion of the second senior-most Graduate Teacher of the school into the Selection Committee was proper and legal. On these grounds, learned counsel Mr. Borthakur implored the Court to dismiss the appeal and affirm the judgment of the learned Single Bench.

10. We have given our thoughtful consideration to the submission advanced at bar and have gone through the material placed on record. There cannot be two views on the aspect that the composition of the School Selection Committee has to be in accordance with the mandate of Rule 8(4) which is reproduced hereinabove.

There is also no dispute that in the case at hand, two members of the School Selection Committee, were not having the requisite status as per the 2003 Rules because Sri Rupak Deka, who was inducted as the Member, was the Vice President of the SMDC whereas the rule mandates that the Member should be either the Vice Principal or a Post Graduate Teacher in case of Higher Secondary School or Assistant Headmaster/senior-most Graduate Teacher in case of High School. The rule also provides that the Member Secretary should be the Principal/Headmaster of the school. In the case at hand, one of the Members of the Committee was Rupak Deka, Vice President of the SMDC whereas the Member Secretary was a Subject Teacher.

The department has anticipated the situation wherein the aspirant for the post of Principal may himself have to act as the Member Secretary. For avoiding this anomalous situation, the office order dated 15.06.2016 has been issued which provides that in case in-charge Principal is himself the candidate for the post of Principal, the Inspector of Schools shall notify a Post Graduate Teacher having Masters degree with B.Ed. or the senior-most Graduate Teacher having Masters degree with B.Ed. to exercise the function of Member Secretary of the School Selection Committee as constituted under the Rules of 2003 amended in 2012.

11. Thus, it is clear as day light that induction of Rupak Deka as the Member and the Subject Teacher as the Member Secretary in the School Selection Committee was not in accordance with the Rule and hence, the composition of the School

Selection Committee was unquestionably dehors the Rules. There cannot be any doubt that the composition of the Selection Committee which conducts the viva-voce examination is required to be absolutely confidential and the candidates cannot be expected to know the identity of the Members before appearing in interview/viva-voce. Thus, the appellant could not have had any inkling about the composition of the School Selection Committee before participating in the viva-voce. However, after coming to know about the identity of the members of the Committee and noting the apparent illegality in the composition thereof, the appellant submitted her objections through two representations dated 19.04.2017 and 24.04.2017. As the representations did not receive required response, the writ petition as aforesaid came to be filed. The precedents pertaining to estoppel which have been relied upon by the learned counsel for the respondent No.7, would not in our opinion, act to the detriment of the appellant because there was no possibility that she could have had any idea about the composition of the Committee prior to appearing in the interview. That apart, as two members of the four Member Committee were inducted in gross contravention of the rules, the ratio of the Supreme Court judgment in the case of Dr. (Major) Meeta Sahai (supra), would directly apply to the controversy at hand and the illegality in composition of the Committee cannot save the procedure merely because the appellant participated therein before challenging the same. She would only be expected to agree to the prescribed procedure and not the illegality in the procedure.

12. The Supreme Court judgment in the case of Madan Lal and others (supra), is clearly distinguishable because in that case there was no such dispute that any of the Members of the Committee was inducted in gross contravention of the rules. Same is the position in the case of Bhabesh Das vs. The State of Assam (supra) relied upon by the counsel representing the respondent No.7.

13. The argument advanced on behalf of the respondents that the Vice President, Rupak Deka only acted as an observer in the committee meeting is also unacceptable on the face of it and is contrary to the record because Rupak Deka signed the result sheet as the Member of the Committee. Hence, the presence of two unauthorised persons in the Selection Committee would definitely give rise to a valid apprehension that the result of the committee's evaluation was tainted/influenced. As stated above, the role of the School Selection Committee in the process of selection is very crucial and any infirmity in composition thereof would give rise to apprehension of subjectivity and bias thereby reflection on the fairness of the evaluation process. The illegality in composition of the Committee is fatal and cannot be purged.

14. In wake of the discussion made above, the impugned order dated 25.01.2019 passed by learned Single Bench is reversed. As a consequence, the recommendation of the School Selection Committee dated 08.11.2016 and the confirmation thereof by the State Selection Board vide order dated 02.05.2017, are hereby quashed and resultantly, appointment of respondent No.7 to the post

of Principal of the A.K.H.S. Institution is also set aside.

15. The respondents are directed to constitute a fresh School Selection Committee with strict compliance to the requirement of Rule 8(4) of the Assam Secondary Education (Provincialised) Service Rules, 2003 and to hold fresh selection for the post of Principal of A.K.H.S. Institution. The exercise as indicated above shall be completed within a period of 3 (three) months from today.

16. The appellant/writ petitioner is continuing as the Principal in-charge in terms of the interim order dated 03.05.2017. The said interim arrangement shall continue till the process of fresh selection for the post of the Principal of A.K.H.S. Institution is completed.

17. The appeal is allowed in these terms. No order as to cost.