

(2010) 05 GAU CK 0006
In the Gauhati High Court
Case No : Writ Petition (C) No. 1011 of 2010

Chatrasing Roy and Others	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 24-05-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 6 GLR 665

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : K.K. Phukan, S.M. Sarma, K. Gogoi, M. Das and D. Borah, for the Appellant; B. Gogoi and B. Sarma, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—Pursuant to an advertisement, published on 23.7.2008, inviting applications for filling up of 32 numbers of vacant posts of Grade-IV, in the Department of Health & Family Welfare, Government of Assam, in Bongaigaon district, several persons, including the present Petitioners, applied. By Government notification, dated 1.10.2008, issued by the Health and Family Welfare (A) Department, Government of Assam, a Selection Board was constituted with the Deputy Commissioner/Addl. Deputy Commissioner (Health) of the District as Chairman, the Additional Chief Medical & Health Officer of the district as Member and Joint Director of Health Services of the district as Member-Secretary. The candidates were accordingly interviewed in the months of November and December, 2008. Thereafter, however, the said process of selection was not proceeded further and another advertisement was published, on 10.4.2009, by the Director of Health Services, Government of Assam, inviting applications to fill up 12 posts of Grade-IV, under the establishment of Directorate of Health Services, in the district of Bongaigaon. A fresh selection process accordingly commenced. The present Petitioners did not participate in the later selection process. This was followed by order, dated 21.1.2010, issued

by the Health and Family Welfare Department (A), Government of Assam, whereby the earlier process of selection, which had been set in motion by the advertisement, dated 23.7.2008, aforementioned, was abandoned with further direction to hold interview by calling afresh those candidates, who had already appeared in the interview held during the earlier selection process.

2. With the help of this writ petition, made under Article 226 of the Constitution of India, the Petitioners, who had participated in the selection process, which was set in motion by the advertisement, dated 23.7.2008, have impugned the order, dated 21.1.2010, and sought for necessary directions to be issued commanding the Respondents to appoint candidates on the basis of the select list, which might have been prepared pursuant to the advertisement, dated 23.7.2008.

3. While considering the grievances of the Petitioners, it needs to be borne in mind, as already noted above, that by notification No. HLA.1134/06/Pt.-VI/33, dated 1.10.2008, the Department of Health and Family Welfare, Government of Assam, constituted a Selection Board for selecting candidates for the posts of Grade-IV for the district of, amongst other districts Bongaigaon, with the following persons:

1. The Deputy Commissioner/Addl. Deputy Commissioner (Health) of the District - Chairman.

2. The Addl. CM & HO of the District - Member

3. The Joint Director of Health Services of the District - Member Secretary.

4. The Respondent No. 3, namely, Deputy Commissioner, Bongaigaon, however, included two more persons, who were functioning as Magistrates in his establishment, in the selection process, as constituents thereof, without, however, obtaining, in this regard, prior approval from, or intimation to, the Government. On being informed that the two persons, who, in terms of the Government notification, dated 1.10.2008, aforementioned, were not members and yet had been included in the Selection Board and had interviewed candidates, the Department of Health, Government of Assam, in consultation with its Judicial Department, concluded that the inclusion of the said two persons, as members of the Selection Board by the Deputy Commissioner, Bongaigaon, was illegal and the interviews, conducted by the Selection Board, which had persons, who were not, otherwise, members of the Selection Board under the Notification, dated 1.10.2008, were not sustainable in law. The Government, therefore, decided to cancel the selection made by the said Selection Board and directed, vide the impugned letter, dated 21.1.2010, interviews to be conducted afresh by issuing call letters to those candidates, who had been interviewed earlier, making it clear that those, who had appeared in the earlier selection process, shall only be called for the interview.

5. I have heard Mr. K.K. Phukan, learned Counsel for the Petitioners, and Mr. B. Choudhury, learned Counsel for the Respondent Nos. 1, 2 and 4. I have also

heard Ms. B. Sarma, learned Government Advocate, appearing on behalf of the Respondent No. 3.

6. In view of the fact that the Selection Board, in the present case, was constituted by the Government, no person, other than those, who were mentioned in the notification, dated 1.10.2008, could have been included in the Selection Board. Consequently, no interview by a Selection Board, which had been constituted by the Deputy Commissioner, in contravention of the Government's Notification, dated 1.8.2008, could have been legally held. Since it was the Government, which had constituted the Selection Board, it was for the Government only to alter or modify the constitution of the Selection Board. The Deputy Commissioner, Bongaigaon, had no authority to include any one, who, in terms of the Government notification, dated 1.10.2008, had not been included in the Selection Board.

7. Situated thus, it becomes glaringly noticeable that the interview, held in the present case, by a Selection Board, which comprised of persons, apart from those whom the Government notification, dated 1.10.2003, had mentioned, was illegal. In such circumstances, the Government has acted legally and within its powers in cancelling the selection made by the Selection Board, which the Deputy Commissioner, Bongaigaon, had constituted. The Government was wholly justified in directing, vide its letter, dated 21.1.2010, the Respondents/authorities concerned to conduct, in terms of the notification, dated 1.10.2008, fresh interview by recalling the candidates, who had already appeared in the interview. This Court finds no illegality and/or infirmity in the decision taken by the State Government and order in the direction given by the impugned letter, dated 21.1.2010.

8. Because of what have been discussed and pointed out above, I hold that this writ petition is devoid of any substance and cannot, therefore, be admitted.

9. In the result and for the foregoing reasons, this writ petition fails and the same shall accordingly stand dismissed. Interim direction, if any, passed in this case, shall accordingly stand vacated.

10. No order as to costs.