

---

**(2010) 05 GAU CK 0032**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 4170 of 2009**

|                                |    |            |
|--------------------------------|----|------------|
| Coaches Association and Others | Vs | APPELLANT  |
| State of Assam and Others      |    | RESPONDENT |

---

**Date of Decision :** 04-05-2010

**Acts Referred:**

Constitution of India, 1950 — Article 226, 309

**Citation :** (2010) 4 GLR 561

**Hon'ble Judges :** I.A. Ansari, J

**Bench :** Single Bench

**Advocate :** A.K. Goswami, U.R. Saikia, S. Saikia, K. Dutta and N.G. Sarma, for the Appellant; R. Bora, U.K. Nair, B.S. Sarma and A. Chetri, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

I.A. Ansari, J.—As had been sought for, and agreed to, by the learned Counsel for the parties, this writ petition is taken up for the purpose of final disposal along with the application, which the respondent No. 3 has filed seeking to get vacated the interim direction passed, in this writ petition, on 23.9.2009, the application having given rise to Misc. Case No. 663/ 2010.

2. The petitioner No. 1, a society, which is run under the name and style of "Coaches Association", stands registered under the Societies Registration Act, 1860, the petitioner Nos. 2 and 3, namely, Sri Baneebrata Das and Shri Ajit Kr. Das, being President and Secretary respectively of the petitioner No. 1, which is hereinafter referred to as "petitioner association".

3. The grievance of the petitioner association is, in substance, thus: In order to streamline the training and standard of performance of the coaches in the country and bringing the same at par with international standards, the Government of India, Department of Sports and Youth Welfare, had set up Netaji Subhash Chandra Bose National Institute of Sports ("NIS"), for all disciplines of sports, which are recognized under the Olympics, the Commonwealth, the Asian

Games and other international sports events and offers diploma, in coaching, in three distinct categories, namely, categories A, B and C. A post of physical instructor cannot be equated to the post of coach inasmuch as even a person, holding the degree or diploma in physical education, is required to undergo the course, as prescribed, for being trained as a coach at NIS, Patiala. Even the Government of Assam has been sending persons, with ability in sports, to pursue the course of coaching offered by the NIS. Gradually, as the requirement of trained coaches increased, the State respondents started appointing persons, having requisite qualifications and proficiency obtained from the NIS, as coach, under its Department of Sports and Youth Welfare. By letter, dated 2.7.1987, a request was made by the Deputy Secretary to the Government of Assam, Department of Sports and Youth Welfare, to the Assam Public Service Commission ("APSC"), for appointment to three Gazetted posts under the Directorate of Sports and Youth Welfare. In the said requisition, one post of Deputy Director of Sports (Coaching) was advertised for selection and appointment, the qualification required being, inter alia, 10 months' diploma in coaching from NIS. Pursuant to the requisition, so received by the APSC, an advertisement was published, on 13.3.1992, by the APSC, inviting applications. However, the said advertisement was not perused and was abandoned by a letter, dated 21.4.1992, issued, in this regard, by the Government/Thereafter, on 4.7.2007, the APSC published another advertisement to fill up, amongst others, six posts of District Sports Officer, the educational qualifications being, apart from a degree in arts, science or commerce from recognized university, three years degree in physical education or diploma in NIS. By, however, a subsequent corrigendum published on 24.7.2007, the requirement of having diploma in NIS came to be deleted. The Government, thereafter, published the Assam Sports and Youth Welfare (Recruitment and Promotion) Services Orders, 2001, which provide for filling up of various posts in the Department of Sports and Youth Welfare. The said Service Order cover the post of Deputy Director of Sports (Coaching). The prescribed qualification, under the said service order, does not require any diploma in NIS from a recognized institute as an essential qualification for appointment to any of the posts to which a coach can be promoted. In fact, the post of a physical instructor is equivalent, under the said service orders, to the post of Coach. Thus, without even having been trained to be a coach, a person may be promoted, under the said service order, 2001, to the post of the Deputy Director of Sports (Coaching). Thus, the said service orders seriously undermine the status, position and requirement of the coaches and ignores the avowed policy with which the NIS has been established and even the Government of Assam Sends persons to pursue the course of coaching.

4. While issuing notice of motion, an order was made, in this writ petition on 23.9.2009, as already pointed out above, whereby an interim direction was given to the State respondents not to fill up the lone vacant post of Deputy Director of Sports (Coaching). By making a miscellaneous application, which has given rise to Misc. Case No. 663/ 2010, the respondent No. 3 has sought to get the said

interim direction vacated. That is how, this writ petition has come to be fixed for final disposal.

5. I have heard Mr. A.K. Goswami, learned senior Counsel, for the petitioner, and Mr. R. Bora, learned Government Advocate, appearing on behalf of the State respondents. I have also heard Mr. U.K. Nair, learned Counsel for the private respondent.

6. While considering the present writ petition, it needs to be noted that the petitioners have correctly pointed out that in order to streamlining the training and standard of performance of the coaches in the country and bringing the same at par with international standards, the Government of India, Department of Sports and Youth Welfare, has set up NIS, which offers diploma in Coaching to three different categories of persons divided into categories A, B and C and such diploma can be obtained even by a bachelor of physical education or by a post graduate diploma holders in physical education. By letter, dated 2.7.1987, as already mentioned above, a requisition was, indeed, given by the Department of Sports and Youth Welfare, Government of Assam, to the APSC, for filling up of three posts, which included the post of Deputy Director of Sports (Coaching), but the said request was, eventually, withdrawn and the process of selection, which was commenced by the APSC by issuing advertisement, dated 13.3.1992, was abandoned. The reasons, for such a decision, are, however, indicated in the letter, dated 21.4.1992, issued, in this regard, by the Government of Assam, Department of Sports and Youth Welfare. The reasons assigned, in substance, are, thus: During the year 1987, the Government had created one post of Deputy Director of Sports (Coaching), one post of Assistant Director of Sports (Body Building) and one post of Assistant Director of Sports (Rural Sectoral Games). The post of Deputy Director of Sports (Coaching) was being held by one Nitya Nanda Sarma, the post of Assistant Director of Sports (Body Building) was held by one Shri Hara Kanta Borgohain and the post of Assistant Director of Sports (Rural Sectoral Games) was held by Miss Meena Bora. All the said three persons, however, held their respective posts, on ad hoc basis. Be that as it may, Sri H.K. Borgohain and Miss Meena Bora left the job in the month of March 1989. On retirement of these officers, Government had been moved by the Directorate of Sports and Youth Welfare by letter, dated 27.5.1989, for filling up the posts of Assistant Director of Sports by promotion from the posts of District Sports Officer. The Government accordingly constituted a Selection Committee by notification, dated 12.5.1989. The Government was, once again, requested, by letter, dated 3.8.1991, to fill up the post of Assistant Director of Sports by promotion from the posts of District Sports Officer and the service records of the eligible officers were also submitted to the Government accordingly. Similarly, the post of Deputy Director of Sports (Coaching) was held by Shri Nitya Nanda Sarma, in the year 1987, as per Government notification, dated 20.2.1987, which had created the said post on ad hoc basis for not beyond one year. The appointment, so made, was extended for a period of one year: but beyond this date, the appointment was not extended. As a result thereof, though Shri Nitya

Nanda Sarma had remained in service, he had not received his pay since April 1989.

7. With the object of regularizing the post of Deputy Director of Sports (Coaching), which had been held by Shri Nitya Nanda Sarma, on ad hoc basis, as described above, the APSC was requested to advertise the post. However, the APSC advertised the post after long 5 years. In the meanwhile, two of the incumbents, namely, Shri Hara Kanta Borgohain and Miss Meena Bora, as mentioned above, left the jobs as they got appointed under the Sports Authority of India and the only incumbent, who continued was Shri Nitya Nanda Sarma, Deputy Director of Sports (Coaching), whose service remained without being regularized.

8. It is, now, necessary to note that the Assam Sports and Youth Welfare (Recruitment and Promotion) service orders, 2001, have come to be notified, in the State Government's Gazette, on 13.11.2002. The said service orders have been brought into force pending finalization of the service rules, which are required to be framed by the Government under Article 309 of the Constitution of India. Under the said service orders, the post of Director of Sports (Coaching) is a post, which can be filled up from the post of Assistant Director of Sports and Youth Welfare. However, the appointment to the post of Assistant Director of Sports, Youth Welfare, does not require diploma from NIS.

9. It is worth pointing out that the said service orders having not been challenged, would hold the field so long the appropriate service rules are not made in this regard and/or until the provisions of the said service orders are not modified by the appropriate authority. The petitioners have not challenged, in this writ petition, the legality and validity of the said service orders. In such circumstances, respondent No. 3, who is, otherwise, eligible, in terms of the said service orders, for promotion to the post of Deputy Director of Sports (Coaching), cannot be restrained by this Court from being considered for promotion inasmuch as the right to be considered for promotion is, now, recognized as a fundamental right if a person is, otherwise, eligible and falls within the zone of consideration [see Delhi Jal Board Vs. Mahinder Singh, . This Court, therefore, cannot, in exercise of its powers, under Article 226 of the Constitution of India, restrain the State from considering the case of respondent No. 3 for promotion, when the service orders, governing the service conditions of the petitioners and also of the respondent No. 3, hold the field, whereunder the petitioner is eligible and within the zone of consideration. This apart, the petitioners have merely sought for necessary directions to be issued by this Court restraining the Government from making promotion to various posts including the posts of Deputy Director of Sports (Coaching) without considering the grievances of the petitioners that their specialized knowledge, as coaches, are not being recognized, appreciated, taken care of, encouraged and promoted by making relevant provisions in the said service orders or in any other legal manner.

10. While invoking its powers under Article 226 of the Constitution of India this Court cannot restrain the State Government, permanently, from making any promotion, under the said service orders, without considering the case of the petitioners, when the petitioners have not even challenged the conditions of their services and/or conditions of recruitment and/or promotion as mentioned in the said service orders, 2001. Situated, thus, it becomes clear that neither this Court can restrain the State respondents from considering the case of the respondent No. 3 for promotion to the post of Deputy Director of Sports (Coaching) nor can this Court command the State Government not to make any promotion, in terms of the said service orders, without considering, the grievances of the petitioners.

11. Because of what have been discussed and pointed out above and without expressing any opinion as to the correctness or otherwise of the grievances expressed by the petitioners that the coaches are not being given appropriate attention by the State Government, while framing conditions for recruitment and promotion of persons, who look after, manage and administer sports, as coaches, this writ petition is dismissed and the State respondents are given the liberty to proceed to fill up the lone vacant post of Deputy Director of Sports (Coaching) by adhering to the provisions of said service orders, 2001 and consider the case of the respondent No. 3 accordingly. The selection of the respondent No. 3, if already made as the Deputy Director of Sports (Coaching), may be finalized and given effect to by the State respondents.

12. Notwithstanding the fact that this writ petition has been dismissed, the petitioners shall have the liberty to approach this Court with appropriate application (s), as may be permissible in law, for remedy of their legally sustainable grievances, if any.

13. No order as to costs.