
(2012) 04 GAU CK 0010
In the Gauhati High Court

Case No : Writ Petition (C) No's. 547, 3048, 3200 of 2008 and 857 of 2009

Dhiren Talukdar and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 04-04-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (2012) 5 GLT 167

Hon'ble Judges : Prasanta Kumar Saikia, J; Amitava Roy, J

Bench : Division Bench

Advocate : Y.S. Mannan, Ms. U. Sharma, Mr. Z. Akibria and Mr. Rubul Das, for the Appellant; S.S. Dey, SC, Transport Department, Mr. U. Rajbongshi and Mr. B.J. Ghosh, State Counsel, for the Respondent

Judgement

Amitava Roy, J.—The petitioners claiming themselves to be candidates belonging to various reserved categories seek to invoke the writ jurisdiction of this court to annul the selection process for appointment to the post of Junior Assistant in the establishment of Commissioner of Transport Department, Assam, We have heard Mr. YS Mannan, learned counsel for the petitioners and Mr. SS Dey, learned counsel appears for the official respondents.

2. The identicalness of the foundational facts bearing on the petitioners' remonstrance permit an abridged portrayal of the backdrop. With the impending exercise in mind, vide notification No. TMV-34/93/Pt/143, dated 27.11.2007, a Selection Committee was constituted as hereinbelow for direct recruitment to the post of LDA (re-designated as Junior Assistant) under the establishment of the Commissioner of Transport, Assam: -

(1) Commissioner of Transport, Assam -Chairman

10.01.2008

(2) Addl. Commissioner of Transport, Assam - Member

(3) Asstt. Commissioner of Transport, Assam - Member Secretary,

(4) Under Secretary Transport Department - Representative from Government.

Vacancies for such recruitment were, thereafter, notified on 10.01.2008 and 20.01.2009 from the office of the Commissioner of Transport, Assam bearing the following particulars thereof.

3. By letters No. CST. MISC/E/48/2007/53/145, dated 10.01.2008 and No. CST. MISC. E/81/2008/20, dated 20.01.2009, the Commissioner of Transport, Government of Assam requested the Director of Employment & Craftsman Training, Assam to issue necessary instructions to all the District Employment Exchanges of the State for furnishing the names and particulars of suitable candidates to reach his office by 25.01.2008/10.2.2009 correspondingly. The letter dated 20.1.2009, in particular, indicated that the recruitment was contemplated in terms of Rule 6 of the Assam Ministerial District Establishment (Transport) Service Rules, 2001 (for short hereafter referred to as the Rules).

4. Though, on the basis of the names furnished by the various employment exchanges of the State, a written test of the eligible candidates was held followed by an interview of those who had passed the same, the petitioners herein could not participate in the process as their names were not forwarded by their respective employment exchanges, Being aggrieved, they are before this Court seeking redress.

5. In the above factual setting, some salient features pertaining to the four proceedings proposed to be disposed of deserve attention.

WP(C) No. 547/2008

Both of them claimed to be eligible in terms of the notified criteria.

Pleaded Stand of the Respondents.

The selection process has been conducted strictly in accordance with the prescriptions of Rule 14 of the Rules. As reiterated by the Employment Officer, Nalbari, on the scrutiny of the relevant records, names of 20 candidates belong to SC, ST(P), OBC and physically handicapped categories were

6. WP(Q No. 3200/2008

sponsored on the basis of various factors, viz, i) Seniority of registration ii) Age of the candidate iii) Requirement criteria of the Employer iv) Consideration on rotational basis.

Petitioner No. 2, Sri Ramen Ch. Baishya had been registered with the said exchange vide registration No. 4799/2004 under General Category and his claim of being a member of the Scheduled Caste community is not substantiated by the records. Vis-?-vis Shri Dhiren Talukdar, petitioner No. 1, his registration had lapsed in the year 2009, where after, he had not sought for any renewal. The letter dated 10.01.2008 had been received by the District Employment

Exchange, Nalbari on 02.02.2008, whereafter, the list of suitable candidates was prepared and forwarded to the Commissioner of Transport, Assam, Guwahati. Out of 54079 registered candidates, the following were eligible in terms of the advertisement:-

SC-3159,

ST(P) - 7740,

OBC-7138,

Physically handicapped - 790.

Five names under the Scheduled Caste category, which were considered for being sponsored, had been registered in the year 1995, 1996, 1999, 2000 and 2002.

They claimed to be eligible in terms of the notified criteria and alleged as well that various general category candidates had been called for the written test and had qualified for the interview, though all the vacancies, as notified, were reserved.

Pleaded Stand of the Respondents.

The requisition for the candidates from the District Employment Exchanges of Assam has been in conformity with the prescription of Rule 6 of the Rules. Only those candidates, who had been sponsored by the respective District Employment Exchanges, allowed to participate in the selection process constituting written test, viva-voce and type writing/speed test. Though, initially a few general category candidates were also permitted to take part, eventually on the decision of the Committee constituted in accordance with Rule 14 of the Rules, though, they had qualified in the written test, they were not called for the interview. The written test was held on 04.07.2008 and the viva-voce as well as type writing/speed test on 29.07.2008 and 30.07.2008 respectively. As the petitioners had not provided their registration numbers in the writ petition, the relevant records could not be verified to ascertain the reasons why their employment exchanges did not forward their names.

7. WP(C) No. 3048/2008

He claimed to be eligible in terms of the notified criteria. For filling up the posts, the advertisement ought to have been published by the concerned authorities in two daily news papers and the same should have been hung at the district level offices of the concerned department.

Pleaded Stand of the Respondents.

The petitioner Shri Ramen Ch. Baishya had been registered with the District Employment Exchange, Nalbari in the general category and his claim to be a member of the Scheduled Caste community is not substantiated by the records. He was registered in the year 2004 and the Scheduled Caste certificate annexed

to the writ petition had been issued in the year 2006.

8. WP(C) No. 857/2009

According to them, they all are eligible as per the criteria notified. They have impugned the vires of Rule 6(1) (b) of the Rules. They have averred that their names have been registered with the District Employment Exchanges of the State, viz, Nagaon, Jorhat and Darrang.

Pleaded Stand of the Respondents.

The respondents contended that advertisement in the newspaper for notification of the vacancies is not necessary under the Rules. According to them, the registration of the petitioner Nos. 4 & 6 with their respective employment exchanges had lapsed at the relevant point of time. Further, the petitioner Nos. 2 to 6 and 8 did not possess the necessary qualification as prescribed and thus did not come within the zone of consideration for which their names were not sent. As the petitioner No. 7 did not mention his registration number, his status could not be verified. They further stated that the petitioner No. 9, though, had passed HSLC, he did not possess any diploma of type writing either in English or Assamese. He did not indicate as to whether he had acquired a diploma in computer. Petitioner No. 1, though, a graduate he did neither have any knowledge in computer nor of type writing in English or Assamese.

Pleaded reply of the petitioners

The petitioner not 4 was also physically handicapped and was thus eligible always to be included in the general category. The requirement of knowledge of type writing in English and Assamese as well as in computer was not an essential condition of eligibility and, thus, the petitioners could not have been disqualified on this ground.

9. Mr. Mannan has argued that the restriction of number of participating candidates to only those registered with the employment exchanges of the State in purported compliance of Rule 6 (1) (b) is violative of the constitutional guarantee of equality before law and in public employment and, thus, the selection process being obviously invalid is liable to be adjudged as such. Not only, the names forwarded by the District Employment Exchanges were beyond the deadline of time mentioned in the communications laying the requisition therefor, the constitution of the Selection Committee vide the notification dated 27.11.2007 also lacks in authority and sanction of law, he urged. Additionally, the District Employment Exchanges having handpicked the candidates on irrelevant and extraneous factors, the process of selection confined to them is apparently unfair, discriminatory and lacking in transparency and is, thus, liable to be declared null and void, he contended.

10. Drawing the attention of this Court to Rule 6 of the Rules and Rule 4 of the Assam Public Services (Direct Recruitment to Class-III and Class-IV Posts) Rules, 1997 (hereafter for short also referred to as the 1997 Rules), the learned counsel

insisted that the exercise for filling up the posts involved ought to have been undertaken in compliance of the provisions of the latter. On a conjoint reading of Rule 6 of the Rules and Rule 4 of the 1997 Rules, according to Mr. Mannan, advertisement of the posts facilitating participation of all eligible candidates was obligatory to conform to the constitutional mandate qua public employment. That the selective approach of the District Employment Exchanges in forwarding the names of the candidates is also not in conformity with the letter and spirit of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, was emphasized as well. According to Mr. Mannan, such omissions are not only in repudiation of the constitutional enjoinder to Article 14 & 16 of the Constitution of India, but also has reduced the selection process to a farce, access thereto of more meritorious candidates for participation having been prevented thereby. To reinforce his arguments, Mr. Mannan has placed reliance on the decisions of Apex Court in *Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others*, , *Arun Kumar Nayak Vs. Union of India (UOI) and Others*, , *State of Bihar Vs. Upendra Narayan Singh and Others*, and *State of Orissa and Another Vs. Mamata Mohanty*, .

11. In reply, Mr. Dey has urged that the decision to requisition eligible candidates from the District Employment Exchanges of the State being in harmony with the prescription of Rule 6 (1) (b) of the Rules, the same cannot be faulted with. Relying on the notification No. TMV. 34/93/Pt/95, dated 01.07.2002, the learned counsel has contended that in terms thereof the application of Rule 7 of the 1997 Rules to the Commissioner of Transport, Assam is visibly excluded and, thus, reference thereto is wholly inconsequential. According to Mr. Dey, having regard to the averments in the pleadings of the Director, Employment & Craftsman Training, Assam, disclosing the reasons for not furnishing the candidature of the petitioners, the plea of discrimination and unfair treatment is misconceived. While admitting that the composition of the Selection Committee has been in terms of Rule 14 of the Rules, Mr. Dey has urged that as direct recruitment to the same post also within its purview was contemplated, such a step also is unassailable in law. He insisted that as the Selection Committee contemplated by Rule 14 is one also for conducting the process of promotion from Grade-IV to Junior Assistant, it was permissible in absence of any other prescription to the contrary to entrust the exercise of direct recruitment to the said entity. The learned counsel, while insisting that the Rules are still in force and that the impugned process has been conducted strictly in accordance therewith, he urged, against any interference therewith, contending that 900 expectant candidates were involved. According to him, the decisions cited on behalf of the petitioner are distinguishable on facts, as the same had been rendered without reference to the Rules of the kind involved herein. Mr. Dey has submitted that as the selection is otherwise complete, the respondents may be permitted to take further consequential steps in terms thereof. The decisions of the Apex Court *Arun Tewari and Others Vs. Zila Mansavi Shikshak Sangh and Others*, and *State of Orissa and Others Vs. Bhikari Charan Khuntia and Others* etc., were pressed

into service by Mr. Dey, in endorsement of these pleas.

12. We have extended our thoughtful consideration to the rival pleadings as well as the submissions based thereon. Noticeably, though, the vires of Rule 6 (1) (b) of the Rules was, in the pleadings, endeavoured to be challenged being violative of Article 14 & 16 of the Constitution of India, in course of the arguments the same was not pursued. Instead, it was sought to be emphasized that on a reading of the said provision of the Rules as a whole, it was incumbent for the respondents to advertise the vacancies in addition to requisitioning of the names of the eligible candidates from the District Employment Exchanges of the State. This was an injunction, according to the petitioners, in view of the stipulation for compliance with the scheme of selection prescribed by the Government as envisaged in Rule 6 (1) (b) of the Rules. The pleaded impugnement of the vires of this provision of the Rules would thus require scrutiny in this perspective.

13. The Rules are an yield of an exercise of powers conferred by proviso to Article 309 of the Constitution of India for regulating the recruitment to and other conditions of service of persons appointed to the Assam Ministerial District Establishment (transport) Service and are applicable to persons appointed to the posts of Head Assistant, Upper Division Assistant and Lower Division Assistant of the offices of the District Transport Officer and Secretary, Regional Transport Authority of the State under the Commissioner of Transport, Assam. The methods of recruitment to the service as laid down in Rule 5 prescribes that appointment to the post of Lower Division Assistant has to be by direct recruitment up to 90% of the vacancies occurring in a year in accordance with Rule 6 and by promotion in accordance with Rule 11 to the remaining 10% of vacancies from amongst Grade-IV employees of district offices. Rule 6 occupying the centre stage of the debate, is extracted hereinbelow:-

6. Direct recruitment:-

(1) Direct recruitment to the cadre of LDA upto 90 percent of Vacancy occurring in a year shall be made by the appointing authority in accordance with the procedure here in after provided:-

(a) Before the end of each year the appointing authority shall make an assessment regarding the likely number of vacancies to be filled up by direct recruitment during the next year together with the details about reservation of candidates belonging to S.C., S.T. or any other category as laid down by the Government as provided under rule 10 and about carry forward of such reservation.

(b) The appointing authority shall then invite applicants from all the District Employment exchange of the State and shall make the selection in accordance with the scheme of selection prescribed by the Government and prepare a list of candidates found suitable for appointment in order of preference. The number of candidates in such a list may be approximately double the number of vacancies.

(c) The appointing authority shall publish the list at such place as it may consider proper,

(d) The list mentioned in clause (b) of sub-rule (I) of this rule shall remain valid for twelve calendar months from the date of publication.

In the event of the appointing authority being unable to enlist sufficient number of candidates to fill up the vacancies in a year it shall repeat the procedure as mentioned here in before under sub-rule (I) of this rule for preparing a subsequent list in a year.

Provided that the appointing authority shall not make appointment to any candidates of the earlier list of the same year eligible for appointment, have been offered the appointment."

It would transpire from the above excerpt that direct recruitment to the cadre of LDA (re-designated as Junior Assistant) has to be in accordance with the procedure laid down therein. In terms thereof, before the end of each year, the appointing authority would have to make an assessment regarding the likely number of vacancies to be filled up by direct recruitment during the next year together with the details about reservation of candidates belonging to Scheduled Caste and Scheduled Tribes or any other category as identified by the Government. The appointing authority would then invite applications from all the District Employment Exchanges of the State and shall make the selection in accordance with the scheme of selection prescribed by the Government and prepare a list of candidates found suitable for appointment in order of preference. The number of candidates in the select list in accordance with the Rules ought to be approximately double the number of vacancies.

Having regard to the unequivocal language applied in Rule 6 (1) (b) stipulating the manner of structuring the corpus of the candidates for the eventual selection, in our view, the reference to the scheme of selection prescribed by the Government is not of any decisive significance in respect thereof. The Rules precisely require the appointing authority to invite applications from all the District Employment Exchanges of the State only and does not, as such, contemplate notification of the vacancies by public advertisement. The scheme of selection prescribed by the same alluded to in Rule 6 (1) (b) of the Rules pertains to a stage subsequent thereto.

14. That the Commissioner of Transport, Assam, has been excluded from the purview of 1997 Rules had been excluded from applicability to the is vivid from the notification dated 01.07.2002 referred to hereinabove. Rule 3 of the 1997 Rules in clear terms make such rules applicable only to those Class-III (both technical and nontechnical and Class-IV) where there are no service rules, executive orders regulating the recruitment and conditions of service. In the face of the Rules, on this count as well, the 1997 Rules has no application to the selection process involved. Consequently, though, it was open to the respondents to adopt the procedure prescribed under Rule 4 thereof to conduct the present process of

recruitment, it obviously was not incumbent upon them to do so. The reliance on the provisions of the 1997 Rules to impeach the validity of the impugned selection process thus cannot be sustained.

15. Having regard to the fact that the Selection Committee contemplated under Rule 14 of the Rules is also one for promotion to the post of Lower Division Assistant (Junior Assistant) in the service noticing the identicalness of the composition with the one prescribed by the notification dated 27.11.2007, we are disinclined to invalidate the selection on the plea of lack of authority," jurisdiction or competence of the Selection Committee constituted thereby.

16. The petitioners' remonstrance on the aspect of forwarding of names of the candidates by the District Employment Exchanges even beyond the date mentioned in the letters of requisition, also does not appeal to us in view of the omnibus nature thereof. Though, the affidavit of the Director, Employment and Craftsman Training, Assam filed in WP(C) No. 547/2008, discloses that the District Employment Exchange, Nalbari, had received the communication dated 10.01.2008 only on 02.02.2008 i.e. after the expiry of the deadline on 25.01.2008, we are not disposed to annul the selection process on this ground alone in absence of any overwhelming material on record to demonstrate the candidates whose names were forwarded belatedly were either ineligible or disqualified in terms of the norms prescribed by the Rules.

The respondents in their affidavit have, in particular, indicated the criteria applied by the District Employment Exchanges of the State for forwarding the names of the candidates in terms of the requisition, which include;-

- i) Seniority of registration,
- ii) Age of the candidate,
- iii) Requirement criteria of the Employer and
- iv) Consideration on rotational basis.

17. The affidavit of the Director, Employment & Craftsman Training, Assam, reveals that in the process, the candidates, who had been registered earlier, had been accorded some preference. It further transpires therefrom that according to this respondent, the registration of some of the petitioners had lapsed at the relevant point of time and others did not strictly satisfy the conditions of eligibility as stipulated. Moreover, the pleadings of the petitioners did not adequately furnish the essential particulars of their registrations, thus, rendering the answering respondent unable to provide the reasons for not forwarding their names in further details. Though, in course of the arguments, it was hinted on behalf of the petitioners that in terms of the notifications dated 10.01.2008 and 20.01.2009, the capability of type writing with a speed of 30 words per minute in English and 20 words per minute in Assamese and knowledge of computer was only a desirable qualification, in the face of Rule 8 read with Schedule-II to the Rules, this plea also does not commend for acceptance to invalidate the selection

process. Whereas, Rule 8 ordains that the academic qualification of a candidate for direct recruitment would be, as prescribed in Schedule-II thereof, the minimum qualifications prescribed thereunder are as follows:-

1) He must have passed the High School Leaving Certificate Examination of a Board recognized by the Government or any other examination declared by the Government as equivalent.

2) He must be capable of typing of the minimum speed of 30 words per minute

18. Though, the requirement of typing at the prescribed speed does not detail further on the language and is sans any reference to the computer, the decision of the District Employment Exchanges of the State and the stand of the Director of Employment and Craftsman Training, Assam, that some of the petitioners were lacking in this segment of the qualification contemplated for the post involved cannot be lightly disregarded as irrelevant and wholly inconsequential in identifying the candidates for forwarding their names for participation in the process.

The petitioners' grievance that though eligible in terms of the advertisement, their names were not forwarded arbitrarily and others were favoured on pick and choose basis thus, does not weigh with us.

19. In the present conspectus of facts, if on an understanding of Rule 6 (1) (b), the respondents have confined the selection process only to the candidates drawn from the District Employment Exchanges of the State, in our view, the same cannot be proscribed as a cardinal vice to incurably afflict the same.

20. The decisions cited on behalf of the petitioners to buttress the plea of inflexible enjoinder of advertisement of the vacancies for public participation in conformity with the mandate of Article 14 & 16 of the Constitution of India are distinguishable on facts. To start with, in none of these decisions any provision akin to Rule 6 had figured for scrutiny. There was no occasion for their Lordships to enunciate the law with regard to the intransigent essentiality of advertisement of vacancies for public employment in the face of a prescription of Rules framed under Article 309 of the Constitution of India confining the zone to the eligible candidates registered with the concerned District Employment Exchanges.

21. The observations in Excise Superintendent Malkapatnam, Krishna District, A.R (Supra) that in addition to the requisitioning from the employment exchanges, the vacancies ought to be published in news paper having wide circulation and notified as well on the office notice board, announced in radio, television and employment news bulletins, in our view, has to be construed in the contextual facts of that case. Relevant in this regard are the following observations of the Apex Court in para 9, page 318 & 319 of Union of India (UOI) and Others Vs. N. Hargopal and Others, are:-

9... The object of recruitment to any service or post is to secure the most suitable person who answers the demands of the requirements of the job. In the

case of public employment, it is necessary to eliminate arbitrariness and favouritism and introduce uniformity of standards and orderliness in the matter of employment. There has to be an element of procedural fairness in recruitment. If a public employer chooses to receive applications for employment where and when he pleases, and chooses to make appointments as he likes, a grave element of arbitrariness is certainly introduced. This must necessarily be avoided if Articles 14 & 16 have to be given any meaning. We, therefore, consider that insistence on recruitment through employment exchanges advances rather than restricts the rights guaranteed by Articles 14 & 16 of the Constitution. The submission that employment exchanges do not reach everywhere applies equally to whatever method of advertising vacancies is adopted. Advertisement in the daily press, for example, is also equally ineffective as it does not reach everyone desiring employment. In the absence of a better method of recruitment, we think that any restriction that employment in government departments should be through the medium of employment exchanges does not offend Articles 14 & 16 of the Constitution.

The remark of the Hon''ble Apex Court in Arun Kumar Nayak (Supra) that its decision in Arun Tewari & Ors. (Supra) did not lay down any law and instead one in Excise Superintendent Vs. KBN Visweshwara Rao (Supra) had done so, in our respectful comprehension, does not clinch the issue in favour of the petitioners in the teeth of Rule 6 (1) (b) of the Rules. To reiterate, no such provision identical to Rule 6 (1) (b) had fallen for consideration of the Apex Court qua this aspect of the debate.

22. The decision of this Court in WP(C) No. 3250/2008 (Ratul Bharali & Anr. Vs. The State of Assam Ors.) also does not advance their cases, inasmuch, as not only the post involved therein and the Rules applicable were different, the 1997 Rules were referred to and relied. In all probability, the notification dated 01.07.2002, excluding the Commissionerate of Transport, Assam, from the purview of 1997 Rules, had not been placed before the learned Single Judge. Further, the requirement of publication of the notification of the vacancies in the news papers was emphasized in view of a mandate to that effect by the Hon''ble Apex Court in an earlier selection for the same posts i.e. Assistant Enforcement Inspector and Enforcement Inspector of the department. The facts are clearly distinguishable on these determinative aspects. In the above view of the matter, we are unable to sustain the challenge as laid in the instant petitions, which therefore fail. The petitions are dismissed. This determination notwithstanding, it would be open for the State respondents to finally decide as to whether in view of the time lag, the selection process ought to be finalized or not for the purpose of appointments. Further, in view of the state of law emphasizing on the desirability of notifications of vacancies in news paper, announcement in radio etc. for wide circulation to promote the excellence and quality of service, the State respondents ought to consider as well the needfulness of suitable amendments in the Rules. No costs.