
(2010) 05 GAU CK 0066
In the Gauhati High Court
Case No : Writ Petition (C) No. 1110 of 2009

Dhon Singh Kramsa

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 25-05-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 301, 309

Citation : (2011) 2 GLR 285

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

Bench : Single Bench

Advocate : M. Sarania, S.U. Ahmed, J.K. Brahma, G. Pegu and W. Temjem, for the Appellant; B. Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—Pursuant to an advertisement, dated 8.10.2007, issued by the Assam Public Service Commission ("APSC"), inviting applications to fill up seven posts of Assistant Director, Town and Country Planning, under Urban Development Department to the Government of Assam, the Petitioner, who is an Assistant Inspector of Excise and a member of Scheduled Tribe (H), Karbi Community, in the State of Assam, applied. The prescribed qualification for appointment to the said post, in terms of the said advertisement, was that a candidate must have passed Post Graduate degree or Diploma in Town/City/Urban/Regional/ Transportation/Planning from recognized University/Institution or equivalent, apart from the educational qualification, so prescribed. This apart, as per the said advertisement, one post was reserved for ST(H). The Petitioner in his 4th semester of M. Sc. Course, in Geography, had specialization (optional paper) in Regional Development and Planning (RDP). As the educational qualification prescribed under the said advertisement, dated 8.10.2007, was Post Graduate Degree/Diploma in Town/City/Urban/Regional/ Transportation/Planning, the Petitioner was, according to the Petitioner, eligible, in terms of the said advertisement, to apply for selection and appointment to the said post and that

is why, the Petitioner applied. Following his application seeking to be selected and appointed, the Petitioner received a letter, dated 6.2.2008, issued by the Secretary APSC, inviting the Petitioner to appear, for interview, on 27.2.2008. Before, however, the interview could be held on the scheduled date, the Petitioner received another letter, dated 16.2.2008, issued by the Deputy Secretary, APSC, informing the Petitioner that the interview/viva voce, for the said posts of Assistant Director, has been postponed due to unavoidable circumstances. While the Petitioner was awaiting another call letter to appear for the postponed interview, the APSC has issued another advertisement, dated 20.1.2009, inviting applications for the said seven posts and prescribed, for selection, an educational qualification, which rendered the Petitioner ineligible to be selected and appointed to the said post of Assistant Director. The prescribed educational qualification was as under:

1. A candidate must have passed Post Graduate Degree or Diploma in Town and Country Planning (City/Regional/Planning/Environmental Planning/Transport Planning/Urban Planning/Housing) from any recognized institution or equivalent qualification. The basic qualification required for obtaining the Post Graduate Degree/ Diploma in Town and Country Planning as above, is B.E. (Civil)/ B. Arch./ P.G. Degree in Geography/Economics/Mathematics. (emphasis is supplied)

2. P.G. Degree in Geography with one paper on Regional Development Planning (RDP), is not eligible to be called for interview for the post of the Asstt. Director, Town and Country Planning.

2. Aggrieved by the fact that the APSC has re-issued the advertisement with modification in the earlier prescribed educational qualification and that too, without formally cancelling the earlier advertisement and withdrawing the call letters, which had already been issued, and without giving any information to those, who had applied earlier, including the present Petitioner, as regards the later advertisement, the Petitioner has come to this Court seeking, with the help of this writ application, made under Article 226 of the Constitution of India, issuance of appropriate writ(s) setting aside and quashing the latter advertisement, dated 29.1.2009, and commanding the Respondents to hold interview, in terms of the earlier advertisement, dated 8.10.2007, and fill up the posts accordingly.

3. The Petitioner's further grievance is that in the earlier advertisement, one post had been kept reserved for ST(H) and the Petitioner could have been selected against the said reserved vacancy, but disqualifying a person, holding the Post Graduate Degree, in Geography, with one paper in Regional Development Planning (RDP), has caused great injustice to the Petitioner and such action of the APSC is mala fide inasmuch as the selection is aimed at filling up the reserved post aforementioned by general candidates and not by reserved category candidates.

4. Resisting the writ petition, the APSC has filed its affidavit, wherein the APSC's

case is, in brief, thus:

(i) Pursuant to a draft advertisement, forwarded by the Department of the Urban Development, Government of Assam, the said advertisement was published by the APSC, wherein the prescribed educational qualification was Post Graduate degree or Diploma in Town/City/Urban/Regional/Transportation/Planning from recognized University/Institution or equivalent. After publication of the advertisement and, on receiving applications, the APSC had some correspondence with the State Government seeking clarification regarding educational qualification for the post of Assistant Director, Town and Country Planning. By its letter, dated 22.2.2008, the APSC specifically asked whether the educational qualification, mentioned in the advertisement, dated 7.10.2007, implies Post Graduate degree or Diploma in Town/City/Urban/ Regional/ Transportation/Planning from recognized University/ Institution and, further, whether a person with Post-Graduate degree in Geography, with one paper on in Regional Development Planning (RDP) would be eligible.

(ii) Reacting to the APSC's letter, dated 22.2.2008, aforementioned, the Directorate, Town and Country Planning, Government of Assam, vide its letter, dated 24.4.2008, that the prescribed educational qualification, for the post of Assistant Director, is Post Graduate Degree or Diploma in Town and Country Planning (City/Regional/ Planning/Environmental Planning/Transport Planning/ Urban Planning/Housing) from any recognized institution or equivalent qualification with the basic qualification required for obtaining the Post Graduate Degree/Diploma in Town and Country Planning being B.E. (Civil)/B. Arch./P.G. Degree in Geography/Economics/ Mathematics. By its letter, dated 24.2.2008, the Government further clarified that P.G. Degree, in Geography, with one paper, on Regional Development Planning (RDP), is not eligible to be called for interview for the post of the Asstt. Director, Town and Country Planning.

5. From the clarification offered by the Government, it becomes clear that the Post Graduate Degree, in Geography, with one paper, in Regional Development Planning, was not the requisite educational qualification for the said post. It has also been clarified in the later advertisement that the basic qualification required for obtaining Post Graduate Degree/Diploma in Town and Country Planning is B.E. (Civil)/ B. Arch./P.G. Degree in Geography/Economics/Mathematics. P.G. Degree in Geography with one paper on Regional Development Planning (RDP).

6. I have heard Mr. M. Sarania, learned Counsel for the Petitioner, and Mr. B. Choudhury, learned Counsel for the Respondent No. 1. None has appeared on behalf of the remaining Respondents.

7. While considering this writ petition, it needs to be noted that no recruitment rules have yet been framed under Article 309 of the Constitution of India for regulating the Recruitment and Conditions of Services of persons in the Town and Country Planning services under the Department of Town and Country Planning, Government of Assam. Pending, however, finalization of the relevant service

rules, the Government has published, on 16.4.1990, the Assam Town and Country Planning service order, 1990, and it is this service order, which holds the field. In terms of this service order, the minimum prescribed qualification, for direct appointment, to the post of Assistant Director, is Post-Graduate Degree or Diploma in Town and Country Planning (City/Regional/Planning/Environmental Planning/Transport Planning/Urban Planning/Housing) from any recognized institution or equivalent qualification provided that such a post-graduate has the basic qualification of Bachelor's Degree in Engineering (Civil) or its equivalent qualification from recognized institution.

8. As long as the service order aforementioned remains in force, there can be no recruitment to the post of Assistant Director ignoring or violating the conditions of service as has been prescribed under the said service order. A reference, in this regard, may be made to the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, wherein the Supreme Court has clearly laid down that no appointment can be made by Government in violation of the recruitment rules and any such appointment, if made, would not clothe a person with any right to claim regularization of his appointment.

9. The mere fact that the Petitioner had applied pursuant to the advertisement, dated 7.10.2007, and a letter, calling for interview had been issued to him, did not vest in the Petitioner, a right to claim that he must have been interviewed inasmuch as it was within the powers of the Government to modify the prescribed qualification for selection and appointment to a given post, when the relevant service order made it clear that a person, to be eligible for appointment to the post of Assistant Director, must have Post Graduate Degree or Diploma in Town and Country Planning (City/Regional/Planning/ Environmental Planning/ Transport Planning/Urban Planning/ Housing) from any recognized institution or equivalent qualification with basic qualification being B.E. (Civil)/B. Arch./P.G. Degree in Geography/Economics/Mathematics. By its letter, dated 24.2.2008, the Government further clarified that P.G. Degree, in Geography, with one paper, on Regional Development Planning (RDP) and this clarification too was in tune with the conditions of recruitment as embodied in the said service order.

10. The present writ petition, therefore, needs to be considered in the backdrop of the position of law that it is for the Government to prescribe the educational qualification and if an advertisement has been issued with certain educational qualification as the prescribed qualification, there is nothing sacrosanct in such prescribed qualification and that the criteria of selection may be changed, altered or modified according to the requirements of the post and no candidate, such as, the Petitioner, can object to such a change, alteration or modification of any prescribed qualification, particularly, when the educational qualification, which has, now, been prescribed is in tune with the conditions of recruitment, to the post of Assistant Director, as embodied in the said service order.

11. The contention of the Petitioner that without cancelling the earlier advertisement, the later advertisement, which, in substance, super ceded the

earlier advertisement, so far as the prescribed educational qualification was concerned, could not have been issued, cannot make this Court strike down the latter advertisement inasmuch as the latter advertisement is in tune with the conditions of recruitment as embodied in the said service order. The fact that the Petitioner had not been specifically informed about the later advertisement does not also alter the situation inasmuch as the Petitioner did not have, as already mentioned hereinabove, any vested or indefeasible right to be called for interview or to be selected on the basis of the educational qualification as had been prescribed by the earlier advertisement, dated 7.10.2007, particularly, when the earlier notification was ex facie incorrect and the latter advertisement is the correct one.

12. As regards the Petitioner's grievance that the re-advertisement is aimed at filling up the reserved post by general candidate, this grievance too is without any foundation inasmuch as no particulars mala fide have been given in the writ petition. In fact, even under the second advertisement, dated 29.1.2009, one post has been kept reserved for the ST(H). In the absence of anything, therefore, showing that the latter advertisement was mala fide, the latter advertisement cannot be interfered with.

13. If it is once conceded that it is for the Government to decide as to what qualification would be required for filling up a post and when there is no Rule framed under Article 301, prescribing educational qualification for the post of Assistant Director, Town and Country Planning, and the Government had already framed the service order, no post of Assistant Director could have been filled up by a person, who did not have or did not satisfy the prescribed qualification under the said service order. No selection, in terms of the educational qualification prescribed under the first advertisement, could have, therefore, been made and as far as the present Petitioner is concerned, since he was, in no way, eligible for being selected and appointed under the relevant service order, his writ petition cannot be said to have any substance.

14. From what has been discussed and pointed out above, this Court finds the present petition is wholly without any merit. This writ petition, therefore, fails and the same shall accordingly stand dismissed.

15. No order as to costs.