
(2023) 09 GAU CK 0025

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 5850, 5855, 5998 Of 2013

Diganta Baruah And 3 Ors

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 20-09-2023

Acts Referred:

Citation : (2023) 09 GAU CK 0025

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : S Chakrabarty

Final Decision : Allowed

Judgement

1. Heard Mr. N.N.B. Choudhury, learned counsel appearing for the writ petitioners in WP(C) 5850/2013 & WP(C) 5855/2013. Also heard Mr. S. Chakrabarty, learned counsel appearing for the writ petitioners in WP(C) 5998/2013. Mr. A. Kalita, learned Standing Counsel, Industries Department, Assam, has appeared for the official respondents in all these writ petitions.

2. Common questions of fact and law are involved in all the 3 (three) writ petitions. Therefore, these writ petitions are being taken up for disposal by this common judgement and order.

3. The writ petitioners in all these writ petitions were appointed as Extension Officers (E.Os) in the Department of Industries and Commerce, Government of Assam on various dates. Apprehending termination of their service in view of the report dated 18/05/2013 submitted by the Chief Secretary to the Government of Assam indicating certain anomalies in the recruitment process and the proposed move on the part of the departmental authorities to issue orders of termination of service to the petitioners, they have approached this Court by filing these writ petitions.

4. The factual matrix of these cases, briefly stated, is as follows :-

(i) The Director of Industries, Government of Assam, had issued an advertisement dated 30/11/1993 inviting applications for filling up few vacant posts of Extension Officers (EOs). Upon conclusion of the recruitment process, a final select list of 150 candidates was prepared, and appointment orders were issued to as many as 140 candidates. However, the recruitment process was called into question by some of the unsuccessful candidates by filing a number of writ petitions before this Court, registered and numbered as Civil Rule Nos. 128/1996, 3988/1996, 2340/1996, 4730/1995, 196/1996 and 933/1996. After hearing the petitioners as well as the departmental counsel and upon taking note of an enquiry report prepared by the Secretary to the Government of Assam, Industries Department dated 21/08/1996 projecting that there were several irregularities in the selection process, the learned Single Judge of this Court had disposed of the writ petitions by the common judgement and order dated 01/09/1997, inter-alia, holding that the entire selection procedure was a farce and, therefore, fresh advertisement ought to be issued by indicating the number of available vacancies and the selection should be made as per the prescribed procedure. In the judgement and order dated 01/09/1997, it has, however, been observed that those who were already working/appointed, they should be given notice and necessary action should be taken against them, if it is found that they have been appointed without being properly and duly selected. Before cancelling the appointment of the persons so appointed, notices were also directed to be served upon them.

(ii) The judgement and order dated 01/09/1997 was apparently passed after hearing the aggrieved candidates as well as the departmental authorities but the appointed candidate were not made parties in those proceedings. As such, a number of selected candidates, who had in the meantime been appointed in the posts of EOs, had preferred appeals being Writ Appeal No. 544/1997 and Writ Appeal No. 549/1997 before the Division Bench assailing the judgement and order dated 01/09/1997, primarily on the ground that the said judgement and order was passed without hearing them. The Division Bench had disposed of the Writ Appeals by the judgement and order dated 18/11/1999, making some modification in the order dated 01/09/1997 passed by the learned Single Judge by providing that if the writ appellants submit reply to the show cause notices issued to them than the authorities would consider the same without being prejudiced by the observations made by the learned Single Judge in the judgement and order dated 01/09/1997.

(iii) Pursuant to the order passed by the Division Bench, a sub-committee was constituted for the purpose of scrutinizing the records for issuing show-cause notices. Thereafter, identical show cause notices, all dated 03/01/2000, were served upon 82 selected candidates, asking them to submit all testimonials, such as, academic certificates, call letters for interview, appointment letter etc. The notices were evidently issued in terms of the judgement and order dated 18/11/1999 passed by the Division Bench.

(iv) It appears that the selected candidates had submitted their replies to the show cause notices denying the allegations brought against them. In the meantime, the Deputy Secretary to the Government of Assam, Industries and Commerce Department, had issued a communication dated 29/09/2000 pertaining to the appointment of E.Os by stating as follows :-

“(1) Time for 15 days may be given to 19(nineteen) nos. of Extension Officers (Ind.) for submission of documents. If they failed to submit the same within the time limit, their services may be terminated.

(2) 52 (fifty two) nos. of Extension Officer (Ind.) who are found in order in all respect may be allowed to continue.

(3) As regards relaxation of age in respect of Shri Pusna Suri, it is not acceptable as Shri Suri’s candidature was not in order as he crossed 36 years of age as on 01.01.1993 (date fixed in the advertisement and he was not eligible for appearing at the advertisement) and he was not eligible for appearing at the said post but appeared illegally which is well known to him. Had he applied for age relaxation earlier, his case could have been considered.

(4) The Extension Officer (Ind.) whose names did not appear in the select list but were appointed illegally should be terminated forthwith.

(5) 7 (seven) nos. of Extension Officer (Ind.) who were unsuccessful in written test but appointed illegally be terminated forthwith.

(6) The case of 6 (six) candidates who approached before the Hon’ble High Court seeking justice may be considered for appointment as it is due to these candidates approaching the Hon’ble High Court, the irregularities of selection came to light.”

(v) In terms of the judgement and order dated 01/09/1997, the Department of Industries had issued advertisement notice dated 26/10/2002, for filling up 30 (thirty) posts of E.Os /Field Enumerators/Economic Investigators under the Directorate of Industries and Commerce, Assam. However, no further action was taken by the department for filling up the aforesaid posts pursuant to the advertisement notice dated 26/10/2002.

(vi) Around that time, one candidate by the name of Sri Tilak Nath, who had also submitted his application in response to the advertisement dated 13/11/1993, had approached this Court by filing WP(C) 4916/2006, inter-alia, praying for a Writ of Mandamus for instituting an independent investigation into the appointment of E.Os in the Directorate of Industries and also the circumstances under which they have been allowed to continue in service. It was further prayed that a Writ of Mandamus be issued to the respondents to disclose as to the steps that had been taken to fill up the vacant posts of E.Os under the Directorate of Industries in terms of the advertisement notice dated 26/10/2002.

(vii) By the judgement and order dated 28/04/2009, the learned Single Judge

had disposed of WP(C) No. 4916/2006 by declining the relief sought by the writ petitioner (Sri Tilak Nath). Subsequently, on the basis of information obtained by Sri Tilak Nath based on his enquiry made under the provisions of the Right to Information Act, 2005, he had again approached this Court by filing WP(C) 997/2010, once again alleging anomalies in the process of appointment of E.Os under the Directorate of Industries, thus, once again seeking an independent enquiry into the process of appointment and the circumstances under which those E.Os had been allowed to continue in service.

(viii) Taking note of the grievance expressed by the writ petitioner in WP(C) 997/2010, the learned Single Judge had passed order dated 26/04/2013 directing the Chief Secretary to the Government of Assam to look into the matter and furnish a comprehensive report. Accordingly, the Chief Secretary had submitted his report on 18/05/2013 making certain adverse observations against some of the selected candidates, who were appointed as E.Os. However, since the order dated 26/04/2013 was passed without hearing the effected persons, some of the selected candidates had assailed the order dated 26/04/2013 before the Division Bench by filing Writ Appeal No. 253/2013. After hearing the learned counsel for the parties, the Division Bench of this Court had passed order dated 03/02/2014 disposing of the Writ Appeal by setting aside the judgement and order dated 26/04/2013 passed by the learned Single Judge in WP(C) 997/2010 with a direction to hear the writ petition afresh after impleading the private respondents.

(ix) In the meantime, as per the recommendation of the sub-committee, order of terminations had been issued to another 11 E.Os on the ground that 7 (seven) of them did not pass the written test and in respect of 4 (four) others, their names were not included in the selection list although appointment orders were issued to them.

(x) The 11 E.Os who were served with termination orders, had approached this Court by filing Writ Petitions being WP(C) No. 2465/2001, WP(C) No. 2666/2001, WP(C) 2975/2001 and WP(C) No. 3996/2001. All these writ petitions were allowed by the judgement and order dated 17/03/2004 primarily on the ground that the department could not produce any record supporting the orders of termination. In view of the judgement and order dated 17/03/2004, these 11 E.Os were allowed to continue in service.

(xi) Thereafter, 12/23-09-2013, the Commissioner of Industries & Commerce, Government of Assam had addressed a letter to the Principal Secretary to the Government of Assam informing him that action has been initiated for termination of service of the Writ Petitioners on the basis of the report of the Chief Secretary, Assam dated 18/05/2013 and in compliance of the judgement and order passed by this High Court in WP(C) No. 997/2010 in Writ Appeal No. 253/2013.

5. The case of the four writ petitioners in WP(C) 5850/2013, in a nutshell, is that

their appointment to the post of E.O. was made on the basis of the recruitment process initiated by the departmental authorities on the strength of the advertisement notice dated 30/11/1993. The writ petitioners have claimed that their names appeared in the select list at Sl. No. 77, 78, 79 & 86 and, therefore, there was no justifiable ground for the Chief Secretary to make any adverse observations against their selection and appointment. The petitioners have also urged that the enquiry report dated 18/05/2013 submitted by the Chief Secretary is not based on any cogent material nor has the same been prepared after giving an opportunity of being heard to the petitioners and, therefore, no action for termination of their services could be initiated based on the report dated 18/05/2013.

6. The 16 (sixteen) writ petitioners in WP(C) 5855/2013 have also assailed the report of the Chief Secretary dated 18/05/2013 on similar grounds by stating that the said report is not based on correct appreciation of facts but had been prepared in a perfunctory manner, merely by referring to earlier reports of the departmental authorities and that too, without giving any opportunity of being heard to the affected candidates. According to the writ petitioners in WP(C) 5855/2013, they are in the group of 52 (fifty two) E.Os whose selection and appointment have been found to be in order even by the Chief Secretary, Assam, as per projection made in his report dated 18/05/2013 and, therefore, there was no justifiable ground for termination of their services merely on the basis of the report dated 18/05/2013, after the lapse of many years since their appointment.

7. The 11 (eleven) writ petitioners in WP(C) 5998/2013 have also assailed the report dated 18/05/2013 by contending that their appointments were made in the year 2001 and, therefore, the same did not have any relevance with the recruitment process initiated on the basis of the advertisement notice dated 30/11/1993. The petitioners have contended that their appointments were originally made on adhoc basis, so as to tide over the shortfall of Officers in the department. Since their appointments were made in view of the urgency involved in the matter and with the approval of the State Level Empowered Committee, hence, notwithstanding the fact that no advertisement was issued at the time of their appointment, the services of the petitioners cannot be terminated after they have worked for more than 2 (two) decades.

8. The learned counsel for the petitioners have argued in one voice that their clients, having been permitted to serve as E.Os for more than 20 years and in view of the fact that many of the writ petitioners have either retired or were in the verge of retirement, termination of their services, based on a perfunctory report dated 18/05/2013 submitted by the Chief Secretary to the Government of Assam, would not only cause serious prejudice to the interest of the petitioners but also their family members. Therefore, the petitioner's counsel have argued that for the ends of justice, the report dated 18/05/2013 be declared as illegal and non est in the eyes of law.

9. Responding to the above, the learned departmental counsel has submitted

that the report dated 18/05/2013 was submitted in view of the order dated 26/04/2013 passed in WP(C) 997/2010. The learned departmental counsel has, however, not denied or disputed the fact that the writ petitioners have been continuously serving as E.Os for more than two decades and many of them were on the verge of retirement.

10. Since the entire controversy revolves around the apprehension of termination of service, generate in the wake of the report dated 18/05/2013 submitted by the Chief Secretary to the Government of Assam, it would be necessary for this Court to briefly deal with the said report.

11. A perusal of the report dated 18/05/2013 goes to show that the same was submitted in compliance of the order dated 26/04/2013 passed by the learned Single Judge in WP(C) No. 997/2010 [Sri Tilak Nath Vs. State of Assam and others]. What would be significant to note herein is that there was no direction from this Court upon the Chief Secretary to conduct an independent enquiry before submitting the report. Therefore, the Chief Secretary had apparently prepared the report dated 18/05/2013 based on the materials that were readily available before the departmental authorities at the relevant point of time, which included the report dated 21/08/1996 submitted by the departmental Secretary.

12. A careful reading of the report dated 18/05/2013 also goes to show that the subject matter of the report was the process initiated for recruitment of E.Os (Ind)/Technical Assistants/Field Enumerators on the basis of the advertisement notice dated 30/11/1993 and the legality and validity of the procedure adopted for appointment of E.Os on the basis of the select list of 150 candidates. While taking note of the enquiry report dated 21/08/1996 submitted by Sri A.K. Sachan, the then Secretary to the Government of Assam, In-charge of the Industries and Commerce Department, the judgement and order dated 01/09/1997 passed by this Court, the judgement dated 18/11/1999 passed by the Division Bench in Writ Appeal No. 544/1997 and the report of the Sub-Committee dated 12/06/2000 as well as the letter of the Government of Assam dated 29/09/2000, the Chief Secretary had submitted his report. Paragraphs 1, 2 and 3 of the findings and conclusions of the report would be relevant for the purpose of these cases and, therefore, the same are reproduced herein below for ready reference:-

"After careful perusal of all the facts on this matter, I have arrived at the following findings:

(1) In pursuance of the Judgement of the Hon'ble High Court in WA 544/1997 & 549/1997, replies to the Show Cause notices submitted by the candidates were examined in the Directorate of Industries & Commerce.

(2) Out of the 82 number of Extension Officers (Industries) whom the notices were served, the committee found that 52 could produce the documents asked for and their names appeared in the select list. It is brought to the notice of the Hon'ble Court that though the Government decided to accept the views of the

committee and allowed them to continue, it has been noticed that the names of the 52 selected candidates were not in order of seniority in the said select list.

Four candidates namely, Shri Sultan Khan, Shri Nazrul Haque Choudhury, Shri Hriday Ranjan Sonowal and Shri Diganta Baruah approved at serial No. 77, 78, 79 and 86 respectively. Therefore, inclusion of names of these four candidates in the list of 52, may not be legitimate in strict legal sense.

(3) (a) Available records reveal that 18 Nos. of Extension Officers (Industries) were given extension of time to submit their documents, there is no record to support their candidature, inasmuch as, in spite of availing extension of time, the said 18 Nos. of Extension Officers (Industries) did not submit any documents.

Therefore, their appointments cannot be construed as regular/legitimate. "

13. From the above report, it is evident that the observations made in paragraph 2 is relatable to the writ petitioners in WP(C) 5850/2013. However, there is no specific findings of the Chief Secretary, Assam, to the effect that the said writ petitioners were appointed without their names being included in the select list or that the said candidates did not take part in the recruitment process. Even assuming that the appointment orders were issued to these four candidates by depriving some other meritorious candidates who were placed higher in order of merit, as has been sought to be projected in the report dated 18/05/2013, even then, that by itself, in the opinion of this Court, would not make their appointments illegal. Had the appointments of these candidates been assailed by any candidate placed higher in order in merit in the select list, than the matter could have been examined from a different angle, in which event, the outcome of the proceeding also could have been different. However, merely on the basis of observations made in paragraph 2 of the report to the effect that appointments had not been made in order of seriality, this Court is of the opinion that services of the 4 (four) writ petitioners in WP(C) 5850/2013, cannot be terminated by the authorities at this distant point of time.

14. In so far as the 16 (sixteen) writ petitioners in WP(C) 5855/2013 are concerned, they have categorically claimed to be a part of the group of 52 Extension Officers, whose appointments were found to be valid even in terms of the observations made in paragraph 2 of the report dated 18/05/2013 submitted by the Chief Secretary. The learned departmental counsel has also not disputed the aforesaid claim. As such, this Court is of the opinion that there can be no justifiable ground for the respondents to terminate their services as Extension Officers, merely on the basis of the report dated 18/05/2013. The petitioners have alleged that although their termination order have already been prepared, the same have not yet been served upon them.

15. In so far as the writ petitioners in WP(C) 5998/2013 are concerned, their appointments are admittedly and evidently not connected with the recruitment process initiated by the advertisement notice dated 30/11/1993. These 11 (eleven) candidates were apparently appointed on adhoc basis in the year 1999

and 2001. It appears from the record that the petitioners nos. 1 to 10 were appointed around 05/03/2001 and they had joined in their respective posts during the period in between 12/03/2001 and 15/03/2001. The writ petitioner no. 11 was appointed as Extension Officer on 16/11/1999 and he was allowed to continue in the said post by order dated 17/05/2001. It is, therefore, evident that the process of appointment of these 11 writ petitioners were not the subject matter of WP(C) 997/2010 nor does the report dated 18/05/2013 submitted by the Chief Secretary to the Government of Assam, deal with the question of validity of the appointment of any of these 11 candidates.

16. As has been mentioned above, another group of 11 Extension Officers had earlier approached this Court by filing 4 (four) Writ Petitions, viz. WP(C) 3996/2001, WP(C) 2465/2001, WP(C) 2666/2001 and WP(C) 2975/2001, being aggrieved by the steps taken by the authorities for termination of their services. By the judgement and order dated 17/03/2004 passed by the learned Single Judge in WP(C) 3996/2001 and the batch of connected writ petitions, the orders of termination of services of those 11 Extension Officers were interfered with as a result of which they were allowed to continue in service. In the judgement and order dated 17/03/2004, the learned Single Judge had categorically observed that the writ petitioners having worked for more than 10(ten) years at a stretch, their services could not be dispensed with after a lapse of more than ten years by issuing the orders of termination, in the manner projected in the writ petition. Even the appeal preferred against the judgement and order dated 17/03/2004 was dismissed by the Division Bench by order dated 03/01/2011 Passed in Writ Appeal No. 314/2005. Having regard to the similarity of facts and circumstances of the cases, this Court finds force in the submission of the petitioners' counsel that the initiation of process for terminating the services of these 11 writ petitioners could be on the basis of their mistaken identity and by treating them as those 11 petitioners, who had earlier approached this Court by filing the aforesaid writ petitions. In any event, this Court is of the opinion that the Report dated 18/05/2013, viewed from any angle, cannot form the basis of termination of service of any of these 11 Writ Petitioners.

17. It is also to be noted herein that the report of the Chief Secretary, Assam, dated 18/05/2013 was evidently submitted in terms of the order dated 26/04/2013 passed by the learned Single Judge in WP(C) 997/2010 but the said order had been set aside by the Division Bench by order dated 03/02/2014 passed in Writ Appeal No. 253/2013. Moreover, the report dated 18/05/2013 is not based on any independent enquiry conducted by the Chief Secretary after consulting the relevant records and after taking note of the version of the selected candidates. It appears that records of the selection process went missing. As a matter of fact, in the judgement dated 17/03/2004, the learned Single Judge had also categorically held that the show cause notices issued to the petitioners were not based on records and therefore, were ill founded, by taking note of the stand of the department that the records pertaining to the selection process was not available in the department and, therefore, the same were not

produced before the Court. The learned Single Judge had, therefore, held that the orders of termination based on show cause notices, which were not issued after consulting the records, were unsustainable in the eyes of law. The view of the learned Single Judge has been affirmed and upheld by the Division Bench by the judgement and order dated 03/01/2011 passed in Writ Appeal No. 314/2005. The aforesaid judgement and order having attained finality in the eyes of law, this Court finds no justifiable ground to adopt a different view in the matter in respect of the writ petitioners, who had also spent more than 20(twenty) years in service, as Extension Officers.

18. For the reasons stated herein above, this Court is of the unhesitant opinion that the report dated 18/05/2013 of the Chief Secretary to the Government of Assam, not being based on any independent enquiry or on scrutiny of relevant records, the same is not tenable in the eyes of law. As such, no order of termination of service of the writ petitioners could be processed by the authorities on the basis of the report dated 18/05/2013. The respondents are, therefore, restrained from terminating the services of the writ petitioners on the basis of the report dated 18/05/2013. Consequently, all the writ petitions succeed and are accordingly, allowed.

19. Interim orders passed earlier in these writ petitions are hereby made absolute.

There would be no order as to costs.