

(2020) 01 GAU CK 0017
In the Gauhati High Court
Case No : Writ Appeal No. 234 Of 2019

Diganta Kalita

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 23-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 01 GAU CK 0017

Hon'ble Judges : Ajai Lamba, J;Soumitra Saikia, J

Bench : Division Bench

Advocate : B. Chetri, D. Mozumder

Final Decision : Dismissed

Judgement

Ajai Lamba, J

1. Shri Diganta Kalita has brought this writ appeal directed against judgment dated 02.04.2019 rendered by learned Single Judge in WP(C) No.1223/2013 (Diganta Kalita -Vs-State of Assam & 5 Ors.). It appears that 2(two) writ petitions were filed, one by the writ appellant/writ petitioner. Both the writ petitions were dismissed by the common impugned judgment.

2. It appears that advertisement dated 13.08.2010 was given for the post of Junior Assistant (Divisional Level). The writ appellant/writ petitioner claimed to have the required qualification for the said post. The writ appellant/writ petitioner was called for written examination. Written examination was held and the writ appellant/writ petitioner found his roll number amongst the candidates, who qualified the written examination for the post. The writ appellant/writ petitioner was called for computer eligibility test, typing test and viva voce vide the letter dated 16.04.2012. Tests were conducted on 07.05.2012. The writ appellant/writ petitioner was confident that he had performed well in the test, however, he did not find his roll number amongst the selected candidates, as published in Assam Tribune dated 28.11.2012.

3. Being dissatisfied, the writ appellant/writ petitioner filed an application under the Right to Information Act, 2005 to seek answer scripts of computer eligibility test and marks given to him in the viva voce. The writ appellant/writ petitioner did not receive any response whereupon he filed WP(C) No.5758/2012. The Writ Court, while dealing with the said petition, was of the view that the petitioner had failed to show any specific instance of illegality, and finding the petition to be vague, dismissed the writ petition vide the order dated 04.12.2012. Liberty, however, was granted to the writ appellant/writ petitioner to approach the Court again in case he comes across any additional information through Right to Information Act.

4. It appears that the writ appellant/writ petitioner received some information whereupon WP(C) No.1223/2013 was filed.

5. The grounds taken by the writ appellant/writ petitioner have been dealt with in extenso by the learned Single Judge. So as to make an exact reference, we hereby extract herein below Paragraphs 9 to 14 of the impugned judgment.

"9. I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. As may be noticed, the petitioner in WP(C) No.1223/2013 had earlier approached this Court by filing WP(C) No.5758/2012. The writ petition was dismissed since Court was of the opinion that the petitioner was unable to show any instance about the alleged illegality in the selection made for the post in question. Notwithstanding the dismissal of the writ petition, liberty was granted to the petitioner to approach this Court again if the reply given to him on his RTI application merited fresh cause of action. On getting a reply to his RTI application, the petitioner is again before this Court through the present writ petition alleging that the respondents ought to have given marks towards the Typing Test that was conducted and also marks towards the correct answer given vide question No.40 in the General English Paper. A similar stand has also been taken by the petitioner in WP(C) No.6804/2013. What can be seen is that both the petitioners failed to score the cut-off marks in the respective categories they belonged to and therefore, it is their case that allotment of 1(one) mark each to them would make them eligible to be selected for the post concerned. It is the specific stand of the respondents that no marks were allotted on Computer Eligibility Test or Typing Test to any of the candidates. If that be so, the petitioners are only in the same footing with others and they cannot have any grievance in this regard. In respect of the claim that the answers given by them being the correct answer, they should be allotted 1 (one) mark each, the same will only have to be considered with reference to the decision of the Apex Court held in the case of Kanpur University Through Vice Chancellor & Ors. (supra). In respect of the answer keys, the Apex Court held that the same should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalization. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the

particular subject would regard as correct. This finding was again relied upon by the Apex Court in the case of Manish Ujwal & Ors. (Supra).

10. The Apex Court in the case of Sadananda Halo & Ors. (Supra) held that High Court in entertaining writ petitions should not take the position of a fact finding commission and indulge itself in making a roving enquiry on the factual aspects. High Court also has to be slow in relying upon microscopic findings while testing the fairness of the selection process involving thousands of candidates.

11. In the case of Amlan Jyoti Borooah (Supra), a candidate who had subjected himself to a faulty selection process cannot question the same later on. Further, the Apex Court also held that the State in emergent situation subject to constitutional limitations would be entitled to take decision to sub-serve a greater public interest.

12. In the case of Ran Vijay Singh & Ors. (Supra) the Apex Court observed that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of any answer sheet. If error is committed by the examining authority, the complete body of the candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible.

13. In the case of Ms. Hage Mamung (Supra), this Court upon considering the fact that in view of the wrong answer keys and the candidates who participated in the selection process were awarded marks Pro-Rata and therefore, no prejudice could be said to have been caused to the petitioner. Consequently, the writ petition was dismissed. In the present case as well, no marks was allotted to any candidate in respect of Computer Test or Typing Test. Likewise, the petitioners participated in the selection process without any complaint and therefore, they are only estopped to raise such grievance at this stage. As for the claim of the petitioners of having given the correct answer against question No. 40, I am of the opinion that the claim does not fulfill the criteria enunciated by the Apex Court in Kanpur University Through Vice Chancellor & Ors. (Supra) and which was again affirmed in Manish Ujwal & Ors. (Supra).

14. As already noticed, the petitioners have also not impleaded the selected candidates in the writ petition and therefore, the writ petition will be vitiated even on this count as well. Authorities relied upon by the learned senior counsel are also found to be not applicable inasmuch as, the facts involved are not similar.

(emphasised by us)

6. When the matter came up before us on 25.10.2019, after hearing learned counsel for the parties, we passed the following order:-

"1. Diganta Kalita preferred WP(C) 1223/2013. It appears that on the same issue

WP(C) 6804/2013 was also preferred by another person on the same cause. Both the writs have been dismissed by the impugned judgment dated 02.04.2019 essentially on the ground that the petitioner had not impleaded the selected candidates in the writ petition. Therefore, the writ petition suffered from the vice of non-impleadment of necessary parties.

2. We have taken into account the fact that advertisement dated 13.08.2010 was notified for filling up of the post of Junior Assistant (Divisional Level). The petitioner claiming to be eligible in General Category, appeared in the written examination. The petitioner qualified in the written examination. It further appears that the petitioner was called for Computer Eligibility Test, Typing Test and Viva Voce. The petitioner, however, did not find his Roll Number amongst those declared selected. The list of selected candidates was published in local daily (Assam Tribune) on 28.11.2012.

Being dissatisfied, the petitioner filed an application under Right to Information Act to seek answer scripts of Computer Eligibility Test and marks awarded to the petitioner in Viva Voce. Response was not received. The petitioner preferred WP(C) 5758/2012 before this Court. The Court dismissed the petition vide order 04.12.2012. Liberty, however, was given to the petitioner to approach the Court again in the event information sought by him was given and the same disclosed a cause of action. It was pleaded on behalf of the petitioner that certain information was received by the petitioner subsequently and, hence, the writ petition was filed.

3. Learned Single Judge has noticed that the petitioner failed to score cut off marks. The court found no illegality in the process adopted by the respondents in the selection process. While recording thus, learned Single Judge also took into account the relevant fact that necessary parties, viz, selected candidates have not been impleaded in the writ petition. We find the reasons given by the learned Single Judge to be in accordance with law.

4. It is apparent that if any relief had been granted to the petitioner, it would have adversely affected the rights of the selected candidates. Under such circumstances, it was imperative for the petitioner to have impleaded the selected candidates, which was not done. Under the circumstances, we find the judgment rendered by the learned Single Judge to have been passed on legally tenable grounds calling for no interference in intra-Court appellate jurisdiction.

5. Be that as it may, learned counsel for the appellant/writ petitioner contends that even though the petitioner was non-suited, including on account of the said technical ground, some relief can be granted to the appellant, if vacancy is there in the category under which the petitioner competed.

6. We hereby direct the respondents to get written instruction on the limited issue noted above.

List on 1.11.2019, high upon the list."

7. In regard to query raised by this Court in Paragraph 5 read with Paragraph 6, affidavit sworn on 04.11.2019 has been filed on behalf of the respondents. Paragraph 2 of the affidavit requires exact reference, and is extracted herein below:-

"2. That the deponent states that on 25.10.2019 this Hon'ble Court directed us to bring instruction on the limited question as to whether the department has filled up all the (84 numbers) posts of Junior Assistant (Divisional Level) pursuant to the advertisement dated 13.08.2010. The deponent hereby confirms after perusing the records that all the 84 numbers of posts of Junior Assistant (Divisional Level) has been filled up and there is no vacant post of Junior Assistant (Divisional Level)."

8. It, therefore, transpires that there were 84 posts of Junior Assistant, which were advertised. All the 84 posts were filled up in June, 2013. Since then, the writ appellant/writ petitioner has been litigating, as noticed in earlier part of this judgment. All the 84 posts have been filled up. In context of our order dated 25.10.2019, therefore, no relief can be granted in favour of the writ appellant/writ petitioner.

9. The scope of judicial review has been very well explained by Hon'ble Supreme Court of India in Municipal Council Neemuch -Vs- Mahadeo Real Estate and Ors. (Civil Appeal Nos.7319-7320 of 2019) in the following terms (relevant portion):

"14. However, before doing that, we propose to examine the scope of the powers of the High Court of Judicial review of an administrative action.

Though, there are a catena of judgments of this Court on the said issue, the law laid down by this Court in the case of Tata Cellular Vs. Union of India reported in (1994) 6 SCC 651 lays down the basic principles which still hold the field. Paragraph 77 of the said Judgment reads thus:

'77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. whether a decision-making authority exceeded its powers?
2. committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind*, (1991) 1 AC 696 Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, 'consider whether something has gone wrong of a nature and degree which requires its intervention'

15. It could thus be seen that the scope of judicial review of an administrative action is very limited. Unless the Court comes to a conclusion, that the decision maker has not understood the law correctly that regulates his decision-making power or when it is found that the decision of the decision maker is vitiated by irrationality and that too on the principle of "Wednesbury Unreasonableness" or unless it is found that there has been a procedural impropriety in the decision-making process, it would not be permissible for the High Court to interfere in the decision making process. It is also equally well settled, that it is not permissible for the Court to examine the validity of the decision but this Court can examine only the correctness of the decision making process.

16. This Court recently in the case of *West Bengal Central School Service Commission vs. Abdul Halim* reported in 2019 SCC OnLine SC 902 had again an occasion to consider the scope of interference under Article 226 in an administrative action.

'31. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in *Satyanarayan v. Mallikarjuna* reported in AIR 1960 SC 137. If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ Court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ Court by issuance of writ of Certiorari.

32. The sweep of power under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no

reasonable person could have ever arrived at it, the same is liable to be struck down by writ Court. If the decision cannot rationally be supported by the materials on record, the same may be regarded as perverse.

33. However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to manifest injustice. The writ Court does not interfere, because a decision is not perfect."

17. It could thus be seen that an interference by the High Court would be warranted only when the decision impugned is vitiated by an apparent error of law, i.e., when the error is apparent on the face of the record and is self evident. The High Court would be empowered to exercise the powers when it finds that the decision impugned is so arbitrary and capricious that no reasonable person would have ever arrived at. It has been reiterated that the test is not what the court considers reasonable or unreasonable but a decision which the court thinks that no reasonable person could have taken. Not only this but such a decision must have led to manifest injustice."

(emphasised by us)

10. We are of the considered opinion that the learned Single Judge has considered the issue raised by the writ appellant/writ petitioner in terms of the judgment rendered by the Hon'ble Supreme Court of India, within the scope of judicial review of administrative action. We find that the writ appellant/writ petitioner has been treated equally. No prejudice has been caused to the right of the writ appellant/writ petitioner. The persons likely to be affected by result of the writ petition have not been impleaded in the writ petition, as also noted in order dated 25.10.2019 (supra).

11. A possible view has been taken by the learned Single Judge, which requires no interference. It has been held by the Hon'ble Supreme Court of India in *Management of Narendra & Co. Pvt. Ltd. -Vs- Workmen of Narendra & Co.*, reported in (2016) 3 SCC 340 as under:

"5. Be that as it may, in an intra-court appeal, on a finding of fact, unless the Appellate Bench reaches a conclusion that the finding of the Single Bench is perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order passed by the Single Judge, unless both sides agree for a fairer approach on relief."

12. We are also of the opinion that every lis must have a terminus. A matter relating to 2012-13 is being pursued.

It is not the case of the writ appellant/writ petitioner that the respondents have

proceeded in malafide action against the writ appellant/writ petitioner. Such being the factual position, we find no reason to interfere in writ appellate jurisdiction.

13. The writ appeal is dismissed.