

(2023) 07 GAU CK 0011

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 7171 Of 2022

Dr. Banabina Brahma

APPELLANT

Vs

State Of Assam And 7 Ors

RESPONDENT

Date of Decision : 19-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Assam Education Service Rules, 1982 — Rule 3(1)(a)(iii), 6

Citation : (2023) 07 GAU CK 0011

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : Bd Das, R Deka, K Gogoi, Pp Dutta, Sr Rabh, P Bhardwaj

Final Decision : Dismissed

Judgement

1. A notification dated 05.11.2022 whereby the results of a selection process were declared for appointment to the post of Principal, Kokrajhar Government College, Kokrajhar in which the respondent no. 6 has been selected, is the subject matter of this writ petition.

2. The petitioner, who was serving as the In-charge Principal, claims that he was more suitable than the respondent no. 6 and also alleges violation of the Rules and Regulations in making such selection.

3. Before going to the issue which has arisen for adjudication, it would be convenient if the facts of the case are narrated in brief in the following manner.

4. The petitioner had been serving as the In-charge Principal of the Kokrajhar Government College, Kokrajhar (hereinafter referred to as the College) since 31.03.2018. On 03.11.2021, an advertisement was issued by the APSC inviting applications for selection to the post of Principal of the College. The petitioner along with other candidates had participated in the said selection process. According to the petitioner, in the list of eligible candidates published in the official website of the APSC, the petitioner claims to be at Sl. No. 1 and the

respondent no. 6 at Sl. No. 2. The petitioner alleges illegality in the constitution of the Interview Board with regard to the Expert members. He has alleged bias in the said selection with the further allegation that the academic statements, API score etc. of the petitioner were not placed before the members of the Interview Board. It is alleged that on 05.11.2022 itself, the results were published whereby, the respondent no. 6 was selected for the said post of Principal. The petitioner further submits that he apprehends that the aforesaid action was because of certain false and frivolous allegations made against him prior to the interview. The petitioner has, accordingly prayed for intervention with the selection process with a further direction to appoint him as the Principal of the College.

5. On the other hand, the respondents contend that there is no basis of the present challenge which has been made only on certain assumptions. It is submitted that the selection process was done in a fair and transparent manner whereby, the most meritorious and suitable candidate was selected and appointed. It is, accordingly contended that the writ petition ought to be dismissed.

6. I have heard Shri BD Das, learned Senior Counsel assisted by Shri HR Das, learned counsel for the petitioner and Shri PP Dutta, learned Standing Counsel, APSC. Also heard Shri K Gogoi, learned Standing Counsel, Higher Education Department, Assam as well as Shri SR Rabha, learned Standing Counsel, BTC. Shri P Bhardwaj, learned counsel has appeared for the respondent no. 6, who has also raised the issue on the maintainability of the writ petition.

7. The records pertaining to the selection process have also been handed over to the Court and those have been carefully perused.

8. Shri Das, learned Senior Counsel for the petitioner submits that the advertisement dated 03.11.2021 was followed by a Corrigendum dated 15.06.2022 wherein, it was clarified that the OM dated 25.02.2019 would be followed. The said OM of the State Government refers to the UGC Regulations. By referring to the pleadings in paragraph 6 of the writ petition, the learned Senior Counsel for the petitioner has submitted that the constitution of the Interview Board is in violation of the UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education Department, 2018 (hereinafter referred to as the UGC Regulations).

9. The learned Senior counsel, Shri Das has referred to the Regulation concerning College Principal against Sl. No. VIII wherein, the constitution of the Selection Committee is stated. Under Clause VIII A (a) (v), it has been stated that such Committee shall be constituted, amongst others of an academican representing SC/ST/OBC/Minority/Women/Differently-abled categories, if any of the candidates representing these categories is the applicant, to be nominated by the Vice-Chancellor, if any of the above members of the Selection Committee

does not belong to that category. The submission made on behalf of the petitioner is that since the petitioner belongs to the ST Community, there has to be one member belonging to the ST Community.

10. The selection procedure laid down in Clause 6.0 has also referred to. Under Clause 6.0 (III), it has been laid down that in all Selection Committees for direct recruitment of teachers and other academic staff in universities and colleges, an academician belonging to the Scheduled Caste/Scheduled Tribes/OBC/Minority/Women/Differently-abled categories, if any of the candidates belonging to these categories is the applicant and if any of the members of the Selection Committee does not belong to that category shall be nominated by the Vice-Chancellor of the University, and in case of a College, Vice-Chancellor of the University to which the college is affiliated to. References have also been made to Clause 6.1 regarding Assessment Criteria and Methodology wherein, under Clause 6.1 certain tables in the Appendix II are said to be applicable to the selection of various posts, including the post of Professors.

11. The learned Senior Counsel, Shri Das has submitted that the impugned selection is vitiated as the Interview Board constituted was not in accordance with law and secondly, the criteria laid down for such selection has not been followed. Referring to the affidavit-in-opposition filed by the APSC on 23.11.2022, the learned Senior Counsel for the petitioner has referred to the averments made in paragraph 6 thereof from where, it is revealed that though there were two ST members, they were not academicians. The learned Senior Counsel has also referred to the Assam Education Service Rules, 1982 in which, Rule 3 (1) (a) (iii) is with respect to Principal of Government Degree Colleges. Rule 6 is with regard to direct recruitment.

12. In support of his submissions, the learned Senior Counsel for the petitioner has relied upon the following case laws:

- i) Banashree Bharaddash @ Banashree Bhardwaj Vs. State of Assam & Ors., (2015) 5 GLR 56;
- ii) Professor (Dr.) Sreejith PS Vs. Dr. Rajasree MS & Ors., 2022 SCC OnLine SC 1473; and
- ii) Aleyamma Kuruvila Vs. Mahatma Gandhi University & Ors., 2023 SCC OnLine Ker 914.

13. Shri Das, learned Senior Counsel for the petitioner, accordingly submits that the selection and appointment of the private respondent be accordingly set aside and the selection be held afresh in terms of the UGC Regulations.

14. Per contra, Shri PP Dutta, learned Standing Counsel, APSC submits that the projections made on behalf of the petitioner are incorrect both on facts and in law. He submits that though the emphasis is upon alleged anomalies in the Section Board, as no academician belonging to ST community was there in the Selection Board, a reading of Section VIII A (a) (v) would make it clear that such

qualification of the academican would apply only when the members of the Selection Committee does not belong to the category of the candidate. He submits that the Selection Committee, apart from the academican, has to be constituted by a Chairperson, two members of the Governing Body, two nominees of the Vice-Chancellor and three Higher Education experts. He submits that there is a basic fallacy in the contention of the writ petitioner and therefore, this writ petition is liable to be dismissed.

15. By referring to the case of Banashree Bharaddash @ Banashree Bhardwaj Vs. State of Assam & Ors. (supra), Shri Dutta, learned Standing Counsel has submitted that the reasons of interference was with regard to the members of the Selection Board. However, he submits that in a Government College of the present nature, there is no Governing Body. In any case, he submits that after the decision in the aforesaid case of Banashree Bharaddash @ Banashree Bhardwaj Vs. State of Assam & Ors. (supra), the Regulations of APSC have been amended and now there is necessity of three numbers of Experts.

16. By referring to the affidavit-in-opposition of the APSC dated 23.11.2022, the learned Standing Counsel submits that in paragraph 6 thereof, the constitution of the Interview Board has been stated in details which is strictly in accordance with the UGC Regulations. He submits that there were two members in the Committee who belong to Schedule Tribe category and therefore, there is no question of any violation of the UGC Regulations.

17. So far as the second ground of challenge, namely, marking pattern, Shri Dutta, learned Standing Counsel, APSC submits that the UGC Regulations do not prescribe the marking pattern for Principal and the post of Principal is different from the post of a Professor. He submits that the job of a Principal is more of an administrative nature and therefore, the pattern meant for Professor cannot be made applicable. He submits that there is a fallacy in the contention of the petitioner which is based upon the fact that the eligibility criteria of Principal and Professor are the same. So far as reliance placed upon Clause 6.1 regarding assessment criteria and methodology, Shri Dutta submits that none of the tables appended are applicable for selection to the post of Principal. By drawing the attention of this Court to the tables, he submits that Table 1 is with regard to Teachers which is not applicable; Table 2 is with regard to API calculation which has not been argued as one of the grievances, Table 3 A is with regard to the post of Assistant Professor in Universities and Table 3 B is with regard to the Assistant Professors in Colleges which are not applicable. He, accordingly submits that there being no provision in the UGC Regulations for marking pattern for the post of Principal, APSC has relied upon the government guidelines. He has also referred to the averments made in paragraph 11 of the affidavit-in-opposition with regard to the marking pattern wherein, it has been stated that only 20 marks were allotted for interview and therefore, there was minimum discretion involved in the marking pattern. With regard to the case laws cited on behalf of the petitioners, he submits that the case of Banashree Bharaddash @ Banashree

Bhardwaj Vs. State of Assam & Ors. (supra) has already been dealt with by him as recorded above. As regards the case of Professor (Dr.) Sreejith PS Vs. Dr. Rajasree MS & Ors. (supra), Shri Dutta, learned Standing Counsel submits that the facts are wholly distinguishable, as there was a conflict and repugnancy with the UGC Regulations and the Regulation of the State and therefore, there was an interference. Shri Dutta, learned Standing Counsel, accordingly submits that the writ petition is liable to be dismissed. Shri Dutta, learned Standing Counsel, APSC has also referred to the APSC (Conduct of Business) Procedure, 2019, as amended up to 04.12.2021. He submits that under Regulation 4, the methodology to be adopted in an interview has been laid down which has been adhered to in the present selection process.

18. A similar stand is taken by Shri Gogoi, learned Standing Counsel, Higher Education Department. He submits that the advertisement dated 03.11.2021 itself, made it clear in Sl. No. 4 that the educational qualification would be at par with the UGC Regulations and there has not been any dilution of the said Regulations. He further submits that there being no provisions for selection of Principal of Government College under the UGC Regulations, the authorities were justified in adhering to the Government guidelines.

19. Shri Gogoi further submits that the case laws cited are not applicable in the present case. Dealing with the case of Professor (Dr.) Sreejith PS Vs. Dr. Rajasree MS & Ors. (supra), the interference of the Hon'ble Supreme Court was with the finding of the Hon'ble Kerala High Court that since the amended part of the UGC Regulations were not adopted in the State of Kerala, the same would not be applicable. He further submits that the case of Kalyani Mathivanan Vs. KV Jeyaraj & Ors., reported in (2015) 6 SCC 363 was not properly discussed and only there was a mention in paragraph 22 of the judgment. He, therefore contends that the aforesaid case of Professor (Dr.) Sreejith PS Vs. Dr. Rajasree MS & Ors. (supra) may not act as a precedent in the instant case.

20. Shri Rabha, learned Standing Counsel, BTC submits that the selection was done through the APSC in a fair and transparent manner and there is no illegality in the same.

21. Shri P Bhardwaj, learned counsel for the respondent no. 6 has opposed the writ petition and has submitted that an affidavit-in-opposition was filed on 08.12.2022. By citing the case of Madanlal Vs. State of J&K, reported in (1995) 3 SCC 486, Shri Bhardwaj, learned counsel has raised a preliminary objection on the maintainability of the writ petition on the ground that the petitioner having participated in the selection process cannot turn around and challenge the same. He further submits that no bias has been alleged in the present case. He further points out that on 05.11.2022, the results were declared in which, the respondent no. 6 has been recommended and the representation by the petitioner to the Department was given on 09.11.2022 and on the same date i.e., 09.11.2022, the writ petition has been filed. He submits that without even giving any scope to the authorities to consider the representation, a parallel

recourse has been taken by the petitioner by filing this petition. The learned counsel for the respondent no. 6 has also referred to a judgment dated 24.06.2019 passed in WP(C)/1737/2019 (Anuradha Das Patra Vs. The State of Assam & 7 Ors.).

22. The rival contentions advanced by the authorities have been duly considered and the materials placed before this Court have been carefully perused.

23. The issue which would therefore arise for determination is whether there has been any violation of the UGC Regulations, as projected in the writ petition. The corollary issue would also be as to whether a fair criterion was adopted in the selection process initiated vide the advertisement dated 03.11.2021.

24. To appreciate the issue involved, it would be necessary to deal with the UGC Regulations of 2018 which is the fulcrum of the challenge.

25. The principal contention being violation in the constitution of the Selection Committee, the relevant part of the Regulations is extracted hereinbelow:

"VIII. College Principal and Professor.

A. Selection Committee

(a) The Selection Committee for the post of College Principal and Professor shall have the following composition:

- i) Chairperson of the Governing Body to be the Chairperson.
- ii) Two members of the Governing Body of the college to be nominated by the Chairperson of whom one shall be an expert in academic administration.
- iii) Two nominees of the Vice-Chancellor who shall be Higher Education experts in the subject/field concerned out of which at least one shall be a person not connected in any manner with the affiliating University. In case of Colleges notified/declared as minority educational institutions, one nominee of the Chairperson of the College from out of a panel of five names, preferably from minority communities, recommended by the Vice-Chancellor of the affiliating university of whom one should be a subject expert.
- iv) Three Higher Education experts consisting of the Principal of a College, a Professor and an accomplished educationist not below the rank of a professor (to be nominated by the Governing Body of the college out of a panel of six experts approved by the relevant statutory body of the university concerned).
- v) An academician representing SC/ST/OBC/Minority/ Women/Differently-abled categories, if any of candidates representing these categories is the applicant, to be nominated by the Vice-Chancellor, if any of the above members of the selection committee does not belong to that category.
- vi) Two subject-experts not connected with the college to be nominated by the Chairperson of the governing body of the college out of a panel of five names

recommended by the Vice Chancellor from the list of subject experts approved by the relevant statutory body of the university concerned. In case of colleges notified/declared as minority educational institutions, two subject experts not connected with the University nominated by the Chairperson of the College governing body out of the panel of five names, preferably from minority communities, recommended by the Vice Chancellor from the list of subject experts approved by the relevant statutory body.

(b) Five members, including two experts, shall constitute the quorum.

(c) All the selection procedures of the selection committee shall be completed on the day/last day of the selection committee meeting itself, wherein, minutes are recorded along with the scoring Proforma and recommendation made on the basis of merit with the list of selected and waitlisted candidates/Panel of names in order of merit, duly signed by all members of the selection committee.”

26. The argument made on behalf of the petitioner is that since the petitioner belongs to the ST category, there was requirement of an academician representing the ST category in the Selection Committee and in absence of the same, the selection is vitiated. The aforesaid contention, though seems to be attractive in the first blush, a careful reading of the entire provision would, however, bring this Court to a different conclusion. The Selection Committee, as noted above, is constituted by various members, including a Chairperson. The requirement of an academician representing a particular category to which an applicant may belong would arise only when none of the other members of the Selection Committee belong to that category.

27. In the instant case, there is no manner of doubt that the members of the Selection Committee included two members, namely, Smt. Julie Sonowal, IAS (Retd.) and Shri Ghana Kanta Pegu, ACS (Retd.), both belonging to the Scheduled Tribe category. The said disclosure has been made by the APSC in its affidavit-in-opposition dated 23.11.2022, the relevant paragraph of which is extracted hereinbelow:

“6. That the deponent begs to state that for selection of Principal, Kokrajhar Govt. College, Kokrajhar, a multi member interview board/Selection Committee has been constituted under the provisions of APSC (Conduct of Business) Procedure, 2019 headed by the Chairman, Assam Public Service Commission as its Chairperson. The members of the Selection Committee are as follows:

1. Shri Bharat Bhushan Dev Choudhury, IAS (Retd.), Chairman, APSC,
2. Dr. Ajanta Nath, Member, APSC,
3. Dr. Niranjana Kalita, Member, APSC,
4. Smti Julie Sonowal, IAS (Retd.), Member, APSC,
5. Shri Ghana Kanta Pegu, ACS (Retd.), Member, APSC,

6. Dr. Padma Sharma, Member, APSC,
7. Dr. Manoj Kumar Mahanta, Principal Pragjyotish College,
8. Dr. Hrishikesh Baruah, Principal, KC Das Commerce College,
9. Dr. Jatin Sarma, Head of Department, Biotechnology, Bodoland University.

It is to be mentioned herein that out of the aforesaid members, Smti Julie Sonowal, IAS (Retd.) and Shri Ghana Kanta Pegu, ACS (Retd.) belong to Scheduled Tribe Category and three experts members i.e. Dr. Manoj Kumar Mahanta, Dr. Hrishikesh Baruah and Dr. Jatin Sarma were nominated by the Government of Assam, Department of Higher Education.”

28. In view of the above, the challenge based on the alleged ground that there being a defect in the constitution of the Selection Committee is fallacious and therefore, rejected. As regards, the second ground involving marking pattern, this Court is unable to accept the contention made that the UGC Regulations have laid down the marking pattern. Though the learned Senior Counsel for the petitioner has referred to the tables appended to the UGC Regulations in connection with Clause 6.1 regarding assessment criteria and methodology, this Court finds force in the contention made by Shri Dutta, learned Standing Counsel, APSC that none of the four tables are applicable for the selection of Principal. As recorded above, Table 1 is for Teachers, Table 2 is for API calculations, Table 3 A is for Assistant Professor of University and Table 3 B is for Assistant Professors in Colleges. This Court is also unable to accept the submissions made on behalf of the petitioner that only because the Selection Committee is the same for College Principal and Professor, the marking pattern would also be same. This Court is of the opinion that in absence of any marking pattern in the UGC Regulations, the marks given as per the government guidelines cannot be held to be an illegal process which requires any interference.

29. The learned counsel for the respondent no. 6, Shri Bhardwaj while questioning the maintainability of the writ petition, has relied upon the cases of Madanlal (supra). Though it is correct that no objections were raised before the Selection Committee on the date of the interview or immediately thereafter before the authorities, the principles laid down in the aforesaid case that it would not be open for an unsuccessful candidate to challenge a selection process may apply. However, without even going into that aspect of the matter, this Court is of the view that the grounds of challenge in this writ petition are on an absolutely weak footing and therefore, those are rejected.

30. The case laws relied upon by the petitioner has already been discussed above. So far as the case of the Hon’ble Kerala High Court in Aleyamma Kuruvila (supra) is concerned, the same lays down that UGC Regulation will prevail in a selection of the present nature. Though the said decision has got only persuasive value, there is no dispute with the proposition advanced and the same would not come to the aid of the petitioner.

31. This Court has also taken note of the marks allotted to the candidates which have been brought on record by way of an additional-affidavit filed by the petitioner. The marking pattern does not disclose that there was any biased or unreasonable approach in allotting the marks. Though the ultimate difference is a minor one, the petitioner had got 4 marks out of 10 under the head of Experience for Administration whereas the respondent no. 6 was given 0. This Court has noticed that the petitioner was the In-charge Principal and had already got additional marks.

32. This Court has also found force in the submission made on behalf of the APSC regarding minimal discretion in the marking pattern. In paragraph 11 of its affidavit dated 23.11.2022, the marking pattern has been disclosed in the following manner:

"11...

With regard to the allegation that the interview has been conducted in a biased and determined manner without referring the qualification/API score of the petitioner, the deponent has denied the same and begs to state that the interview process consisted of two parts i.e., marks against 'academics and experience' as well as 'performance in the interview'. The marking pattern consists of total 100 marks, out of which 20 marks for academic (from HSLC to Master Degree), 5 marks for Teaching experience, 5 marks Research & Publishing, 10 marks for Administration, 10 marks against Communication Ability, 5 marks for Ability to plan institutional programme, 5 marks against ability to analysis and discuss curricular development, 5 marks for Ability to analysis and discuss research support, 5 marks for Ability to analysis and discuss development, 10 marks against Ability to deliver lecture programme and 20 marks against interview performances. As such contention of the petitioner is misconceived, not tenable in the eye of law and denied."

33. This Court is also reminded of the fact that while exercising the extraordinary powers conferred by Article 226 of the Constitution of India, it is the decision making process which may be the subject matter of adjudication and in the instant case, no apparent flaws have been noted in the decision making process in which the respondent no. 6 has been selected for the post of Principal of the College.

34. In view of the above, the writ petition stands dismissed. Consequently, the interim order dated 10.11.2022 stands vacated.

35. The records, which were produced, are returned back.