
(2003) 08 GAU CK 0020

In the Gauhati High Court

Case No : Writ Petition (C) No's. 5691 and 1016 of 2003

Dr. Kalyani Das

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 05-08-2003

Acts Referred:

Assam Health Services Rules, 1995 — Rule 8

Citation : (2004) 1 GLR 389

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : D.C. Mahanta, Geeta Deka, T.J. Mahanta, H.N. Sarma, C. Bhattacharya, S.S. Barooah, L. Kalita and S. Dhar, for the Appellant; G.A. Assam and H.K. Barman, for the Respondent

Final Decision : Dismissed

Judgement

P.G. Agarwal, J.—Heard Mr. H. N. Sarma, learned senior counsel for the petitioner, Mr. S. N. Sarma, learned counsel appearing on behalf of respondent No. 4, Mr. Chutia, learned standing counsel appearing on behalf of respondent Assam Public Service Commission and Mr. Mushahary, learned Govt. Advocate.

2. Both the writ petition Nos. 1016/2003 and 5691/2003 are disposed of by this common order.

3. Both the writ petitions have been filed by Dr. (Smt.) Kalyani Das. The matter relates to selection and appointment for the post of Director of Health Service, Assam.

4. Pursuant to the advertisement issued by the Assam Public Service Commission (for short the Commission) for the post of Director of Health Services, Assam, the petitioner before us who belongs to the Scheduled Caste community submitted her candidature for the said post but her candidature was not accepted on the ground that she had crossed the upper age limit, whereupon the petitioner approached this court in WP(C) No. 1016/2003 stating that as she

belongs to Scheduled Caste category, her age requires to be condoned/relaxed by the Govt. on the basis of policy decision, rules and circulars. By interim order this court directed the Commission to allow the writ petitioner to appear for the selection process and accordingly she was allowed to participate and subsequently as ordered, results of the said selection was published, whereby respondent No. 4 has been selected and placed at serial No. 1 in the merit list and Dr. Dhruva Hozai has been placed at serial No. 2 in the merit list. The writ petitioner has therefore filed the subsequent writ petition No. 5691/2003 challenging the selection.

5. In view of the fact that the petitioner has been allowed to participate in the selection process, the earlier writ petition No. 1016/2003 has become infructuous and the same is disposed of as infructuous.

6. The writ petitioner has challenged the impugned selection by the commission on the ground that the selection has been made on the basis of oral interview and the respondent No. 4 and another candidate Dr. Dhruva Hozai has superseded as many as 6 officers senior to them. It is further submitted that Dr. Haren Chandra Doley had filed a representation (Annexure-8) for his appointment and that the said representation was submitted through the Secretary, Health and Family Welfare Department and the said Secretary set in the selection process.

7. So far the first submission regarding the alleged supersession of six senior officers is concerned, there is no dispute at the Bar that the post of the Director of Health Service under the Govt. of Assam is a direct recruitment post and it is not the case of promotion to selection on merit. The question of seniority is relevant in the matter of promotion only. But in the case of direct recruitment, the eligible officers are required to apply for the post and the selection is made amongst the applicants only. As regards the mode of selection, we find that the said post was meant for senior officers from Health (A) Department who have at least 4 years of experience in the post of Chief Medical Officer or Addl. Chief Medical Officer and the minimum age is 40 years.

8. In a catena of decisions the Apex Court has held that under such circumstances, the selection by interview only is also permissive. In the case of *Siya Ram Vs. Union of India (UOI) and Others*, the Apex Court observed that "at time for certain posts only interview is considered to be the best method for selection".

9. In a later decision, in the case of *Parveen Singh v. State of Punjab* AIR 2001 SC 152 the Apex Court has observed that where matured people are to be appointed, interview only may be sufficient. However it will vary from case to case.

10. It may be mentioned here that on earlier occasion this court considered the matter regarding selection/appointment to the post of Director, Health Services and WP(C) No. 1042/2002 was disposed of on 13.6.2002. Direction was given to

the State of Assam to lay down the parameters and accordingly the parameters were laid down by notification dated 30.10.2002 which reads as follows :

"NOTIFICATION

Dated Dispur the 30th October, 2002

No. HLA/155/2001/118 : In pursuance of Rule 8(ii) of the Assam Health Services Rules, 1995, the Governor of Assam is hereby pleased to prescribed the following qualifications and experience for direct recruitment for the post of Director of Health Services, Assam :-

(1) Minimum 40 years and maximum 55 years as on the 1st day of January of the year of advertisement.

(Applicable for all categories inclusive reserve category).

(2) Academic (a) At least MBBS Degree Qualification : or an equivalent Degree of a recognized University.

(3) Experience: (a) At least 4 years practical and administrative experience in the post of either Chief Medical & Health Officer or combining both the experience together or experience in an equivalent or in a higher post.

(b) Experience in Medical and Public Health and Family Welfare works ;

(c) Preference will be given to the candidates having experience in administering health service programme-including family programme and Hospital administration.

(d) A postgraduate degree of diploma in public Health will be treated preferential qualifications;

(e) Candidates must be from Health (A) Department only.

Sd/- H. Ali

Secretary to the Govt. of Assam Health & Family Welfare Deptt."

11. The learned counsel for the respondent/commission has submitted that in the instant case the selection was made in accordance with the above parameters as directed by this court. The relevant records of the selection process have been produced before this court. The learned counsel for the respondent/commission has challenged the locus of the writ petitioner for challenging the selection by stating that once the petitioner participated in the selection process and that too after interference by this court and awaited the results and when the results were adverse to her, she cannot be allowed or permitted to challenge the selection process.

12. It is further submitted that merely stating that the selection process was arbitrary without giving complete details is not sufficient to disturb the selection process made by the experts of the commission.

13. We have perused the records produced by the commission which shows that the classification was under the four major heads, academic, marks, experience and general bearing and experts opinion and the records show that out of the eight candidates who participated in the selection process, respondent No. 4 secured highest marks and he was placed at serial No. 1 and one Dr. Dhruba Hozai secured the second highest marks alongwith another person and he was placed at serial No. 2. Petitioner's grievance directed more against the experts/ members of the commission on the ground that respondent No. 4 has submitted representation through the said expert who was working as the Secretary of the Health Department.

14. Learned counsel for the respondent has submitted that the representation was directed to executive post and not to the members of the commission.

15. However, we find from the marks allotted by the experts that the petitioner was also allotted the same marks with that of respondent No. 4 although some other candidates were given higher marks by the said experts. Thus, this is not a case where the experts have favoured respondent No. 4 in any manner.

16. Considering the transparency in the selection process and the fact that the selection was made by an independent body and it was conducted as required under the rules and the parameters fixed and in absence of any act of arbitrariness or mala fide, we find no case to interfere or to take a different view of the matter of selection at this stage.

17. The learned counsel for the State of Assam has submitted that the Govt. has already approved the selection made by the Commission but in view of the stay granted by this Court, appointment could not be made.

18. In result WP(C) 5691/2003 and WP(C) 1016/2003 stands dismissed. Interim order stands vacated. Respondent State shall proceed in the matter in accordance with the rules and regulations.