
(2011) 12 GAU CK 0007
In the Gauhati High Court
Case No : Writ Petition (C) No. 2671 of 2010

Dr. Md. Jahanhir Alom

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 22-12-2011

Acts Referred:

Citation : (2012) 1 GLD 865

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : M.U. Mahmud, Mr. A.T. Sarkar, Mr. S.K. Roy, Mr. N. Ahmed and Mr. M.S. Hussain in W.P.C No. 2671/10, Mr. A.M. Bazarbaruah, Dr. B. Ahmed, Mr. N. Haque, Miss. M. Barman, Mr. S.K. Deori, Mr. H.I. Choudhury, Mr. K. Uddin in W.P.C No. 3182/10, for the Appellant; D. Saikia, A.A.G., Mr. N. Rajkhowa, Standing Counsel, Education Department, Mr. T.J. Mahanta and Ms. P. Bhattacharjee, for the Respondent

Final Decision : Allowed

Judgement

I.A. Ansari, J.—By this common judgment and order, I propose to dispose of two writ petitions, namely, WP(C) 2671 of 2010 and WP(C) 3182 of 2010, because both these writ petitions have arisen out of the one and the same selection process, involving the same post, and the decision, in anyone of these two writ petitions, may have a bearing and impact on the decision of the other one. Pursuant to an advertisement, published on 26-05-2009, inviting applications to fill up a sanctioned post of lecturer, amongst others, in Arabic, in BN College, Dhubri (hereinafter referred to as the "respondent College"), the present writ petitioners, namely, Md. Jahangir Alom [petitioner in WP(C) No. 2671 of 2010], and Md. Nurul Amin Sheikh, Md. Asraf Ali and Md. Atowar Rahman [petitioners in WP(C) No. 3182 of 2010], being qualified, applied for appointment to the said post of lecturer of Arabic.

2. I have heard Mr. MU Mahmud, learned counsel for the petitioner in WP(C) No. 2671 of 2010, and Mr. AM Buzarbaruah, learned counsel for the petitioners, in

WP(C) No. 3182 of 2010. I have also heard Mr. T.J. Mahanta, learned counsel for those respondents, who comprise of the Government Body of BN College, namely, Principal of the said college, the Secretary of its Governing Body, the Selection Committee and the Members thereof, and Mr. D Saikia, learned Additional Advocate "General, Assam, appearing on behalf of the Department of Higher Education, Government of Assam.

3. Following the application, which had been made by the present petitioners pursuant to the said advertisement, the petitioners were called for interview and they accordingly appeared for the interview, before the Selection Committee, on 02-07-2009. While the selection, in respect of the posts, other than the post of Lecturer of Arabic, was completed, the process of selection of the Lecturer, in Arabic, could not be completed, though the candidates, who had applied for appointment to the post of Arabic, were interviewed, as indicated hereinbefore, by the Selection Committee. The Governing Body of the respondent College met on 26-07-2009 and resolved, by its resolution No. 6, to conduct are interview on the ground that some doubts and confusion had arisen in the process of interview of the candidates, who had applied for the post of Lecturer in Arabic inasmuch as the subject experts could not prepare the panel list. The resolution No. 6, adopted by the respondent College, on 26-07-2009, read as follows:

Discussed the agenda No. 2. After threadbare discussion the meeting has approved the selection made by the Selection Committee for the post of lecturer in the department of English, Bengali and Zoology. Accordingly (1) Dipankar Malick is selected for the post of lecturer in English (2) Miss Nirmita Nath is selected for the post of lecturer in Bengali and (3) Sri Bhabesh. Nath is selected for the post of lecturer in Zoology. The Principal is authorized to send the names of those candidates to the Director of Higher Education, Assam for prior approval of appointment.

As regards the selection of candidate for the post of lecturer in the department of Arabic there arose some doubts and confusion in the process of interview as the subject experts could not prepare the panel list. Hence, it is resolved that a re-interview for the said post of lecturer in the department of Arabic be done after obtaining permission from the Director of Higher Education, Aseam.

4. Thereafter, respondent No. 4, namely, Principal of the College, wrote a letter, on 30-07-2009, to the English and Foreign Languages University, which is a Central University, established by an Act of Parliament, seeking a clarification if Md. Jahangir Alom (i.e., the petitioner in WP(C) 2671/2010), had been awarded degree of M.Phil and Ph.D. from the said University. In response to the letter, dated 30-07-2009, of respondent No. 4, the Registrar of the said University clarified that Md. Jahangir Alom (i.e. the petitioner in WP(C) No. 2671 of 2010), had, indeed, obtained M.Phil and Ph.D. degree from the said University. The clarification, which the respondent No. 4 had sought for, was, in fact, in respect of an expression, which stood inscribed in the Degree produced by Md. Jahangir Alom. The Ph.D. degree, which had been produced by Md. Jahangir Alom, used

the words "Admitted to the Degree of M.Phil" and "Admitted to the Degree of Ph.D". By his letter, dated 30.07.2009, respondent No. 4 wanted to know if "Admitted to the Degree of M.Phil Ph.D" meant that the person was a degree holder of the said University or whether he had been merely admitted for obtaining degree of M.Phil. or Ph.D., as the case may be? By its letter, dated 11-08-2009, the Registrar of the said University clarified that the expression, "Admitted to the Degree of M.Phil or Ph.D." is a standard expression, used for a degree holder of a University, and like many other Universities, the English and Foreign Languages University, which is a Central University, established under the Act of Parliament, also grants M.Phil or Ph.D. as the case may be, by using the expression, "Admitted to the Degree of M.Phil or Ph.D.", as the case may be.

5. Having received the above clarification from the English and Foreign Languages University, respondent No. 4 wrote a letter to the respondent No. 3, namely, Director of Higher Education, Government of Assam, on 08-08-2009, seeking permission to hold re-interview for the said post of Lecturer. By a latter resolution, dated 31-12-2009, the respondent College decided to re-advertise the post instead of re-interviewing the candidates, who had earlier appeared for the interview, on 02.07.2009, for selection and appointment to the post of lecturer of Arabic. This resolution was adopted on the basis of a letter, dated 16.10.2009, issued by respondent No. 3, namely, Director, Higher Education, Government of Assam, informing the respondent College that the qualification for appointment to the post of lecturer of colleges and universities stands changed by Government of Assam's notification, dated 07.10.2009, which had made passing of the NET/SLET a condition of eligibility even for the persons, who holds M.Phil. Degree, and the only exception, in this regard, is in respect of a candidate, who holds Ph.D. degree, and applies for the post of lecturer in an undergraduate college, such as, the respondent College.

6. As the respondent College decided to re-advertise the post making passing of NET/SLET as the minimum educational qualification, three of the persons, who had participated in the said interview for selection and appointment to the post of lecturer in Arabic, namely, Md. Nurul Amin Sheikh, Md. Asraf Ali and Md. Atowar Rahman, have filed the writ petition, which has given rise to WP(C) No. 3182 of 2010, their case being, in brief, thus. Since the recruitment to the post of lecturer, in Arabic, in the respondent College, had been initiated as far back as on 26-05-2009 and the UGC guidelines came into force, in Assam, by way of notification, issued, on 07-10-2009, by the Government of Assam, the post of lecturer, in Arabic, shall be filled up by interviewing the same candidates, who had participated in the earlier interview, which was held on 02-07-2009. The petitioners contend that the decision of the respondents/authorities concerned to fill up the said post by resorting to the UGC norms of NET/SLET, which have been accepted by the Government of Assam, by notification, dated 07-10-2009, is illegal.

7. In support of the above submission, reliance has been placed, on behalf of the

petitioners in WP(C) No. 3182 of 2010, by Mr. Buzarbaruah, learned counsel, on the case of P. Mahendran and others Vs. State of Karnataka and others, , wherein it has been pointed out that every statutory rule is prospective in nature unless it is expressly or by necessary implication can be said to have been brought into force with retrospective effect and if the statutory rules are prospective, then, such rules cannot be applied with retrospective effect. Consequently, what the decision, in P. Mahendran (supra), holds is that when a recruitment process is started under the old rules, it cannot be changed to the process of selection, which may have been prescribed by new rules. The relevant observations, made, in this regard, in Paragraphs 4 and 5, read as under :

4. There is no dispute that under the Recruitment Rules as well as under the advertisement dated October 6, 1983 issued by the Public Service Commission, holders of Diploma in Mechanical Engineering were eligible for appointment to the post of Motor Vehicle Inspectors alongwith holders of Diploma in Automobile Engineering. On receipt of the applications from the candidates the Commission commenced the process of selection as it scrutinised the applications and issued letters for interview to the respective candidates. In fact the Commission commenced the interviews on August 1984 and it had almost completed the process of selection but the selection could not be completed on account of interim orders issued by the High Court at the instance of candidates seeking reservation for local candidates. The Commission completed the interviews of all the candidates and it finalised the list of selected candidates by June 2, 1987 and the result was published in the State Gazette on July 23, 1987. In addition to that the selected candidates were intimated by the Commission by separate letters. In view of these facts the sole question for consideration, is as to whether the amendment made in the Rules on May 14, 1987 rendered the selection illegal. Admittedly the amending Rules do not contain any provision enforcing the amended Rules with retrospective effect. In the absence of any express provision contained in the amending Rules it must be held to be prospective in nature. The Rules which are prospective in nature cannot take away or impair the right of candidates holding Diploma in Mechanical Engineering as on the date of making appointment as well as on the date of scrutiny by the Commission they were qualified for selection and appointment. In fact the entire selection in the normal course would have been finalised much before the amendment of Rules, but for the interim orders of the High Court. If there had been no interim orders, the selected candidates would have been appointed much before the amendment of Rules. Since the process of selection had commenced and it could not be completed on account of the interim orders of the High Court, the appellants' right to selection and appointment could not be defeated by subsequent amendment of Rules.

5. It is well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the rule must be held to be

prospective. If a rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rules of 1987 do not contain any express provision giving the amendment retrospective effect nor there is anything therein showing the necessary intendment for enforcing the rule with retrospective, effect. Since the amending Rules were not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force, the amended Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made In a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter.

8. Mr. Buzarbaruah, learned counsel, has also placed reliance on the case of N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, , wherein the Supreme Court, in no uncertain words, held, at paragraph 11, that when a candidate, who is eligible to apply for a post, in accordance with the relevant rules in force and the terms, contained in the advertisement, apply for the post pursuant to such advertisement, he does acquire a vested right for being considered for selection in accordance with the rules and in terms of the rules as existed on the date of advertisement and he cannot be deprived of that limited right, on the amendment of rules, during the pendency of selection process, unless the rules are retrospective in nature.

9. In the present case, the selection process was, admittedly, started in terms of the rules, which were in force on the date of the advertisement, namely, 26-05-2009. Interview was also held, on 02.07.2009, in the light of the old rules and the Governing Body of the respondent College resorted to hold re-interview of the said post. This re-interview was, unless permitted by law, ought to have been held and has to be held even now in accordance with the old Rules and not the new ones.

10. The question, therefore, which arises for consideration, is whether the process of selection, which would be resumed pursuant to the decision of re-interview shall be held according to the new Rules, which have come into force by notification, dated 07.10.2009, issued by the Government of Assam or the interview shall be held adhering to the old Rules. In order to arrive at a correct decision to this question, the relevant portion of the said notification, dated 07-10-2009, is reproduced below :

NET shall remain compulsory requirement for appointment to lecturers even for those with post graduate degree. However, the candidates having Ph.D. Degree in the concerned subjects are exempted from NET for P.G. Level and U.G. Level teaching the candidates having M.Phil. Degree in the concerned subjects are

exempted from NET for U.G. Level teaching only.

The above provisions shall be substituted by the following paragraph.

"NET/SLET shall remain the minimum eligibility condition for recruitment and appointment to lecturers in Universities/Colleges/Institutions.

Provided, however, that candidates, who are or have been awarded Ph.D. Degree in compliance of the "University Grants Commission (minimum standards and procedure for award of Ph.D. Degree) Regulation, 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET for recruitment and appointment of Assistant Professors or equivalent positions in Universities/Colleges/Institutions,

11. From a bare reading of the changes, which have been brought, by notification, dated 07.10.2009, it becomes clear that before the notification, dated 07-10-2009, was issued, a person, having M.Phil or Ph.D. degree, could teach as a Lecturer in both postgraduate level as well as undergraduate Level; but after the notification, dated 07-10-2009, while the Ph.D. Degree holder can be appointed as Lecturer or Assistant Professor to teach in any College or University without having passed NET/SLET, a person, having M.Phil. Degree, cannot teach even in an undergraduate college unless he has passed NET/SLET, because NET/SLET has been made a minimum conditions of eligibility for recruitment and appointment of Lecturers, in the colleges and Universities with the exception, as indicated hereinbefore, that the holder of Ph.D. degree may teach in Colleges and Universities.

12. In the present case, as the notification, dated 07-10-2009, has come into force, without giving the same retrospective effect, the notification, in question, has to be treated as prospective in effect. Consequently, the requirement of having NET or SLET as embodied in the notification, in question, cannot be applied to the case at hand, when the process of selection for appointment to the post of Lecturer, in the respondent College, was initiated before the notification, dated 07-10-2009, was brought into force and before a decision to re-interview the candidates, in question, was taken.

13. What logically follows from the above discussion is that the selection process, in question, must be continued in terms of the old rules, which did not prescribe NET/SLET as one of the eligibility conditions for appointment as Lecturer in an undergraduate college, such as, the respondent College. In fact, this conclusion is supported by a subsequent Notification, dated 1.1.2011, issued by the Government, Education (Higher) Department, which reiterates that a person, who obtained M.Phil. Degree on or before 10.07.2009, shall remain exempted from the requirement of clearing the NET to qualify for the purpose of appointment as lecturer/Assistant Professor of colleges.

14. What is, now, necessary to note is that while the petitioners, in WP(C) No. 3182 of 2010, do not object to the re-interview, the decision to re-interview

taken by the Governing Body of the respondent College has been challenged by Md. Jahangir Alam, (i.e. the petitioner in WP(C) No. 2671 of 2010), who contends that since his Ph.D. degree is valid and it has been so confirmed by the English and Foreign Languages University, which is a Central University, established by an Act of Parliament, the respondents shall not be allowed to hold any re-interview and what they shall do is to add to the marks of the various candidates their respective educational qualifications and if the mark, meant for Ph.D., is added against his candidature, he (Md. Jahangir Alam), would be found to have secured far more marks than others and would be entitled to appointment. This apart, this petitioner, Md. Jahangir Alam, alleges that the decision to re-interview is motivated and mala fide inasmuch as the respondents want to appoint a person of their own choice and since it could not have been possible without re-interview or fresh interview, they had deliberately decided to re-interview and, then, this decision, too, has been changed by deciding to call for interview by issuing a fresh advertisement. Suffice it to point out, in this regard, that the allegations, so made, are devoid of any material particulars. When motive is attributed to an authority or institution for a decision, which the authority or the institution has taken, it is the duty of the person, who makes allegation, to substantiate the allegation by giving material particulars. The writ petitioner, Md. Jahangir Alam, could not give any material particulars in the writ petition. Even when enquired into by this Court, Mr. Mahmud, learned counsel, could not furnish any material particular to show that any of the candidates, who had faced the interview, on 02-07-2009, was intended to be selected by the Selection Committee or the Government Body of the respondent College.

15. Thus, a bald allegation made by the petitioner, namely, Md. Jahangir Alam, that the decision to re-interview is a motivated or mala fide act, on the part of the respondents, can be given no credence at all and, ordinarily, it, should be rejected by imposing cost for maligning the respondents concerned, particularly, when it is not in dispute that the Selection Committee did not consist of Principal or Members of the Government Body of the respondent College alone. Apart from the Principal of the respondent College, Head of the Department of Arabic of the respondent College, Head of the Department of Arabic and Persian Department, Cotton College, the Principal MK College, and Senior Lecturer of Arabic of Cotton College were members of the Interview Board. No specific allegation could be made against any of them to show that they acted with ulterior motive in deciding to hold re-interview.

16. What emerges from the above discussion is that in the process of interview for the post of Arabic, the members of the Selection Committee developed a doubt as regards genuineness of the Ph.D. degree, which Md. Jahangir Alam, (i.e., petitioner in WP(C) No. 2671 of 2010). This doubt arose because of the fact that certificate, which Md. Jahangir Alam produced and which had been issued by the English and Foreign Language University, mentioned that Md.

Jahangir Alam had been admitted to the degree of M.Phil. The members of the

Selection Committee did not perhaps, know that admitted to the degree is an expression, which is not uncommon in the field of higher education, and a person, who is awarded Ph.D., is also, by many of the Universities, described as "Admitted to the Degree of Ph.D.". It is this expression, which was used in the case of Md. Jahangir Alom, when the English and Foreign Language University granted Ph.D. Degree to Jahangir Alom.

17. Because of the doubt, which had so arisen, the Selection Committee decided not to complete the process of selection and obtain a clarification from English and Foreign Languages University to know whether Jahangir Alom had Ph.D. Degree from the said University or not. Following this decision of the Selection Committee, a resolution was adopted, on 26-07-2009, by the Governing Body of the respondent College to hold re-interview of the said post after obtaining permission from the Director of Higher Education, Government of Assam. In order to remove their doubts, the college authorities, as indicated above, wrote to English and Foreign Languages University and the said University responded, on 11-08-2009, saying that the expression, "Admitted to the Degree of M.Phil or Ph.D", as the case may be, is a standard expression for granting of M.Phil or Ph.D. and that Md. Jahangir Alom had, indeed, been awarded Ph.D. by English and Foreign Languages University, which is a Central University established by the Act of Parliament.

18. Thus, the decision, which had been taken on 26-07-2009, by the Governing Body of the respondent College to hold re-interview, did not suffer from any mala fide nor can this decision be called to be arbitrary. The decision, therefore, to hold the re-interview cannot be said to be bad in law or arbitrary, irrational, unreasonable, mala fide or suffering from ulterior motive. Consequently, and the decision to re-interview the candidates, who had appeared for interview, on 02.07.2009, cannot be interfered with.

19. While, therefore, the decision to hold re-interview cannot be interfered with, the decision to re-advertise the post with the conditions of eligibility, which has been prescribed by the notification, dated 07-10-2009, cannot be allowed to stand good on record.

20. In the result and for the foregoing reasons, while the direction, given by the respondent No. 3, namely, Director of Higher Education, Government of Assam, and the decision of the Governing Body to re-advertise the post by prescribing new qualification as introduced by the notification, dated 07-10-2009, are hereby set aside and quashed, the respondent College is hereby directed to hold re-interview by inviting the candidates, who had appeared earlier for interview, on 02.07.2009, and, after holding the re-interview, as directed hereinbefore, the selection and appointment to the post of Lecturer, in Arabic, in the respondent College, shall be made.

21. The two writ petitions are, thus, allowed to the extent as indicated above.

22. With the above observations and directions, these two writ petitions shall

stand disposed of. No order as to costs.