
(2018) 05 GAU CK 0006
In the Gauhati High Court
Case No : WP(C) 2832 of 2010

GIRISH RAJBONGSHI

APPELLANT

Vs

THE STATE OF ASSAM AND ORS

RESPONDENT

Date of Decision : 10-05-2018

Acts Referred:

Citation : (2018) 05 GAU CK 0006

Hon'ble Judges : HRISHIKESH ROY

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Heard Mr. T.J. Mahanta, the learned Senior Counsel appearing for the petitioner. The State respondents are represented by Mr. S.S. Roy, the learned Govt. Advocate. The 5th respondent Hiranya Saikia, whose appointment is under challenge, is represented by the learned Counsel Mr. R. Goswami.

2. The process of recruitment to the post of Chowkidar in the establishment of the Foreigners Tribunal (2nd), Mangaldoi, commenced with the advertisement dated 20.3.2010 and the petitioner and other aspirants offered their candidature(s). The candidates were evaluated by the 5 Member Selection Board on the criteria of their reading and writing capabilities, educational qualifications, manner and attitude, experience, financial status etc. On the basis of marks given by the Members of the Board, the select list was notified on 30.3.2010 (Annexure-2) in which the petitioner with his aggregate score of 34.1 secured the top position amongst the 11 participating candidates. The rival aspirant Hiranya Saikia (respondent No.5) with his aggregate score of 33.4, was placed in the 4th position. The Selection Board then

considered the result sheet and recommended the petitioner for appointment on the basis of his highest aggregate score, in the selection exercise.

3. However most surprisingly, ignoring the recommendation for the top merited candidate, the impugned appointment order was issued on 31.3.2010 for the lesser merited Hiranya Saikia (respondent No.5). Assailing the legality of the appointment of the candidate with inferior merit, Mr. T.J. Mahanta, the learned Senior Counsel submits that this appointment was made for extraneous consideration and the action undermines the selection exercise, undertaken by the 5 Member Selection Board. In this context, he refers to the Deputy Commissioner's letter dated 7.4.2010 (Annexure-6) where it is reflected that the respondent No.5 was undeservingly appointed only because, he is the son of one Gobinda Saikia, serving as a Peon in the same establishment. As the petitioner was evaluated to be most meritorious, the Deputy Commissioner suggested cancellation of the undeserving appointment and proposed the appointment of the candidate recommended by the Selection Board.

4. The respondent No.5 is represented by the learned Counsel Mr. R. Goswami and he submits that the appointed person had earlier worked as a Chowkidar in the same establishment. The Counsel highlights that difference between the petitioner and the respondent No.5 is 0.7 marks only and therefore, the preference for the candidate with past experience, is contended to be justified.

5. On the other hand, the learned Govt. Advocate Mr. S.S. Roy refers to the counter affidavit filed on 30.6.2011 to project that only after the Finance (SIU) Department had accorded approval on 2.2.2010 to fill up the post of Chowkidar, the process of appointment was started with the advertisement and the convening of the Selection Board. It is averred in this affidavit itself that the appointment of respondent No.5, who was placed in the 4th position in the select list, was contrary to the norms and the recommendation of the Selection Board.

6. When the process of regular appointment is initiated with due public notice and aspirants compete against each other, it is expected that the appointment would be made on merit. When a Selection Board is constituted and they evaluate the petitioner to be the most meritorious amongst the eleven participating candidates, there can be no justification for preferring the 4

th merited person for appointment. The small margin of marks in the aggregate score of the two litigants can have no bearing in appointment the lesser merited person. Moreover, no extra weightage can be claimed by the 5th respondent, on account of his past service on casual basis.

7. As earlier noted, the Selection Board made their evaluation with due regard to experience and other criteria and the relative merit of the candidates was assessed. Therefore, to ignore the person at the top of the merit list, to offer appointment to another one with lesser aggregate score, will surely be arbitrary and cannot be permitted.

8. The case records show that the appointment order for the respondent No.5 was stayed by this Court on 26.5.2010 and although the Misc. Case 2152/2010 was filed for vacating the interim order, the same was not granted. Therefore, the respondent No.5 is not occupying the post of Chowkidar, despite the appointment.

9. Since the appointment of Hiranya Saikia (respondent No.5) with his lower aggregate score is found to be un-merited the impugned order of

31.23.3010 (Annexure-5) is interfered and quashed. In consequence, the State authorities are directed to appoint the petitioner in the post of Chowkidar in the Foreigners Tribunal (2nd), Mangaldoi, as per the selection and recommendation made on 30.3.2010 by the Selection Board. It is ordered accordingly.

10. With the above order, the case stands allowed without any order on cost.