
(1997) 03 GAU CK 0006
In the Gauhati High Court
Case No : Writ Appeal No. 120 of 1996

Gitanjali Handique

APPELLANT

Vs

Shahnawaz Begum and Ors.

RESPONDENT

Date of Decision : 03-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1997) 1 GLJ 414

Hon'ble Judges : D.N.Chowdhury, J and V.Dutta Gyani, J

Bench : Division Bench

Advocate : N.K.Barua, C.Barua, B.Banerjee, B.M.Sharma, Advocates appearing for Parties

Judgement

D. N. Chowdhury, J.—This appeal arises out of the order of the learned Single Judge dated 16.11.95 in Civil Ryie No.2977 of 1993.

2. By an order bearing No.GDfcST/APTT/48793/PT/2 dated 20.9.93 issued by the Director of Secondary Education, Assam (respondent No.3 in the writ appeal) the appellant, while working as an Assistant Teacher in Senairam Higher Secondary School, was appointed temporarily as Subject Teacher in Political Science in the same school in the scale of pay of Rs. 17854200 PM plus other allowances as admissible under the rules for a further period of 3 (three) months till the post was filled up by the candidates selected by the State Selection Board, whichever was earlier from the date of her/his joining. The respondent No.1 moved this Court by way of a writ petition assailing the legality and validity of the aforesaid order of appointment dated 20.9.93 appointing the present appellant as a Subject Teacher. In the aforesaid proceeding the appellant was impleaded as the respondent No.4. According to the writ petitioner, the writ petitioner claimed that she was an apointee of 1983 and was holding tlje post of Assistant Teacher at an intermediate scale though she was at all relevant time a person qualified to hold the post of Post Graduate Teacher in Political Science. The respondent also claimed that at all relevant time the authorities sponsored her case for being

absorbed as a Subject Teacher and to meet the demand of the school and Government has sanctioned a post of Subject Teacher in Political Science in the scale of pay of Rs. 17854200. The writ petitioner claimed that she had a superior claim over the appellant to hold the said post, more so, in view of the fact that she was duly selected for appointment as a Subject Teacher in Political Science by the State Selection Board. Upon consideration of the respective cases, the learned Single Judge directed the State Government to fill up the post through State Selection Board within a period of four months from the date of judgment. The Court further ordered that the case of the petitioner (respondent No. 1 herein) as well as the respondent No.4 (appellant herein) would be taken into consideration for appointment as they were selected along with other similarly situated persons. The Court issued the following direction:

"... It is made clear that if this appointment is not made within this period of four months Annexure XI dated 20th September, 1993 shall stand quashed after the expiry of four months from today. It is for the authority to decide which select list now holds the field for the purpose of appointment."

The appellant being aggrieved mainly with the latter part of the order of quashing her appointment after expiry of the four months from the date of order, moved this Court by this appeal.

3. This Court in Misc Case No.1208 of 1996 (in Writ Appeal No. 120 of 1996) upon hearing the present appellant as well as the learned Govt Advocate appeared on behalf of the State respondent passed the following order on 19.2.96:

"After hearing the learned counsel appearing for the parties, we are of the opinion that the appellant/respondent will in person file a certified copy of our order along with the copies of Memo of Appeal and the judgment delivered by the learned Single Judge before the Secretary to the Govt of Assam, Education Department, Dispur, who shall accept the same. The Secretary to the Govt of Assam, Education Department shall see that the regular appointment on the posts are made, if not already made, within a period of six months from the date of filing of the certified copy of our order which will be filed within one week by the appellant/respondent. It is being made clear that in case the appellant/respondent and the petitioner/respondent are working on the posts and there are available posts, it will be open for the authorities to allow them to work till regular selection is made in accordance with the directions given by the learned Single Judge.

Subject to the aforesaid observations, the present stay application is finally disposed of."

4. On examination of the materials on record, it thus emerges that the writ appellant/respondent No.4 in the writ petition was appointed only as a stop gap arrangement till the post is filled up by the candidates selected by the State Selection Board. Admittedly as on 20th September, 1993, i.e. on the date of appointment no candidates were available selected by the State Selection Board.

Therefore, the appointment of the appellant/respondent No.4 in the writ petition cannot be faulted till the posts are regularly filled up. Till selections are made by the State Selection Board it is open for the appointing authority to appoint persons as an ad hoc measure to meet the exigencies of the situation. There is no allegation of malafide or improper motive imputed on the respondent Nos. 1 and 2 in the writ petition in appointing the petitioner. Within the area of discretion the authority can have a free play within the joints and unless it is unlawful by itself there is no scope for the High Court to intervene under Article 226 of the Constitution of India. We, therefore, cannot infer any illegality as such in the impugned order of appointment dated 20.9.93 requiring interference by the High Court. The order of the learned Single Judge to the extent of quashing of the order of appointment after expiry of four months, therefore, cannot be sustained.

5. We, however, agree with the learned Single Judge that the initiation of the selection process and appointing persons on regular fashion has become imperative and it is expected that the respondents 2, 3 and 4 in the writ appeal (respondent Nos.1, 2 and 3 in the writ petition) shall take positive steps for appointing persons in the regular fashion. We have also made it clear that it would be open for the respondents to accommodate the respondent/writ petitioner in any suitable post commensurate to her qualification till proper selections are made. Subject to the observations made above, the appeal is allowed, and the judgment and order of the learned Single Judge dated 16.11.95 stands modified to the extent indicated.