
(2012) 02 GAU CK 0041
In the Gauhati High Court

Gitanjali Talukdar, W/o.Sri Mukul Talukdar, R/o.Basistha,
Guwahati, Kamrup, Assam

APPELLANT

Vs

State of Assam, represented by the Commissioner and
Secretary to the Govt.of Assam, Education (Secondary)
Department, Dispur, Guwahati

RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Citation : (2012) 02 GAU CK 0041

Hon'ble Judges : B.K.Sharma, J

Bench : Single Bench

Advocate : For the Petitioners : Mr. B.D. Das, Sr. Adv, Mr. H.K. Sharma, Adv, Mr. P.J. Saikia, Adv.??For the Respondents : Mr. P.N. Goswami, SC, Edu., Advocates appearing for Parties

Judgement

Sharma, J.—Heard Mr. B.D. Das, learned senior counsel assisted by Mr. H.K. Sharma and Mr. P.J. Saikia, learned counsel for the petitioners as well as Mr. P.N. Goswami, learned Standing Counsel, Education Department.

2. This batch of writ petitions raising the same issue, have been heard together and are being disposed of by this common judgement and order. For convenience, the writ petition being WP(C) No. 3089/2011 (Smt. Gitanjali Talukdar Vs. State of Assam & Ors) has been taken as the lead case.

3. The petitioners are aggrieved by the Annexure18 order dated 7.6.2011 by which their services have been terminated. As reflected in the order itself, such a course of action was adopted pursuant to the judgement and order dated 6.8.2010 passed in WP(C) No. 3178/2008. In the said proceeding, the Court was concerned with the selection and appointment of subject teacher in Zoology for which an advertisement was issued in 1992. The selection was conducted in 1995 and a select list was published on 12.6.1995. The petitioner involved in the said writ petition, filed the writ petition claiming that many candidates below her in the select list had been appointed superseding her claim. It appears that

during the course of hearing of the said proceeding, the Court directed for an enquiry into the matter and consequently a report was submitted by the SIT. On perusal of the said report and other materials, the writ petition was disposed of by the aforesaid judgement and order with the following observations and directions :

10. In this case it has become quite apparent that undeserving candidates were appointed during 1995-2001 to the 20 posts of Zoology Subject Teachers in different provincialised Higher Secondary Schools in Assam. When such illegal appointments are found to have been made appropriate judicial order(s) for termination of such illegal appointment has to follow. In the present case however all such appointees are not before the Court i.e. Smti. Manimala Kakoti, Smt. Banti Talukdar, Smti. Gitanjali Deka (from GroupA) ; Smt. Bijuli Chakraborty (from GroupB) and Smti. Dipali Bora (from GroupC). All the relevant facts i.e. circumstances in which the 7 regularisation under GroupB and 3 regularisation under GroupC were made are not before the Court. Whether such regularisation was against the advertised posts and if not what had happened to the advertised posts is also not known with certainty. In such circumstances it may not be appropriate for the Court to pass any order for cancellation of the appointments. But considering the information gathered by the SIT, we deem it appropriate to direct the State to take into account the report of the SIR and thereafter take appropriate steps to discontinue the services of such appointees who got undeserved appointments. Of course if any adverse action is to be taken against the appointee, they ought to be given an opportunity before termination orders are issued.

11. Since relevant Government records pertaining to appointment in public offices have gone missing and were consequently withheld from scrutiny of the Court, necessary steps be taken by the State to unearth the missing records. Departmental action be taken against the persons identified by the SIT as responsible for the above. The State must also fix responsibility and proceed against the errant officials who may be found to be responsible for the appointments that may be eventually set aside by the State.

12. In so far as the relief claimed by the petitioner, considering that she is at merit position No. 47 in the select list, she can claim appointment only as per turn. If vacancies become available through termination of illegal appointees and if appointment is refused by those who are in higher merit position than the petitioner, only then the petitioner can be offered appointment. Accordingly if the petitioner's turn comes in order of merit she may then be appointed to the post of Subject Teacher of Zoology by virtue of her selection. However, considering the fact that the petitioner had largely conducted the present proceeding on her own and her painstaking efforts and perseverance have had some impact on attempts at cleansing public life, the Court directs that the petitioner should be suitably compensated for the efforts by payment of cost of Rs. 25,000/ (Rupees twenty five thousands) only which will be paid to her by the State Government in

the Education Department within 30 days from today.?

4. Pursuant to the said judgement and order, the petitioners were issued with the identical show cause notice dated 10.5.2011. For a ready reference, the show cause notice issued to the petitioner involved in WP(C) No. 3089/2011 is quoted below :

?GOVERNMENT OF ASSAM OFFICE OF THE DIRECTOR OF SECONDARY EDUCATION :::: ASSAM KAHILIPARA :::: GUWAHATI19 No. GBEST/DSC/CC/125/2008/Pt/171

Dated Kahilipara, the 10th May, 2011

From : Sri B.N. Talikdar, Director of Secondary Education, Assam, Kahilipara, Ghy19.

To,

Smti. Gitanjali Talukdar, Subject Teacher in Zoology, Kamrup Academy HS School, Ghy, PO Chenikuthi, Dist Kamrup.

Sub : Show Cause Notice.

Ref : 1.Govt. letter No. ELC/WP(C) 3178/2008/429/563 dtd. 3.5.2011.

2. Hon''ble High Court''s order dt. 6.8.2010 passed in PIL No. 14/2010 in WP(C) No. 3178/2008 filed by Zulekha Wahida Ahmed.

Sir,

It is seen from the records/ papers that you have received offer of appointment as

Subject Teacher in Zoology on adhoc basis which is quite contrary to the rules/ procedures in force at that point of time. Further an advertisement was made on June/1992 for filling up of 20 posts of Subject Teacher in Zoology and accordingly the selection was made on October/1995 by the State Selection Board, Assam wherein your name appeared at Sl. "X" which is beyond the zone of 20 posts of Subject Teacher in Zoology advertised in June, 1992.

Hence your appointment is undeserved and subsequent regularisation as Subject Teacher in Zoology is found to be nor proper and hence treated as illegal and as such as instructed by the Govt. vide letter No. ELC/WP(C) 3178/2008/429/563 dtd. 3.5.2011, you are hereby required to show cause as to why your service will not be terminated/ discontinued. Accordingly show cause notice is served and you are asked to appear personally along with the replies to the show cause before the Committee for hearing in the office of the Director of Secondary Education, Assam on 19.5.2011 at 11.00 AM positively along all relevant papers/ documents connected with your appointment/ regularisation as Subject Teacher in Zoology, failing which exparty decision will be taken. This is issued in compliance with the Hon''ble High Court''s order passed in PIL No. 14/2010 in

original WP(C) No. 3178/2008 filed by Smti. Julekha Wahida Ahmed vs state of Assam and others.

Sd/

Disciplinary Authority & Director

Secondary Education, Assam,

Kahilipara, Guwahati 19.?

5. On receipt of the said show cause notice, the petitioners submitted their individual replies in which it was contended that they were not the beneficiaries of the selection conducted in the year 1995 pursuant to the advertisement issued in 1992. Their specific plea was that their earlier appointments were regularized pursuant to the recommendation made by the Screening Committee constituted for the purpose. In this connection, the petitioners have referred to the Annexure5 letter dated 16/10/1998, by which the Govt. of Assam in the Education (Secondary) Department conveyed the decision to constitute the screening Committee for the purpose.

6. Pursuant to the said decision to examine the cases of such appointees by Screening Committee, an advertisement was issued, a copy of which has been annexed as Annexure6. The said advertisement is dated 20.11.1998. In the advertisement it was specified that screening of the subject teachers would be taken up by the Screening Committee on the dates notified in the advertisement.

7. It was upon such screening done by the authorities, the petitioners were appointed. The petitioner involved in WP(C) No. 3089/2011 was appointed by Annexure8 order dated 22.3.2000. The said order of appointment has a reference to the order dated 16.10.1998 by which the screening Committee was constituted.

8. Thus, according to the petitioners they were never appointed pursuant to the selection conducted in the year 1995 and thus there is no question of the appointments being illegal. It has been contended that since in the aforesaid decision, the Court was concerned with the selection that was conducted in 1995 and the excess appointments made thereunder, the case of the petitioners did not come within the purview of the said proceeding.

9. It will be appropriate to refer to the SIT report, a copy of which has been annexed to the counter affidavit filed by the respondents. In the said SIT report, it has been clearly indicated that the services of the petitioners were regularized on the basis of the SSB selection and approval of the same by the Govt. vide letter No. B(3) S.515/1995/38 dated 3.1.1996. There is no adverse comments made by the SIT in its report against the appointment of the petitioners. However, the respondents in their counter affidavit have taken the plea that the services of the petitioners could not have been regularized in the manner and method in which the same was done.

10. Above plea of the respondents is not available in the impugned show cause notice. In the notice dated 10.5.2011 only reference made was to the selection of 1995 and the purported appearance of the name of the petitioners in the said select list. However, nothing was indicated in the show cause notice as to in which place their names had appeared. When it is the case of the petitioners that they were not selectees of 1995 selection, the show cause notice itself was redundant as the same was on the issue in respect of the purported illegalities committed towards appointing from the select list whose names were either included in the 1995 select list or which were not included in the select list. When the case of the petitioners were altogether on a different footing i.e. that their services were regularized pursuant to the screening and the same was reflected in the SIT report, the authority passing the impugned order ought to have taken note of the said order, which was agitated by the petitioners.

11. From the materials on records, it appears that the respondents while passing the impugned order preceded by the impugned show cause notice, was obsessed with the observations made in the judgement referred to above, unmindful of the fact that each case was to be decided on its own merit taking note of the pleas/ defence taken by the petitioners, who had received the show cause notice. There is no waiver in the impugned order about the pleas raised by the petitioners in their impugned show cause replies. In WP(C) No. 3101/2011 disposed of on 6.2.2012 (Ajit Kr. Goswami Vs. State of Assam & others) all these aspects have been discussed.

12. For all the aforesaid reasons, I am inclined to allow the writ petitions by setting aside and quashing the impugned order dated 7.6.2011 passed by the Director of Secondary Education, Assam, so far as the same relates to the present petitioners. Consequently, the petitioners shall be deemed to be in service all throughout with all consequential benefits.

13. Writ petitions are allowed. There shall be no order as to costs.