
(2013) 09 GAU CK 0002

In the Gauhati High Court

Case No : Writ Petition (C) No's. 5550, 5646, 5740, 5788, 5882, 5896, 5987
and 6082 of 2012 and 1557 of 2013

Hitesh Deka and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Citation : (2013) 5 GLT 435

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : B.D. Konwar, Mrs. J.M. Konwar, Mr. R. Kalita, Mr. P. Choudhury, Ms. G. Ghosh, Ms. S. Barua, Mr. M. Phukan, Mr. L.N. Dihingia, Mr. S. Borgohain, Mr. P.J. Saikia, Mr. R. De, Mr. B. Sharma, Mr. S.A. Ahmed, Mr. H. Ali, M.D. Saikia, Mr. P.P. Baruah, Mr. M. Talukdar, Mr. M.J. Baruah, Ms. M. Talukdar, Mr. P.K. Deka, Mr. I.H. Laskar, Mr. S. Alam, Ms. A. Begum, Mr. P. Phukan, Mr. P. Dutta, Mr. S. Sarma, M.R. Islam, Mr. N. Mitra and Ms. M. Devi, for the Appellant; H.M. Phukan, Learned State Counsel, Mr. P. Naik, Standing Counsel, Finance, Mr. A.K. Takur, S. Chetia, A. Goyal, Mrs. C. Roy, P. Baruah, M. Sarma and Mr. P. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Biplab Kumar Sharma, J.—All these writ petitions pertain to selection and appointment to the post of Grade-IV in the Assam Secretariat, Guwahati. The petitioners involved in this batch of writ petitions were aspirants for selection and appointment, but when they found that their names were not included in the list of candidates sent for the second phase of selection they approached this Court by filing the writ petitions and because of the interim order passed, the 2nd stage of selection although was held, but the results thereof could not be published and consequently no appointment could be made. Since the issue involved in all the writ petitions is one and the same, they have been heard analogously and are being disposed of by this common judgment and order. I have heard Mr. B.D. Konwar, Mr. R. De, Mr. P.K. Deka, Mr. M. Phukan, Mr. M.

Talukdar and Mr. S. Sharma, learned counsel appearing for the petitioners. I have also heard Mrs. H.M. Phukan, learned State Counsel and Mr. P. Naik, learned Standing Counsel, Finance appearing in WP(C) No. 1557/2013. I have also considered the entire materials on record including the decision, on which Mr. R. De, learned counsel for the petitioner has placed reliance. Such decisions are as reported in A.K. Bhatnagar and Others Vs. Union of India (UOI) and Others, Chander Bhan Vs. Hotilal Gupta and Others, and H.C. Puttaswamy and others Vs. The Hon'ble Chief Justice of Karnataka High Court, Bangalore and others, Mr. B.D. Konwar, learned counsel representing the petitioners involved in WP(C) No. 1557/2013 has made the additional submission that the petitioners having had the past experience of working, the same ought to have been considered by the interview board. He has further submitted that relaxation should have been provided to the petitioners in respect of their over age in terms of the Rules.

2. Referring to the rules of recruitment namely the Assam Secretariat Grade-IV and Record Suppliers Service Rules, 1963, the learned counsel for the petitioners have submitted that the appointing authority being the Deputy Secretary of the department, the advertisement could not have been issued by the Commissioner and Secretary of the department. Be it stated here that the department is Secretarial Administration Department (in short SAD). It is the further submission that Rule-6 of the said rules having prescribed for interview by the appointing authority, the first phase of the interview could not have been held by the officials deputed by the departmental authority. Another submission made is that in the particular case involved in WP(C) No. 5788/2012, the Personal Assistant to the Parliamentary Secretary, Government of Assam having been deputed to take the interview providing him with security coverage, the selection conducted in that manner was bad in law.

3. In the counter affidavit filed by the respondents, it has been stated that having regard to the large number of candidates (80,830), the first phase of the interview was conducted through the Senior Administrative Assistants (SAA) and Junior Administrative Assistants (JAA) and the selection boards for the respective districts were constituted in that manner. It has further been stated that the 2nd phase of the interview was held in the Assam Secretariat and the selection board comprised of the officials of the rank of Deputy Secretary, Joint Secretary and Additional Secretary.

4. As regards the allegation of sending the Personal Assistant to the Parliamentary Secretary under security coverage, it has been clarified that the particular WT message requesting for security coverage to the Personal Assistant to the Parliamentary Secretary, Government of Assam was at the instance of the said Personal Assistant without any intimation to the Home and Political Department. The affidavit further states that as per the report received from the Deputy Commissioner, Goalpara, neither any personal security nor conveyance was provided to the respondent Nos. 4 and 5, but security coverage was deployed at the venue of the interview for smooth conduct of selection. The

affidavit also states that there was no threat perception in respect of the respondent Nos. 4 and 5 and not communication was made to the Deputy Commissioner, Goalpara from Home and Political Department to provide security coverage to them. The WT message issued by the respondent No. 4 to the Deputy Commissioner, Goalpara was on his own motion. The Home and Political Department sought for information from the SAD vide letter dated 21.01.2013 and as per the reply furnished, no such message was issued from their end as well.

5. In the Recruitment Rules of 1963, while defining the term "appointing authority", it has been stated that the same means the "Deputy Secretary" to the Government of Assam in the SAD and in case of non-availability of Deputy Secretary, it would be the Under Secretary, SAD. As noted above, Rule-6 of the said rules also provides for interview by the appointing authority. In the call letters issued to the petitioners, it was specified that interview in the first phase would consist of total 50 marks. Total 50 marks was divided in different heads such as educational qualification-20 marks; personality-10 marks; general knowledge-10 marks and experience-10 marks.

6. It is not the case of the petitioners that the Commissioner and Secretary to the Government of Assam in the SAD is Subordinate to the Deputy Secretary or Under Secretary of the said Department. If the selection would be conducted by an authority lower than the appointing authority, a grievance could have been raised. But the selection having been conducted under the authority of the head of the department i.e., the Commissioner and Secretary, it cannot be said that there has been deviation in conducting the selection.

7. Merely because the Deputy Secretary is the appointing authority, it cannot be said that the higher authority of the Department cannot even initiate the selection process. As stated in the affidavit in opposition filed by the respondents, having regard to the large number of candidates (80,830), it was decided to hold selection in two phases. At the first phase, district wise selection was held through a committee comprising of SAA and JAA. Thereafter, those who were found suitable, were interviewed by the committee constituted for the 2nd phase of the selection, which comprised of the officers in the rank of Deputy Secretary, Under Secretary and Additional Secretary. This being the position, it cannot be said that the selection is vitiated as because the head of the department i.e. the Commissioner and Secretary initiated the selection process. The term "Deputy Secretary" as the "appointing authority" will have to be understood in that context. In paragraph-6 of the affidavit in opposition filed in WP(C) 5882/2012, it has been stated thus:-

That with regard to the statements made in Paragraphs-9, 10, 12 and 13 of the writ petition, the deponent states that as per Rule 2(1) of the Assam Secretariat Grade-IV and Record Suppliers Service Rules, 1963, Appointing Authority means the Deputy Secretary to the Government of Assam. However, in the present instance, only the process of recruitment has been initiated. As the Head of the

Administrative Department, the Commissioner and Secretary has every right to set in motion the process of selection. It is not improper for the authority higher than the appointing authority to initiate the recruitment process. Hence, it is neither relevant nor necessary in the present context.

8. As regards deputation of the Personal Assistant to the Parliamentary Secretary as a member of the selection board in the district of Goalpara, it has been stated in the counter affidavit that his substantive appointment is in the post of SAA and from that post he has been deputed to work as Personal Assistant to the Parliamentary Secretary. Thus his substantive position being SAA and the selection board being comprised of SAA's and JAA's, there was no impediment towards his deputation as a member of the selection board.

9. So far as the plea of the petitioners that he could not have been provided with security coverage and for that matter he had influenced the selection committee, the matter has been clarified in the counter affidavit filed by the respondents. As per the said clarifications, the Personal Assistant to the Parliamentary Secretary had sent the message in his personal capacity not backed by any order of the Home and Political Department. He was also not provided with any security coverage. The fact of the matter is that his substantive appointment is to the post of SAA and the authority having constituted the selection committees for the districts consisting of SAAs and JAAs, he had the capacity to work as member of the selection committee.

10. The First phase of the selection was conducted as a measure of scrutiny and the selected candidates were thereafter interviewed by the selection board consisting of Deputy Secretary, Joint Secretary and Additional Secretary.

11. At this stage, the learned counsel for the petitioners have also submitted that the interview at the first phase was a total force in as much as the candidates were not interviewed in terms of the parameters and yardsticks laid down for conducting the interview. However, in absence of any definite materials, the said plea cannot be accepted. Moreover, the members of the selection board and the candidates who have been selected at the first phase of the selection are also not made party to this proceeding.

12. In A.K. Bhatnagar (supra) and Chander Bhan (supra), the Apex Court reiterated the well-known principle of law that if the rule provides for doing something in a particular manner, that will have to be done in that manner and not otherwise. These two decisions have been relied upon to emphasis the point of argument that it is the Deputy Secretary, who alone could have conducted the selection. The position has been explained above. In H.C. Puttaswamy (supra), the Supreme Court interfered with the particular selection made by the Chief Justice of the particular High Court. In that case, the District Judge was the appointing authority and he was to conduct the selection as per the Karnataka Civil Services (Classification, Control and Appeal) Rules. The rules provided that every District Judge was the appointing authority and consequently every District

constitute a recruitment unit. Unlike in the instant case in which the higher authority in the department initiated the selection process, in that case the Chief Justice of the High Court usurped all the functions of the District Judge and conducted the selection. It was on that count, the Apex Court had the occasion to interfere with such process of the Chief Justice. Same is not the case in hand.

13. As regards the plea of Mr. B.D. Konwar, learned counsel for the petitioners involved in WP(C) No. 1557/2013 that the petitioners were entitled to get weightage in respect of their experience, the selection criteria adopted and referred to above itself provides for giving marks under experience head. That being the position, no separate and or extra weightage can be given to the petitioners. For all the aforesaid reasons, I do not find any merit in the writ petitions and accordingly they are dismissed.