
(2014) 03 GAU CK 0013
In the Gauhati High Court
Case No : WP(C) No. 3748 of 2010

Ibunagosana Singha

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Citation : (2014) 3 GLD 588 : (2014) 2 GLT 564

Hon'ble Judges : Tinlianthang Vaiphei, J

Bench : Single Bench

Advocate : D. Borgohain, Advocate for the Appellant; U.K. Goswami, Advocate for the Respondent

Final Decision : Allowed

Judgement

Tinlianthang Vaiphei, J.—Heard Ms. D. Borgohain, learned counsel appearing for the petitioners and Mr. U.K. Goswami, learned Standing Counsel, Education Department, appearing for the State Respondents. The facts of this case as summed up by this Court in its judgment dated 5.6.08 passed in WP(C) No. 7242/2002 and WP(C) No. 7243/2002 are that in the month of January, 1996, 50 posts of graduate teachers in High/Higher Secondary Schools of the State of Assam were created for being filled up by candidates belong in to the Tea Garden and Ex-Tea Garden categories. Out of the posts so created specified numbers were allotted to different districts and were required to be filled up by the end of February, 1996 as the same carried retention only upto the end of the financial year of 1995-96. Apparently to meet such a situation, a direction was issued to the Inspector of Schools of the different districts to appoint candidates of the above-named categories on ad hoc basis subject to their selection later by the District Level Selection Board. In this way, 37 posts were filled up on ad hoc basis in the above manner leaving 13 posts vacant. Thereafter selections were held and the select list of 18 named candidates including the four petitioners herein so prepared was published on 7.12.99. However, the appointments from the said select list were not forthcoming as there was ban on appointment with

effect from 6.12.99. The said ban could only be lifted with the approval of the then State Level Empowered Committee (hereinafter referred to as SLEC) now SIU (Finance). In fact, by the W.T. message dated 25.3.2001 the ban came to be lifted for certain categories of posts. However, the same did not cover the posts in question. Notwithstanding the above, the then Director of Secondary Education issued the communication dated 29.3.2001 to the Inspector of Schools for filling up the vacant posts in question in terms of the aforesaid W.T. message dated 25.3.2001. As appointments were not forthcoming, those writ petitions were filed by the writ petitioners including the petitioners herein seeking appropriate directions.

2. This Court by the judgment and order dated 05.06.2008 had observed that the ban on appointments imposed with effect from 6.12.1999 could be lifted only with the approval of the SLEC [now SUI (Finance)] and that such approval presupposed a proposal by the concerned Department for lifting of the ban, in the absence of such proposal made before the SLEC, there was no occasion for it to consider whether the ban should be lifted. According to this Court, the very fact that the bans were lifted by the SLEC in respect of other posts was suggestive of the fact that the SLEC was open to lift the ban on genuine cases. Therefore, concluded the Court, in the absence of requisite action taken by the Department in this behalf, the failure to give effect to the selections so made could be held to be justified. An observation was made by this Court that persons not selected had been appointed and subsequently regularized, whereas the writ petitioners including the petitioners herein who were selected candidates were without any appointment and that in such circumstances, the Court was of the view that a direction for appointment of the petitioners against the four posts in question should be made by the Court.

3. The learned departmental counsel, had then submitted that neither the original select list containing 18 names including those of the petitioners nor the proceedings of the selection process were available and that only a copy of the select list signed by the three persons who possibly acted as the members of the said Selection Board was available. The learned departmental counsel, therefore, submitted therein that before giving appointments to the petitioners, the State should be granted the liberty to verify from the aforesaid persons the relevant facts surrounding the selection. On the basis of the said submission, this Court had disposed of the writ petitions by observing that appointments of the petitioners would be made only after verification of the facts and circumstances surrounding the selection process, if required, by duly examining the aforesaid three persons whose signatures appeared in the photocopy of the select list. If, on such verification of the selection process, held this Court, the select list was found to have been validly prepared, appointments would be conferred upon the petitioners against four of the remaining 13 posts which must still be available. The Court thus concluded such appointments would be made after completion of all formalities including obtaining the approval of SIU (Finance) and retention for the posts, if such retention was required.

4. In terms of the directions of this Court, the respondent authorities entrusted the Joint Secretary to the Govt. of Assam, Education Department to enquire into the matter and obtain the statements of the three persons committee. The Enquiry Officer after examining the three members of the Selection Board came to the conclusion that those three members had confirmed the signatures appearing in the photocopy of the select list as their own signatures. The Enquiry Officer did not dispute genuineness of the signatures of the members of the Selection Board. However the Enquiry Officer proceeded to observe that the procedure of selection of the candidates adopted by the Selection Committee was not strictly as per the provisions of the Rules at that relevant point of time since the Service Rules in the past for recruitment of teachers were not strictly followed in many cases as opined by the Chairman of the Selection Committee. On the basis of the said report, the respondent authorities refused to issue appointment order in favour of the petitioners, for which this second round of litigation has been initiated by the petitioners in this writ petition.

5. The contention of the learned counsel for the petitioners is that the Enquiry Officer has clearly recorded the findings that the select list was duly signed by the members of the Selection Board, as such, all that is now required on the part of the State respondents to do is to issue the appointment order in favour of the petitioners. She further contends that the observation of the Enquiry Officer that the procedure of selection of the candidates adopted by the Selection Committee was not strictly as per the provisions of the Rules, was never the pleaded case of the respondent authorities in WP(C) No. 7242/2002 and others and the respondent authorities cannot now take this new plea to deny the appointments to the petitioners. According to the learned counsel, the findings made by this Court with respect to the select have now attained finality. The learned counsel, therefore, urges this Court to direct the respondent authorities to issue the appointment order in favour of the petitioners on the basis of the findings of the Enquiry Officer on the genuineness of the select list dated 7.12.99.

6. Mr. U.K. Goswami, learned Standing Counsel, Education Department supports the impugned action of the respondent authorities in refusing the appointments of the petitioners and submits that the legality of the select list is covered by the terms of reference of this Court by pointing that this Court in the operative part of the order clearly stated that the appointments of the petitioners would be made after verification of the facts and circumstances surrounding the selection process, if required, by duly examining the aforesaid three persons whose signatures appeared in the photocopy of the select list. According to him, the Enquiry Officer was duly authorized by this Court to include the issue as to the legality of the select list which necessarily include the procedure of selection and, as such, the observation made by the Enquiry Officer on the legality of the selection process can be used by the respondent authorities in denying appointments to the petitioners: illegal select list cannot confer upon the petitioner the right to appointments. He, therefore, strenuously urges this Court to dismiss this writ petition, which is bereft of merit.

7. I have given my anxious consideration to the submissions made by the learned counsel appearing for the rival parties. I have also gone through the materials on record including the judgment of this Court in WP(C) No. 7242/2002 and other. At the very outset, it may be observed that the petitioner No. 1 and the petitioner No. 3 are the petitioners in WP(C) No. 7242/2002, whereas the petitioner No. 3 is the petitioner in WP(C) No. 7242/2002. The observation made by this Court in the said writ petition that once the ban on appointments was lifted, it was the duty of the respondent authorities to make proposal for lifting of the ban on appointments in respect of these posts and that in the absence of requisite action on the part of the Department to lift the ban on appointment, their failure to give effect to the selection of the petitioners already made could not be held to be justified, have attained finality. Similarly, the further observations of this Court that the persons not selected had been appointed and subsequently regularized though the petitioners who were selected candidates were without any appointment and that the direction for appointment of the petitioners against the four posts should be made by this Court, have also attained finality. On going through the foregoing judgment of this Court, I find that the respondent authorities had never questioned the legality of the selection process in respect of the petitioners: they were merely concerned about the genuineness of the signatures of the persons appearing in the select list or of the select list. The respondent authorities should have made such a plea in the earlier writ petitions and having not done so, the plea now taken by them in respect of legality of the selection process is barred by constructive res judicata . In other words, the State respondents are now barred by the principles of constructive res judicata from questioning the validity of the said select list. Thus, the only ground on which the respondent authorities have decided to deny appointments to the petitioners for the post of graduate teachers, has no legs to stand on and is, therefore, arbitrary. The law is now well settled that when the discretion available to the authority is reduced to such an extent that only one choice is possible, which is the case here, this Court has the power, in fact, the duty, to require the authorities to act in a particular manner. - See Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., . For the reasons stated in the foregoing, this writ petition stands allowed. The respondent authorities are directed to appoint the petitioners to the post of graduate teachers in the High Schools against the posts created for being filled up by the Tea Garden and Ex-Tea Garden categories subject to police and medical verification within a period of 45 days from the date of receipt of a copy of this judgment. It is made clear that if any of the petitioners have become overage during the pendency of this writ petition, they should be exempted from the age bar.