
(2010) 02 GAU CK 0005
In the Gauhati High Court
Case No : WA No. 230 of 2006

Inavi and Others

APPELLANT

Vs

W. Renponthung Yanthan and Others

RESPONDENT

Date of Decision : 19-02-2010

Acts Referred:

Citation : (2011) 2 GLR 299

Hon'ble Judges : Ranjan Gogoi, J; Brojendra Prasad Katakey, J

Bench : Division Bench

Advocate : K.N. Choudhury, I. Choudhury, K. Borthakur, B.K. Purohit and R.N. Deka, for the Appellant; D.K. Mishra and A. Dutta, for the Respondent

Final Decision : Allowed

Judgement

Ranjan Gogoi, J.—This appeal has been filed challenging an order dated 13.6.2005 passed by a learned Single Judge of this Court in a proceeding registered and numbered as WP(C) 23(K)/04. By the said order, the learned Single Judge has allowed the writ petition and interfered with the selection process for filling up 791 posts of Under Graduate Teachers in the State of Nagaland advertised on 7.7.2003.

2. The brief facts that will be required to be noticed to effectively decide the issues arising in the appeal may now be stated:

An advertisement dated 7.7.2003 was issued by the Directorate of School Education, Government of Nagaland inviting applications for filling up, inter alia, 791 posts of Under Graduate Teachers. Clause (16) of the aforesaid advertisement specifically mentioned that the selection for the posts advertised was to be governed by the norms laid down in an Office Memorandum dated 4.6.2001. The said Office Memorandum dated 4.6.2001, it may be noticed, inter alia, contemplated constitution of District Level Selection Boards and selection on the basis of merit. The ratio of candidates to be called for the interview was stipulated as 1: 3, i.e., 3 candidates for each vacancy, in order of merit. A

minimum of 40 per cent qualifying marks was stipulated in the Office Memorandum dated 4.6.2001 as a condition of eligibility for being called for the interview.

3. The written examination which was the initial step in the selection process was scheduled to be held on 19.8.2003. However, the said date was deferred and ultimately the written examination was held on 27.9.2003. The precise number of candidates who took part in the written examination is not known, though it is certain that such number was sufficiently high. On 13.1.2004, the results of all the selection centers, except three, were declared whereas the results of the remaining three centers were declared on 12.2.2004. The number of candidates who qualified in the written examination and became eligible to be called for the interview, on a very conservative estimate, exceeded 3000 in number. The writ Petitioners in WP(C) 23(K)/2004, who are 13 in number (4 Petitioners were deleted subsequently), did not qualify for the interview except the writ Petitioner No. 8. In terms of the results declared, the interviews were to be held between 25th and 29th January, 2004. However, the said dates got indefinitely postponed and, in the meantime, on 17th/18th January, 2004 a corrigendum was published in the newspapers making some corrections in the result of the written examination earlier declared on 13.1.2004. Such corrections extended to deletion of the names of candidates who were earlier declared to have qualified as also correction of some roll numbers which were earlier declared to have qualified. The roll number of the Petitioner No. 8 who had earlier qualified was also deleted. While the aforesaid developments were going on, another Office Memorandum dated 20.1.2004 was issued changing the constitution of the District Selection Boards and deleting certain provisions contained in the earlier Office Memorandum dated 4.6.2001. The most significant deletion that has to be noticed is with regard to the stipulation of minimum 40% qualifying marks which was done away with. Thereafter, on 4.2.2004 a decision was taken to the effect that the ad hoc teachers, who were candidates in the selection, would be granted 20 grace marks for the purpose of reckoning their eligibility to be called for the interview. After award of the aforesaid grace marks to the extent of 20, 59 more persons (ad hoc teachers) were declared to have qualified for the interviews which were to be held between 9th and 14th March, 2004. At this stage, on 11.3.2004, WP(C) No. 23(K)/2004 was filed wherein an interim order was passed directing the official Respondents not to proceed with the selection any further. Subsequently, by order dated 13.6.2005 the said writ petition was allowed. Aggrieved, the Appellants have instituted the present appeal.

4. It may be noticed, at this stage, that the Appellants were not parties to the writ petition registered and numbered as WP(C) No. 23(K)/2004. All the Appellants, however, were selected in the original list which was published on 13.1.2004.

5. Having noticed the broad facts that would be relevant for the purposes of the present adjudication, we may now proceed to understand the basis on which

WP(C) No. 23(K)/04 was filed before this Court. The writ Petitioners in para 12 of the said writ petition had challenged the conduct of the written examination by stating that "the evaluation of papers have not been done fairly or there has been interference at the level of Directorate of School Education, Nagaland after the tabulation containing the marks of the candidates were submitted by the Nagaland Board of School Education". It was also stated that "from the facts stated above supported by the documents as well as the news items it is clear that the Government is interfering with the process of recruitment with a view to ensure selection of their favourite candidates to the exclusion of meritorious candidates.....". The writ Petitioners had also alleged violation of the norms laid down by the Office Memorandum dated 4.6.2001 in holding the selections in question, inasmuch as, according to them, the written examinations were not held by the District Level Selection Boards but the same were conducted by the Nagaland Board of School Education. According to the writ Petitioners, the provisions of the Office Memorandum dated 20.1.2004 were invoked during the currency of the selection process and grace marks were awarded, though no provision for grace marks had been made either in the Office Memorandum dated 4.6.2001 or the Office Memorandum dated 20.1.2004. The Petitioners had also specifically contended that in the advertisement issued it was not indicated that any preference would be given to ad hoc teachers in the matter of selection for appointment pursuant to the advertisement issued. In the aforesaid circumstances, the writ Petitioners prayed for interference of this Court with the selection process as a whole.

6. Resisting the prayers made in the writ petition, the official Respondents and the State of Nagaland had filed an affidavit stating that the conduct of the written examination by the Nagaland Board of School Education had become necessary to provide uniformity in the standard of such examination as the same was being held in different centers. The allegation of interference at any level by any quarter was denied by the official Respondents. Award of grace marks to the ad hoc teachers was sought to be justified by the State by contending that such recognition was necessary in view of the long years of service rendered by the ad hoc teachers.

7. On the rival pleadings, the learned Single Judge hearing the writ petition took the view that the written examination held on 27.9.2003 having been conducted by the School Education Board and not by the District Level Selection Boards, the conduct of the said written examination was contrary to the provisions of the Office Memorandum dated 4.6.2001. Insofar as the issue with regard to the corrigendum dated 17th/18th January, 2004 is concerned, the learned Single Judge recorded the finding that the changes made were somewhat large scale and the affidavit of the Respondents did not satisfactorily explain the reasons there for except seeking to explain the same by reference to errors committed. According to the learned Single Judge, such large scale errors indicated lack of application of mind and exercise of due and proper care in preparation of the results of the written examination which was not acceptable. The learned Single

Judge also recorded the finding that with the decision to award grace marks to ad hoc teachers it cannot be understood as to why the second Office Memorandum dated 20.1.2004 had to be applied to the instant selection, which application was admitted by the State in its counter affidavit. Insofar as the award of grace marks is concerned, it was the view of the learned Single Judge that award of such grace marks is not contemplated by either of the Office Memoranda or by the advertisement in question. Finally, the learned Single Judge also took note of the fact that in another proceeding which was heard along with WP(C) No. 23(K)/2004, i.e., WP(C) No. 181(K)/2004 the final results after interview had already been enclosed though there was an interim order staying the same. In such circumstances, the learned Single Judge thought it proper to arrive at the conclusion that there was absolute lack of transparency in the entire selection process and, therefore, the same should receive the court's interference.

8. Sri K.N. Choudhury, learned senior counsel appearing for the Appellants has, at the outset, submitted that except the Petitioner No. 8, all other Petitioners had not qualified in the selection and they being ad hoc teachers, they did not qualify despite the grace marks awarded. Sri Choudhury, therefore, has questioned the legitimacy of the present proceeding initiated at the instance of the writ Petitioners. Sri Choudhury has further submitted that the writ petition, if at all, should have been filed once the Office Memorandum dated 20.1.2004 was issued or the decision to award grace marks was taken. Yet, the Petitioners remained silent and it is only when the interviews were underway that the writ petition has been filed. Furthermore, according to Sri Choudhury, the conduct of the written examination by the Nagaland Board of School Education instead of the District Level Selection Boards, by itself, will not be a vitiating factor, inasmuch as, the District Level Selection Boards have been constituted and empowered to hold the selection by virtue of a Government order as distinguished from a statutory provision. The learned Counsel has submitted that the ultimate test, therefore, would be whether the written examination conducted by the School Board is vitiated by large scale illegalities or irregularities thereby affecting public interest. In this regard, Sri Choudhury has taken the court to the corrigendum dated 17th/18th January, 2004 and has submitted that the corrections made in the results originally declared are not large scale corrections but are limited in scope and extent. Therefore, according to Sri Choudhury, there could have been no reason for the learned Single Judge to set aside the entire selection process including the conduct of the written examination held on 27.9.2003 and the results declared on that basis. In this regard, it is further submitted by Sri Choudhury that the aforesaid part of the selection is clearly and distinctly severable from the rest of the process involving the ad hoc teachers to whom grace marks were awarded and, therefore, the appellate court should pass appropriate orders restoring the first part of the selection and directing recommencement of the process from that stage.

9. In reply, Sri D.K. Mishra, learned senior counsel appearing for the private

Respondents (writ Petitioners) has submitted that though in the initial counter affidavit of the official Respondents it was clearly stated that it is the School Education Board which has conducted the written examination, subsequently in an additional affidavit filed by the Joint Secretary of the Education Department a different stand has been taken. According to Sri Mishra, the official Respondents are unsure of their actions and the materials on record including the admit cards issued for the written examination and the press publications made by the officials of the Education Department, which are on record, would clearly indicate that the written examination was conducted by the School Education Board which is contrary to the norms laid down by the Office Memorandum dated 14.6.2001. Sri Mishra has further submitted that the corrigendum dated 17th/18th January, 2004 would indicate large scale changes in the results originally declared and in one center, namely, Kiphire except for a few candidates the results of all other candidates have been declared null and void by deletion of the roll numbers of such candidates from the list of successful candidates. In these circumstances, according to Sri Mishra, no fault can be found in the order of the learned Single Judge interfering with the entire selection process.

10. The State of Nagaland has not offered any oral argument but has relied on the affidavits filed in the proceeding before the learned Single Judge.

11. We have considered the respective cases of the parties as projected before us. At the outset, we would like to clarify that it is the common ground of the Appellants as well as the writ Petitioners that the second part of the selection, i.e., inclusion of the names of 59 ad hoc teachers to whom grace marks have been awarded, is contrary to law. In fact, Sri Choudhury, learned Counsel for the Appellants has submitted that the aforesaid part of the order of the learned Single Judge is not really being assailed in this appeal wherein it is only the validity of the first part of the selection, i.e., result of the written examination held on 27.9.2003 which is in issue. Despite the above, it is necessary for us to observe that the order of the learned Single Judge insofar as the aforesaid second para, of the selection, namely, inclusion of the names of 59 ad hoc teachers to whom grace marks have been awarded, is perfectly justified as the award of grace marks is clearly contrary to the provisions of the advertisement dated 7.7.2003 as well as the norms in force. No acceptable basis has been shown for the award of such grace marks except to make the ad hoc teachers who had not qualified initially so qualified to face the interview. Such actions on the part of the State which are contrary to the prevailing norms and which goes against the tenor of the advertisement wherein no preference was contemplated for the ad hoc teachers, in our considered view, was rightly interfered with by the learned Single Judge.

12. This will bring the court to a consideration of the validity of the first part of the selection, namely, the results declared on 13.1.2004, on the basis of the written examination held on 27.9.2003, read with the corrigendum dated 17th/18th January, 2004. We have already noticed that the aforesaid part of the

selection has been challenged by the writ Petitioners on the ground that the written examination was conducted by the School Education Board and not by the District Level Selection Boards, as required under the Office Memorandum dated 4.6.2001. The further ground urged is that the results were declared piecemeal and the corrigendum dated 17th/18th January, 2004 indicates large scale revision of the original results for which no satisfactory explanation is forthcoming. The learned Single Judge has upheld the aforesaid challenge on the grounds stated. Specifically, the learned Single Judge had noticed large scale irregularities in the corrigendum dated 17th/18th January, 2004 which, according to the learned Single Judge, were not sufficiently explained by the State so as to have the court's acceptance.

13. The requirement of holding the written examination by the District Level Selection Boards is stipulated by an Office Memorandum. An Office Memorandum is nothing but a Governmental policy decision reflected in the form of a Notification/Memorandum. Such a decision can, on good and sufficient grounds, be varied or departed from. In the present case, from the affidavit of the State Respondents it transpires that as the written examination was being held in many different centers of the State it was thought necessary to have a common format for the examination which should be of a uniform standard, Therefore, a conscious decision was taken that instead of conduct of the written examination in different centers by different District Level Boards, the School Education Board would be more appropriate for the conduct of such examinations. If such a conscious decision was taken by the State, as stated in its affidavit, we do not see how the court can find fault with the written examination merely on the ground that the same was conducted by the School Education Board and not by the District Level Selection Boards.

14. It is, therefore, our considered view that the conduct of the written examination by the School Education Board should not, ipso facto, be held as a vitiating factor and the court must turn to ascertain whether the conduct of such examinations by the School Education Board has been fair, transparent and, therefore, acceptable. The averments made in para 12 of the writ petition in this regard, as already extracted above, are somewhat scanty and ambiguous. However, the writ Petitioners rely on the corrigendum dated 17th/18th January, 2004 to establish that large scale changes in the results of the written examination earlier declared had been made and, therefore, it necessary follows that the conduct of the written examination by the School Education Board was not proper. The learned Single Judge agreed with the aforesaid contention of the writ Petitioners.

15. The argument is acceptable provided the same is based on correct facts. We, therefore, had a close look at the aforesaid corrigendum. The corrigendum is in two parts. By the first part typographical errors in the roll numbers published earlier have been corrected. By the second part, certain roll numbers have been deleted. Insofar as the exercise contained in the first part of the corrigendum is

concerned, i.e., correction of typographical errors, such errors can and do occur in the declaration of results of an examination where a large number of candidates participate. In the present case, co-relating the figures of correction made as available in the corrigendum dated 17th/18th January, 2004, we are of the view that the number of such corrections is minimal. Insofar as deletion of roll numbers are concerned, we also find that except for Kiphire Center (Arts group), Noklak Center (Arts group) and Aboi Center (Arts group) where after retention of a few roll numbers the rest have been deleted, in all other centers such deletion has been minimal. Specifically we have noticed that in Kiphire Center (Arts group), out of 127 candidates declared to have passed the written examination, the roll numbers of 116 candidates have been deleted by the corrigendum dated 17th/18th January, 2004. Similarly, in Aboi Center (Arts group), out of 18 roll numbers shown to have been successful in the written examination, 11 roll numbers have been deleted whereas in case of Noklak Center (Arts group), out of 25 roll numbers shown to have earlier qualified, 16 roll numbers have been deleted. The figures are approximate and may marginally vary on a detailed recount. The total number of candidates qualified in the written examination has already been found by us to be over 3,000. We can reasonably estimate, in the absence of any specific material on record, that the number of candidates who had participated in the written examination would have been very high. If the aforesaid figures are to be co-related with the deletions made by the corrigendum dated 17th/18th January, 2004, we have to arrive at the conclusion that the deletions have also been minimal and are capable of being explained on the basis of errors that have occurred, as stated by the State. Further insistence on revelation of the precise errors in each case will not be justified as it is not the province of the writ court to sit in judgment over the same. In the above circumstances, the finding of the learned Single Judge that there has been large scale corrections of errors by the corrigendum which have remained unexplained will not be justified. If that be so, we will have no reason to agree with the learned Single Judge that the above facts would constitute a good ground to set aside the selection as a whole.

16. We are, therefore, of the view that the order of the learned Single Judge dated 13.6.2005 would require suitable modifications. The interference made by the learned Single Judge with regard to the second part of the selection, i.e., addition of 59 ad hoc teachers showing them to have been qualified for the interview and the interference with the result of the written examination held on 27.9.2003 in so far as Kiphire Center (Arts group), Noklak Center (Arts group) and Aboi Center (Arts group) is concerned, is maintained whereas the interference with the result of the written examination held in all other centers in respect of both Arts and Science groups is set aside. The Respondents, therefore, will now be under an obligation to recommence the selection process from the stage of declaration of the results of the written examination held on 27.9.2003 in respect of all centers except Kiphire Center (Arts group), Noklak Center (Arts group) and Aboi Center (Arts group). We may also put on record that the above

specific direction has been considered necessary by us as the interviews of all the candidates including the 59 ad hoc teachers have been completed in the meantime.

17. Consequently, this appeal shall stand allowed to the extend indicated above.