
(1995) 07 GAU CK 0029
In the Gauhati High Court
Case No : Writ Appeal No. 361 of 1994

Inspector of Schools

APPELLANT

Vs

Dilip Robidas

RESPONDENT

Date of Decision : 24-07-1995

Acts Referred:

Citation : (1995) 2 GLJ 308

Hon'ble Judges : V.K.Khanna, C.J. and A.K.Patnaik, J

Bench : Division Bench

Advocate : S.K.Kejriwal, H.Rahman, G.Uzir, A.C.Sharma, C.Barua, B.Chetri,
Advocates appearing for Parties

Judgement

V.K.Khanna, C.J.—The present writ appeal has been filed against the judgment of the learned Single Judge dated 5.7.94, by which he has disposed of two Civil Rules i.e. Civil Rule No.287 of 1994 and Civil Rule No.288 of 1994 by a common judgment.

2. We have heard Mr.G.Uzir, the learned counsel appearing on behalf of the appellant, Mr.C.Baruah, the learned counsel appearing on behalf of respondent Nos. 1 to 16 and Mr.AC Sarma, the learned Additional Senior Govt Advocate appearing on behalf of State respondents.

3. The brief facts for the purposes of adjudicating the controversy raised in the present appeal are that the respondents/petitioners in the two Civil Rules prayed for appropriate directions to respondent No.3 in the Civil Rules to appoint the petitioner in Grade III and Grade IV posts in pursuance of the Select List dated 30.12.93 issued by the respondent No.2 and the Select List dated 30.6.93 issued by the same authority. By office memorandum dated 15th June, 1992, the State of Assam framed a Recruitment Policy for appointment of nonGazetted staff other than school teachers in district and below district level offices for the purpose of which a Central Recruitment Committee had to be formed in the District and the District Level Officer of the concerned Department was to be coopted as a

member of the Central Recruitment Committee for the purposes of preparation of the aforesaid Select List. This has not been disputed that such a list had been prepared on 30.12.93 and the District Inspector of Schools, Dibrugarh was coopted in the Central Recruitment Committee when the Select List was being finalised for recruitment in the Grade III and Grade IV posts for the schools situated in the district of Dibrugarh. It has also not been disputed that as far as the aforesaid list is concerned, the names of the petitioners in the two Civil Rules featured in the Select List and thus they are entitled to get appointment in their turns because their names find places in the aforesaid Select List.

4. Mr.G.Uzir, the learned counsel appearing on behalf of the appellant, Inspector of Schools, Dibrugarh District, has however urged before us that the aforesaid policy which has been incorporated in the office memorandum dated 15th June, 1992 is not applicable to recruitment to Grade III and Grade IV posts in the schools. Reliance was placed on Rule 6 (b) of the Assam Secondary Education (Provincialisation) Services and Conduct Rules, 1979 for the aforesaid purpose. The Inspector of Schools, Dibrugarh, in pursuance of this Court's direction is present in person and has produced before us a copy of the direction which had been issued by the Joint Secretary to the Govt. of Assam, Education Department dated 18.6.93. In clause 1 of the aforesaid direction it has been stated that all the Grade III and Grade IV posts will be appointed by the respective Inspector of Schools with the approval of the respective Board (Recruitment) on a fair and equitable distribution basis. However, it may be pointed out that it has not been shown to us as to which Board the aforesaid direction is referring to and also the procedure which has been prescribed for appointment of the aforesaid Board and its constitution and also the procedure for preparation of the Select List.

5. Another legal question which arises for consideration is whether an officer of the rank of the Joint Secretary to the Govt of Assam can undo the policy which has been laid down by the State Government. We are of the opinion that if the policy had been laid down by the State Government, the aforesaid policy has to be nullified by the State Government and the State Government will be well within its jurisdiction to make any further provision by spelling out any other policy. In our opinion, an officer of the rank of the Joint Secretary in the Education Department, on the materials which have been placed before us, had no power to undo the policy which has been made the State Government and ask the Inspector of Schools to act contrary to the specified policy laid down by the State Government. It may also be mentioned that by an specific order passed by us on an earlier occasion, we had granted opportunity to the Secretary and the Director, Education Department, Government of Assam, who is a party to this litigation to produce materials before us to substantiate his claim that the recruitment to Grade III and Grade IV posts in the Secondary Schools would only be made in pursuance of the directions issued by him on 18th June, 1993 and not in accordance with the policy laid down by the State Government. We are constrained to say that the Secretary to the Govt of Assam and Director, Education Department, despite being granted time has failed to produce the

relevant materials before this Courts and in the absence of production of any such materials, the Court will record findings on the materials which exist on the record as on date.

6. On the materials which have been placed before us, we are of the opinion that recruitment to Grade III and Grade IV posts in the schools at the district level has to be made in pursuance of the policy made by the State Government and the view taken by the learned Single Judge, in our opinion, cannot be said to be suffering from any error requiring interference from this Court. More particularly when we find that the Select List which has been prepared in pursuance of the policy of the State Government has been signed by the appellant himself who has appeared before us and has admitted he has signed the aforesaid list. We fail to understand as to for what purpose the aforesaid list was prepared and it has not been explained to us as to whether the purpose of preparation of the aforesaid Select List, to which the appellant was also a party, was something different than for the purpose of fillingup the posts of Grade III and Grade IV in schools.

7. It has been brought to our notice that some ad hoc appointments were made even though the Select List was ready. If that has happened, we are of the opinion that adhocism has gone on while there was a Select List from which appointments should have been made. A certified copy of our order will be filed by the petitioner in person before the Secretary and Director, Education Department, Govt of Assam within a period of one week from today who shall personally accept the same. The Secretary and Director, Education Department, Govt of Assam will conduct an enquiry by getting the entire original records pertaining to this matter and will by a reasoned order, which will be passed within a period of one month from the date of production of the certified copy, give direction in respect of appointment to the vacant posts of Grade III and Grade IV on regular basis in accordance with law and in the light of the observations made in the judgment passed by the learned Single Judge and those made by this Bench.

8. Subject to the aforesaid observations, the present appeal is finally disposed of.

Certified copies of this judgment/order will be given to the learned counsel appearing for the parties on payment of usual charges within three (3) days.