
(2000) 12 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 375 and 377 of 1998

Jayanta Kumar Bhattacharjee and Others	APPELLANT
Vs	
State of Tripura and Others	RESPONDENT

Date of Decision : 19-12-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2001) 1 GLT 48

Hon'ble Judges : B.B. Deb, J

Bench : Single Bench

Advocate : Mr. A.K. Bhowmik, Mr. J.L. Poddar, Mr. S.R. Dey, Mr. S. Ghosh, Mr. J. Chakraborty and Mr. J. Saha, for the Appellant; Mr. B.R. Bhattacharjee, Mr. U.B. Saha and Mr. A. Ghosh, for the Respondent

Final Decision : Allowed

Judgement

1. Heard Mr. A. K. Bhowmik, learned senior counsel for the petitioners and Mr. B. R. Bhattacharjee, learned Advocate General Assisted by Mr. A. Ghosh, learned counsel for the respondents.

2. The aforesaid two writ petitions though filed by the different e petitioners alleging identical grievance and sought for identical relief and as such, as agreed by the parties, both the cases have been taken up for final hearing analogously.

3. In Civil Rule No. 375/1998, there are as many as three petitioners, who unfolded their grievances as follows :-

That the petitioner Nos. 1 and 2 are Graduates and the petitioner No. 3 is not Graduate and have been looking for suitable job. The respondent-State Government through several Departments issued Job Forms inviting the eligible candidates to fill up the Job Forms g for being considered for appointment to the respective posts/jobs in accordance with their eligibility and qualification. The Job Form so submitted by the candidates had gone through proper scrutiny and test by the competent authority and having found the petitioners suitable for the

posts of Tahesildar, the competent appointing authority, i.e.. the respondent No. 2, the District Magistrate and Collector, South Tripura issued offer of appointment in favour of the petitioners for the posts of Tahesildar in the scale of pay of Rs. 970 - 2,400/- plus usual other admissible allowances. The petitioner No. 1 received the said offer of appointment issued by the respondent No. 2 vide Memo No. F 1(79) - DM/S/Estt, 61 Udaipur, dated 5.1.1993, the petitioner No. 2 received the offer of appointment vide Memo No. F.1(79) -DM/S/Estt. 63, Udaipur, dated 5.1.1993 and the petitioner No. 3 received the offer of appointment vide Memo. F. 1(79) - DM/S/Estt. 62, Udaipur, dated 5.1.1993. The petitioners were asked to communicate their acceptance to the said offer of appointment by 20th January, 1993 along with the documents required to be furnished as asked for in the said offer of appointment. The petitioners within the stipulated time communicated their acceptance along with the documents so required. The petitioners were residents of Kailashahar, North Tripura District and being unemployed person they were not in a position to pursue the matter regularly from such a long distance. On 19.9.1997, the petitioners found an advertisement issued by the respondent No. 2, published in the daily newspaper "Daily Desher Katha", inviting application for 43 posts of Tahesiklar and as such the petitioners became astonished to know how the respondent No. 2 made an exercise to fill up the post of Taheshildar despite the petitioners had been offered with the said posts. Thereafter the petitioners started inquiry and they were told that along with the new recruitees pursuant to the aforesaid advertisement their formal letter of appointment would be issued. In course of inquiry, the petitioner came to know that in the year 1993 as many as 16 unemployed persons were offered with the same posts of Tahesildar including one Shri Chitta Ranjan Das. Despite their selection, none was appointed and the respondents kept the matter pending and being compelled the said Chitta Ranjan Das filed a writ petition bearing No. Civil Rule 227/1997 before this Court and during the pendency of the said writ petition the respondents appointed said Chitta Ranjan Das and five others. Having learnt the same, the petitioners promptly approached this Court with this petition seeking a direction to be issued commanding the respondents to issue formal letter of appointment to the petitioners pursuant to the offer of appointment already issued and accepted.

4. In Civil Rule No. 377/1998, the petitioner Shri Bikash Nandi put forward his grievance in the aforesaid manner. According to the petitioner, he filled up the Job Form pursuant to the Forms circulated by the competent authority and he was selected for the post of copyist under the respondent No. 2, the District Magistrate & Collector, South Tripura. He accepted the offer of appointment within the stipulated time issued by the respondent No. 2 vide Memo No. F.1(79)-DM/S/Estt/66 dated 5.1.93, but he was not appointed and the matter was kept pending. Curiously on 19.9.97 the petitioner found an advertisement issued by the respondent No. 2 published in the daily newspaper "Daily Desner Katha" inviting applications for filling up one post of Copyist. The petitioners started inquiries and he was told that he would be issued with the letter of appointment

along with new recruitee, but since no letter of appointment was issued and since one Shri Chitta Ranjan Das who was also offered with a post of Tahesildar in the year 1993 was denied the letter of appointment, filed Civil Rule No. 227/1997 and during the pendency of the said Civil Rule the said Chitta Ranjan Das and five others have been appointed in the posts of Tahesildar. Being encouraged by the aforesaid action, the present petitioner filed this petition seeking a direction commanding the respondent No. 2 to issue the formal letter of appointment in favour of the petitioner to the post of Copyist.

5. The respondents in both the cases took identical plea in their defence. In the counter affidavit, the respondents raised the question that the petitioners had no right to seek for appointment in this petition. It was the prerogative of the Government to appoint a person or not, notwithstanding the offer of appointment have been issued. The issuing of offer of appointment themselves did not create any right to the oferees to be appointed against the post offered. In the counter affidavit it remains admitted that the petitioners in the first mentioned case had been offered with the post of Tahesildar and the petitioner in the second referred case the post of Copyist asking them to communicate their acceptance with required documents and they complied with the same. But in the mean while, the State Assembly Election was declared to be held in February, 1993 by the Election Commission of India and as a result all sorts of transfer and appointment had been directed to be banned during the election period. The issuing of advertisement inviting application for recruitment to the posts of Tahesildar, L.D.C. etc. as alleged in their writ petitions remains admitted. A specific plea was taken in the counter affidavit that the Government decided to fill up all the Group - C posts other than the teachers directly by the department concerned and not through the Job Forms and as such the offers issued in favour of the petitioners pursuant to the Job Forms stood abandoned. The counter affidavit also raised a plea of delay and laches. Offer of appointment was admittedly issued in the year 1993 and the petitioner approached this court in the year 1998, after lapse of five years. On the aforesaid plea of defence, the counter affidavit sought for dismissal of the petition.

6. In this case the distribution of Job Forms by the authority among the intending candidates are admitted. The selection of the candidates for the aforesaid posts made by the competent authority are also admitted. The respondents raised the pleas, first of which is that due to declaration of State Assembly Election in the year 1993, all sorts of appointment and transfer had been banned and as such the letter of appointments could not be issued pursuant to the offer of appointments. Next after election the Government decided to recruit against all the vacancies directly through the departments and not through the Job Forms. And lastly, that the petitioners acquired no right on the basis of offer of appointment to insist upon the appointing authority for issuing formal letter of appointments.

7. The learned Advocate General appeared for the respondents referred few

decisions *Tagin Litin Vs. State of Arunachal Pradesh and another*, (*Tagin Litin*) v. *State of Arunachal Pradesh and other* with *State of Arunachal Pradesh v. Ojm Libang and another*) *Jai Singh Dalal and Others Vs. State of Haryana and Another*, and having relied upon of those decisions of the Apex Court, the learned Advocate General urges that the offerees acquired no right to insist upon the authorities for issuing formal letter of appointment. It is the prerogative of the Government / appointing authority to appoint any person in accordance with the rule notwithstanding offers of appointment had been issued. As no other special reason has been spelt out in the counter affidavit the Court calls for the original records where in the matter relating to issue of offer of appointment has been generated. The learned counsel Mr. A. Ghosh produced a department file bearing No. F.6(2)-DM/S/Estt/98. This file does not contain the process initiated relating to the issuance offer of appointment as this file opened only on 26.10.1998 after receipt of the copies of the aforesaid two Civil Rules and thus it remains yet to be unfolded by the respondent-authorities under what circumstances they distributed the Job Forms among the intending job seekers and on what basis and/or having applied what sorts of criteria the selection was made pursuant to which offers of appointment had been issued.

8. Having received the copies of the writ petitions, the authorities took up the matter for preparation of the counter affidavit and the file was sent to the Law Department for vetting of counter affidavit so drafter. The Law Department vide its Note No. 28 dated 8.2.2000 did not approve the inaction of the appointing authority, who withheld the formal letter of appointment. According to the Law Department the appointing authority failed to show any justification as to why the petitioners had been left out and the Law Department also marked a note of caution that withholding of issuing of letter of appointment would be hostile discrimination.

9. It appears from a Memorandum dated 29th December, 1993 that the Under Secretary to the Government of Tripura in the Department of Appointment and Services asked all the Head of Departments to constitute a departmental team to examine and review that matter relating to issuing of offer of appointment / appointments already done and to examine whether those had been done in accordance with the recruitment rules. The cases covered by the recommendation of the S.C. & S.T. sub-committee also had to be examined / reviewed by the special departmental team. Particularly, all the offers of appointment made during 3.12.1992 to 8.4.1993 were to be examined and reviewed. What happened thereafter, what is the out come of the said scrutiny or review have not been made known to the Court. But from the Note No. 61, dated 19.9.2000, it appears that administrative department expressed their inability to place the relevant records and files and as a result the decisions / findings of the review committee has not been available in the file.

10. It is correct and I also shared with the view of the learned Advocate General that none has acquired a vested right to be appointed pursuant to an offer of

appointment already issued. But there must be some cogent reason, otherwise the inaction of the authority in withholding the formal letter of appointment pursuant to the offer of appointment already issued cannot pass the test of transparency which is the utmost features in a democratic set up like ours Government has, undoubtedly, right to appoint or not appoint but that right is to be exercised by the Government / authority in accordance with the established principles of rule of law having the desired transparency in administration. Unreasonable or arbitrary action in withholding the issuing of formal letter of appointment pursuant to the accepted offer of appointment can only be termed as unreasonable and arbitrary and as such violating of the Articles 14 and 16 of the Constitution of India. In this case no reason whatsoever has been spelt out by the authority for withholding the letter of appointment. At the initial stage the authority rightly withheld the letter of appointment in view of the ensuing assembly election declared by the Election Commission of India, but that was for a temporary period and after the election process was over what steps were taken by the authority in processing or not processing the finalisation of the offer of appointment by way of issuing formal letter of appointment has not been spelt out. It is on record that one of the offerees, Shri Chitta Ranjan Das filed a writ petition as stated above and pending the writ petition he was appointed which negates the stand taken by the Government that the Government decided not to issue any appointment pursuant to the offers issued. There is no policy decision taken by the competent authority in this regard as revealed from the related files. This being the position in my considered view the decision of the authorities in withholding the issuing of formal letter of appointment pursuant to the offer of appointment issued and accepted by the individual petitioner appears to be unreasonable, unjust and arbitrary.

11. The learned counsel for the petitioner having referred to the subsequent advertisement issued by the respondent No. 2 contends that only to deprive the petitioners of their right of legitimate expectancy of being appointed to the posts they offered, the authority made an attempt to fill up the posts having ignored the rights of the petitioners. I find much force in the contention advanced by the learned counsel for the petitioners. The authority if so well advised, should have cancelled the offer of appointment with reasoning before issuing fresh advertisement for the aforesaid posts, but that was not done and having not disclosed any reason. This being the position as available from the records, I am of the firm opinion that in order to deprive the petitioner, the authority made the second attempt to fill up the said posts.

12. The learned counsel for the petitioners further submits that in the mean time some appointments had already been made by the respondents depriving the petitioners. The respondents replied that admittedly few appointments had already been made in the mean time, but those were on the compassionate ground being die-in-harness case. So, the aforesaid appointments already issued on compassionate ground cannot be put as instance of hostile discrimination. But the action of the authorities in withholding the formal letter of appointments as

discussed above, particularly the respondent No. 2 is highly condemnable.

13. The petitioners accepted the offer of appointments unconditionally and had submitted all the documents as asked for. They had never been informed nor their documents have been returned. Entry in the service admittedly is a contract, and subsequently the term of service are followed by the related statutory rules and regulations. In the instant case offer of appointments have been made by the authorities after examining the Job Forms pursuant to which the petitioners accepted the offers having complied with all formalities required within the stipulated time and as such the petitioner acquired the right to insist upon the authorities to issue formal letter of appointments. Of course, the authorities are also entitled to refrain from issuing formal letter of appointments had there been any genuine, bona fide or legitimate grounds, but these are absent in the present case. No cogent and acceptable grounds whatsoever has been spelt out by the respondents and as such the petitioners are entitled to get the reliefs in the writ petition.

14. The writ petitions succeed. The respondent No. 2 is directed to issued letter of appointments to the petitioners of both the cases pursuant to the offer of appointments issued and accepted as discussed above and that must be done within a period of three months from this day. If any appointment made in the meant time pursuant to the advertisement so mentioned, the seniority of the petitioners shall be counted on and from the date of any such appointment without any financial benefits.

15. The petition is allowed with no order as to costs.

16. The original Judgment be kept with the case record No. C.R. 375/1998 and a certified copy of Judgment be kept in the related case record bearing No. C.R. 377/1998.