

(2018) 02 GAU CK 0008
In the Gauhati High Court
Case No : 4958 of 2014

JNANDEEP RABHA

APPELLANT

Vs

THE STATE OF ASSAM and ORS

RESPONDENT

Date of Decision : 23-02-2018

Acts Referred:

Citation : (2018) 02 GAU CK 0008

Hon'ble Judges : Achintya Malla Bujor Barua

Bench : Single Bench

Advocate : B. Choudhury, K. Gogoi, D.D. Barman, P.D. Nair

Final Decision : Disposed

Judgement

1. Heard Ms. B. Choudhury, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned standing counsel for the Higher Education

Department in the Government of Assam as well as Ms. D.D. Barman, learned Addl. Senior Govt. Advocate appearing for the respondent Nos.1

and 5 and Mr. P.D. Nair, learned counsel for the respondent No.6.

2. The petitioner who has the qualification of HSLC pass with Diploma in Computer had participated in a selection process for the post of Library

Assistant in the Nagaon College, pursuant to the notification of the Employment Exchange of Nagaon dated 10.12.2012. As per the said

notification, the qualification of HSLC was shown as essential and Graduate (B.A., B.S.c., B.com) and Diploma in Computer as desirable.

Further the post was shown to be reserved for ST(P) candidates.

3. It is the case of the petitioner that in the resultant selection process, he was shown to have been selected having secured 25.53 marks. In the

same selection, the respondent No.6 had also participated and he was in the 5th

position having secured 22.21 marks. While the petitioner was waiting for the result of the said selection to be declared, the respondent authorities issued another advertisement for the same post on 27.03.2013.

The subsequent advertisement stated that the required qualification for the post of Library Assistant would be HSLC and the candidates must have

Diploma Certificate in Computer. Accordingly, the petitioner having no other option and also as a matter of abundant precaution participated in the

subsequent selection process. In the mean time, the petitioner under the Right of Information Act of 2005, applied for the reason, as to why the

first selection was not further proceeded and also as to why the second advertisement was issued for the same purpose. Upon being provided with

the information, the petitioner could learn that by the resolution of the Governing Body of the Nagaon Girls College dated 05.03.2013, it was

resolved that the earlier advertisement by the Employment Exchange did not contain the correct educational eligibility requirement of the

candidates, and as a result, legal anomalies could not be ruled out in the selection process. Accordingly a decision was taken that the select list

prepared by the selection committee pursuant to the advertisement of 10.12.2012 be cancelled and the employment exchange be requested to

send a fresh list of candidates from amongst those registered with them, by providing the minimum eligibility criteria to be HSLC with either

Certificate/Diploma in Computer.

4. In this writ petition, the said resolution of the Governing Body dated 05.03.2013 and the resultant advertisement of 27.03.2013 are assailed. It

is noted that in the second selection conducted pursuant to the advertisement of 27.03.2013, the respondent No.6 herein was the selected

candidate having secured 27.5 marks, whereas the petitioner was the 5th candidate with 23.3 marks. A noticeable factor would be that in the first

selection, the petitioner was given 10.28 marks for the practical test in computer and 8.25 marks for interview, whereas, the respondent No.6 was

given 7.71 marks for practical test in computer and 4.5 marks for interview. But in the subsequent selection that was held, the petitioner was given

11.3 marks for practical test in computer but 5 marks for interview, whereas the respondent No.6 was given 10.5 for practical test in computer

and 7 marks for interview.

5. The difference in the marks allotted in the practical test in computer and the interview had changed the result in the second selection. Mr. P.D.

Nair, learned counsel for the respondent No.6 opposes the writ petition on the ground that the writ petitioner having participated in the second

selection process could not have subsequently turned around and assailed the same upon being unsuccessful. For the purpose, the learned counsel

relies upon the decision of the Hon'ble Supreme Court rendered in *Madan Lal and Ors., v. State of J & K Ors*, reported in (1995) 3 SCC 486.

In paragraph 9 thereof it has been held as follows:-

.... It is now well settled that if a candidate takes calculated chance and appears at the interview, then, only because the result of the interview is

not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not

properly constituted.

6. The said proposition of law laid down by the Hon'ble Supreme Court is of course applicable in a situation, when a candidate participates in a

selection process but on being unsuccessful comes back and assails the same on the ground that the constitution of the selection committee was not

in order. But as already noticed, in the instant case, the petitioner had participated in the first selection process held for the same post and was

successful, but without publishing the result and making it known to anyone, a second selection process was started.

7. In the circumstances, it can be viewed that the petitioner had no other option, but to participate in the second selection process under a

compelling circumstance and also as a matter of abundant precaution. In the peculiar factual circumstances of this case, the general proposition of

law laid down in *Madan Lal (Supra)* would not be applicable.

8. Further the purport of the present writ petition is to assail the decision of the Governing Body of the College in its resolution dated 05.03.2013

to cancel the earlier selection process held pursuant to the advertisement dated 10.12.2012 and the challenge to the selection process pursuant to

the subsequent advertisement of 27.03.2013 is a consequential challenge. As it is within the legal right of the petitioner to assail the decision of the

Governing Body of the college in its resolution dated 05.03.2013, therefore, from the said point of view also the proposition of law laid down in

Madan Lal (Supra) is inapplicable in the present case. Now as regards the reason given by the Governing Body in its resolution dated 05.03.2013,

it is noticed that the only reason given was that the advertisement of 10.12.2012 did not contain the correct educational eligibility. When the

educational eligibility provided in the said advertisement is examined, it is noticed that the required qualification is HSLC pass with desirability of

having a Diploma in Computer. On the other hand, the eligibility qualification provided in the second advertisement of 27.03.2013, is that the

candidate must be HSLC pass and must have Diploma certificate in computer education. The said difference in the prescribed qualification is trivial

and did not result in a situation where the respondent authorities were required to conduct the selection in the first selection process amongst the

lesser or restricted number of candidates.

9. The first advertisement provides the qualification of HSLC with a desirability Diploma in Computer, whereas, the second advertisement it is

stated to be HSLC with Diploma in Computer. The second advertisement definitely does not expand the scope of the number of candidate

participating nor had any desirable candidate been left out in the first advertisement. In fact, on the other hand, the second advertisement has the

effect of restricting the number of participating candidates as only such candidates who have both the qualifications of HSLC pass as well as

Diploma in Computer can only participate, whereas, in the earlier advertisement even candidates without the Diploma in Computer also could have

participated, although, no such candidate without a Diploma in Computer could have been selected because of the further condition of desirability

of having a Diploma in Computer.

10. Mr. K. Gogoi, learned standing counsel for the Higher Education Department has made a submission that the cancellation of the first selection

process pursuant to the advertisement of 10.12.2012 was justified inasmuch as the constitution of the selection committee was contrary to the

provisions of Rule 10(B) of the Assam College Employees (Provincialisation) Rules, 2010 To that extent, Ms. B. Choudhury, learned counsel for

the petitioner submits that no such plea has been taken by the authorities in the Higher Education Department and therefore, the same cannot be

raised. Whereas, on the other hand, Mr. K. Gogoi, learned standing counsel for

the Higher Education Department refers to the affidavit-in-

opposition and contends that such a plea has infact been taken. Without adverting to the question as to whether the plea has been taken or not

what is noticeable is that the selection process pursuant to the advertisement of 10.12.2012 was not cancelled because the selection committee

was contrary to the provisions of Rule 10(B) of Assam College Employees (Provincialisation) Rules, 2010

11. The law in this respect has been settled by the Hon"ble Supreme Court in Mohinder Singh Gill & Ors v. The Chief Election Commissioner,

New Delhi reported in (1978) 1 SCC 405, wherein, in paragraph-8, it has been held that when a statutory functionary makes an order based on

certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or

otherwise. Paragraph-8 is as follows:-

The reasons equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by

the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the

beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer

making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to

have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with

reference to the language used in the order itself.

12. In view of the proposition laid down in paragarpah-8 in Mohinder Singh Gill (supra), the Governing Body in its resolution of 05.03.2013

having not cancelled the selection process pursuant to the advertisement of 10.12.2012 for the reason that the selection committee was contrary to

the requirements of Rule10(B) of Assam College Employees (Provincialisation) Rules, 2010, the respondents in the Higher Education Department

of the Govt. of Assam cannot supplement a different reason by way of an affidavit to justify the resolution of cancellation. Accordingly, the plea

raised by Mr. Gogoi cannot be accepted to be a reason for not interfering with the resolution of the Governing Body dated 05.03.2013.

13. In such view of the matter, the difference in the description of the qualification in the first advertisement cannot be a justifiable reason for the

Governing Body to cancel the earlier selection process and initiate a fresh selection process for the same purpose.

14. Accordingly, this court is in the view that the resolution of the Governing Body dated 05.03.2013 is arbitrary and de-hors of any justifiable

reason to cancel selection process pursuant to the first advertisement of 10.12.2012. Therefore, the subsequent advertisement as well as the

selection are set aside and the respondent authorities are directed to bring the selection process pursuant to the advertisement dated 10.12.2012 to

its logical end by strictly following the procedure prescribed.

15. In terms of the above, this writ petition stands disposed of.