

(2004) 06 GAU CK 0019
In the Gauhati High Court
Case No : Writ Petition (C) No. 3042 of 2004

Joyshab Hussain Laskar and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 22-06-2004

Acts Referred:

Assam Survey and Settlement Training Centre (AS and STC) Rules, 1991 — Rule 15, 20, 23, 23E
Constitution of India, 1950 — Article 14, 16

Citation : (2004) 3 GLT 458

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : A.M. Mazumdar, T. Dhar and M. Roy, for the Appellant; U.K. Nair, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—This writ petition has been filed for setting aside and quashing of the advertisement dated 25.2.2004 for the proposed selection for the six months Recorders' Certificate Class Course in Assam Survey and Settlement Training Centre, Guwahati. Total number of seats for such training has been specified as 160. It is the case of the Petitioners that they had already undergone the training course in the year 1995 and are now awaiting for their appointment as "Mandal" against the vacant posts. The stand in the writ petition is that the Respondents without first exploring the possibility of pointing the Petitioner against the vacancies, ought not to have resorted to fresh advertisement for imparting training course and thereby to increase the number of contenders for appointment against the vacant posts.

2. I have heard Mr. A.M. Majumdar, learned senior Counsel appearing for the Petitioner and Mr. U.K. Nair, learned Counsel appearing for the Respondents. Mr. Majumdar referring to Rule 20 of the Assam Survey and Settlement Training Centre (AS and STC) Rules, 1991 submitted that the impugned advertisement

dated 25.2.2004 could not have been issued without first filling up the vacant posts through the Petitioners and other such selected candidates who had successfully undergone the training way back in 1995. Mr. U.K. Nair, learned Counsel appearing for the Respondents submitted that the issue is no longer res-integra in view of the judgment of this Court in series of writ petitions delivered on 26.6.2002 affirmed in writ appeal No. 499/2002 and others by judgment and order dated 15.5.2003 and the order passed on 15.5.2003 in Misc. Case No. 1098/2002 in W.P.(C) No. 517/2002.

3. I have considered the rival submissions made by the learned Counsel for the parties and have also perused the materials on records. Rule 20 of the aforesaid Rule reads as follows:

20. For admission into each course, the Director will invite application from intending candidates preferably by the middle of June each year. Before final selection is made for admission to the course, the Director will obtain a statement from each district in regard to the following:

- i) The lots which are vacant or likely to fall vacant within the next three years.
- ii) The date from which the vacancy arises and the reason thereof
- iii) The lots with non-resident Mandals or unqualified Mandals.
- iv) The number of Survey passed persons in the locality waiting for appointment.
- v) Reserved vacancy and back log position regarding Schedule Tribes (Plains Tribes), Schedule Caste and other Backward Class in the districts and Sub-divisions and in making the final selection, the Director will pay due regard to the need of each district.

4. A bare perusal of the aforesaid provisions of Rule 20 makes it clear that the Director of Land Records is required to obtain a statement from each district in respect of vacancy position and the number of survey passed persons in the locality waiting for appointment. The further requirement is to pay due regard to the need of each district taking into account the vacancy position. Such a course of action is required to be carried out before the final selection is made for admission to the course. This is primarily for the purpose of allotment of seats for the training course to each district and not for providing any job by way of imparting the training. The training imparted to the candidates and their successful completion of the same only make them eligible for consideration for appointment pursuant to selection to be conducted by the competent authority. Selection for the training is not to be understood to be the selection for an appointment.

5. The reading of the scheme as formulated in the aforesaid Rules of 1991 goes to show that the training in question is also imparted to candidates deputed by other States, Government Agencies, District Councils, Public and Private Undertaking/Enterprises/Bodies and even to private individuals subject to

availability of seats. Rule 15 of the said rules has recorded the object of the course as, to train candidates in the duties of Recorders. The course is for the duration of six months and is to commence preferably in the month of January every year. Rule 23 lays down the modality and methodology towards carrying out the selection. The list prepared is to remain valid for one year from the date of finalisation. The validity of the list can be extended by the State Government for a further period not exceeding six months (Rule 23E.). The in-service employees of the Revenue Department can also undertake such a course. The Rules nowhere provide for any job opportunity imparting such a training. Same is not related to any appointment against any vacancy for which needless to say separate selection will have to be conducted by way of open advertisement and conducting selection from amongst the candidates who have already undergone the training.

6. The core issue involved in this proceeding is as to whether the Respondents have committed anything wrong in issuing the impugned advertisement to conduct the selection for imparting the aforesaid training course against the 160 seats. The issue is not longer res-integra as rightly contended by Mr. U.K. Nair, learned Counsel appearing for the Respondents. This Court in a series of writ petitions taking into account all aspects of the matter into consideration, by its judgment and order dated 26.6.2002 concluded as follows:

13. The question of law in this case has already been decided and that has received the approval from the Division Bench of this Court. So there is no need to reconsider the same. Accordingly all the Civil Rules are disposed of with a direction that the authority shall adhere to the direction of the learned Single Judge in Civil Rule No. 5882/98 which has been approved by the Division Bench in Writ Appeal No. 279/ 99 and the other direction given by the interim order shall stand merged with this order. There is no question of throwing out somebody who have been admitted in the Centre and receiving training, they will be allowed to complete their course.

14. Regarding anomalies and irregularities in the selection in the year 1997 the authority shall pass necessary speaking order and that shall hold the field and no relief can be given to other persons on the basis of that selection. This shall be done preferably within a period of three months and the selection shall be done twice in a year and everybody shall be entitled to apply for such selection and the authority shall relax the age if necessary as those persons have suffered because of unnecessary litigation before this Court.

7. The aforesaid decision was carried on appeal by way of filing number of writ appeals. The Division Bench of this Court noticing that the judgment in question was based on the earlier judgment of the Division Bench held that the authorities have no option but to admit the candidates for the aforesaid training course in accordance with the provisions of the rules. Upholding the judgment of the learned Single Judge, the Division Bench observed that the Appellants/writ Petitioners may also submit their applications for admission in accordance with

the rules and that the authority concerned would consider the applications in accordance with the procedure laid down in Rule 23 of the aforesaid rules along with other similarly situated persons. The Division Bench also clarified the position relating to holding the selection twice in a year as was directed by the learned Single Judge that such selection should be held atleast once in a year. (emphasis added).

8. It was pursuant to the aforesaid judgment and order of this Court the impugned advertisement has been issued. However, the Petitioners have resorted to the present writ proceeding to stall the process of selection questioning the validity of the advertisement itself and thereby virtually have questioned the validity of the aforesaid judgments of his Court in terms of which the Respondents are required to carry out the selection at least once in a year. The Petitioners while insisting for their appointment on the purported strength of Rule 20 of the aforesaid rules have been unmindful of the purport and intent for which the Rule has been framed and at the same time have been unmindful of their own position in terms of Rule 23E of the said rules in terms of which the validity of the select list prepared pursuant to the training course is only for one year which may be extended for another period not exceeding six months. It is the own pleaded case of the Petitioners that they were selected in the year 1995. If that be so the list has long expired and thus the very basis of claiming appointment falls through.

9. If the meaning of Rule 20 as has been sought to be projected by the Petitioners is to be accepted, then in that case the Respondents will be duty bound to make appointment in respect of 160 candidates every year. Such a projection made on behalf of the Petitioners is fallacious firstly because the course in question is only to make the candidates eligible for appointment and not for appointment as such and secondly because in case of any regular appointment against available vacancies, there will have to be regular selection pursuant to regular advertisement giving equal opportunity to all eligible candidates in tune with Article 14 and 16 of the Constitution of India.

10. Rule 20 of the rules only envisages finding out the vacant lots in each district before the final selection and not before advertisement. There is a purpose behind the same. The intendment of the said rule will have to be understood in the context in which the Rules of 1991 have been framed. The selection is required to be carried out in accordance with the requisition placed by each district as to their requirement. The final selection is required to be made on the basis of such requirement so that the selection of candidates does not become disproportionate in reference to the districts. It may so happen that the number of candidates selected for a particular district exceed the actual requirement to the deprivation of another district and the selected candidates may also confine to one or few districts instead of equal and proportionate distribution of seats among the districts as per requirements. Such an intendment in Rule 20, in my considered opinion cannot be said to be for the purpose of making appointment

against the vacancies without there being any advertisement and selection from amongst the eligible candidates, The advertisement in question also does not say, the same is for appointment against any post rather it envisages districtwise merit list for appearing in the viva voce to be held in the Directorate of Land Records and Surveys etc. Assam, Guwahati for final selection for undergoing Six Months Recorders' Certificate Class Course Training.

11. The aforesaid decisions of this Court have also mandated the Respondents for holding the selection at least once in a year and such a direction cannot be put to jeopardy on the grounds urged by the Petitioners. If the interpretation sought to be given by the Petitioner is to be accepted, there will be no such training till exhaustion of the candidates who have already undergone the training by way of their appointments as "Mandals". This kind of a situation has not been virtualized in the aforesaid Rules of 1991 and this is precisely the reason as to why this Court in the aforesaid judgments emphasized the need for imparting training at least once in a year.

12. The Petitioners although referred to various orders of this Court relating to imparting of training and annexed the same to the writ petition did not even obliquely referred to the aforementioned judgments of the learned Single Judge and the Division Bench through which the matter attained its finality and the issue raised in earlier proceedings was set at rest.

13. In view of the above, I do not find any merit in the writ petition and the same merits dismissal.

14. Writ petition stands dismissed without, however, making any order as to costs.