

(2010) 08 GAU CK 0141
In the Gauhati High Court

Case No : PIL No. 14 of 2010 in WP (C) No. 3178 of 2008

Julekha Wahida Ahmed

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Citation : (2011) 3 GLR 646

Hon'ble Judges : Ranjan Gogoi, J;Hrishikesh Roy, J

Bench : Division Bench

Advocate : S. Shyam, for the Appellant; P. Pathak, P. Barman, A. Narzery, S. Changkakati, J.N. Gogoi, B.D. Das, N. Gogoi, H.K. Samna, N. Goswami, M.R. Pathak, V.M. Thomas, S.C. Edu, U. Bhuyan, B. Chakrabartty, D. Deka, S.D. Bhuyan, K.M. Talukdar, A. Hazarika, C. Chowdhury, A.K. Deka, N. Goswami, S.R. Bhattacharjee, P. Das, H.A. Sarkar, S. Bhattacharjee, K. Agarwal, P.J. Baruah, P. Neog, Y.K. Phukan, D. Das, S. Bora, K. Baruah, N.C. Phukan, R. Phukan, P. Gogoi, N. Goswami, M. Baruah, K.N. Choudhury, Addl. AS and P.S. Deka, for the Respondent

Judgement

1. Heard Mr. S. Shyam, learned amicus curiae. Also heard Mr. M.R. Pathak, learned standing counsel for the Education Department. Submissions have also been heard from the learned Counsels representing the private Respondents.

2. The Petitioner a post graduate (M. Sc.) in Zoology offered her candidature for the post of subject teacher in provincialized Higher Secondary School(s) in Assam in pursuant to the advertisement dated 22.6.1992. In the Select List dated 12.10.1995 prepared by the State Selection Board (S.S.B.), the name of the Petitioner was enlisted at Sl. No. 47 in order of merit whereas vacancies advertised in the subject of Zoology was 20 in number.

3.1 The Petitioner having learnt that persons below her in merit and some whose names did not figure at all in the select list were appointed against the advertised vacancies, she initiated steps under the Right to Information Act, 2005 ("the RTI Act") to seek further information on the matter. As requisite

information were not supplied and concerned file was stated to be missing, the matter was taken to the Assam State Information Commission, which directed the officials of the Education Department to locate the missing file and to furnish the information sought by the Petitioner.

3.2 Subsequently the Petitioner was informed by communication dated 15.8.2007 by Shri M. Rahman, Deputy Secretary to the Government of Assam, Education(s) Department that, the Government of Assam had not approved the select list submitted by the said State Selection Board for appointment of subject teacher of Zoology and, hence, nobody from the select list was given appointment by the Director of Secondary Education ("DSE"). The Petitioner was further informed that as the relevant file is missing, the reason for non-approval of the select list and non-appointment there from could not be furnished. As the concerned file No. B(3)S.515/1995 was found to be missing since 15.12.1998 an F.I.R. was also lodged on the basis of which, the Dispur P.S. Case No. 1144/2007 was registered.

4. During the proceeding of the writ petition before the learned Single Judge, considering the larger issues emanating from the case and the possible consequences, on 8.9.2008 the writ proceeding was ordered to be entertained as a public interest litigation ("PIL").

5. The Division Bench while proceeding with the PIL found that several persons were actually appointed as Zoology subject teachers during the concerned period. From the communication dated 13.3.2009 of the Director of Secondary Education, Assam addressed to the Commissioner and Secretary to the Government of Assam, Education Department it is on record that 6 persons who are placed below the Petitioner in the merit list and 8 persons who do not figure in the select list, were appointed as subject teacher in Zoology in different provincialized Secondary Schools. Having noticed this, the 14 appointees were ordered to be impleaded as Respondents in the proceeding and by order dated 16.3.2009 the court directed the State to stop payments of salaries to the newly impleaded Respondents.

6. On 19.11.2009 from the materials produced by the Department, the court identified some of the officers (DSE's) involved with the illegal appointment of subject teachers and accordingly notices were directed to be issued on those appointing authorities.

7. Since the relevant Government records pertaining to selection and appointment were not being made available and it was perceived that those records were being deliberately withheld from the court, a search team was constituted and ordered to trace out the missing record. But this also failed to elicit the desired results and since little progress was being made with the investigation of the missing file case (Dispur P.S. Case No. 1144/2007), the court ordered for constitution of a Special Investigation Team (S.I.T.) headed by Shri Shiva Kumar, IPS and 2 others and directed the team by order dated 11.2.2010

to make all efforts to trace out the missing records pertaining to the illegal appointments of Zoology subject teachers besides verifying such facts pertaining to the appointments in question as may be revealed in the course of investigation. In this regard it may be specifically noticed that on behalf of some of the Respondents impleaded subsequently (teachers who were appointed) a stand was taken that such appointments were not against the posts advertised but were regularisation of ad hoc temporary appointments made earlier.

8.1 Thereafter the S.I.T. submitted its report on investigation which indicated that despite thorough search of the concerned office premises, the missing files could not be recovered. However, the team identified the official in the Directorate who last handled the concerned file and accordingly Shri Karuna Gogoi, now posted as Superintendent (Home-A Department) was identified as the person responsible for the file, which went missing since 15.12.1998 from the Government office.

8.2 The S.I.T. report significantly revealed that contrary to the information given to the Petitioner on 14.8.2007 by the Deputy Secretary Shri M. Rahman, Government approval was in fact granted to the Select List by communication dated 3.1.1996 sent by Shri R. Ahmed, ACS the Deputy Secretary to the Government of Assam.

8.3 It was also reported by the S.I.T. that of the 20 persons appointed since 1995 as subject teachers in Zoology, 7 persons were appointed before 15.12.1998, i.e., the date, when the Government record went missing. These 7 appointees were (i) Gitimoni Hatikakoti, (ii) Lini Baruah, (iii) Archana Sarma Sonari, (iv) Monimala Kakoti, (v) Banti Talukdar, (vi) Subhesh Bhattacharjee and (vii) Pradip Das.

The remaining 14 subject teachers were appointed after the loss of the file (post 15.12.1998) and they are (i) Gitanjali Deka, (ii) Nili Kalita, (iii) Amulya Goswami, (iv) Bijuli Chakraborty, (v) Nurul Huda, (vi) Madhumita Das Bora, (vii) Jyotimoni Hazarika, (viii) Gitanjali Talukdar, (ix) Tirangajyoti Handique, (x) Madhumita Sen, (xi) Dipali Bora and (xii) Anjali Pator.

The S.I.T. noted that since Dispur P.S. Case No. 1147/2007 was lodged with the information that the concerned files were missing since 15.12.1998 and if the files were actually lost since that date, how appointment to the 14 posts could be given by the Department, in the absence of the files. The names of the 20 appointees between 1995 to 2001, could be gathered by the S.I.T. on the basis of Memo. No. GB. EST/DSE/CC/125/2008/153 dated 13.3.2009 issued from the office of the DSE wherein it was also recorded that, the select list submitted by the State Selection Board during 1995 was approved by the Deputy Secretary to the Government of Assam on 3.1.1996.

8.4 The S.I.T. also collected the marks scored by the candidates in the interview held by the S.S.B. which revealed that 9 persons were appointed on the basis of the interview/selection of the S.S.B. However, 7 others were found to have been

appointed to regular vacancies on the basis of a screening process conducted, in pursuant to a Government order No. B(3)S.21/93/PT/50 dated 16.10.1998. That apart, the services of 3 temporary appointees were also regularized. The details of these 3 categories of appointees are reflected under separate heads, i.e., in Group A, Group B and Group-C in the said report.

GROUP A

Name of the Teacher

Name of the School

Smt. Gitimoni Hatikakoti (Appeared marks - 61/Rank - 48th)

HS School, Nazira, Sivasagar.

Smt. Lini Baruah (Appeared marks - 60/Rank - 56th)

Margherita Public HS School, Tinsukia.

Smt. Archana Sarma (Appeared marks - 60/Rank 64th)

Hazarimol HS School, Chabua, Dibrugarh.

Smt. Manimala Kakoti (Appeared marks - 64/Rank - 29th)

Ulubari HS School, Barpeta.

Smt. Banti Talukdar (Appeared marks - 63/Rank - 35th)

Barpeta HS School, Barpeta.

Sri Subesh Bhattacharjee (Appeared marks - 69/Rank - 11th)

MMC Girls HS School, Karimganj.

Sri Pradip Das (Appeared marks - 60/Rank - 55th)

Jalukbari HS School, Kamrup.

Smt. Gitanjali Deka (Appeared marks - 62/Rank - 41st)

Mandia HS School, Barpeta.

Smt. Nili Kalita (Appeared marks - 60/Rank-5)

Khowa HS School, Dhemaji.

GROUP B

Name of the Teacher

Name of the School

Shri Amulya Goswami appeared in the SSB interview 1995, but secured only 54 marks so his name was not incorporated in the select list of SSB-95.

Mondia HS School, Barpeta.

Smt. Bijuli Chakraborty not appeared in the SSB interview 1995

Lakhipur HS School, Goalpara.

Md. Nurul Huda (not appeared in the SSB interview 1995)

Joleswar HS School, Goalpara.

Smt. Madhumita Das Borah (not appeared in the SSB interview 1995)

Arjya Bidyapith HS School, Kamrup.

Smt. Jyotimoni Hazarika (not appeared in the SSB interview 1995)

Qlazira HS School, Savasagar.

Smt. Gitanjali Talukdar (not appeared in the SSB interview 1995)

Kamrup Academy HS School, Kamrup,

Sri Tirangajyoti Handique (not appeared in the SSB interview 1995)

Rajgarh HS School, Dibrugarh.

GROUP C

Name of the Teacher

Name of the School

Smt. Madhumita Sen (appeared in SSB-1995 marks obtained - 68, Rank 13th)

RN Vidyapith MD School, Ramkrishna Nagar, Karimganj.

Smt. Dipali Bora (appeared in SSB-1995 marks obtained - 62, Rank 44th)

Rajdhar Bora HS School, Azara, Kamrup.

Smt. Anjali Pator (not appeared in SSB-1995)

Laguma HS School, Goalpara.

8.6 The part of the report extracted above reveal that of the 7 in Group A (appointed on the basis of selection), barring Shri Subhash Bhattacharjee, the appointment of others was unjustified considering their merit position.

Insofar as the Group B appointees, no documents could be furnished by the Department on the alleged screening test conducted in the year 1998 and the Department failed to justify as to why appointments were made through an alleged screening process instead of from the duly prepared select list.

In respect of the Group C appointees, the S.I.T. found that on Madhumita Sen having secured 13th position in the merit list, deserves regularization of her temporary service and the other 2 persons, whose services were regularized,

were undeserving of such regularization.

8.7. The different Higher Secondary Schools where the vacancies were available on the date when the advertisement was issued on 22.6.1992 advertising the 20 posts of subject teachers were identified in the S.I.T. report. The persons who ought to have been appointed on the basis of their performances in the selection process were also named in the report of the S.I.T.

(A) General Candidates (unreserved category)

Rank

Name of the candidate

Rank

Name of the candidate

1.

Miss Anku Ghosh

9.

Miss Jeena Devi Boarah

2.

Mrs. Kalpana Dhar

10.

Miss Susmita Saha

3.

Sufiara Begam

11.

Sri Subhash Bhattacharjee

4.

Sri Poritush Bhattacharjee

12.

Mrs. Malabika Das Chakraborty

5.

Miss Manjulata Thakuria

13.

Madhumita Sen

6.

Miss Manjushree Dutta

14.

Miss Neeta Baishya

7.

Mrs. Nanda Devi Kumar

15.

Mrs. Nizara Bhuyan Baruah

8.

Mrs. Niruparna Banik Saikia

(B) Scheduled caste

Rank Name of the candidate

1. Miss Jhumur Sutradhar

(C) Scheduled Tribe (Plains)

Rank Name of the candidate

1. Miss Pritilekha Rabha

2. Miss Rupjyoti Boro.

(B) Scheduled Tribe (Hills)

Rank Name of the candidate

1. Will remain vacant as no suitable candidate is appeared.

9. From the report of the S.I.T., it is, therefore, crystal clear that several undeserving persons were given appointments on regular basis. The relevant records pertaining to such appointments as well as the proceeding of the "Screening Committee" could not, however, be made available for court's own scrutiny. It also appears that incorrect and false information was furnished to the Petitioner, wrongly informing her that the select list, where the name of the Petitioner figures at SI. No. 47 was not approved. In fact to the prejudice of the Petitioner, the proceeding before the State Information Commission was ordered to be closed on 7.9.2007 on the basis of the incorrect information furnished on 14.8.2007 to the Petitioner.

10. In this case it has become quite apparent that undeserving candidates were appointed during 1995-2001 to the 20 posts of Zoology subject teachers in different provincialized Higher Secondary Schools in Assam. When such illegal appointments are found to have been made appropriate judicial order(s) for

termination of such illegal appointment has to follow. In the present case, however, all such appointees are not before the court, i.e., Smt. Manimala Kakoti, Smt. Banti Talukdar, Smt. Gitanjali Deka (from Group A); Smt. Bijuli Chakraborty (from Group B) and Smt. Dipali Bora (from Group C). All the relevant facts, i.e., circumstances in which the 7 regularisations under Group B and 3 regularisations under Group C were made are not before the court. Whether such regularisation was against the advertised posts and if not what had happened to the advertised posts is also not known with certainty. In such circumstances it may not be appropriate for the court to pass any order for cancellation of the appointments. But considering the information gathered by the S.I.T., we deem it appropriate to direct the State to take into account the report of the S.I.T. and thereafter take appropriate steps to discontinue the services of such appointees who got undeserved appointments. Of course if any adverse action is to be taken against any appointee, they ought to be given an opportunity before termination orders are issued.

11. Since relevant Government records pertaining to appointment in public offices have gone missing and were consequently withheld from scrutiny of the court, necessary steps be taken by the State to unearth the missing records. Departmental action be taken against the persons identified by the S.I.T. as responsible for the above. The State must also fix responsibility and proceed against the errant officials who may be found to be responsible for the appointments that may be eventually set aside by the State.

12. Insofar as the relief claimed by the Petitioner, considering that she is at merit position No. 47 in the select list, she can claim appointment only as per her turn. If vacancies become available through termination of illegal appointees and if appointment is refused by those who are in higher merit position than the Petitioner, only then the Petitioner can be offered appointment. Accordingly if the Petitioner's turn comes in order of merit she may then be appointed to the post of subject teacher of Zoology by virtue of her selection. However, considering the fact that the Petitioner had largely conducted the present proceeding on her own and her painstaking efforts and perseverance have had same impact on attempts at cleansing public life the court directs that the Petitioner should be suitably compensated for the efforts by payment of cost of Rs. 25,000 (Rupees twenty-five thousand only) which will be paid to her by the State Government in the Education Department within 30 days from today.

13. The writ petition is disposed of with the above direction(s).