

(2008) 03 GAU CK 0008

In the Gauhati High Court

Case No : Writ Petition (C) No. 91 (AP) of 2007

Jumbom Karlo

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 24-03-2008

Acts Referred:

Assam Engineering (Public Works Department) Service Rules, 1978 — Rule 6(1)
Constitution of India, 1950 — Article 14, 16(1), 226

Citation : (2009) 5 GLT 40

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Advocate : K. Ete, N. Ratan, M. Kato, D. Padu, M. Tang and K. Tasso, for the Appellant; R.H. Nabam, K. Jini, N. Nyorak, D. Kamduk, B. Habung, R. Tagia and T. Tamang, for the Respondent

Final Decision : Dismissed

Judgement

H. Baruah, J.—Heard Mr. K. Ete, learned Counsel for the writ-Petitioner. Also heard Mr. R.H. Nabam, learned Senior Government Advocate for the State Respondents and Mr. K. Jini, learned Counsel for Respondent Nos. 4, 5 and 6. None appeared for and on behalf of Respondent No. 7.

2. By this writ petition, under Article 226 of the Constitution of India, the writ-Petitioner has sought for issuance of a writ in the nature of mandamus/certiorari and/or any other appropriate writ, or order or direction of like nature to the Respondent authorities to consider the case of the writ-Petitioner and accommodate him in any post likely to fluctuate.

3. The writ-Petitioner's brief case can be reproduced as under:

Arunachal Pradesh Fire Service Force, Government of Arunachal Pradesh, Itanagar, on 15.11.2006, for filling-up 4 (four) number of posts of Mechanics and 8 (eight) number of posts of Drivers in the Department floated an advertisement calling applications from eligible candidates which was to be conducted on

17.01.2007 at P.T.C., Banderdewa. Subsequently, a corrigendum was issued in regard to the date of recruitment wherein it was stated that same would be conducted on 17.12.2006 instead of 17.01.2007. Pursuant to that advertisement, the writ-Petitioner submitted his application for the post of Mechanic along with required documents on 15.11.2006. He was allotted Roll No. 03 for participation for the recruitment process. In the advertisement, it was specifically stated that method of recruitment shall be a physical efficiency test followed by a written examination and interview. Subsequently, the writ-Petitioner alongwith other candidates were directly called for interview/viva-voce test which was conducted on 29.12.2006 but no written examination was held as advertised. The writ-Petitioner, participating in the said interview process, came-out unsuccessful. It is contended in the writ petition that the Respondent authorities most illegally and arbitrarily and against the principles of natural justice without conducting the written examination, directly published a select-list on 07-03-2007 and thereby, illegally deprived the writ-Petitioner who was well prepared for the written examination and was confident that he would do well in the written examination and would be selected for the post on merit. Being thus deprived, the writ-Petitioner has preferred this application under Article 226 of the Constitution of India.

4. All the Respondents including the State-Respondents have filed affidavit-in-opposition. The Respondents, inter alia, contended that since the writ-Petitioner became unsuccessful in the recruitment process, there cannot be any question of arbitrariness or violation of principles of natural justice on the part of the Respondent authorities.

5. The learned Counsel for the writ-Petitioner, at the very outset of his arguments, referring to the advertisement issued by the Respondent authorities (Annexure-1) submits that for filling-up the post of Mechanic and Drivers, the advertisement contained the essential qualifications and the method of recruitment together with other requirements. At Serial No. 5 of the aforesaid advertisement, the essential qualifications of the candidates for the purpose of filling-up the post of Mechanic are incorporated therein. Under the said "heading", it is specifically stated that preference will be given to those candidates having Certificate in Diploma in Motor Mechanic. Under the "Heading" method of recruitment at Serial No. 8, it is specifically stated that there would be a Physical Efficiency Test (PET) followed by a written examination and interview but the Respondent authorities failed to adhere to the method of recruitment as advertised vide Annexure-1. The call-letters (Annexure -A series) which are annexed in the affidavit-in-opposition filed by the private Respondent Nos. 4, 5 and 6 clearly go to show, according to Mr. K. Ete, learned Counsel for the writ-Petitioner, that only 3 (three) tests were conducted on the date of the interview minus the written examination. It was argued by the learned Counsel that had the written examination been held, the writ-Petitioner would have come-out successful, being adorned with requisite qualifications. The Respondent authorities by not adhering to the method of recruitment, debarred the writ-

Petitioner in getting the aspired post. The learned Counsel, therefore, argued that when an advertisement was floated for adoption of a particular procedure for selection of candidates for filling-up certain posts, the selection process ought to have been made by adhering to that procedure and for any deviation therefrom in selecting the candidates by not adhering to the procedure, the selection so made cannot be maintained. When the advertisement speaks of a written examination for the purpose of selection of the candidates for filling-up the posts of Drivers and Mechanic, adherence of a different procedure and selection would be against the advertised procedure of selection. The candidates who had been selected for the purpose of appointment by the Respondent authorities and the appointment made thereof to the said posts is not legally sustainable, Mr. Ete, learned Counsel, argued.

6. That apart, it was argued by Mr. K. Ete, learned Counsel for the writ-Petitioner that in the advertisement itself, some preference was given in regard to filling-up of the posts of Mechanic. The writ-Petitioner had possessed said qualification and when no written examination was held for the purpose of selection to the said posts and when the test was conducted by deviating therefrom, the proficiency of the writ-Petitioner ought to have been considered by the Selection Board but no due importance was given to his qualification. The learned Counsel, therefore, argued that the selection of the candidates so made is against the method of selection which finds place in the advertisement (Annexure-1) and that being the situation in the face of the record, the appointments of the other candidates cannot stand since the Respondent authorities by not adhering to the conditions of selection afforded opportunity to adopt "pick and choose" method which is against Article 16(1) of the Constitution of India.

7. It was further argued by Mr. K. Ete, learned Counsel for the writ-Petitioner that at the time of advertisement through Annexure-1 for filling-up the posts, there was an indication in the advertisement itself that vacancies may fluctuate. In that view of the matter, it was argued by him also that appropriate direction may be issued to the Respondent authorities to consider the case of the writ-Petitioner in such a post.

8. Controverting the submission advanced by the learned Counsel for the writ-Petitioner, it was submitted by Mr. R.H. Nabam, learned Senior Government Advocate that when there is no scheme available for selection of the post of the Drivers and Mechanics in the Department itself, in the absence of such scheme, it would be within the domain/power of the Department concerned, the manner in which the selection should be made. Though in the advertisement, the method of selection was indicated, non-adherence thereof while selecting the candidates for filling-up the posts in the absence of any specific scheme cannot be said as illegal. According to Mr. R.H. Nabam, learned Senior Government Advocate, the selection process adopted by the Respondent authorities cannot be questioned in the absence of a scheme.

9. It was further argued by Mr. R.H. Nabam, learned Senior Government

Advocate that despite deviation in regard to the method of selection, the writ-Petitioner became one of the subjects of the selection process adopted by the Respondent authorities, the writ-Petitioner therefore, cannot question the illegality or illegality of the selection process. It was further argued by him that selection process is beyond the scope of challenge by a candidate in which the candidate participated. In the instant case, the candidate is estopped by his conduct.

10. Mr. R.H. Nabam, learned Senior Government Advocate, in support of his contention relied on the following decisions reported in:

(1). Madan Lal and Others Vs. State of Jammu and Kashmir and Others, wherein, in paragraph-9 of the decision, the Hon"ble Supreme Court held as under:

9. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be successful. It is also to be kept in view that in this petition we cannot sit as a Court of appeal and try to re-assess the relative merit of the concerned candidates who had been assessed at the oral interview nor can the Petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee.

(2). 1996 (3) GLT 323 Santanu Barua and Ors. v. State of Assam and Ors. and 1998 (2) GLT 236 Rajkumar Poddar (Dr.) v. North Eastern Hill University.

In paragraphs-10, 12 and 13 of the judgment reported in 1996 (3) GLT 323 , the Division Bench of this High Court held as under:

10. The first question that has to be decided in this batch of cases is whether the selection of candidates made by the APSC for appointment to the post of Assistant Engineer (Civil) under the P WD was contrary to the Rules and arbitrary. Mr. A.B. Choudhury, learned Counsel contended that recruitment to the post of Assistant Engineer (Civil) under PWD is governed by the Assam Engineering (Public Works Department) Service Rules, 1978 (for short "the 1978 Rules"), and under Rule 6(1)(c) of the 1978 Rules, the APSC has to make selection in accordance with the scheme of selection prescribed by the Government in consultation with the APSC. The APSC could not hold written test for such selection until a written test is provided for in a scheme of selection prescribed by the Government, under the said rule. Mr. S.S. Dey, learned Additional Senior Government Advocate, Assam, and Mr. P. Prasad, learned

Counsel for the APSC, did not dispute the position that no scheme of selection has yet been prescribed by the Government under the said Rule 6(1)(c) of the 1978 Rules but submitted that even in the absence of any scheme of selection prescribed by the Government, the APSC can hold a written test and viva-voce for the purpose of selecting the candidates for appointment to the post of Assistant Engineer under the PWD.

12. It was next contended by Mr. A.B. Choudhury, learned Counsel that in the present cases, the process of selection has not been fair and was arbitrary and violative of Article 14 of the Constitution. He submitted that the candidates did not know about the written test and syllabus for the examination until they received the call letters from the APSC in July, 1995. He further contended that along with the said Call letters issued in July, 1995, a very sketchy syllabus was enclosed which did not contain the details of the syllabus but only the broad headings for the written test. After receipt of the said call letters in July, 1995, the candidates could not possibly prepare for the written test in August, 1995, on the basis of a syllabus which did not contain the required information particularly in Civil Engineering. Mr. Choudhury relied on the judgment of the Apex Court in the case of *State of M.P. v. Ram Raghubir Prasad* reported in AIR 1979 SC 888 , in which the Apex Court has observed that the syllabus must contain sufficient information for the concerned persons to know what courses of instruction were broadly covered under the heading mentioned. Mr. A.B. Choudhury also cited the judgment of the Supreme Court in the case of *Munindra Kumar and others Vs. Rajiv Govil and others*, in which the Supreme Court observed that the candidates who had taken the written examination and failed could be estopped from challenging a rule which was arbitrary and violative of Article 14 of the Constitution. Mr. D.K. Misra, learned Counsel for the other side however submitted that by the call letters issued in July, 1995, about 25 days were allowed to every candidate and a few candidates cannot make a grievance that they did not get sufficient time to prepare for the written test. Mr. Misra submitted that similarly it is on the basis of the same syllabus furnished along with the call letters that all the candidates have prepared and taken the written test and a few of the candidates cannot complain of inadequate information in the syllabus having failed in the written test. Mr. Misra cited the judgment of the Supreme Court in the case of *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, for the proposition that a candidate who has appeared for the examination without protest was not entitled to approach the Court and challenge the said examination having failed the same.

13. We find lot of force in the aforesaid submission of Mr. Misra. In the case of *Munindra Kumar v. Rajiv Govil* (supra) cited by Mr. Choudhury, the Apex Court while observing that a candidate cannot be estopped from challenging a rule which is arbitrary and violative of Article 14 of the Constitution, also held that the conduct of candidates who have taken examination and have out successful and the equities of those candidates who have been selected are relevant considerations for the purpose of moulding the relief. Similarly, in the case of *Om*

Prakash v. Akhilesh Kumar (supra) cited by Mr. Misra, the Apex Court held that where a candidate having taken the examination without protest approaches the Court after realizing that he has not succeeded in the examination, no relief can be granted to him for setting aside the examination as it would cause hardship to the selected candidates. In the facts of the present case, the syllabus that was circulated along with the call letters to different candidates by the APSWC was the same to all the candidates and the time that was allowed to the candidates for preparation of the written test was the same for all the candidates and at the instance of a few candidates who had taken written test but had come out unsuccessful, the Court cannot set aside the selection of the successful candidates, so as to cause hardship to them.

A Division Bench of this High Court also in Paragraph-23 and 24 of the judgment reported in 1998 (2) GLT 236, Rajkumar Poddar (Dr.) v. North Eastern Hill University and Ors. regarding participation in the selection process and challenge thereof, held as under:

23. Having dealt with the submissions made on merit, let us now see at what stage the Writ Petitioner Appellant has approached this Court. As already noted above and also noted by the learned Single Judge, he approached the court when he filed this writ petition on 16.6.97 after having appeared before the Selection Board for interview on 25.4.97. The selection process was yet to be completed since the recommendations of the Selection Committee under the Rules was required to be placed before the Executive Council for its consideration as per statute No. 20 read with Ordinance OE 3:3. The proceedings of the Selection Committee are still confidential, as observed by the learned Single Judge:

I am of the view that the present writ petition was filed by the writ-Petitioner as an afterthought as he has apprehension in his mind that he may not be selected and he did not approach the Court as expeditiously as possible.

The learned Single Judge proceeds to observe:

This Court, further reiterates that people seeking for equity must approach the Court as expeditiously as possible and with clean hands. But, the writ Petitioner did not disposed of so inasmuch as, he did not challenge/question the validity of constitution of the screening committee and the advertisement for the said post with specializations in three subjects earlier, before he appeared before the Selection Committee as discussed above.

24. The Supreme Court in a similar case in between G. Sarana Vs. University of Lucknow and Others, held as below:

From the above discussion, it clearly follows that what has to be seen in a case where there is no allegation of bias in respect of a member of an administrative Board or body is whether there is a reasonable ground for believing that he was likely to have been biased. In other words, whether there is substantial possibility of bias animating the mind of the member against the aggrieved party.

11. From the composite reading of the facts averred, in the writ petition as well as the affidavit-in-opposition and the documents annexed thereto, it is noticed that the writ-Petitioner pursuant to the advertisement and call-letter appeared before the Selection Board for filling-up the post of Mechanic, which had been advertised vide Annexure-1 but he came out unsuccessful and being aggrieved, challenged the selection process through this writ petition. Admittedly, there was some deviation in the said selection process. The department concerned did not adhere to the method of selection as advertised rather adopted a different procedure for selection of the candidates. In view of that, it is contended by the writ-Petitioner that there was arbitrariness on the part of the Respondent authorities in selecting the candidates by adopting a different procedure which presumably afforded some room for a different consideration.

12. It has been set at rest by the ratio propounded by the Apex Court and the High Court that when there is no scheme of selection for appointment for filling-up a post, it is within the domain of the authority concerned to hold the test as per its wish, desire and suitability. Apparently, there was no scheme of selection for post of Mechanic and Driver in the department concerned. The department while calling the candidates for the interview specifically mentioned about the subject/test to be held during the interview. The invitation/call-letter which has been annexed herewith the affidavit-in-opposition submitted by the private Respondents 4, 5 & 6 speak of absence of the written examination. Being known of the fact, the writ-Petitioner became a subject of the Selection Process.

13. Thus the writ-Petitioner in view of the facts and the law laid down cannot challenge the selection process that was adopted by the Respondent authorities. This writ-petition is devoid of any merit and is accordingly dismissed. However, there shall be no order as to costs.