

**(1997) 11 GAU CK 0031**  
**In the Gauhati High Court**  
**Case No : Civil Rule No. 3841 of 1997**

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|---------------------------|----|------------|
| Jyoti Rupa Das and Others | Vs | APPELLANT  |
| State of Assam and Others |    | RESPONDENT |

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**Date of Decision :** 24-11-1997

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 226

**Citation :** (1999) 1 GLT 527

**Hon'ble Judges :** D.N. Chowdhury, J

**Bench :** Single Bench

**Advocate :** B. Choudhury, A.N. Choudhury and R. Islam, for the Appellant; B. Goswami, for the Respondent

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## Judgement

D.N. Chowdhury, J.—This writ petition is directed and arises out of an advertisement for filling up of a few temporary posts of Supervisors (Graduate female candidate only), alongwith other posts in the I.C.D.S. Projects under the Directorate of Social Welfare and Probation, Assam.

2. The Petitioners before this Court assailed the legitimacy of the advertisement and more particularly the pretence of filling up of the posts against the future vacancies as being violative of the Equality Clause enshrined in the Constitution of India.

3. By Notification bearing No. DSW(ICDS)E/21/96/7, dated Guwahati the 18th October, 1996 (Annexure-4 of the Petition) applications were invited from the eligible candidates for filling up of a few temporary posts of Supervisors etc. The relevant passages of which are extracted below:

...Applications are invited from Indian Citizens in the standard prescribed in Part-IX of the Assam Gazette for filling up of a few temporary posts of Supervisors (Graduate Female candidate only), Statistical Assistants and L.D.A.-cum-Typist in the I.C.D.S. project under the Directorate of Social Welfare and Probation, Assam, Bal Bhawan, Uzanbazar, Guwahati-781001. The application together with

attested copies of certificates, (academic/caste) testimonials, one copy of recent photograph duly attested should reach the undersigned on or before 30.10.96. None need apply who have applied against this Directorate advertisement No. DSW(ICDS)E/21/9611, dated. Guwahati the 12th March, 96 No. DSW(ICDS)E/21/96/3, Dtd. Guwahati, the 5th June"96 No. DSW(ICDS)E/24/96/1, Dtd. Guwahati, the 15th March "1996 and No. DSW(ICDS)E/24/96/3, Dtd. Guwahati the 4th June "96.

1. (a) Educational Qualification for supervisors: Graduate in Arts/Science/Commerce/Home Science/Experience of Social Work in Rural/Tribal areas and interest in Music/Dance/Drama etc. will be desirable qualifications....

4. The basic grievance of the Petitioners mainly against the filling up of posts of Supervisors at a time far in excess than the posts those were in existence on the date of advertisements. Petitioners claimed that on the date of advertisement there were not more than 20 sanctioned posts of supervisors (Graduate female Candidates only) Statistical Assistants and L.D.A.-cum-Typist in the I.C.D.S. project. The Petitioners however were not eligible to apply on or before 30.10.96 since their result were not declared by the respective Universities. When they enquired into the Office of the Respondents/Authorities they came to know that after the advertisement made in February, 1997 numbers of posts including 308 posts of supervisors were sanctioned by the Government and for those newly sanctioned posts the Respondent would invite fresh applications which would take care at those who became eligible subsequent to the advertisement and the selection process. The Respondents, according to" the Petitioners almost completed the process of selection on the basis of advertisement published on 18.10.96 but also intended to fill up all the posts of Supervisors earmarked for the Graduate Female Candidates including those posts which became available long after the advertisement. The Petitioners, therefore, moved this Court praying for a direction on the Respondents for issuance of fresh advertisement for filling up of 308 posts of Supervisors in the ICDS Projects under the Directorate of Social Welfare and Probation, Assam sanctioned vide the letter No. SWD.87/94/364 dated 28.2.97 and restraining the Respondent from filling up of 308 posts of Supervisors by the candidates who submitted their applications pursuant to the advertisement published on 18.10.96 issued by the Director of Social Welfare and Probation Assam (Annexure-4).

5. The Respondent No. 2, the Director, Social Welfare and Probation, Assam, Uzanbazar, Guwahati has submitted his affidavit and denied and disputed the contentions asserted by the Petitioners. The Respondent also asserted that the process of recruitment in the instant case will be confined to the clear vacancies those were in actuality on the date of advertisement including the anticipated vacancies, and under no circumstances, the Respondents are going to recruit persons from the selection list against future vacancies.

6. Mr. B. Choudhury, the learned Counsel appearing on behalf of the Petitioners submitted that in the instant case the recruitment process is to be confined to

the posts advertised pursuant to the publication dated 18.10.96 and under no circumstances the Respondents should be allowed to fill up the posts against future vacancies. Mr. Choudhury, the learned Counsel particularly had drawn my attention to the advertisement which sought to be filled up of a few temporary posts did not mean that newly created 308 vacancies of supervisors as per sanction letter dated 28.2.97. Mr. Choudhury, the learned Counsel in support of his contentions referred to the decision of the Supreme Court in Prem Singh and Others Vs. Haryana State Electricity Board and Others, , New India Public School and other etc. Vs. HUDA and others etc., Santanu Borua and Ors. v. State of Assam and Ors. reported in 1996 (3) GLT 323.

7. Mr. B. Goswami, the learned Jr. Govt. Advocate on the other hand objected to the locus-standi of the Petitioner's in assailing the advertisement dated 18.10.96. Mr. Goswami, the learned Jr. Govt. Advocate submitted that as per advertisement the last date of submission of applications was 30.10.96 and on that date these two Petitioners were not eligible to apply for, and at the instance of these two persons the process of advertisement can not be stopped. Mr. Goswami, the learned Jr. Govt. Advocate further submitted that on merit that all these 308 posts of supervisors were very much known to the Respondents by communication dated 28.2.97 only posts were sanctioned letter in point of time though Government was aware of about all these 308 posts at the time of advertisement and accordingly advertisement will contemplate 308 posts subsequently sanctioned by communication dated 28.2.97. Mr. Goswami, the learned Jr. Govt. Advocate in support of his contention also referred to a decision objected to by this Court on 10.7.97 in Civil Rule No. 2985/1997. There is total unanimity at the bar that all public appointments must conform to the Constitutional norms enshrined in Article 14 and 16 of the Constitution as well as norms professed by the State. There is no dispute on the proposition that the State can not deviate from the advertisement and make appointments in posts falling vacant after the advertisement and the posts those are newly created. In Hoshiar Singh Vs. State of Haryana and Others, the Director General of Police, Haryana sent a requisition to the subordinate Service Selection Board, Haryana to select candidates for appointment on six posts of Inspector of Police. Consequently, the Board by its advertisement dated January 22, 1988 invited applications for the said posts which was amended by corrigendum dated July 7, 1988. Subsequent to the written examination but prior to physical test and interview the Director General sent a revised requisition for 8 posts. Ultimately, the Board recommended 19 names out of which 18 persons were given appointments. The said selection of appointments were challenged before the High Court and the High Court quashed the selection and appointment made with respect to 18 posts of Inspector of Police and directed that keeping in view the facts that the integrity of the written test had not been challenged before them, the authority would be entitled to make a fresh selection for eight posts on the basis of the written examination already held. On appeal the Supreme Court observed as follows:

...since the requisition was for eight posts of Inspector of Police, the Board was required to send its recommendations for eight posts only. The Board, on its own, could not recommend names of 19 persons for appointment even though the requisition was for eight posts only because the selection and recommendation of larger number of persons than the posts for which requisition is sent. The appointment on the additional posts on the basis of such selection and recommendation would deprive candidates who were not eligible for appointment to the posts on the last date for submission of applications mentioned in the advertisement and who became eligible for appointment thereafter, of the opportunity of being considered for appointment on the additional post because if the said additional posts are advertised subsequently those who become eligible for appointment would be entitled to apply for the same. The High Court was, therefore, right in holding that the selection of 19 persons by the Board even though the requisition was for 8 posts only, was not legally sustainable....

8. The principles enunciated above is consistently applied in the State of Bihar and others Vs. The Secretariat Assistant Successful Examinees Union 1986 and others, Gujarat State Dy. Executive Engineers Association v. State of Gujarat and Ors. reported in (1994) 2 SCC 591, State of Bihar and Anr. v. Madan Mohan Singh and Ors. reported in (1994) 3 SCC 308 , Madan Lal and Others Vs. State of Jammu and Kashmir and Others, and Prem Singh v. Haryana State Electricity Board (supra). In Mandal (supra) the Supreme Court made the following observations:

...It is no doubt true that even if requisition is made by the Government for 11 posts the Public Service Commission may send merit list of suitable candidates which may exceed 11. That by itself may not be bad but at the time of giving actual appointments the merit list has to be so operated that only 11 vacancies are filled up, Because the requisition being for 11 vacancies, the consequent advertisement and recruitment could also be for 11 vacancies and no more. It is easy to visualise that if requisition is for 11 vacancies and that results in the initiation of recruitment process by way of advertisement, whether the advertisement mentions filling up of 11 vacancies or not, the prospective candidates can easily find out from the Office of the Commission that the requisition for the proposed recruitment is for filling up 11 vacancies. In such a case a given candidate may not like to compete for diverse reasons but if requisition is for larger number of vacancies for which recruitment is initiated, he may like to compete. Consequently the actual appointments to the posts have to be confined to the posts for recruitment to which requisition is sent by the Government. In such an eventuality, candidates in excess of 11 who are lower in the merit list of candidates can only be treated as wait listed candidates in order of merit to fill only the 11 vacancies for which recruitment has been made, in the event of any higher candidate not being available to fill the 11 vacancies for the reason. Once the 11 vacancies are filled by candidates taken in order of merit from the select list that list will get exhausted, having served its purpose....

In Prem Singh (supra) the Supreme Court however upheld the selection but observed on consideration of the fact situations and the law "the selection process by way of requisition and advertisement can be started for clearing vacancies an also for vacancy but not for future vacancies. If the requisition and advertisement are for a certain number of posts only, the State cannot make more appointments, than the number of posts advertised, even though it might have prepared a select list of more candidates. The State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf." It was further observed in the above case that the Board could have taken into account not only the actual vacancies but also vacancies which were likely to arise because of retirement etc. by the time the selection process was completed. The Court however observed that the appointment which are made against future vacancies in the above case of posts which were newly created were regarded as invalid. After considering all the aspects of the matter, the Court did not think proper to invalidate the appointment of 25 additional posts. But the appointments made by the Board on posts beyond 87 were held to be invalid. And accordingly the Supreme Court modified the order of Punjab and Haryana High Court to aforesaid extent.

From the foregoing discussions it thus emerges that appointments can be lawfully made only to the posts those were factually in existence as on the date of advertisement including those vacancies which are likely to arise because of retirement etc. by the time the selection process was to be completed. However, any appointment those are made against future vacancies from the posts which were newly created is to be regarded as invalid. Prem Singh (supra) the Supreme Court also negated the contention of locus-standi. In the above case the Supreme Court held that even the persons who were not eligible on the date of advertisement can legitimately make grievances that due to the appointments of the candidates in excess of the posts advertised cause deprivation of right of appointment against post which would become vacant after he or she acquired eligibility.

9. It is equally true that "a few" cannot comprehend many. The word many when used as an adjective it connotes for constituting or forming, a large number e.g. many people when the same word is used as noun it conveys the considerable numbers, e.g. many were there and as a pronoun it speaks of many persons or things. The antonym of many is "few". The meaning of the worked few, a few assigned by the Lexico graphers are cited below:

few, adj. small in number; not many hardly any "n" fewness smallness of number - a few; a small number (of) used as noun or virtually a compound adjective; also facetiously as an adv. a little (The Chambers Dictionary) "Few" pron (contrasted with many - little, much) 1. (with a Pin) not many...." (Oxford, Dictionary) Adj. 1 Not many but more than one - n (contrued as p1.) a small number of persons or things" (Webster's Encyclopedic Unabridged Dictionary of

the English language).

Therefore the process of appointment, launched as per the advertisement dated 18th October, 1996 cannot go beyond the few posts those were prevailing on the date of the advertisement including the anticipated vacancies, any appointment beyond and above posts would transgress the equality clause as enshrined in Article 14 and 16 of the Constitution.

To assess and ferret out the actual number of vacancies conceived by the advertisement dated eighteenth October, 1996, this Court will have to get down to an enormous exercise. The selection is yet to be made out - the process of appointment and the final decision of recruitment specifying the number of posts are yet to be made. The picture is yet uncertain. In a similar situation this Court in *Srimati Seema Handique and Anr. (supra)* refused to exercise the extraordinary jurisdiction under Article 226 of the Constitution of India. Though, I hold that the Petitioners have the locus standi to move the court under Article 226 of the Constitution of India. On over all consideration of all the aspects of the matter, I however refrain myself from adjudicating on the merits of the controversy at this stage. The rejection of the Petition shall not however carry the conviction on the Respondents that as if the court granted a carte blanche to depart from the advertisement and make appointment on posts falling vacant thereafter. The dismissal of the Petition shall not preclude the aggrieved persons to move the Court and impinge the legality and validity of the recruitment.

Subject to the observations made above, the writ petition stands dismissed. Interim order stands dissolved. No costs.