

(2011) 08 SC CK 0149

In the Supreme Court Of India

Case No : Civil Appeal No. 7401 of 2011 (Arising out of SLP (Civil) No. 21013 of 2006)

Kandarpa Sarma

APPELLANT

Vs

Rajeswar Das and Others

RESPONDENT

Date of Decision : 25-08-2011

Acts Referred:

Constitution of India, 1950 — Article 162, 311

Citation : (2011) 10 JT 600 : (2011) 5 LW 784 : (2011) 10 SCR 644 : (2012) 1 SLJ 220

Hon'ble Judges : Mukundakam Sharma, J; Anil R. Dave, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Leave granted.

2. This appeal is directed against the judgment and order passed by the Gauhati High Court on 17.11.2006 allowing the appeal filed by the Respondent No. 1 whereby the learned Division Bench set aside the judgment and order passed by the learned Single Judge allowing the writ petition filed by the Appellant herein.

3. The Respondent State issued an advertisement for filling up the post of Gaonburah of Tikka Garia Gaon, Mouza: Sariha in the District of Barpeta. The Appellant as also Respondent No. 1 along with others submitted their candidature as against the aforesaid advertisement which was issued on 11.11.1998 by the Sub-Divisional Office, Balaji Sub Division. After submission of the applications by the various candidates, the circle officer submitted a report along with other records regarding suitability of the candidates which was considered by the Selection Committee consisting of the Sub-Divisional Officer Balaji Sub Division,, the Circle Officer and the Election Officer. The said selection committee considered the records and found the Appellant as the most suitable candidate and appointed him as the Gaonburah.

4. Being aggrieved by the said order of appointment issued by the Sub-Divisional Officer, Respondent No. 1 filed an appeal in terms of paragraph 162(B) of the Executive Instructions which was entertained. The aforesaid appeal was heard by the Additional Deputy Commissioner and upon consideration he set aside the order of appointment of the Appellant and also issued a direction to appoint Respondent No. 1 as the Gaonburah in place of the Appellant. The said decision of the First Appellate Authority was challenged by the Appellant herein in Second Appeal as provided for under paragraph 162(C) of the Executive Instructions.

5. The aforesaid Second Appeal was dismissed consequent upon which the Appellant herein filed a Writ Petition before the High Court which was registered as Writ Petition (C) No. 8019/2001. The learned Single Judge by a judgment and order dated 11.5.2004 allowed the writ petition and directed that the Appellant be allowed to continue as Gaonburah of Tikka Garia Gaon, Mouza: Sariha in the District of Barpeta.

6. Being aggrieved by the aforesaid judgment and order passed by the learned Single Judge, Respondent No. 1 filed an appeal before the Division Bench of the Gauhati High Court which was registered as Writ Appeal No. 228 of 2004. The Division Bench, after hearing the counsel appearing for the parties on 15.11.2006 allowed the appeal by its judgment and order dated 17.11.2006 whereby the Division Bench not only set aside the judgment and order of the learned Single Judge but it also restored the order passed by the Second Appellate Authority directing appointment of Respondent No. 1 as Gaonburah. By virtue of the aforesaid order, Respondent No. 1 assumed charge of the office and he, as of today, continues to hold the post of Gaonburah.

7. Being aggrieved by the aforesaid order passed by the Division Bench, the Appellant herein filed the present appeal on which we have heard the learned Counsel appearing for the parties.

8. Mr. P.K. Goswami, learned senior counsel appearing for the Appellant has submitted before us that the Division Bench committed manifest error in holding that the expression 'family' used in the Executive Instructions should receive an extended meaning so as to include 'nephew' within the expression 'family'. He has also submitted before us that the selection committee after taking into consideration all the factors found the Appellant as the best candidate for the post and the said decision being based on records should not have been interfered with by the Appellate Authority as also by the Division Bench of the High Court on extraneous consideration and also by wrongly reading the documents particularly when the learned Single Judge has upheld the aforesaid order of the selection committee. In support of his contention, he has relied upon the decisions of Constitution Bench of this Court in State of Assam and Anr. v. Nahar Chutia and Anr. reported in 1974 ALR 163 as also in State of Assam and Others Vs. Shri Kanak Chandra Dutta, He has also drawn our attention to the Executive Instructions which are part of the Assam Land Revenue Regulation by referring to paragraph 162 of the said instructions as also paragraph 163.

9. It was also brought to our notice that in terms of the ratio of the decisions of the aforesaid two cases decided by the Constitution Bench of this Court, the status of Gaonburah in Assam is that he holds a Civil post under the State of Assam and he is entitled to the protection as provided for under Article 311 of the Constitution of India. Consequently, the State has the power and also the jurisdiction to select and appoint a Gaonburah and also to dismiss him. He has also pointed out to us the settled position that Gaonburah works under the supervision of Moujadar who is also a State government servant as held in the aforesaid Constitution Bench decision of this Court.

10. Mr. Pravir Choudhary appearing for the Respondent No. 1, however, has submitted that the judgment and order passed by the High Court is justified as in the context of the expression 'family' used in the Executive Instructions. According to him, the said expression should receive a wider and extensive interpretation so as to include a nephew. He has also submitted that Respondent No. 1 was working with and helping and assisting the earlier Gaonburah for a very long time and, therefore, he has sound experience in the working and functioning of the Gaonburah and, so he was the best candidate and the High Court was justified in directing for his appointment to the aforesaid post.

11. The State is also represented by the counsel who has submitted that the impugned judgment and order should not have been interfered with for the reasons that the decision of the selection committee should have been preferred as the selection committee had the privilege of looking into all the records and also had the privilege of interviewing the candidates.

12. Having heard the learned Counsel appearing for the parties and having gone through the connected records, we propose to dispose of this appeal by giving our reasons thereof.

13. The post of Gaonburah is an executive post in the sense that he works under the supervision of the Moujadar. He holds a civil post and, therefore, is entitled to the protection as provided for under Article 311 of the Constitution of India. In that view of the matter, there has to be some service conditions governing his service. A Government Servant who is usually appointed to a civil post has to have minimum age requirement for appointment and there is always a maximum age on completion of which he stands retired from the government service. He has other service conditions also prescribed for his service and status. However, on going through the Executive Instructions, we do not find any such terms and conditions of service envisaged and laid down which would govern his service condition. A government servant cannot be appointed unless he fulfills a minimum age criteria. He should not also be allowed to continue to work as Gaonburah in perpetuity. There has to be some age limit or duration of period for his service on completion of which he should stand relieved. The other service conditions like the reasons for removal of the Gaonburah are also required to be clearly stated by the State Government either in the executive instruction or by framing a separate set of rules. Since all these fall within the domain of the State

Government, we request and leave it to the State Government to frame such service conditions of the Gaonburahs as expeditiously as possible preferably within a period of three months from today keeping in view the observation made hereinbefore. We also feel that the contents of the Executive instructions relating to appointment of Gaonburah requires updating and further amendments to be in tune with the present day requirement, which shall be done simultaneously with the aforesaid exercise.

14. The next question that arises for our consideration is whether the Respondent No. 1 herein is entitled to get a preferential treatment for appointment as a Gaonburah on the ground that he was the nephew of an earlier Gaonburah. The executive instruction in para 162 provides that in the matter of appointment of Gaonburah, certain factors are to be taken into consideration which are (1) claim of the family of the Gaonburah (2) the views of the Maujadar (3) the suitability of the person for the post.

15. On going through the records, we find that the selection committee considered the suitability of the candidates by allotting 80 marks in all. For the factors stated above, the selection committee had allotted 10 marks for the claims of the family of Gaonburah and for the views of the Moujadar, another 10 marks were allotted by the selection committee and it appears that the rest 60 marks were allotted for consideration of the suitability of the person for the post.

16. For the scheme of compassionate appointment in government service, the expression 'family' in the natural course, includes the family of the deceased, namely, his son, daughter and widow. The surviving dependents in the family are considered for such appointment on compassionate grounds. The said expression 'family' in those cases is always restricted to the aforesaid members, namely, son, daughter or widow. This expression also has come to be used in various ceiling Acts in the Assam Fixation of Ceiling on Land Holdings Act, 1956. The expression 'family' has been defined to mean a family consisting of any one or more or all of the following namely (1) husband, (2) wife, (3) minor children, and also includes a joint family. In the explanation thereto, joint family has been defined to mean a family of which the members are descendants from a common ancestor and have a common mess, and shall include wife or husband, as the case may be, but shall exclude married daughters, married sons and their children.

17. A joint family could be considered to be a family only when they are sharing a common residence and common mess. To give an extended meaning to mean any 'nephew' would also be inappropriate for the word nephew is a very vague expression for it could include not only nephew being the son from the own brother but it could also be nephew being the son not only from the sister but being son of even from the cousin brothers or sisters. It is difficult to give such a wide meaning to the expression 'family'. It is, therefore, appropriate that the State Government also while laying down the criteria identifies the members of the family who could be entitled to some preferential consideration in the matter

of such appointment to the post of Gaonburah. The State Government should also therefore frame proper guidelines laying down the conditions as stated hereinbefore.

18. Now, coming to the facts of the present case, we find that the Circle Officer submitted a report on consideration of all the materials on record that the Appellant should be considered for appointment to the post of Gaonburah as he satisfies all the requirements and because he is the best candidate. The selection committee considered the records and thereafter selected the Appellant herein despite being aware of the fact that the recommendation of the Moujadar is for another candidate neither being the Appellant nor being Respondent No. 1 and also being aware of the fact that Respondent No. 1 was related to the earlier Gaonburah. The said selection was made keeping in view the mandate of executive instructions. The executive instructions which lay down the criteria for selection have force in law as they were made part of the Assam Land Revenue Regulation. They also have a binding force having been issued in exercise of constitutional powers conferred under Article 162 of the constitution of India.

19. Pursuant to the aforesaid selection made by the selection committee which had considered all the factors and also the criteria laid down for the purpose, the Appellant was appointed to the said post which came to be set aside by the Appellate Authority which order was confirmed by the Second Appellate Authority. Having gone through the records, we find that the First Appellate Authority has set aside the appointment of the selection committee and the order passed by the Sub-Divisional Officer on the ground that Respondent No. 1 is entitled to a preferential treatment, he being the nephew of the earlier Gaonburah. We have found that the aforesaid view taken by the Deputy Commissioner was incorrect and without jurisdiction and, therefore, the aforesaid findings which are also rendered by the Division Bench and also by the First Appellate Authority and Second Appellate Authority have to be set aside which we hereby do.

20. In our considered opinion, the entire matter of appointment to the post of Gaonburah in the present case has to be considered afresh in accordance with law de novo taking into consideration the relevant factors only and in the light of the observations made hereinbefore. Therefore, while setting aside the orders of the Division bench of the High Court and also of the learned Single Judge, we remit back the matter to the selection committee who shall consider the records and take a final decision regarding the appointment of Gaonburah as expeditiously as possible preferably within a period of four months from the date of receipt of a copy of this order. The State Government shall make the entire records available to the concerned selection committee so as to enable them to take a conscious and informed decision. It would be also appropriate that the State Government would also take a decision regarding updating the administrative instructions in this regard and also laying down the service conditions of the Gaonburah in terms of this order. It would be appropriate that

these decisions are also taken within three months so that the selection committee may be in a position to consider the said criterion which are laid down by the State afresh in terms of this order.

21. Since the selection committee has been directed to complete the entire process of fresh selection and appointment within four months from the date of receipt of the copy of this order, Respondent No. 1 would continue to hold the post till the order of appointment is issued by the sub-Divisional Officer in accordance with law within a period of four months. The said continuation would be only as a stop gap arrangement so that the working of Gaonburah is not affected in any manner. He shall in no case be allowed to continue beyond a period of four months. We make it clear that Respondent No. 1 will not claim any equity also to hold the post beyond four months and also beyond the terms as mentioned herein.

22. The appeal is allowed to the aforesaid extent leaving the parties to bear their own costs.

23. I.A. is also disposed of in terms of the aforesaid order.