
(1999) 08 GAU CK 0016
In the Gauhati High Court
Case No : Civil Rule No. 4946 of 1994

Kulendra Keot and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 12-08-1999

Acts Referred:

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

Citation : (1999) 3 GLT 167

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : N. Saikia, for the Appellant; T.C. Chutia, for the Respondent

Judgement

A.K. Patnaik, J.—Heard Mrs. N. Saikia, learned Counsel for the Petitioners and Mr. T.C. Chutia, learned Junior Government Advocate, Assam.

2. The case of the three writ Petitioners in this petition under Article 226 of the Constitution of India is that their names had been sponsored by the Mangaldoi Employment Exchange to the Department of Excise for recruitment to the posts of Excise Constable. They were then called for appearing in the written examination by letter dated 18.11.93 of the Superintendent of Excise, Mangaldoi. They took the said written examination on 12.12.93 and were thereafter called for viva voce on 10.1.94. On the basis of their performance in the written examination and viva voce they were selected amongst Ors. and placed in the select list of candidates published on 17.1.94 for appointment to the vacant posts of Excise Constable. The Petitioner No. 1, Sri Kulendra Keot was placed in 8th position in the said select list, the Petitioner No. 2, Md. Nazbul Hussain was placed in 9th position and the Petitioner No. 3, Md Sirajul Hoque in 13th position in the said select list published on 17.1.94. The further case of the Petitioner is that persons who were selected and placed above the Petitioners in the select list were appointed in different posts of Excise Constable lying vacant in the office of the Superintendent of Excise, Darrang and when the turn of the Petitioner No. 1 came, instead of the Petitioner No. 1 placed in 8th position in the select list being

appointed, Respondent No. 3 who was not a matriculate and who did not appear in the interview was appointed by order dated 21.10.94 of the Superintendent of Excise, Darrang as a Excise Constable. Aggrieved, the Petitioners have filed this writ petition for directing the Respondent No. 2 to appoint the Petitioners to the posts of Excise Constable.

3. Although notice was issued in this case on 15.12.94 and time was granted thereafter to the Respondents to file counter-affidavit from time to time, no counter-affidavit has been filed. When the case came up for hearing before this Court on 3.8.99, this Court passed orders requesting Sri T.C. Chutia, learned Junior Government Advocate, Assam to obtain instruction with regard to averments made in the writ petition and if necessary produce the relevant records. Mr. Chutia submitted today that although he sent a communication to the concerned authority calling for instruction and the relevant records, instruction and relevant records have not been received by him. In the circumstances, I propose to hear and dispose of this writ petition on the basis of the averments made in the writ petition.

4. Mrs. N. Saikia, learned Counsel for the Petitioners submitted that since the Petitioner No. 1 was placed in 8th position in the select list for appointment to the post of Excise Constable and candidates placed above him in the select list had been appointed, it was the turn of the Petitioner No. 1 to be appointed to the post of Excise Constable, but instead of appointing the Petitioner No. 1, the Respondent No. 2 appointed one Sri Kauneswar Das, private Respondent No. 3 as Excise Constable. Such an action on the part of Respondent No. 2, according to Mrs. Saikia was arbitrary and in the facts and circumstances of the case the Petitioner is entitled to a direction to the Respondent No. 2 to appoint him in the post of Excise Constable. She further submitted that the averments made in para-12 of the writ petition would show that two more vacancies in the posts of Excise Constable arose on 31.12.94 and 28.2.95 on retirement of Md Abdul Gafur who was posted at Mangaldoi Bamun Guli and Sri Rabi Kalita who was posted at Udalguri. On their retirement, the Petitioner Nos. 2 and 3 were entitled to be appointed to the posts of Excise Constable on the basis of their selection. She cited the decision of the Supreme Court in Shankarsan Dash Vs. Union of India, in which it was held that unless the relevant recruitment rules so indicated, the State was under no legal duty to fill up all or any of the vacancies, but it did not mean that the State had the licence of acting in an arbitrary manner and that the decision not to fill up the vacancies had to be taken bona fide for appropriate reasons. She also relied on the decision of the Supreme Court in R.S. Mittal Vs. Union of India (UOI), to the effect that although a person on the select panel has no vested right to be appointed to the post for which he has been selected, the appointing authority cannot ignore the select panel or on its whims decline to make the appointment and that when a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. Mrs. Saikia further cited the decision of a learned single judge of

this Court in *Raman Singh Nath v. State of Assam* (1994) 2 GLR 293, on the point that the State by holding a selection cannot turn back and say that no appointment shall be made from the select list and that the selected candidates have a right to be appointed on the basis to the existing vacancies at that point of time.

5. Mr. T.C. Chutia, learned Junior Government Advocate, Assam, on the other hand, submitted that the appointment of the Respondent No. 3, Sri Kauneswar Das was on compassionate ground. He further submitted that the law is well settled that empanelment of names in the select list does not confer right on the selected candidates to be appointed. He cited the decisions of the Supreme Court in *Rani Laxmibai Kshetriya Vs. Chand Behari Kapoor and Others*, and *R.S. Mittal Vs. Union of India (UOI)*, . He also submitted that the select list was published on 17.1.94 and in the said select list it has been stated that it would remain valid for 12 months from the date of approval. Hence, the validity of the select list has expired on 17.1.95 and the Petitioners are not entitled to a direction at this stage for appointment on the basis of the said select list which has expired.

6. It is difficult to accept the submission of Mr. Chutia that since the select list has expired on 17.1.95, the Petitioners are not entitled to a direction for being appointed to the posts of Excise Constable on the basis of the said select list. This is because during the validity period of the select list, the Respondent No. 2 instead of appointing a candidate from the select list has appointed Respondent No. 3 from outside the select list by his order dated 21.10.94. Although an attempt was made to justify the appointment of Respondent No. 3 stating that his appointment was on compassionate ground, no counter-affidavit has been filed by the State-Respondents to show that the said appointment of the Respondent No. 3 was made strictly in accordance with the office memorandum dated 9.9.83 of the Government of Assam, Department of Personnel within the 5% of the vacancies reserved for appointment on compassionate ground. In my considered opinion, when a select list is prepared on the basis of merit, appointments will have to be made on the basis of such select list to different posts excepting the percentage of vacancies reserved for appointment on compassionate ground under the policy of the Government as contained in the office Memo. dated 9.9.83 and the State cannot bypass the candidates selected on the basis of their merit and placed in the select list by making appointment on compassionate ground in excess of the vacancies reserved for appointment on compassionate ground under the policy of the Government of Assam as contained in office Memo. dated 9.9.83 Hence, the appointment of Respondent No. 3 was violative of the right of the Petitioners under Articles 14 and 16 of the Constitution to equality in matters of public employment. The said appointment of Respondent No. 3 by the Respondent No. 2 took place on 21.10.94 which was within the validity period of the said select list published on 17.1.94 and therefore the Petitioners were entitled to approach this Court for relief and this Court will not decline relief on the ground that as on date the select list dated 17.1.94 has expired. Since the Petitioner No. 1 was placed in 8th position in the

select list on the basis of his merit and the uncontroverted averment in para-8 of the writ petition is that the selected candidates who were placed above the Petitioner were appointed long ago, I am of the opinion that the Petitioner No. 1 is entitled to a direction to the Respondents No. 2 to appoint him in the post of Excise Constable on the basis of his position in the select list dated 17.1.94. In so far as the Petitioners No. 2 and 3 are concerned, although averments have been made in para-12 of the writ petition that two more vacancies arose on 31.12.94 and 28.2.95 on account of retirement of Md Abdul Gafur who was posted at Mangaldoi Bamun Ghuli and Sri Rabi Kalita who was posted at Udalguri, no direction as such can be given to the Respondent No. 2 to appoint the said two Petitioners on the basis of the said select list dated 17.1.94. As has been held by the Apex Court in the decision cited by Mr. Chutia, selection and placement in the select list itself will not confer a right on a candidate to be appointed. Unless, therefore, arbitrary action is shown on the part of the Respondents in not appointing a candidate placed in the select list, the court cannot issue a direction to the authorities to appoint a candidate placed in the select list. There may have been some retirement on 31.12.94 and 28.2.95 as alleged in para-12 of the writ petition. But from the mere fact that vacancies arose on retirement of two Excise constables, the court cannot come to the conclusion that there has been arbitrariness on the part of the Respondents in not appointing the Petitioners No. 2 and 3 in the vacancies which have so arisen.

7. For the reasons stated above, I dispose of this writ petition with the direction that the Respondent No. 2 will within one month from the date of receipt of the certified copy of this order from the Petitioner No. 1, appoint the Petitioner No. 1 to a post of Excise Constable. But I make it clear that such appointment will be prospective and the Petitioner will be paid his pay and allowances as admissible under the Rules with effect from the date he joins the post pursuant to such appointment. It is needless to say that since the Petitioner No. 1 has approached this Court on the basis of his selection when he was aged 34 and was eligible for appointment, the appointment of the Petitioner No. 1 will not be withheld on account of the fact that he has in the meanwhile crossed the age of 35 years.

8. There shall be no order as to costs.