
(2005) 05 GAU CK 0016
In the Gauhati High Court
Case No : Writ Petition (C) No. 501 of 2002

Madhabananda Roy and Another

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 02-05-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 05 GAU CK 0016

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : K.H. Choudhury, Sk. Muktar and P. Lahkar, for the Appellant; R.K. Bora, G.K. Bhattacharyya, P. Sarma and B.M Chetri, for the Respondent

Final Decision : Dismissed

Judgement

R. Gogoi, J.—The challenge in the present Writ application is against the order dated 9.7.2001 passed by the learned Assam Administrative Tribunal (hereinafter referred to as the Tribunal) by which benefit of notional seniority was directed to be conferred on the private Respondents No. 3 to 66 herein over the two Writ Petitioners in the cadre of Sub-Inspector of Statistics. The provisional seniority list prepared by the department on 2.8.2001 pursuant to the aforesaid order of the learned Tribunal; rejection of the objections of the Petitioners to the aforesaid fixation of seniority as well as the final seniority list dated 3.12.2001" showing the private Respondents No. 3 to 66 to be senior to the two Writ Petitioners have also been impugned in the present Writ application.

2. The facts are long and the pleadings have been elaborate and an attempt is being made to put on record what would be essential for a determination of the controversy that has arisen in the present case.

In the year 1983, an advertisement was issued for filling up an unspecified number of posts of Sub-Inspector of Statistics. A selection was held pursuant to the advertisement issued and, on the basis thereof, a combined select list of 150

candidates as well as district-wise select lists of the candidates included in the combined select list were prepared. It must be noticed, at this stage, that though district-wise select list were prepared, the advertisement in question did not specify the vacancies on a district-wise basis. The Writ Petitioners were placed at Serial Nos. 3 and 4 of the select list prepared for Dhubri district. However, in the combined select list the position of the two Writ Petitioners appeared at serial Nos. 89 and 108 and in the said combined select list the names of the Respondents No. 3 to 66 appeared above the names of the two Writ Petitioners. By an order dated 12.12.85, 31 persons including the Petitioners whose names appeared in the combined select list were appointed in the post of Sub-Inspector. The appointments made, evidently and admittedly, were not on the basis of the inter-se merit as mentioned in the combined select list. After the aforesaid 31 persons were appointed in the manner indicated above, an order dated 17.12.86 was issued to the effect that there will be no further appointment in the post of Sub-Inspector of Statistics from the select list/lists and that the 31 persons who were already appointed were to be terminated. As against the aforesaid order dated 17.12.86, two batches of Writ petitions were filed by before this Court—the first batch consisted of 5 Writ petitions filed by the 31 appointed candidates whose appointments were to be terminated by the order dated 17.12.86. The second batch consisted of a single Writ petition i.e. Civil Rule No. 1332/86 which was filed by 21 empanelled candidates including some of the private Respondents No. 3 to 66 against the decision contained in the order dated 17.12.86 to the effect that there will be no further appointments in the post of Sub-Inspector of Statistics. Both the two batches of Writ petitions were answered by this Court by two separate orders dated 6.3.1987 allowing both sets of Writ petitions. In other words, this Court by the two orders dated 6.3.87 held that the termination proposed by the order 17.12.86 will not be authorized in law and further that the empanelled candidates would have a subsisting right for consideration of their cases for appointment. Against the aforesaid orders passed by this Court, special leave petitions were filed by the State which were dismissed by the Hon"ble Supreme Court on 14.12.87 and 4.4.88 respectively. Thereafter, on 18.7.88 the 21 Writ Petitioners in C.R. No. 1332/86 were appointed and on two successive dates i.e. 20.4.90 and 8.10.90, another 81 persons from the select list (s) were appointed in the post of Sub-Inspector of Statistics. The private Respondents No. 3 to 66 are amongst the aforesaid appointees made on the dates noticed above.

While the matter was so situated, on 18.12.95 a tentative seniority list of Sub-Inspector of Statistics was published, wherein, the 1985 batch of appointees including the two Writ Petitioners were shown to be senior to the private Respondents No. 3 to 66. However, the aforesaid determination of seniority was corrected and in the final seniority list of Sub-Inspector of Statistics published on 27.10.97 the position was reversed and the 1985 appointees including the two Writ Petitioners were shown to be junior to the Respondents No. 3 to 66. The aforesaid seniority having been made final on 16.12.98, 15 of the 31 persons who

belong to the 1985 batch of appointees, including the two Writ Petitioners, filed an appeal being Appeal No. 1 ATA/98 before the learned Administrative Tribunal challenging the fixation of seniority as noticed above. By order dated 31.3.99, the learned Tribunal interfered with the determination of seniority made by the authority except in the cases of the persons at serial No. 1 to 36 of the said seniority list, which position was maintained as the Appellants before the Tribunal had no grievance in that regard. Acting pursuant to the order dated 31.3.99 passed by the learned Tribunal, a fresh provisional gradation list followed by a final gradation list dated 11.9.99 was published by the authority showing the 1985 batch appointees including the Petitioners to be senior to the private Respondents No. 3 to 66. Some of the Respondents No. 3 to 66 and other affected persons, totalling 14 in number, instituted a fresh round of proceedings before the learned Tribunal i.e. 100ATA/99 challenging the re-determination of seniority by which benefit of seniority was given to the 1985 batch of appointees. It is in the aforesaid proceeding that the impugned order dated 9.7.2001 has been passed by the learned Tribunal which has been followed up by the authority by another re-determination of the seniority; this time, in favour of the private Respondents No. 3 to 66, which actions have been assailed in the present Writ application.

3. I have heard Sri K.H. Choudhury, learned senior Counsel for the Writ Petitioners, Mr. R.K. Bora, learned Government Advocate, Assam and Mr. G.K. Bhattacharyya, learned senior counsel appearing for the private Respondents No. 3 to 66. I have also read and perused the pleadings of the parties, the orders dated 6.3.87 passed by this Court in the Writ proceedings instituted by the affected parties and the two orders of the learned Tribunal dated 31.3.99 and 9.7.2001.

4. Before proceeding to record and analyse the submissions advanced on behalf of the contesting parties, it maybe apposite, at this stage, to briefly notice the basis on which the learned Tribunal has rendered its decision on 9.7.2001 pursuant to which seniority has been re-determined leading to the institution of the present Writ application.

The Appellants before the learned Tribunal in the proceeding registered and numbered as 100ATA/1999, including some of the private Respondents No. 3 to 66, had not specifically challenged the orders of appointment of the two Writ Petitioners or any of the appointees of the 1985 batch, though, in the combined select list prepared in the year 1985, the Appellants before the Tribunal were placed higher than the persons belonging to the 1985 batch of appointees. The grievance raised before the learned Tribunal was with respect to the seniority assigned to the 1985 batch of appointees and the basis of the said grievance was that the belated appointments of the persons before the Tribunal, who were placed higher in merit in the select list, was illegal and unjustified and, therefore, the position should be corrected by conferment of seniority as due. The learned Tribunal, by a very elaborate judgment, took note of all relevant facts and came

to the finding that the appointees of the 1985 batch were placed lower in merit than the Appellants before it in the combined select list and, therefore, the appointments given to the Appellants before the learned Tribunal were belated appointments which were not justified. In the absence of any specific challenge to the appointments made in the year 1985 and further in the absence of any specific prayer for antedating the appointments of the Appellants before the learned Tribunal, the learned Tribunal did not think it fit and proper to pass any orders to the above effect. However, the learned Tribunal, on the grievance raised, came to the conclusion that the appointments of the Appellants before it were belated and the same being without any justification, the Appellants before the Tribunal had been wronged which wrong had to be cured by grant of benefit of notional seniority to such Appellants over the 1985 batch of appointees. Proceeding further, the learned Tribunal took note of Rule 23 of the Service Rules in force which provided for fixation of inter se seniority of persons selected in one batch and directed the State to give seniority to the Appellants under Rule 23 by relaxing the rigour of the said Rules by invoking the power of relaxation contained in Rule 29 of the Rules. It is the correctness of the aforesaid view taken by the learned Tribunal that needs to be adjudicated in the present Writ proceeding. The consequential re-determination of seniority as impugned by the Writ Petitioners will naturally stand answered by any such view that the Court may take on the question formulated above.

5. The essence of the arguments advanced by Sri K.H. Choudhury, learned Counsel for the Petitioners, is that the learned Tribunal not having interfered with the appointments of the Writ Petitioners and other persons of the 1985 batch of appointees and the learned Tribunal also not having ante-dated the promotions of the persons appointed subsequently including the private Respondents No. 3 to 66 and in fact there being no relief claimed before the learned Tribunal to any of the aforesaid effects, the order of the learned Tribunal granting benefit of notional seniority to the persons appointed subsequently to the Writ Petitioners and other members of the 1985 batch of appointees, cannot be justified in law. In this regard, the provisions of Rule 23 have been placed before the Court by Sri Choudhury, learned Counsel for the Petitioners, who has contended that, on a plain reading thereof, Rule 23 would not be applicable to the facts of the present case, inasmuch, as appointments though on the basis of the same select list were made on different dates in subsequent years and the earlier appointments of the Writ Petitioners and other members of the 1985 batch of appointees have been left intact. Learned Counsel for the Writ Petitioners has contended that the eventual order recorded by the learned Tribunal cannot sustain the test of logic and reasonableness, inasmuch, as persons appointed in 1985 have been directed to be placed below the persons appointed in the year 1990, in order of seniority. Such a situation, according to the learned Counsel for the Petitioners, cannot be visualized in law and, therefore, the present would be a fit case wherein appropriate interference should be made by this Court and the order of the learned Tribunal dated 9.7.2001 and all consequential actions taken on that basis

by the official Respondents should be declared by the Court to be nonest in law.

6. Controverting the submissions advanced on behalf of the Writ Petitioners, Mr. G.K. Bhattacharyya, learned senior counsel appearing for the private Respondents No. 3 to 66, has submitted that there is no dispute with regard to the fact that the Petitioners and all other members of the 1985 batch of appointees were placed below the private Respondents No. 3 to 66 in the combined select list prepared in the year 1985. It was not necessary for the private Respondents No. 3 to 66 or the other Appellants before the learned Tribunal to specifically challenge the appointments made in the year 1985 or to seek to have their own appointments ante-dated, inasmuch, as under Rule 23 of the Rules, seniority of incumbents selected in one batch has to be made strictly in order of merit as appearing in the select list, provided the incumbents have joined within the period contemplated by Rule 23. In the instant case, the private Respondents No. 3 to 66 and others, who though belong to the same batch as the 1985 appointees, were appointed belatedly though they were placed higher in the merit list. In such circumstances, Rule 23, according to learned Counsel for the private Respondents No. 3 to 66, would apply with all its rigour and seniority has to be fixed in accordance with the inter se merit of the selected candidates as reflected in the combined select list prepared in the year 1985. This is precisely what the learned Tribunal had ordered to be done, though the learned Tribunal had thought it proper that the exercise should be performed by invoking the relaxation power conferred by Rule 29. The aforesaid direction of the learned Tribunal, i.e., to invoke the relaxation power under Rule 29 to relax the rigour of Rule 23, according to learned Counsel for the private Respondents No. 3 to 66, was strictly not necessary as the exercise directed to be performed was inbuilt. In Rule 23 being a logical consequence of the provisions contained in the said Rule 23. It is on the aforesaid basis that the learned Counsel for the private Respondents No. 3 to 66 has sought to justify the order of the learned Tribunal and all further and consequential actions taken on that basis.

7. The rival submissions advanced on behalf of the parties have received the due and anxious consideration of the Court. Seniority of incumbents in a particular cadre is required to be determined strictly in accordance with the provisions of the Rules, as maybe in force, and in the absence of any Rules to that effect, by adopting the criteria of length or continuous officiation in service. Service Rules, as may be in force, normally provide that seniority is to follow the date of appointment and persons appointed earlier are normally considered to be senior to persons appointed later. However, exceptions to the aforesaid principle are not foreign to Service jurisprudence and in a given case it maybe possible to visualize a position where a person appointed earlier is ranked below a person appointed later, in order of seniority if the operation of the relevant provisions of the Service Rules so permit and contemplate. It is, therefore, to the provisions of the Service Rules and in the present case to the provisions of Rule 23 that the Court has to turn to.

8. In the present case, there is no manner of doubt that the Respondent No. 3 to 66 being placed higher in merit in the combined select list prepared in the year 1985 had a better right to be appointed earlier than the two Writ Petitioners and other such persons who by the force of circumstances came to be appointed in the year 1985. Though in such a situation the persons appointed later, i.e. Respondents No. 3 to 66, could have sought an order for ante-dating their appointment, the failure to do so cannot be considered to be fatal in so far as their entitlement for determination of seniority in accordance with the Service Rules in force, is concerned. Under Rule 23 of the Service Rules in force, seniority in a cadre is to be arranged in order of inter-se-merit as reflected in the select list which had formed the basis of the appointments made. The Respondents No. 3 to 66 were placed in higher merit positions than the Writ Petitioners and other members of the 1985 batch in the select list prepared for appointment. The fact that the Respondents No. 3 to 66 were appointed subsequently and the Petitioners were appointed earlier in the year 1985 which actions of the State have been found unjustified by the learned Tribunal, a conclusion with which this Court is in full agreement, cannot detract the application of Rule 23 of the Service Rules in force. The Respondents No. 3 to 66 being placed higher in order of merit than the Writ Petitioners are entitled to have the benefit of seniority over the two Writ Petitioners and the other appointees of the 1985, batch on an application of Rule 23 of the Rules. The learned Tribunal, in the above facts, having directed for conferment of the benefit of notional seniority on the Respondents No. 3 to 66 without causing any disturbance in the respective appointments of the contesting parties, in the facts already noticed, no fault can be found in the view taken by the learned Tribunal and the directions issued. The Respondents No. 3 to 66 being entitled to seniority in terms of Rule 23, their delayed appointments for reasons held to be unjustified cannot obliterate the rights that should flow to the said Respondents No. 3 to 66 under Rule 23 of the Service Rules in force. The effect of Rule 23 cannot be rendered nugatory by the unjustified actions of the authority in not giving appointments as per the order of merit in the select list. In such circumstances, the learned Tribunal having directed the benefit due to the Respondents No. 3 to 66 to be conferred by giving them benefit of notional seniority and the subsequent actions of the State being in compliance, with the said directions, this Court finds no good reason to interfere with the order of the learned Tribunal dated 9.7.2001 passed in 100ATA/1999 as well as the consequential actions taken by the State on that basis.

9. In view of the foregoing discussions and for the reasons recorded, I do not, consider the present to be a fit case for interference in exercise of my power under Article 226 of the Constitution. This Writ petition, therefore, has to fail. It is, accordingly, dismissed. However, considering the facts and circumstances of the case, I make no order as to cost.