

(2008) 09 GAU CK 0013
In the Gauhati High Court
Case No : Writ Petition (C) No. 3211 of 2008

Madine Hazarika

APPELLANT

Vs

Tezpur University and Others

RESPONDENT

Date of Decision : 19-09-2008

Acts Referred:

Citation : (2009) 2 GLR 112

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : R.C. Saikia, M.J. Baruah, B.N. Pathak, M. Kalita, J. Bhattacharya, M.B. Pathak and K. Saikia, for the Appellant; N.C. Das, B. Choudhary, M. Devi, J. Chutia and N.M. Hazarika, for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, J.—The selection and appointment of the Respondent No. 3 herein, as Assistant Registrar (General Administration) as a Schedule Tribe candidate, has been assailed in the instant proceeding. The Petitioner, who claims himself to be also a candidate of the same category complains of not being recognized as such and, thus, in spite of superior merit, has been denied the appointment on extraneous considerations. This court by order dated 30.7.2008 restrained the University from allowing the Respondent No. 3 to join without its leave.

2. I have heard Mr. R.C. Saikia, learned Counsel for the Petitioner and Mr. N.C. Das, senior advocate assisted by Mr. B. Choudhury, advocate for the Tezpur University ("the University"). Also heard Mr. J. Chutia, learned Counsel for the Respondent No. 3.

3. The Petitioner's case, in essence, is that he is a Post Graduate in Arts and is pursuing M. Phil degree at present. He has to his credit work experience as Lecturer in Geography in Moriani College, Jorhat for over 10 years and has also completed a certificate course in Geographic Information System conducted by the Gauhati University. Further, he has also attended the workshop organized by

the Indian Statistical Institute, Kolkata, West Bengal and Rajib Gandhi University, Itanagar, Arunachal Pradesh. He has introduced himself to be a member of the Sonawal Kachari Immunity recognized as Scheduled Tribe by the Government of Assam.

4. In response to an advertisement No. 1/08 published by the University in the issue dated 12.1.2008 of the daily, Assam Tribune, notifying two vacancies in the post of Assistant Registrar in General Administration, the Petitioner being eligible in terms of the conditions of eligibility offered his candidature as a ST candidate. The advertisement disclosed that out of the two vacancies one (1) was unreserved and the other was reserved for ST candidates. The relaxations in favour of such reserved category candidates were also spelt out therein. The Petitioner and other contenders of both the streams, who were found qualified, thereafter were allowed to take the written examination held on 7.6.2008. Thereafter, a list of candidates successful therein, was published on 11.6.2008, wherein seven (7) candidates in the unreserved category and eight (8) in the reserved category were declared to have passed the written examination and thus were adjudged eligible to be called for personal interview. The list, however, did not divulge the marks secured by the candidates in the written examination. The Petitioner, accordingly, being duly informed attended the interview on 7.7.2008. The Respondent No. 3 also was called for the interview, she having passed the written examination.

5. According to the Petitioner, he topped the select list drawn up by the interview Board and as per its recommendations was, thus, entitled to be appointed against the post earmarked for the ST candidates. He, however, has alleged that on the eve of the interview acting on an information chipped in by "some vested interest out of personal grudge" that he did not belong to the ST category, Sri Akhil Dutta, Assistant Registrar (Establishment), Tezpur University, issued a letter to the President/Vice-President of All Assam Tribal Sangha, Jorhat District, Assam on 2.7.2008, seeking a confidential confirmation about the genuineness of the Petitioner's claim as a member of the said reserved category. The Petitioner has asserted that the aforementioned Sangha on receipt of the letter replied in writing on 10.7.2008 confirming the reserved status of the Petitioner. The Sangha also dispatched its message to the above effect by fax to the University on the same date. The Petitioner has imputed that the Board of Management in its meeting-held, thereafter on 14.7.2008 dropped his name from the list and selected Respondent No. 3 for appointment. This the Petitioner has asseverated to be unfair and unjust for not having been offered an opportunity of hearing and also arbitrary and lacking in bona fide as led by irrelevant and collateral considerations. The Petitioner's representation before the University submitted on 22.7.2008 not having been responded to, the Petitioner, he has approached this Court for redress.

6. By his additional affidavit, the Petitioner has affirmed that the All Assam Tribal Sangha, on receipt of the letter from the University enquiring about the

genuineness of his Scheduled Tribe Certificate, on necessary scrutiny by its letter dated 10.7.2008 confirmed the authenticity thereof. The interview was, however, held before that on 7.7.2008 in course of which, as perceived by him, the members of the Interview Board seemed to have some reservations about his Scheduled Tribe status. According to the Petitioner, the Interview Board in his comprehension did not treat him to be a Scheduled Tribe candidate, which adversely affected his prospects.

7. In its counter, the University White reiterating the facts pertaining to the advertisement, written examination and the interview as narrated by the Petitioner has categorically denied the imputation of denying him the benefit, of his reserved category status. While admitting that the University on 1.7.2008 had received a letter from one Shri Jagat Khound alleging that he possesses two caste certificates, one of Scheduled Tribe and the other of Other Backward Class, it got the matter enquired through the All Assam Tribal Sangha, Jorhat, to which a letter was addressed on 2.7.2008 seeking its comments thereon. The University, however, insisted that the complaint did not have any bearing what so ever on the proceedings of the Interview Board and for all practical purposes it construed him to be a Scheduled Tribe candidate. It, however, affirmed that the reply of the All Assam Tribal Sangha, Jorhat District, Assam, authenticating the Petitioner's Scheduled Tribe status was received on 9.7.2008 through Fax. The answering Respondent maintained that even before receiving that reply the Petitioner had been called for the interview as a Scheduled Tribe candidate. The University clarified that on the basis of the performance in the written examination, seven candidates of both the reserved and unreserved categories were short listed for interview. However, as three candidates belonging to the Scheduled Tribe category secured the same marks in the written test, the number of candidates for that category came to be eight. The Interview Board, on an analysis of all relevant factors, however, recommended the Respondent No. 3 and one Mrs. Sujata Deori for the post of Assistant Registrar reserved for the Scheduled Tribe candidates. On an evaluation of the Petitioner's suitability, he not having been able to make the mark, the Interview Board/Selection Committee did not recommend him for the post. The allegation of nepotism and extraneous considerations made by the Petitioner was stoutly denied by the University.

8. Mr. Saikia has argued that having regard to the performance of the Petitioner in the written examination and the interview, he ought to have been selected for the post on a consideration of his reserved category status and the recommendation to the contrary is ex-facie illegal and arbitrary. According to the learned Counsel, the move to question the Petitioner's reserved category status was for the collateral purpose of wrongfully denying him the post and in all fairness, the University ought to have postponed the interview till the receipt of the clarification from the All Assam Tribal Sangha, Jorhat District, on the queries made it on the issue. Instead it proceeded with the interview pending a reply on the complaint made and under evaluated his performance nursing a lingering

suspicion against him thus illegally depriving him of the post, he urged.

9. Mr. Das in reply has emphatically refuted the above contending that though the University as required decided to enquire on the Complaint made against the Petitioner, for all intents and purposes, he was through out treated to be a Scheduled Tribe candidate and, therefore, his misgivings are unfounded. The Interview Board not having recommended the petitioner for the post on a thorough appraisal of his overall performance in the interview, the assertions to the contrary are untenable and the petition is thus liable to be dismissed. In support of his submission, the learned senior Counsel for the University has produced the relevant records pertaining, to the selection as a whole.

10. The competing pleadings and the arguments advanced have received the due consideration of this Court. Admittedly both the Petitioner and the Respondent No. 3 had staked their claim to the post as Scheduled Tribe candidates. The official records produced reveal that on a written complaint made by one Shri Jagat Khound to the Vice-Chancellor of the University contending that the Petitioner had submitted a false Scheduled Tribe certificate, as decided by the authorities thereof, in terms of letter No. C.34013/6/2005-Vig of the Ministry of Human Resource Development (Department of Secondary and Higher Education), Vigilance Section, Government of India, the Assistant Registrar (Estt.), Tezpur University, by his letter dated 2.7.2008 requested the President/Vice-President of Assam Tribal, Sangha, Jorhat District, to confirm his status with reference to the certificate submitted by him. While expressing urgency in the matter, a reply was sought for on or before 5.7.2008 as the interview for the post for which the same had been submitted was scheduled to be held on 7.7.2008. As admitted by the University, the reply dated 10.7.2008 of the All Assam Tribal Sangha, Jorhat District, affirming the Petitioner's certificate testifying him to belong to the Scheduled Tribe community was received by the University through fax on 9.7.2008 at 1750 hours. The letter is also a part of the records. The interview, however, was held as scheduled on 7.7.2008.

11. The advertisement discloses that out of the two posts one would be reserved for the members of the Scheduled Tribe requiring that the candidates would have to appear in a written and/or personal interview. The records reveal that a written examination was conducted and on the basis of the marks secured by the candidates of both the categories they were short listed for personal interview. Eight Scheduled Tribe candidates including the Petitioner and the Respondent No. 3 were screened on the basis of their performance in the written examination for the interview. The answer scripts of the said Scheduled Tribe candidates as available in the official records disclose that the Petitioner had scored higher than the Respondent No. 3 in the written examination. For obvious reasons, the marks of the candidates have not been divulged herein. Suffice it to mention that the margin of difference in the marks secured by the Petitioner and the Respondent No. 3 cannot be dismissed as negligible, having regard to the scheme of assessment of the suitability of the candidates on their overall performance in

the two segments of the process, i.e., the written examination and interview. The records, however, do not contain any basis of the appreciation of the performance of the candidates in the interview either by the individual members of the Interview Board or collectively. There is no indication whatsoever as to the aspects emphasized upon by the Board for comparative assessment of suitability of the candidates or any objective basis demonstrating such evaluation. The records, however, demonstrate that the Petitioner otherwise had been dealt with as a Scheduled Tribe candidate and the proceedings do not betray anything to the contrary. The complaint against his Scheduled Tribe status also stands negated by the response of the All Assam Tribal Sangha. The Petitioner's charge of the process being vitiated by personal grudge or partisan favour is also not discernible from the records.

12. The above, notwithstanding, having regard to the professed and administered scheme of the selection which indubitably contemplate a cumulative assessment of the performance of the candidates both in written as well as personal interview, in the exigency of fairness, legitimacy and transparency of the process, the ultimate selection to be valid ought to be endorsed by objective material inputs. The minutes of the meeting of the Interview Board/Selection Committee is conspicuously silent about the considerations, founded on which the candidates referred to therein had been recommended for appointment. The official records submitted as observed hereinabove also do not carry any basis whatsoever in support thereof. Having regard to the two constituent and inseparable units of assessment of a candidate, for eventual selection, in the opinion of this Court, the essentiality of recording the basis of their appraisal in the interview to gauge their overall performance for recommendation cannot be cast aside as inconsequential.

13. The appointment being one akin to a public post, the exercise pertaining thereto has to be determinate, outright and non-arbitrary to generate an unreserved conviction of its acceptance. Institutional autonomy cannot be permitted to jettison these peremptory imperatives recognized by law. The University having regard to its status and distinction is not free from these cardinal prescriptions concomitant to a public participatory process for appointment to its posts. The records of the selection placed before this Court do not vouchsafe the observance of the above time tested edicts ordained by-law.

14. In the above view of the matter, the impugned Selection for the posts reserved for Scheduled Tribe category so far as it relates to the post of Assistant Registrar in the General Administration Department/Office of the University cannot be sustained. As a result, the same is adjudged to be illegal and non est in law. Consequentially the appointment of the Respondent No. 3 is set aside. The matter is remitted to the University for redoing the process from the stage of the interview of the candidates as short listed by it. As understandably the post involved requires to be filled up early, the University would expedite the process from its end. Needless to say, the drill hereafter would be conducted, having

regard to the observations made hereinabove.

The petition stands allowed in the above terms. No costs.