

(2019) 05 GAU CK 0015
In the Gauhati High Court
Case No : Writ Petition (C) No. 5077 Of 2016

Maresh Dekk And 4 Ors

APPELLANT

Vs

State Of Assam And 14 Ors

RESPONDENT

Date of Decision : 07-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 05 GAU CK 0015

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : M Sharma, D Medhir

Final Decision : Dismissed

Judgement

1. Heard Mr. B.C. Choudhury, learned counsel for the petitioner. Also heard Mr. N. Goswami, learned Government Advocate for the State respondent and Mr. R.C. Saikia, learned counsel for the private respondents No. 3 to 15.

2. This writ petition is filed under Article 226 of Constitution of India, the case projected by the petitioner is that vide advertisement published on 20.12.2014, applications were invited for filing up 11 nos of posts of Peon and 15 nos. of posts of Jugali in the Department of Geology & Mining, Assam. The respondent No.2 i.e. the Director of Geology and Mining had constituted 4 nos. of Selection Committee (A to D) for making selection of candidates and for preparing the selection list accordingly. The petitioners were called for interview vide various call letters dated 24.02.2016, 25.02.2016, 26.02.2016, 27.02.2016, 28.02.2016 and 29.02.2016, accordingly, the petitioners had appeared before the respective Selection Committee.

3. It is projected that it is reflected from the Office order dated 02.03.2016, that instead of 5 Selection Committees announced earlier vide office order dated 20.02.2016, 4 selection Committees were constituted being A, B, C and D. Accordingly, interviews were held as assigned on 24, 25, 26th February, 2016

and by the order dated 02.03.2016, the Director-Incharge of Geology and Mining, Assam recorded error of serious nature in the selection, further mentioning therein that as there was no mention of issue numbers of the calling letters in the list submitted by the Committee members (Committee-D), the identification of the candidate has become impossible. Accordingly, it was held by the said order dated 02.03.2016 that it was not possible to select the candidates for recruitment and the list submitted by the Committees was thereby cancelled. It was further recorded therein that a new Selection Committee will be constituted shortly and accordingly, dates of interviews will be intimated.

4. Referring to the affidavit-in-opposition filed by the respondent No.2, it is submitted by the learned counsel for the petitioners that on the same date i.e. 02.03.2016 by another office order under Memo No.Gm/ET/14/ Pt/11/7620-25, two new committees A and B were constituted of 3 same persons in both Committees for conducting the interview for the post of Peon and Jugali in the office of the Directorate of Geology and Mining, Assam, thereby fixing the date of interview to be held on 03.03.2016.

5. It is further submitted that by a notification dated 05.03.2016, the Model Code of Conduct was imposed for declaration of Assembly Election, 2016 by the Election Commission of India and therefore, very hurriedly various persons and/or outsiders were appointed immediately on 04.03.2016 for bye-passing Model Code of Conduct. The learned counsel for the petitioners has submitted that though the appointments were shown to be made on selection/ interview, but it was actually done without constituting any selection Committee in terms of office order dated 02.03.2016. It is submitted that the selection process is vitiated because the previous selection committees were not dissolved before the constitution of the fresh two Selection Committees.

6. The learned State counsel has referred to the averments made in the affidavit-in-opposition and it is submitted that the stand of the State respondents is that the petitioners had participated in the interview process and that the order of 02.03.2016 to re-constitute the Selection Committees and the selection process had also been notified on the Notice Board and the selection process was culminated before the Model Code of Conduct came into force in the afternoon of 04.03.2016.

7. It is submitted that the petitioners were unsuccessful in the interview and therefore, the present writ petition to assail the selection process is not maintainable.

8. The learned counsel for the private respondents has also made similar submissions and it is submitted that the private respondents had received their appointment letters on 04.03.2016 and since then they have been working in the Office of the respondent No.2.

9. Certain records has been produced by the learned Government Advocate and placed before this Court and accordingly, the learned counsel for the petitioner as

well as the learned counsel for the private respondents No.3 to 15 have both submitted that the entire selection records may be ordered to be produced.

10. In this regard this Court is of the considered view that in view of the nature of issues raised before this Court, there would be no necessity to call for any further records at this stage.

11. It is seen that in the writ petition that there is a statement made in para-8 of the writ petition that on 04.03.2016, the respondents had issued some appointment letters to the private respondents No. 3 to 15 without holding any interview of the said posts of Peon and Jugali. The construction of statement appears to be unclear and therefore para-8 of the writ petition is quoted below: "8. That petitioners beg to state that on 04.03.2016 respondent No. has issued some appointment letters to 6 Nos of candidates (Private R-3 to 15) without holding any interview for the said posts of peon & Jugali where the present petitioners approved for interview depriving the legitimate expectation of their appointment."

12. It appears that the word "approved for interview" does not make any intelligible sense, but if the word "approval" is read as "appeared" it would make a definite sense to the effect that the "petitioners had appeared for interview".

13. In para-19 of the affidavit-in-opposition filed by the respondent No.2, it has been asserted that the writ petitioner had suppressed material facts that they had appeared before the Interview Board on 03.03.2016 and that being unsuccessful in the interview the writ petition has been filed.

14. In para-12 of the affidavit-in-reply filed by the petitioner against the affidavit-in-opposition of respondent No.2, para-12 thereof, it is reflected that the petitioners were not called for the interview for the post of Jugali and peon. However, the selection record produced reflects that at least 2 of the petitioners namely, Ramen Talukdar and Mahesh Deka had appeared in the Interview and they were allotted marks by the Interview board. It is further seen that para-10 of the writ petition, statements have been made to the effect that "Interview was held without publishing the selection list for the said post and the respondent authority had secretly issued some appointment letter to the private respondents (R3 to 15)" violating rules and procedures of recruitment and at the same time deprived the legitimate expectations of the petitioner."

15. From the above discussions there appears to be no doubt that the interview for selection was held and that two out of five petitioners herein had participated therein.

16. The learned counsel for the respondent had cited the case of Tapan Kumar Das & Ors. Vs. Bank of India & Ors, 2014 (4) GLT 129 and Chitta Ranjan Nath Vs. The State of Assam and 12 others, WP(C) 6590/16 disposed of by order dated 21.05.2018.

17. Although, the learned counsel for the petitioners have submitted that no

interview was held at all, but if the petitioners No.1 and 4 had appeared for interview before the authorities on 03.03.2016 they should have made a statement on oath as to what actually transpired on 03.03.2016 when they appeared before the Selection Board because from the statement made in the affidavit-in-opposition by the respondent No.2, a clear submission was made therein that the petitioner had appeared for interview before the Selection Committee.

18. Therefore, two out of five writ petitioners had appeared in the interview and there would be a presumption that all the petitioners had notice of interview to be held on 03.03.2016 and that the other petitioners had not appeared in the interview process. Some of the petitioner having participated in the selection process, it is not open for the unsuccessful candidates to turn back and assail the selection process. Hence, this Court is not inclined to interfere with the selection process and/ or the appointment of the private respondents No.3 to 15. The appointment letters having been issued on 04.03.2016 is a part of the ongoing selection process/ which commenced before Code of Conduct came into force, the appointment of the private respondents cannot be stated to be vitiated when the Model Code of Conduct which came into force in the afternoon of 04.03.2016.

19. The second round of attack against the selection held on 03.03.2016 is that without cancellation of the previous Selection Committees, the appointment of the two new Selection Committees has vitiated the selection process.

20. In this regard, it is seen that in the office order No. GM/0/314 dated 02.03.2016, passed by the Director In-charge, Directorate of Geology and Mining, Assam it has been clearly mentioned that a new selection committee would be re-constituted shortly for this purpose and accordingly, dates of interview would be intimated. Under such circumstances, when new selection committee is re-constituted on 02.03.2016, it would be deemed that the earlier selection committee had ceased to exist although there is no specific order to cancel the previous selection committee.

21. Under such circumstances, this Court does not find any reasonable ground for the petitioners to be aggrieved by the re-constitution of a new Selection Committee. The petitioners have not been able to demonstrate that any prejudice was caused to them by re-constitution of the Selection Committees. In the light of the record produced, atleast 2 out of the 5 writ petitioners being petitioner No.1 and petitioner No.4 had appeared for interview before the Selection Committee on 03.03.2016.

22. In the absence of any statement on oath as to what transpired on 03.03.2016, this Court is unable to accept the oral submissions made by the learned counsel for the petitioner that no interview was actually held and, as such, this Court is not inclined to interfere with the selection process or the appointment of the private respondents on such vague submissions alone.

23. Accordingly, the writ petition stands dismissed.

24. The Rule stands discharged. The record as produced by the learned Government Advocate is returned.

25. No cost.