
(2001) 10 GAU CK 0033

In the Gauhati High Court

Case No : Writ Petition (C) No. 177 (AP) of 2000

Maktem Dai

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 09-10-2001

Acts Referred:

Citation : (2002) 1 GLT 17

Hon'ble Judges : N.S. Singh, J

Bench : Single Bench

Advocate : T. Pertin, for the Appellant; G. Deka, for the Respondent

Judgement

N.S. Singh, J.—In this writ petition, the Petitioner sought for a direction to the Respondents-State to appoint him to the post of Assistant Teacher (A) with effect from the date on which the Respondent No. 3 Smti Renu Singh had been appointed as Assistant Teacher (A) coupled with a prayer for quashing the appointment order dated 21.4.1999 as in Annexure-5 to the writ petition by contending inter alia, that the Petitioner along with 4 (four) candidates including the Respondent No. 3 had been selected and recommended for appointment to the post of Assistant Teacher (A) and those selected candidates were kept in the panel list for appointment as soon as vacancy arises and, the names of those candidates in terms of order of merit are as follows:

1. Shri Kiron Ningo (APST)
2. Shri Maktem Dai (APST)
3. Shri Maktel Dai (APST)
4. Shri Puluk Khampa (APST)
5. Smti Renu Singh (Non-APST)

and, the candidates who is at S1. No. 5, a non-APST was given appointment to the post of Asstt. Teacher (A) by virtue of the appointment order dated 21st

April, 1999 as in Annexure-5 to the writ petition thus, superseding the other candidates including the present Petitioner.

2. The case of the Petitioner is resisted by the State-Respondents by contending inter alia, that Smti. Renu Singh, the Respondent No. 3 herein who is the first amongst the non-APST candidates in the present list, has been given appointment in the post of Assistant Teacher(A) in view of the shortage of Hindi Teacher in the district to utilise her as Hindi Teacher thus depriving the rights of the Petitioner.

3. Be that as it may, it is an admitted position that the candidate who is at S1. No. 5 has been given appointment to the post of Assistant Teacher(A) thus, ignoring the case of other candidates including the Petitioner herein who are above the Respondent No. 3 in the related panel list. Law is settled on this legal issue inasmuch as, the State Respondents are bound to respect the comparative merit of the candidates and they cannot act arbitrarily. It is well settled that a selected candidate whose name finds in the select list cannot claim for appointment as of right to a post unless the relevant recruitment rules so indicates, and the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that State has the licence of acting in an arbitrary manner and the State is bound to respect the comparative merits of the candidates as reflected at the recruitment test, and no discrimination can be permitted. In this regard, a reference can be made to a decision of a Constitutional Bench of the Apex Court rendered in Shankarsan Dash Vs. Union of India, and, also other decision reported in Union Territory of Chandigarh Vs. Dilbagh Singh and others, and Jatinder Kumar and Others Vs. State of Punjab and Others,

4. In U.P. State Mineral Development Corporation Ltd. and Anr. Appellants v. Vijoy Kumar Upadhyay and Anr. Respondents reported in (1997) 9 SCC 334 , the Apex Court held that similarly placed persons are entitled to the same benefit despite practical difficulties on the part of the authority concerned in grant of benefits i.e., regularisation of services. In Anr. case between U.P. State Road Transport Corporation and U.P. State Road Transport Corpn. and another Vs. Gobardhan and anothers, the Apex Court held thus:

...Though we find force in the contention of Shri Pradeep Misra that the candidates have no right to the post since they are in the waiting list, since the Corporation has already appointed some of the juniors who are in the waiting list, necessarily, before following that procedure they should have given intimation to those candidates who were placed in the waiting list if even then they do not turn up, then it could be taken that they have waived the right of appointment. But in this case, it might be that candidate who was in the waiting list under expectation that he would get an order of appointment from the Corporation as and when vacancy arises and may be he could not read the newspaper, though published. Under these circumstances, we think that after the cancellation of the waiting procedure, though no one has a right those who were

on the wait list need to be considered in accordance with the rules in view of the fact that their juniors had got appointment and were even regularised. Therefore, the Appellants are directed to consider the case of the Respondent as a special case and make appointment according to the procedure.

5. In the instant case also the State Respondents/competent authority afforded appointment to a junior to the post of Assistant Teacher(A) ignoring the case of the present Petitioner whose name finds its place at Sl. No. 2 in the panel list above the Respondent No. 3, whose name appears at Sl. No. 5 in the panel list.

6. For the reasons, observations and discussions made above, I am of the view that the State Respondents/competent authorities had acted arbitrarily while affording appointment to the junior candidate like, the Respondent No. 3 mentioned above and, there is no bona fide reason for appointing the Respondent No. 3 thus, ignoring the case of the present Petitioner.

7. In view of the above position, I direct the State Respondents/competent authorities to afford appointment to the present writ Petitioner in the post of Assistant Teacher(A) by maintaining the said merit/panel list within a period of one month from the date of receipt of this order.

8. The Petitioner may obtain a certified copy of this order and submit the same to the appropriate authorities for doing the needful in the matter in terms of this order.

In the result, petition is allowed but, no order as to costs.