
(2002) 03 GAU CK 0055
In the Gauhati High Court
Case No : Writ Petition (C) No. 3968 of 2001

Manjura Mohan Kalita

APPELLANT

Vs

Assam Public Service Commission and Others

RESPONDENT

Date of Decision : 07-03-2002

Acts Referred:

Assam Agricultural Service Rules, 1980 — Rule 11, 12, 6, 8

Citation : (2002) 1 GLT 363

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

Bench : Single Bench

Advocate : A.C. Borbora, R. Borbora and D. Kokon, for the Appellant; T.C. Chutia, S.C., A.P.S.C. and M. Bhagawati, for the Respondent

Judgement

A.K. Patnaik, J.—By an advertisement of the Assam Public Service Commission published in the newspaper on Sunday, the 14th January, 2001, applications were invited for the post of Director of Agriculture under the Agriculture Department of Government of Assam. In the said advertisement, it was, inter alia, stipulated that the candidates must have experience in administration of agriculture in a senior post at least for 8 years, not below the equivalent rank of Deputy Director of Agriculture. The Petitioner who initially joined as Senior Research Assistant in the year 1972 in Assam Agriculture University, Jorhat, and thereafter, worked there as Associate Director of Students Welfare with effect from 9.9.1988, and who has been working there as the Director of Students Welfare since 15.10.1998 applied for the said post of Director of Agriculture. But the Assam Public Service Commission, (for short, "the APSC"), did not call the Petitioner for selection and interview for the said post of Director of Agriculture on the ground that the Petitioner did not have the experience in administration of agriculture in a senior post at least for 8 years not below the equivalent rank of Deputy Director of Agriculture. Aggrieved, the Petitioner has filed this application under Article 226 of the Constitution with the prayer to quash the said advertisement dated 14th January, 2001, published by the APSC, and for directing the Respondents to call the Petitioner for selection and interview by the

APSC for the said post of Director of Agriculture.

2. On 4.6.2004, this Court while issuing notice passed an interim order directing the APSC, and Respondents-2 and 3 to allow the Petitioner to participate in the interview for selection to the post of Director of Agriculture, but observed in the said order dated 4.6.2001 that the participation of the Petitioner in the interview and the result thereof would abide by such further order that the Court may pass in the writ petition. The APSC has informed the Court through its counsel Mr. T.C. Chutia that pursuant to the said order, the Petitioner has been allowed to participate in the interview and in fact the Petitioner has been placed in the first position in the select list for the post of Director of Agriculture. The question that remains to be decided in this writ petition is whether the Petitioner had experience in administration of agriculture in a senior post at least for 8 years as stipulated in the rules and the advertisement.

3. Mr. A.C. Borbora, learned Counsel appearing for the Petitioner, submitted that the Assam Agricultural Service Rules, 1980, (for short), "the Rules, 1980") and in particular Schedule-II thereof provides that for the post of Director of Agriculture, a candidate must have experience in administration of agriculture in a senior post at least for 8 years. The said provision in Schedule-II to the Rules, 1980, does not say that such experience in administration of agriculture should be in the rank of Deputy Director of Agriculture. Yet, in the advertisement, it has been stipulated that such experience in administration of agriculture should be in the rank of Deputy Director of Agriculture. The advertisement was, therefore, contrary to the Rules, 1980. Alternatively, Mr. Borbora submitted that in any case the Petitioner has worked as Associate Director of Students Welfare with effect from 9.9.1988 and thereafter as the Director of Students Welfare with effect from 15.10.1998, and the scale of pay of the Associate Director of Assam Agriculture University is Rs. 16,400/- - Rs. 25,000/- whereas the scale of pay of the Deputy Director of Agriculture is Rs. 8,001/- - Rs. 13,025/-. Hence, the experience of the Petitioner was above the rank of Deputy Director of Agriculture. Mr. Borbora referred to the certificate of the Vice-Chancellor of Assam Agriculture University, Jorhat, annexed as Annexure-"A" to the writ petition, certifying that the Petitioner in his capacity as Associate Director of Students Welfare was functioning as a very competent administrator. He also referred to Annexure-A(1) to the writ petition which is a certificate given by the Registrar of Assam Agriculture University to the effect that the service in the capacity of Associate Director of Students Welfare was considered as administrative experience in Agriculture. He argued by referring to the provisions of the Assam Agricultural University Act, 1968, and in particular Section 17 thereof to show that the Director and the Associate Directors are officers of the University and hold administrative posts. He also referred to notification dated 4.11.1992 annexed to the affidavit-in-reply of the Petitioner as Annexure-1 which goes to show that administrative powers have been delegated to Associate Director of Students Welfare, Assam Agriculture University, Jorhat. Similarly, he referred to notification dated 5.8.1997 annexed to the affidavit-in-reply of the Petitioner as

Annexure-5(b) to show that qualifications for the post of Director of Students Welfare which the Petitioner is now holding includes administrative experience in Agriculture as well as other qualities, such as, initiative, leadership and capacity to plan, organise, co-ordinate and supervise students' co-curricular and extra curricular, cultural and different welfare activities, etc. According to Mr. Borbora, the materials annexed to the writ petition as well as to the affidavit-in-reply of the Petitioner would go to show that the Petitioner had the requisite 8 years experience in administration of agriculture and was therefore eligible to be considered for appointment to the post of Director of Agriculture under the Rules, 1980.

4. Mr. M. Bhagawati, learned Government Advocate, Assam, on the other hand, relied on the averments in the affidavit-in-opposition filed on behalf of Respondent No. 3, Commissioner & Secretary to the Government of Assam, Agriculture Department. In para-8 of the said affidavit-in-opposition, it has been stated that the duties and functions of the officers of the Assam Agriculture University are limited within the jurisdiction of the University, and there is vast difference between the activities of the officers of the University and the agricultural activities of the officers working under the Government Departments. In the said para-8 of the affidavit-in-opposition, it has been contended that experience in administration of agriculture in a senior post for at least 8 years as stipulated in Schedule-II to the Rules, 1980, covers wide range of activities relating to agriculture performed by the Government in the entire State of Assam which has multiple problems in the field of Agriculture. Besides field activities, such experience would cover the knowledge of various Acts, Rules and Regulations as well as the Fertilizer Act, the Insecticide Act, the Agricultural Market Produce Act and the knowledge of personnel management, preparation of Plan and Scheme, F.Rs and SRs, Assam Financial Rules, Treasury Rules, etc. The scope of gathering such required experience by holding Government post is much wider than that of the post under the University. It has further been stated that the post of Associate Director of Students Welfare is not an administrative post and even though the duties and functions of the post of Director of Students Welfare are of administrative nature, they have no link in any way with the administration of agriculture. It was for this reason that a communication dated 25.11.1998 was issued by the Commissioner & Secretary to the Government of Assam, Agriculture Department to the Secretary, Assam Public Service Commission to the effect that as per the records available the Petitioner did not possess the required experience in administration of agriculture as per condition for experience prescribed in Schedule-II to the Rules, 1980. Along with the said affidavit-in-opposition filed on behalf of Respondent No. 3, a copy of the communication dated 24.4.2001 of the Joint Secretary to the Government of Assam, Agriculture Department to the Deputy Secretary, APSC has also been annexed reiterating that the Petitioner did not possess the required administrative experience in agriculture.

5. Mr. T.C. Chutia, learned Standing Counsel for Assam Public Service

Commission, relied on the affidavit-in-opposition filed on behalf of Respondent No. 1 in which it has been stated that in response to the advertisement, 13 candidates including the Petitioner applied for the post of Director of Agriculture, and by letter dated 31.3.2000 the Petitioner requested the Government to let the APSC know whether the experience gathered by the Petitioner may be treated as experience in administration of agriculture in the rank of Deputy Director of Agriculture, and in their reply dated 24.4.2001, the Government of Assam, Agriculture Department informed the APSC that the Petitioner did not have the requisite experience of 8 years in administration of agriculture.

6. On a perusal of the Rules, 1980, it appears that Rule 6 provides for direct recruitment to the cadre of Director in Class-I (Senior Grade), and other posts named in the said rule. As per the said Rule 6 of the Rules, 1980, such direct recruitment is to be made by the Government on the basis of the recommendations made by the APSC in accordance with the procedure laid therein. Rule 8 further states that the academic qualification of the candidates for direct recruitment shall be prescribed by the Governor from time to time and the qualifications and experience prescribed as on the date of commencement of the rules are those as are given in Schedule-II. For the post of Director of Agriculture, the qualifications and experience prescribed for direct recruitment in Schedule-II are as follows:

1. For the post of Director of Agriculture.

(1) First Class or high second class degree in Agriculture or first class or high second class honours or master degree in a subject basic to Agricultural Science such as Botany, Chemistry, etc.

(2) Experience in research extension work or teaching for 10 years.

(3) Experience in Administration of Agriculture in a senior post at least for 8 years.

(4) The following qualifications will be treated as a desirable additional qualifications.

(a) Post Graduate degree or Ph.D. or B.Sc. in any of the basic Agricultural Science like Agronomy, Agriculture, Extension, Horticulture, Botany, Agriculture Botany, Agril. Chemistry, etc.

(b) Outstanding research training or extension or evidenced by published paper.

(c) Experience in a top position in the field of Agricultural education or Agricultural extension.

(d) Intimate knowledge of problems of Indian Agriculture particularly with reference to any of the rice growing regions of India.

A reading of serial No. 3 quoted above would show that a candidate must have experience in administration of agriculture in a senior post at least for 8 years. A

reading of serial No. 4 quoted above would show that outstanding research training or extension or evidenced by published paper, and experience in a top position in the field of Agricultural education or Agricultural extension would be treated as desirable additional qualifications for the post of Director of Agriculture. Thus, if a person has outstanding research training or extension or experience in a top position in the field of Agricultural education or Agricultural extension, the said additional qualifications will be taken into consideration along with his other essential qualifications and experience, such as experience in administration of agriculture in a senior post at least for 8 years. Serial No. 3, in any considered opinion, cannot be read in isolation with serial No. 4, and so read it will encompass not only the experience in administration of agriculture under the Government, but also the experience in administration of agriculture under an Agriculture University where the outstanding research training or extension and education are carried on. Thus, the contention of Respondent No. 3 in the affidavit-in-opposition that the experience in administration of agriculture under the Assam Agriculture University is not the experience in administration of agriculture as stipulated in serial No. 4 quoted above, is misconceived.

7. Similarly, the contention in the affidavit-in-opposition of Respondent No. 3 that the experience in administration of agriculture would mean only the experience under the Government in administration of agriculture, is not correct for several reasons. Firstly, in serial No. 3 quoted above, it has not been mentioned that experience in administration of agriculture should be only under the Government, but it has only been mentioned that a candidate must have experience in administration of agriculture in a senior post at least for 8 years. The word "administration" in Black's Law Dictionary, Fifth Edition, has been defined to mean - management or conduct of an office or employment, the performance of the executive duties of an institution, business, or the like. In Chambers Twentieth Century Dictionary, similarly, the word "administration" has been referred to mean - the act of administering; management, etc. Thus, experience in administration would include not only experience in Government administration but also experience in other administration, such as, administration under a University. Secondly, Rule 6 of the Rules, 1980, provides for direct recruitment to the cadre of Director in Class-I (Senior Grade). The intent of the said statutory rules is that the post of Director of Agriculture should be filled up not by promotion from amongst the officers under the Agriculture Department holding lower posts than the Director, such as, Additional Director, Joint Director, Deputy Director, but from amongst the persons having requisite experience and qualifications including" those who do not have administrative experience under the Department of Agriculture, Government of Assam. In contrast to Rule 6, Rules 11 and 12 of the Rules, 1980, provide for promotion to the cadres of Agricultural Extension Officer and Junior Subject Matter Specialist, and to the cadres of Additional Director, Joint Director, Deputy Director, Subject-Matter Specialist and Sub-Divisional Agricultural Officer. If the stipulation in serial No. 4 quoted above is to be confined to experience in administration of

agriculture under the Department of Agriculture, Government of Assam, such as experience in the posts of Additional Director, Joint Director, Deputy Director as contended in the affidavit-in-opposition of Respondent No. 3, the purport of Rule 6 of the Rules, 1980, for holding the open direct recruitment to the post of Director of Agriculture and appointing the best available talent to the said post would be frustrated. In my considered opinion, therefore, the post of Director of Agriculture is to be filled up by a competition amongst the candidates having requisite qualifications and experience provided in Schedule-II to the Rules, 1980, and not merely by candidates who have administrative experience in Agriculture under the Government of Assam.

8. The Petitioner has worked in the administrative post of Associate Director of Students Welfare since 1988 and thereafter as Director of Students Welfare since 1998. From the certificate dated 9.4.1998 of the Vice-Chancellor, Assam Agriculture University in Annexure-A to the writ petition, it appears that the Petitioner after serving as Research and Extension Officer and Professor of Agronomy has also worked in an administrative post of Associate Director of Students Welfare. From the certificate dated 16.10.1998 issued by the Registrar, Assam Agriculture University in Annexure-A(1) to the writ petition, it appears that the administrative experience earned by the Petitioner in the capacity of Associate Director of Students Welfare is considered as administrative experience in Agriculture. It further appears from the certificate dated 2.2.2001 of the Registrar, Assam Agriculture University that the Petitioner being one of the statutory officers of the University has wide background in administrative management as well as policy procedure. It further appears that by notification dated 5.8.1997; the essential qualifications for the post of Director of Students Welfare including administrative experience in Agriculture have been prescribed. The Petitioner thus appears to have administrative experience in Agriculture for the period of 8 years, and the communications dated 25.11.1998 and 24.4.2001 to the Assam Public Service Commission that the Petitioner has no such administrative experience in Agriculture for the period of 8 years were not warranted. But as to whether the Petitioner is suitable for the post of Director of Agriculture, Assam, is different from the question as to whether he is eligible to be considered for the post of Director of Agriculture. The question as to whether the Petitioner is suitable or not for the post of Director of Agriculture is to be decided by the Assam Public Service Commission and the State Government. Now that the APSC has found the Petitioner to be suitable for the post of Director of Agriculture, Assam, the Government will now consider the said recommendations of the APSC in accordance with the Rules, 1980.

9. For the foregoing reasons, I dispose of this writ petition by holding that the Petitioner is eligible under Schedule-II to the Rules, 1980, to be considered for selection to the post of Director of Agriculture, and by directing that the State Government in the Agriculture Department will consider the recommendations of the APSC selecting the Petitioner for the said post of Director of Agriculture and pass orders thereon within a period of two months of the date of receipt of a

certified copy of this judgment from the Petitioner by the Commissioner & Secretary to the Government of Assam, Agriculture Department. Considering however the entire facts and circumstances of the case, the parties shall bear their respective costs.