

(1998) 04 GAU CK 0025
In the Gauhati High Court
Case No : Civil Rule No. 4575 of 1995

Manoj Kr. Roy

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 07-04-1998

Acts Referred:

Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1983 — Rule 4, 4(2)
Constitution of India, 1950 — Article 14, 16

Citation : (1998) 2 GLT 421

Hon'ble Judges : N. Surjamani Singh, J

Bench : Single Bench

Advocate : A.S. Choudhury and S. Seal, for the Appellant; J.L. Sarkar, A.K. Roy and J. Phukan, for the Respondent

Judgement

N. Surjamani Singh, J.—The order in the form of notification dated 16.9.95 issued by the Dy. Secretary to the Govt. of Assam, Education Department, appointing the Respondent No. 5 namely Smti. Charubala as Principal being posted at DIET, Udaband, Cachar, Silchar as in Annexure-6 to the writ petition is the subject matter under challenge in this writ petition. Apart from this, the Writ Petitioner sought for appointing him as Principal, DIET, Udaband, Cachar, in place of the Respondent No. 5.

2. According to the Writ Petitioner, he is M.Sc. in Chemistry, BT and LLB and he was initially appointed as subject teacher in Chemistry in Narsing Higher Secondary School, Silchar and he worked in the said capacity for about 16 years and thereafter, he was appointed as senior lecturer of DIET, Cachar, Udaband in the year 1989. In the year 1991, he was appointed as Vice Principal of the same institution and thereafter, in the year 1992, he was allowed to hold the current charge of Principal of the same institution in addition to his own duties on the retirement of the Principal of the said institution. After some time, the Principal of Teachers Training College, Silchar, was allowed to hold the current charge of Principal, DIET, Udaband, Cachar under a related order dated 7.1.93 and

accordingly, the Petitioner handed over the charge to the said Principal and remained as Vice Principal for some time. However, the Govt. again put the Petitioner into the charge of Principal of the said institution on the retirement of the Incharge, Principal of DIET, Udaband and the Petitioner took over charge from the out-going Incharge Principal and since then, he has been holding the post of Principal of the said institution till date.

3. It is also the case of the Writ Petitioner that in pursuance of the advertisement No. 8/93 issued by the Assam Public Service Commission, in short APSC, for selection and appointment of six (6) Principals of DIET, he being an eligible candidate applied for the same alongwith others. Out of the 43 candidates, 15 candidates had been selected and recommended in order of preference under the related order/select list dated 21.11.94 issued by the APSC as in Annexure No. 5 to the Writ petition. In the said select list, name of the Petitioner appears at serial No. 5 and the name of Respondent No. 5 appears at serial No. 13. The said Respondent No. 5 is a Scheduled Caste candidate and the person appearing at serial No. 15 namely Shri Chanakya Brahma is STP. Initially, 5 candidates from the select list namely Chanakya Brahma, STP, (serial No. 15), Devakanata Gohain, OBC (serial No. 3), Kumud Ch. Patowary, General (serial No. 1), Ucharan Deka, General (serial No. 2) and Shri Nabin Ch. Dutta, General (serial No. 4) have been appointed as Principal of DIET. While the Petitioner was expecting his appointment, the State-Respondents had appointed the Respondent No. 5 whose name appears at serial No. 15 in the select list, thus depriving the legitimate rights of the Writ Petitioner. According to the Writ Petitioner, Respondent No. 5 is a Lecturer of DIET, Udaband and she is neither senior lecturer nor worked as Vice Principal or Principal Incharge of any DIET and as such, she is very junior in service, age and experience to the Writ Petitioner.

4. It is also urged that, as per reservation policy/quota and related advertisement as in Annexure No. 4 to the writ petition, reservation of Scheduled Castes candidates is 7%; STP-10%; STH-5%; OBC and MOBC-15%. As the percentage of Scheduled Castes candidates is 7% and out of 6 posts Scheduled Caste candidates percentage is only 0.4 which is below 0.5; minimum fraction required for a whole thing and, as such, Scheduled Castes candidates cannot get any post out of the 6 posts so far advertised.

5. It is also asserted that since the number of posts is only 6, which is far below to 20 point roster, the roster system cannot be applied in the instant case. The Writ Petitioner further alleged that the validity of the select list is for one year which expires on 20.11.95 and if, in the meantime, he is not appointed in the post of Principal, DIET, in that event, he will face serious injustice and irreparable loss and accordingly, he sought for extension of the validity of the select list. It is also urged that there are yet 12 numbers of Vacant posts of Principal, DIET.

6. The case of the Writ Petitioner is mainly contested by Respondent No. 5 by filing affidavit in opposition and contending inter-alia, that the Respondent No. 5 filed a writ petition being Civil Rule No. 4575 of 1995 and in that case, this Court

passed an interim order directing the State-Respondents not to fill up the third vacancy reserved for Scheduled Caste candidates until further order from this Court. The said order was passed on 11.8.95.

7. According to the Respondent No. 5, in the schedule of the Act namely the Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1978, a 20 point roster has been prescribed which required to be followed for the purpose of appointment or promotion as the case may be. By virtue of the said 20 point roster, third vacancy would go to Scheduled Caste candidates and as such, Respondent No. 5 had been duly appointed as against the third vacancy as it is meant for Scheduled Caste and as such, the Respondent No. 5 has been selected for appointment to the post of Principal, DIET.

8. It is also the case of Respondent No. 5 that he assumed charge of Principal, DIET, Udarband, Cachar, with effect from 20.9.95 forenoon. According to the Respondent No. 5, she, being a member of Scheduled Caste community has a right to be appointed on preference and she cannot be ignored and denied this right and moreover, Udarband, DIET, Cachar, is a female centre and she is a female.

9. Shri A.S. Choudhury, learned Counsel for the Petitioner contended that the APSC had completely lost sight of Rule 4 of the Assam Scheduled Castes and Scheduled Tribes etc. Rules, 1983 inasmuch as the APSC ought to have recommended only 12 candidates. But, the APSC recommended 15 candidates. As per Rule 4(2) of the said Rules, 1983, the APSC shall furnish its recommendation about such number of candidates as provided in the related Service Rules. In case, however, where there is no Service Rules, the APSC or Selection Committee/Board as the case may be, shall recommend such number of candidates as are equal to double the number of vacancies, in order of preference for the appointment. In the instant case there is no Service Rules for Principal, DIET, Shri A.S. Choudhury contended.

10. The learned Counsel further contended that the recommendation of the Respondent No. 5 as against serial No. 15 of the select list is an illegal recommendation which cannot be acted upon by the State-Respondents in the matter of appointment in the post of Principal, DIET. According to Shri A.S. Choudhury, as per advertisement No. 8/93 issued by the APSC for selection and recommendation of candidates for appointment against 6 vacant posts of Principal, DIET, the reservation for Scheduled Caste, STP, OBC and MOBC in general, will be as under:

S.C.-7%

STP-10%

STH-5%

OBC and MOBC-15%

In view of the above reservation position, the percentage for Scheduled Caste candidates is 7 and out of 6 posts, the Scheduled Caste candidate is only 0.4, which is below 0.5 a minimum fraction required for a whole thing and as such. Scheduled Caste candidates cannot get any post out of the said 6 posts so far advertised, Shri A.S. Choudhury argued.

11. The learned Counsel further contended that the action of the State-Respondents while giving appointment to Respondent No. 5 is violative of Articles 14 and 16 of the Constitution of India, thus depriving the legitimate rights of the Writ Petitioner.

12. At the hearing, the learned Govt. Advocate contended that by observing the reservation policy as required under the Assam Scheduled Caste and Scheduled Tribes etc. Act, 1978, the third vacancy will go to Scheduled Castes candidates and as such, the Respondent No. 5 being a Scheduled Caste candidate, she had been given appointment in the post of Principal, DIET.

13. Shri J.L. Sarkar, learned Counsel appearing for Respondent No. 5 submitted that there is no illegality or irregularity in recommending 15 candidates by the APSC for appointment as against the 6 vacant posts of Principal DIET. As the Respondent No. 5 is a Scheduled Caste candidate and she, being a recommended candidate, she had been accommodated by the State-Respondents in the said post of Principal, DIET against the third vacancy which is meant for Scheduled Caste candidates. The learned Counsel further argued, that the writ petition could be rejected for non-joinder of necessary party like Shri Chanakya Brahma, STP selected candidate whose name appears at serial No. 15 in the said select list and who has been afforded appointment in the post of Principal, DIET.

14. It is also contended by the learned Counsel for Respondent No. 5 that by virtue of an interim order of this Court passed on 11.8.95 in Civil Rule No. 3057 of 1995, the State-Respondents are directed not to fill up the third vacancy reserved for the Scheduled Caste candidates. With due regard to the said order of 11.8.95, the Govt. had completed investigation on the basis of certain report and lastly, the Respondent No. 5 has been appointed as Principal, DIET under the impugned order of 16.9.95.

15. I have pursued the related advertisement No. 8/93 as in Annexure No. 4 to the writ petition issued by the APSC wherein the percentage of reservation for Scheduled Caste/STP/OBC/MOBC is highlighted and it is one of the conditions for such selection and appointment for 6 Principals, DIET. The related portion containing the reservation policy/quota and percentage of it, is quoted below:

Except otherwise specified in individual cases the reservation for S.C./S.T.P./OBC/MOBC in general will be as under:

S.C.-7%

STP-10%

STH-5%

OBC and MOBC-15%

As the percentage for Scheduled Caste candidates is 7%, out of the said 6 vacant posts of Principal, DIET, the Scheduled Caste candidates percentage is only 0.4 which is below 0.5, a minimum fraction required for a whole thing and as such. Scheduled Caste candidates cannot get any post out of the 6 posts so far advertised. I am of the view that this percentage of reservation as highlighted in the said advertisement is one of the condition and norms and procedure to be followed for the purpose of selection and appointment. According to me, such percentage of reservation for Scheduled Caste, Scheduled Tribes etc. as highlighted in the said advertisement was made by the authority concerned after following all the related reservation policies as required under the Assam Scheduled Castes and Scheduled Tribes, etc. Act, 1978, and Rules, 1983. Apart from this, the APSC had lost sight of the Rule 4(2) of the Assam Scheduled Castes and Scheduled Tribes etc., 1983, inasmuch as they had recommended 15 candidates in the instant case without following this prescribed procedure laid down under the aforementioned Rule 4. The APSC ought to have recommended only 12 candidates in the instant case as per related Rule 4 mentioned above. In my considered view, the recommendation of 15 candidates by the APSC in violation of Rule 4 as mentioned above and the appointment of Respondent No. 5 in the post of Principal, DIET may be through inadvertance and bonafide mistake and as such, this Court shall not disturb the appointment of Respondent No. 5 and also considering the fact that the Respondent No. 5 had assumed charge of Principal, DIET on and from 20.9.95 and she had served more than two and a half years. However, this shall not be a precedent in other cases.

16. Now, so far the claim of the Writ Petitioner for his appointment to the post of Principal, DIET, I am of the view that the Writ Petitioner has enforceable right and had been duly selected and recommended for his appointment in the post of Principal, DIET and his name appears at serial No. 5 in the select list and the persons below him have been given appointment in the said post long back. It is also an admitted position that there are still 17 Nos. of vacant posts of Principal, DIET under the Govt. of Assam and as such, the Writ Petitioner may be accommodated in one of the said vacant posts. It is needless to say that the Writ Petitioner had rendered the services of senior lecturer of DIET, Vice Principal and Principal, incharge for a long time. Considering his efficiency, he has been selected by the APSC and he has been placed at serial No. 5 in the select list in order of preference. Moreover, the validity of the said select list has been extended until further orders from this Court vide order dated 14.11.95 passed in the present case.

In view of the above position, I direct the Respondents Nos. 1, 2 and 3 to appoint the Writ Petitioner in the post of Principal, DIET within a period of 2 weeks from the date of receipt of this judgment and order.

For the reasons and direction made above, this writ petition is accordingly disposed of No costs.