
(2014) 06 GAU CK 0003
In the Gauhati High Court
Case No : WP (C) Nos. 170 and 2283/2012

Mausumi Rekha Khaund

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 05-06-2014

Acts Referred:

Citation : (2014) 2 GLD 174 : (2014) 4 GLT 238 : (2014) LabIC 3357

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : P.K. Goswami, Mr. R. Deka, and Mr. S.S. Goswami, in WP (C) No. 2283/2012, Mr. C. Baruah and Mr. R.K. Talukdar, in WP (C) No. 170/2012, Advocate for the Appellant; J. Abedin, Standing Counsel, Education, Mr. D. Das, Mr. U.S. Borgohain, Adv., in WP (C) No. 2283/2012 and WP (C) No. 170/2012, Mr. C. Baruah, Advocate in WP (C) No. 2283/2012, and Mr. P.K. Goswami, Advocate in WP (C) No. 170/2012, Advocate for the Respondent

Judgement

Biplab Kumar Sharma, J.—Both the writ petitions are being inter connected have been heard analogously and are being disposed of by this common judgment and order.

2. The matter pertains to selection and appointment to the post of Assistant Professor of Assamese in Swahid Pioli Phukan College, Namti in the district of Sivasagar. While the petitioner in WP(C) No. 2283/2012 (hereinafter referred to as the 1st writ petition) has been selected for appointment as the 1st nominee, the petitioner in the 2nd wit petition being WP(C) No. 170/2012 is 7th in the merit list.

3. The challenge in the 1st writ petition is the resolution adopted by the Governing Body of the College in its meeting held on 24.06.2011. The challenge in the 2nd writ petition is the Annexure-4 communication dated 17.11.2011 made to the College Authority by the Director of Higher Education requiring it to recommend the 1st selected candidate i.e. the petitioner in the 1st writ petition for appointment as Assistant Professor of Assamese pursuant to her aforesaid

selection.

4. Briefly stated the facts leading to filing of the instant writ petitions are that the College Authority vide its Annexure-1 advertisement dated 22.02.2011 invited applications for the aforesaid post of Assistant Professor of Assamese. Amongst others the petitioners involved in these two writ petitions also offered their candidatures. Upon acceptance of their candidatures along with others, they were invited for the selection that was conducted by the selection committee and it is an admitted position that the Selection Committee recommended the petitioner in the 1st writ petition as the 1st nominee, while the petitioner in the 2nd writ petition occupied 7th merit position. However, trouble started for the petitioner in the 1st writ petition when the Governing Body of the College declined to accept the recommendation of the Selection Committee vide the impugned resolution No. 4 that was adopted by the Governing Body of the College in its meeting held on 24.06.2011. For a ready reference, the said resolution is quoted below:-

Resolution No. 4:-

After detail discussion, the meeting expressed dissatisfaction (1) on the condonation of overage of the selected candidate by the Selected Committee on the ground that the condonation order No. AHE. 20/2011/47 dated 09.03.2011 was issued after the last date of submission of Application forms by the candidates i.e. 07.03.2011 and (II) the concerned candidate submitted two experience certificates one from the Principal of CKB College Teok as lecturer w.e.f. 02.07.2005 to 30.06.2009 and the other from the Principal of J.B. College, Jorhat as substitute lecturer against F.I.P. w.e.f. 17.05.2009 to 28.02.2010, which shows that the candidate worked from 17.05.2009 to 30.06.2009 in two Colleges simultaneously.

On this ground, the meeting unanimously decided not to approve the name of the selected candidate selected by the selection committee and directed the Principal & Secretary of S.P.P. College, Namti to do the needful to re-advertise for the said post of Assistant Professor in Assamese.

The meeting also decided to call all the candidates again for interview.

5. When the aforesaid resolution was forwarded to the Director of Higher Education for approval as required under Rule-7 of the Assam College Employees (Provincialisation) Rules, 2010, the said Director on perusal of the materials on record did not accept the same and instead by his communication dated 17.11.2011 impugned in the 2nd writ petition directed the college authority to act on the basis of the recommendation of the Selection Committee. It was at that stage, the 2nd writ petition was filed challenging the said communication by which the Director of Higher Education declined to accept the above quoted resolution of the Governing Body of the College.

6. During the pendency of this proceeding this Court vide order dated

03.04.2012 directed the Director of Higher Education, Assam to pass a speaking order considering all the materials relating to the selection and also the ground on which the Governing Body had adopted the aforesaid resolution. Pursuant to the said order, the Director has passed the speaking order up holding the selection of the petitioner in the 1st writ petition. It has been stated in the order that the grounds on which the Governing Body of the college declined to accept the recommendation of the Selection Committee are not sustainable in law. Upon a detailed discussion of the relevant materials and also the grounds assigned by the Governing Body of the College towards adopting the aforesaid resolution, the Director has expressed his view that the recommendation of the Selection Committee in favour of the petitioner in the 1st writ petition is required to be accepted.

7. If we go by the aforesaid speaking order of the Director of Higher Education, there is now no impediment against the appointment of the petitioner in the 1st writ petition. However, the said order having been passed pursuant to an interim order of this Court, it is argued that irrespective of the said order, the issues involved in these writ petitions are required to be gone into to give finality to the matter.

8. As per the provisions of the aforementioned Rules of 2010 (Rule-7) of appointment, either by direct recruitment or by promotion shall be made by the Director of Higher Education on the basis of recommendation of the Governing Body based on the recommendation of the Selection Committee/DPC. There is no dispute that while considering the recommendations made by the Governing Body of the College contrary to the recommendation of the Selection Committee, the Director being the appointing authority cannot blindly accept the recommendation of the Governing Body and he is required to apply his independent mind.

9. In the instant case although the petitioner involved in the 1st writ petition was recommended by the Selection Committee as the 1st nominee, but the Governing Body of the College declined to accept the said recommendation and adopted the resolution for fresh interview of the candidates. While considering the said resolution of the Governing Body, the Director was of the view that there was no valid ground not to accept the recommendation of the Selection Committee and accordingly required the Governing Body of the College to act on the basis of the Selection Committee's recommendation. Be it stated here that as per the impugned resolution of the Governing Body, all candidates would again be called for a fresh selection/interview. If that be so, the petitioner involved in the 1st writ petition is also not debarred. But on the other hand, the recommendation made in her favour by the Selection Committee has not been accepted by the Governing Body for the reasons assigned in the said resolution.

10. The recommendation made in favour of the petitioner in the 1st writ petition has not been accepted by the Governing Body on two grounds, namely, (i) on the last date of submission of application i.e. 07.03.2011, the condonation of upper

age limit that was provided to the petitioner did not accompany her application, but the same was submitted on 14.03.2011 and (ii) she could not have worked in two colleges simultaneously during the period from 17.05.2009 to 30.06.2009.

11. While the learned counsel for the petitioner in the 1st writ petition Mr. P.K. Goswami, has submitted that the aforesaid two grounds cannot lead to rejection of recommendation of the Selection Committee, Mr. C. Baruah, learned counsel representing the petitioner in the 2nd writ petition submits that the candidatures were required to be considered on the basis of the documents made available on the last date of submission of applications. While Mr. Goswami, learned counsel for the 1st writ petitioner has placed reliance on two decisions of this Court reported in *Dr. Mahesh Gogoi Vs. State of Assam and Others*, and *Dr. Mahesh Gogoi Vs. State of Assam and Others*, to submit that the age relaxation having been provided to the petitioner by the competent authority of the Government well ahead of the interview and when the same was duly informed to the college authority, there was nothing wrong on the part of the Selection Committee to accept the said resolution towards recommending the petitioner for appointment, Mr. Baruah, learned counsel for the other writ petitioner has placed reliance on the decision of the Apex Court reported in *Dipitimayee Parida Vs. State of Orissa and Others*, so as to argue that the eligibility of the candidates is required to be considered as on the last date of submission of applications. He has also placed reliance on the decision of the Apex Court reported in *A. Panduranga Rao Vs. State of Andhra Pradesh and Others*, so as to emphasis on the interpretation of the term "recommend".

12. Mr. J. Abedin, learned Standing Counsel, Education Department supporting the impugned decision of the Director of Higher Education submits that the Governing Body of the College has adopted the impugned resolution on technical ground without considering the matter in its true prospective. Supporting the speaking order of the Director of Higher Education, he submits that the Director having exercised his sound discretion in the matter upon a objective assessment of the matter in terms of the order passed by this Court, the matter should come to an end. Mr. D. Das, learned senior counsel, representing the Governing Body of the College supporting the impugned resolution, however fairly admitted that in view of the aforesaid decisions of this Court in *Jyotima Phukan (Supra)* and *Mahesh Gogoi (Supra)*, the candidature of the petitioner in the 1st writ petition cannot be rejected. He however, submits that the petitioner could not have worked in two different colleges for the particular period and if the Governing Body of the college has taken note of the said fact, no fault can be attributed to it while passing the impugned resolution. Mr. Das, learned counsel representing the Governing Body of the college has also produced the document relating to 10th Plan Guidelines for faculty improvement Programme (Clause 4.3 thereof) so as to emphasis that since the petitioner was a substitute teacher in the particular college, she could not have worked in another college during the same period, as, as per the requirement of the said guidelines, a substitute teacher is also a full time teacher of the college.

13. I have given my anxious consideration to the submissions advanced by the learned counsels for the parties and have also perused the entire materials on record.

14. The petitioner in the 1st writ petition has annexed the Annexure-3 and 4 experience certificates dated 31.08.2009 and 26.06.2010. While in the 1st certificate, the Principal and Secretary of the particular college has certified that the petitioner had worked as Lecturer in Assamese from 02.07.2005 to 30.06.2009, in the 2nd certificate the Principal of the other college has certified about the services rendered by the petitioner as Lecturer in Assamese against FIP (Faculty Improvement Programme) w.e.f. 17.05.2009 to 28.02.2010. Thus on the face of it, except the period from 17.05.2009 to 30.06.2009, both the periods in two different colleges are distinct and different. What has been emphasized by the Governing Body of the college is that there is overlapping of the period from 17.05.2009 to 30.06.2009. This aspect of the matter has been dealt with by the Director of Higher Education with the finding that there was no impediment for the petitioner to work in two different colleges more particularly when she was not a regular teacher of any one of the colleges. It has been observed in the impugned order that the petitioner was entitled to work as Part Time/Guest Lecturer in more than one college as per her convenience.

15. The Guidelines on which Mr. Das, learned counsel representing the Governing Body of the college has placed reliance is on the point of salary of the Substitute Teacher. As per the said guidelines, a Substitute Teacher is also entitled to pay scale prescribed for a Lecturer. However, the same does not debar even such a Lecturer to work as Part Time/Guest Lecturer in another college. As noted above, the petitioner in the 1st writ petition had worked in both the colleges for the periods in question, out of which, the overlapping period is from 17.05.2009 to 30.06.2009, which is about 1 1/2 months. A certificate regarding work experience is not required to be construed with scientific provision. That apart, there is no indication in the certificates that the petitioner had worked as a Full Time Lecturer for the said 1 1/2 months period. Even if that was so, there was no bar for her to work in another college as Guest Lecturer/Part Time Lecturer by delivering few lectures in the said college.

16. This being the position, in my considered view, the Director of Higher Education has rightly held that there was no bar for the petitioner to work as Part Time/Guest Lecturer in more than one college. This aspect of the matter will also have to be considered taking into account the very small period in respect of which the whole controversy has arisen, which is only about 1 1/2 months.

17. This now leads us to the question as to whether the 1st writ petitioner was disqualified from appearing in the selection as her application did not accompany the communication of the Government condoning her over age limit. In paragraph-5 of the 1st writ petition, the petitioner has explained the circumstances in which her application did not accompany the age relaxation document provided by the Government. It is her specific case that while

submitting her application for the post, she had informed the Principal of the College about the process being undertaken for condonation of the age limit. It is not in dispute that there is provision for condonation of upper age limit as per the Government Policy Decision laid down in the OM dated 04.01.1992. The last date of submission of application form was 07.03.2011 and while submitting the application, the petitioner duly informed the college authority about the process being undertaken towards condoning the age limit. Such a course of action was required to be adopted by the petitioner as she had crossed the upper age limit of 38 years.

18. In due course, the Government in consideration of her prayer, condoned the upper age limit enabling her to participate in the selection process. The communication conveying the condonation of upper age limit was made to the petitioner on 09.03.2011, just after two days of last date of submission of application. On receipt of the same, the petitioner submitted the copy thereof to the college authority, which duly accepted the same without raising any objection. The communication regarding age relaxation having been made on 09.03.2011, presumably such relaxation was endorsed in the relevant file even before the last date of submission of application. That apart, even if there was a delay on the part of the Government and/or the authority empowered to provide age relaxation, the same cannot lead to a situation in which the right of the petitioner will get frustrated.

19. The two decisions on which Mr. P.K. Goswami, learned counsel representing the 1st writ petitioner has placed reliance i.e. Jyotime Phukan (Supra) and Mahesh Gogoi (Supra) are exactly on the point of eligibility on the basis of the age relaxation. It has been held that if the relaxation of age is provided for before the date of selection/interview, the candidate will be entitled to benefit thereof and the said benefit cannot be frustrated on the ground of non submission of documents relating to such age relaxation on the last date of submission of application.

20. The decision on which Mr. C. Baruah, learned counsel for the 2nd writ petitioner has placed reliance i.e. Diptimayee Parida (Supra) pertains to crucial/cutoff date for determination of eligibility. There is no quarrel with the said proposition that eligibility is determined as on the last date of submission of application. However, in the instant case, we are concerned with condonation of upper age limit for which the petitioner in the 1st writ petition had duly applied for and the same was provided to her in the form of communication within 48 hours of the last date of submission of application. That being the position, the right of the petitioner to participate in the selection process cannot be frustrated. The decision in A. Panduranga Rao (Supra) has been pressed into service to buttress the argument that the Governing Body of the College is not bound to accept the recommendation of the Selection Committee. There is also no quarrel with the said proposition, but at the same time, while not accepting the recommendation of the Selection Committee, the Governing Body will have to

assign sound and cogent reason and not the kind of reason assigned in the impugned resolution, about which discussions have been made above.

21. Above being the position, I have no hesitation to allow the writ petition being WP(C) No. 2283/2012 and dismiss the writ petition being WP(C) No. 170/2012. Consequently, the respondents shall now take the required follow up action towards materializing the appointment of the petitioner in the 1st writ petition i.e. WP(C) No. 2283/2012 as Assistant Professor of Assamese in Swahid Pioli Phukan College, Namti in the district of Sivasagar as expeditiously as possible, but at any rate not later than 15.07.2014.

22. The speaking order passed by the Director of Higher Education, Assam in terms of the interim order of this Court stands upheld.

23. Both the Writ Petitions are answered in the above manner, however, without any order as to cost.