

(2024) 08 GAU CK 1105
In the Gauhati High Court
Case No : WP(C) Of 6774 Of 2022

Md. Raja Ali

APPELLANT

Vs

State Of Assam And 7 Ors

RESPONDENT

Date of Decision : 30-08-2024

Acts Referred:

Citation : (2024) 08 GAU CK 1105

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : B Rahman, T J Mahanta, S J Shamim, M S Alam, S Alom

Final Decision : Dismissed

Judgement

Sanjay Kumar Medhi, J

1. The controversy connected with this case is with regard to a recruitment process for the post of Gaonburah in the Tamulitup Batamari village in the district of Nagaon. The tussle is between the petitioner and the respondent no. 8 who are both aspirants for the said post.

2. There is a chequered history including history of litigations in this case. An advertisement was published on 23.10.2018 for filling up of the aforesaid post and both the petitioner and the respondent no. 8 had participated in the said recruitment. Since the appointments were not made, the petitioner had earlier filed WP(C)/3867/2019 in which there was an order dated 14.06.2019 to complete the recruitment process.

3. Pursuant to the said order, the respondent no. 8 was appointed to the aforesaid post vide an order dated 18.02.2021. The writ petitioner had preferred an appeal in the Department in which the Appellate Authority had passed an order dated 24.08.2021 whereby the matter was remanded back for a fresh consideration. In the meantime, certain villagers had filed WP(C)/4885/2021 which however was dismissed by this Court on 22.09.2021. The respondent no. 8

had however preferred a review against the decision of the Appellate Authority dated 24.08.2021. Since the review was not attended and disposed of, the respondent no. 8 had filed WP(C)/5440/2021. This Court vide order dated 07.10.2021 had directed the authorities to dispose of the review filed by the respondent no. 8. In the meantime, vide an order dated 30.12.2021, the petitioner was appointed as Gaonburah. However, on 24.03.2022, the review preferred by the respondent no. 8 was allowed and the appointment of the petitioner was cancelled. The petitioner had thereafter preferred WP(C)/2453 / 2022 in which this Court had passed an order dated 04.04.2022 remanding the matter to the reviewing authority for a fresh consideration. The reviewing authority vide the order dated 07.07.2022 had again allowed the review and it is this action which is the subject matter of challenge in the writ petition.

4. I have heard Shri K.N. Choudhury, learned Senior Counsel assisted by Shri B. Rahman, learned counsel for the petitioner. I have also heard Shri T.J. Mahanta, learned Senior Counsel, Shri S. Alom, learned counsel, Ms. M. Bhattacharyya, learned Addl. Senior Government Advocate, Assam and Shri S. Dutta, learned Standing Counsel, Revenue & DM Deptt.

5. Shri Choudhury, the learned Senior Counsel for the petitioner has submitted that so far as the Executive Instruction 162 of the Assam Land and Revenue Regulation, 1886 is concerned, the same had undergone an amendment vide a notification dated 10.04.2018. After the amendment, certain criteria have been laid down for selection and appointment of Gaonburah. It is submitted that leadership is one of the important aspect and the same was not taken into consideration. It is submitted that the advertisement in question contained certain criteria which did not encompass all the criteria of the amended Rule. He further submits that the father of the petitioner was a Gaonburah and as per prescription of the Rules, a family member of a Gaonburah has to be given preference. It is also submitted that in the markings given in the selection, there was involvement of the Finance and Accounts Officer (FAO) who was not a part of the scheme. It is submitted that the marks granted were not fairly done and the respondent no. 8 was favoured. The learned Senior Counsel submits that interest of justice would be served if a fresh selection is held even if the appointment of the petitioner is not upheld by this Court.

6. Per contra, Ms. Bhattacharya, the learned State Counsel has submitted that the procedure laid down in the Rules have been duly followed. As regards the involvement of the FAO in the recruitment process, it is submitted that he was a nominee of the Deputy Commissioner and such procedure is uniformly followed in all recruitment process for the post of Gaonburah.

7. Shri S. Dutta, the learned Standing Counsel, Revenue Department has endorsed the submission of the learned State Counsel.

8. Shri Mahanta, the learned Senior Counsel for the respondent no. 8 has strenuously opposed the writ petition. He submits that the basic criteria for a

candidate to be eligible is that he or she should be a permanent resident of the area. By drawing the attention of the official version as reflected in the affidavit-in-opposition filed by the ADC-respondent no. 6, the learned Senior Counsel has submitted that the petitioner is from village Puthikhaity which is outside the jurisdiction of the village concerned. It is also submitted that while his client had secured 46 marks in the selection, the petitioner had secured 41 marks. As regards the argument made that preference is to be given to the family members, the learned Senior Counsel has submitted that the question of preference would come only when the marks are equal.

9. The rival submissions have been duly considered and the materials placed before this Court have carefully examined.

10. The challenge is based on the ground that the advertisement dated 23.10.2018 is not in accordance with the prescription of the rules namely Executive Instruction 162 (2). To examine the argument / aspect that many of the prescription of the Rules have not been incorporated in the advertisement, this Court has carefully looked into the advertisement dated 23.10.2018. A bare look would reveal that apart from the seven number of criteria laid down in the advertisement, there is a specific mention that the requirements would be as per the government order dated 10.04.2018. As observed above, the aforesaid notification 10.04.2018 pertains to the amendment of the Executive Instructions. As regards the presence of the FAO in the selection process, this Court has noted from the records that though the FAO was present, the markings given are uniform in nature. This Court also would accept the submission that the FAO was the nominee of the Deputy Commissioner who is said to be present in all such selection of Gaonburah. The records which have been placed before this Court not only contains the consolidated statement of marks but also the breakup. The petitioner had participated in the selection and was never aggrieved by the presence of the FAO. In this regard, it would also be relevant to note that this Court, in the order dated 14.06.2019 while disposing of WP(C)/ 3867/2019 had recorded the submission of the petitioner which is extracted herein below:

"2) It has been submitted by the learned counsel for the petitioner that the petitioner will be satisfied for the time being if a direction is issued to respondent authorities to take necessary steps in accordance with law for appointment of Gaonburah in respect of Lot No. 5 of Tamulitup and Batamari Village under Khatowal Mouza of Samaguri Revenue Circle in the District of Nagaon, Assam."

11. In the case of Madan Lal and Ors. Vs. State of J & K and Ors., reported in (1995) 3 SCC 486, the Hon'ble Supreme Court has laid down that an unsuccessful candidate who participates in the recruitment process without any objection cannot be allowed to turn around and challenge the same.

12. With regard to the submission that preference is required to be given, this Court is of the opinion that the question of preference would come only when the marks obtained are equal. In this case, it is not in dispute that the respondent

no. 8 had secured 46 marks whereas the petitioner had secured 41 marks.

13. Under the facts and circumstances and the discussions made above, this Court is of the opinion that no case for interference is made out and accordingly the writ petition is dismissed. The interim order passed earlier stands vacated.