

(2015) 05 GAU CK 0034
In the Gauhati High Court
Case No : WP(C) 5334 and 5366 of 2011

Mijanur Rahman Sheikh

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 20-05-2015

Acts Referred:

Citation : (2015) 05 GAU CK 0034

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : M. Hussain, Counsel, for the Appellant

Judgement

Michael Zothankhuma, J.—Heard Mr. M. Hussain, counsel for the petitioner and Mr. N. Sarma, Standing Counsel, Elementary Education Department, Govt. of Assam.

2. WP(C) No. 5366/2011 and WP(C) No. 5334/2011 are being disposed of by this common order as identical question of law and facts are involved in both the writ petitions.

3. Mr. M. Hussain, counsel for the petitioners submits that pursuant to an advertisement dated 30.10.2005 for filling up of 81 posts of Sub-Inspector of Schools, the petitioner took part in the selection process held with effect from 6.1.2006 to 12.1.2006. The petitioner not being selected had initially challenged the appointments of the private respondent Nos. 8 to 39 and had also challenged the selection process on two counts--firstly, on the ground that only 29 posts out of 81 having been kept for the general category candidates, petitioner's counsel submits that reservation of more than 50% has been done for the reserved category candidates, which is not allowed. Secondly, he has challenged the selection made on the ground that the marks allotted to the petitioner vis-a-vis the selected candidates was wrong. In essence, he submits that the petitioner should have been given more marks than what was given by the Selection Committee and that the private respondents were given more marks than what

they should have been given.

4. Mr. N. Sarma, counsel for the respondents submits that the percentage of reservation has already been reflected in the advertisement and the same percentage of reservation is also reflected in the Selection Committee Minutes dated 17.2.2011. He thus submits that the petitioner having taken part in the selection and knowing fully well that the Selection Committee having not deviated from the percentage of reservation enumerated in the advertisement, no fault can be found with the selection process. Mr. N. Sarma has also submitted that though initially less marks were given to the petitioner, the same has subsequently been corrected and the petitioner has been given more marks as was due to him. However, the marks of the petitioner which totals 224.96 is less than the marks secured by the lowest general category candidate who has been appointed, which is 230.8. He thus submits that the petitioner having secured less marks than the lowest general category candidate who has been appointed, the petitioner can have no grievance for not being selected on the basis of merit.

5. During the course of the hearing, it has been noticed that this Court vide order dated 17.2.2012 passed in WP(C) 5366/2011 has directed as under:

"Learned counsel for the petitioner seeks to strike out the names of the respondent No. 8 to 39 from the writ petition.

The prayer is allowed.

Necessary correction the cause title shall be carried out by hand.

List on 14.3.2012."

6. In view of the order dated 17.2.2012 which was passed on the prayer of the counsel for the petitioner, respondent Nos. 8 to 39 have been struck off as parties from the writ petition. Accordingly, the petitioner cannot be now allowed to challenge the selection and appointments of the erstwhile respondent Nos. 8 to 39 on the ground of allotment of marks by the Selection Committee.

7. Petitioner's only remaining ground to challenge the selection process is with regard to whether the advertisement dated 3.10.2005 and the Selection Committee Minutes dated 17.2.2011 were illegal, in as much as, the percentage of reservation for reserved category candidates was more than 50% of the total vacant posts.

8. A perusal of the advertisement dated 3.10.2005 and the Selection Committee Minutes dated 17.2.2011 shows that there is no deviation in the reservation percentage for the reserved category and the general category. It is no doubt true that the vacancies that were left for the general category candidates were less than 50% of the total posts. However, there is nothing in the advertisement dated 3.10.2005 which shows that the vacancies for the general category candidates would be 50% or more. The reservation of posts for reserved

category candidates is as under:

9. Thus, by adding up the number of posts earmarked for the reserved category candidates, it is seen that only 31 posts out of 81 posts of Sub Inspector of Schools have been kept reserved. Thus, the percentage of reservation comes to 38.27%. Accordingly, the petitioner's contention that more than 50% of the vacancies have been reserved for the reserved category candidates is not correct.

10. There were reservations also for candidates having knowledge in languages. Viz. Bodo, Nepali, Missing, Garo etc. and for candidates belonging to Tea Gardens. However, these posts to be filled up by candidates having knowledge in languages and candidates from Tea Gardens totalling 21 posts could also be filled up by general category candidates who were having knowledge of the languages and who were from Tea Gardens and were not reserved for the SC, ST, OBC/MOBC and persons with disability. Accordingly, I do not find that the percentage of reservation of posts for candidates belonging to SC, ST, OBC/MOBC and for persons with disabilities is more than 38.27% of the total vacancies

11. I also find that as the petitioner has taken part in the selection process, he cannot now turn around and question the terms and conditions of the selection process in which he had taken part. In the case of Ramesh Chandra Shah and Others Vs. Anil Joshi and Others, (2013) 5 AD 52 : AIR 2013 SC 1613 : (2013) 137 FLR 759 : (2013) 8 JT 311 : (2013) 4 JT 441 : (2013) LabIC 2676 : (2013) 5 SCALE 397 : (2013) 11 SCC 309 : (2013) 3 SCT 657 : (2013) 2 SLJ 377 : (2013) AIRSCW 2219 : (2013) 3 Supreme 129 , it was held by the Apex Court that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.

12. In WP(C) 5334/2011, the petitioner being a Scheduled Caste candidate, the challenge is only with regard to the marks obtained by the petitioner in the selection process vis-a-vis private respondents. However, vide order dated 17.2.2012, respondent Nos. 9 to 18 were struck out on the prayer of the counsel for the petitioner. The order dated 17.2.2012 reads as under:

"Learned counsel for the petitioner seeks to strike out the names of the respondent No. 9 to 18 from the writ petition.

The prayer is allowed.

Necessary correction the cause title shall be carried out by hand.

List on 14.3.2012."

13. As there is no challenge to the percentage of reservation in WP(C) 5334/2011, the only question that has to be decided is whether the marks obtained by the petitioner in the selection process was correct or not.

14. Mr. N. Sarma, counsel for the respondents submits that the petitioner in WP(C) 5334/2011 after rectification of his marks secured 207.39 marks and the lowest candidate from Scheduled Tribe (reserved category) secured 209.35

marks. Thus, Mr. N. Sarma submits that the petitioner cannot be appointed in the vacancies reserved for the Scheduled Tribe candidates as he has secured lower marks.

15. In view of the fact that private respondent Nos. 9 to 18 have been struck off from the writ petition, there can be no challenge made by the petitioner in respect of the erstwhile respondent Nos. 9 to 18 with regard to the marks obtained by them in the selection process. As such, nothing survives in the writ petition. WP(C) No. 5334/2011 is accordingly dismissed.

16. In view of the reasonings recorded hereinabove, WP(C) 5366/2011 is also dismissed.