

(2003) 09 GAU CK 0003

In the Gauhati High Court

Case No : Writ Petition (C) No. 47 (A.P.) of 2001

Mintu Das

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 09-09-2003

Acts Referred:

Citation : (2004) 1 GLT 46

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : N. Grayu, for the Appellant; B.L. Singh, for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, J.—The Petitioner is aggrieved by the action of the State authorities in not appointing him in the post of Lower Division Clerk in the Arunachal Pradesh Secretariat, Itanagar in spite of his selection in the process initiated vide advertisement dated 28.8.97, (Annexure-I) to the writ petition, for the purpose.

2. I have heard Mr. N. Grayu, learned Counsel for the Petitioner. Also heard Mr. B.L. Singh, learned Senior Govt. Advocate, appearing on behalf of the Respondent Nos. 1 and 2. In spite of service of notice, none has entered appearance on behalf of the Respondent No. 3.

3. The bare facts are that the State Respondents through the Arunachal Pradesh Public Service Commission (hereinafter referred as "the Commission") published an advertisement dated 28.8.97 inviting applications, inter alia, for 23 posts of Lower Division Clerks in the Arunachal Pradesh Secretariat. It was mentioned that out of 23 posts in the Secretariat, 19 posts were reserved for APST candidates. The advertisement also set out the manner in which, the assessment of the suitable candidates would be made. The Petitioner along with others submitted their candidatures. After the selection process was over, a Select list was published on 13.5.99. The name of the Petitioner appeared at serial No. 11 in the said select list. The Petitioner is admittedly a non APST candidate.

Incidentally, his position amongst the non APST candidates was serial No. 7. The appointment letter was thereafter issued on 15.10.99 in which the name of the Petitioner did not figure. Instead the Respondent No. 3, who was a candidate in the waiting list was shown appointed. Being aggrieved, the Petitioner submitted representations before the Respondent authorities, which did not meet any response. It is in this background that the Petitioner has approached this Court. Though the Petitioner had also assailed the vires of certain provisions of the Arunachal Pradesh Secretariat Subordinate Service Rules, 1989, in course of the hearing, the learned Counsel for the Petitioner did not pursue the attack on that line.

4. In the counter affidavit filed by the State Respondents the stand taken is that initially 23 posts were advertised but during the pendency of the process, some more vacancies arose raising the total number of vacancies from 23 to 36 of which, first 7 posts were meant to be filled up by open competition on merit and posts at serial No. 8 to 36 were reserved for APST candidates as per the provisions of the Arunachal Pradesh Secretariat Subordinates Service Rules, 1989. The Petitioner's name appeared at serial No. 11 in the said merit list for which his case could not be considered.

5. It has been argued on behalf of the Petitioner that the State Respondents are obliged to adhere to the 100 point model roster in which points at serial No. 5, 10, 15, 20, 25, 30, 35 etc. are earmarked for un-reserved candidates. As the Petitioner's position was at serial No. 7 amongst the unreserved candidates he should have been appointed against the 35th post and the denial of appointment is illegal, arbitrary and unconstitutional.

6. The learned Counsel for the Petitioner further argued that the stand taken by the State Respondents that seven posts at serial Nos. 1 to 7 have been filled up on merit thought open competition is in contravention of the policy of reservation as well as 100 point model roster and that the Respondents had denied appointment to the Petitioner without any justification.

7. It has also been contended that the arrangement as indicated in the affidavit, i.e. 20% of the unreserved posts were meant to be filled up by open competition is opposed to the ratio of the decision of this Court in the case of State of Arunachal Pradesh Vs. Ashok Kr. Yadav and Others, .

In reply Mr. Singh has argued that under the Government policy 80% of the posts are reserved for the APST candidates and 20% posts are unreserved meaning thereby that these posts are to be filled up by open competition on the basis of merit. According to him, unreserved posts do not signify that these are to be filled up by unreserved candidates.

8. Admittedly, when the advertisement was published, only 23 posts were advertised. The number however grew to 36 at the time of completion of the selection process. It is the common case of the parties that out of the 36 posts 29 posts are reserved for APST candidates and 7 posts are unreserved. It is also

not disputed that the appointments are to be made by the following 100 point roster in which the slots at serial No. 5, 10, 15, 20, 25, 30, 35 etc. are un-reserved. Mr. Singh has not produced any decision of the Government to indicate that expression unreserved posts would construe posts to be filled up on merit by open competition.

9. Moreover, the stand taken by the State Respondents is in apparent departure from the contents of the advertisement. It is therefore difficult to concur with Mr. Singh that 7 out of the 36 posts can be permitted to be filled up by the open competition by the State Respondents. The Government has earmarked the posts for APST candidates and non APST candidates. In my view 80% post have to be filled up by the APST candidates and the remaining 20% by non APST candidates. If the arrangement as indicated by the State Respondents is adhered to, there would be excess reservation in favour of APST candidates, which does not seem to be the Policy of the Government.

10. The decision of this Court referred in the case of State of Arunachal Pradesh v. Ashok Kr. Yadav and Ors. (Supra) is a clear pointer in support of the above view. In that case, the writ Petitioners were placed at serial Nos. 8 and 14 in the combined seniority list and at serial Nos. 3 and 4 amongst the unreserved candidates. The State Respondents replaced them by more meritorious reserved candidates. The action was assailed. The writ petition was allowed. The Division Bench in the appeal upheld the decision of the single Bench and while disapproving the impugned action held that the writ Petitioners were entitled to be appointed as per the merit position amongst non Arunachalee candidates in the vacancies in the roster. The situation is the same here. The Petitioner being placed at serial No. 7 amongst the non Arunachalee candidates, he is entitled for appointment against the available vacancy in the 100 point roster meant for unreserved candidates.

11. It has been contended by the Petitioner in his reply affidavit that in the meantime, unreserved candidates at serial No. 8 and 10 in the combined merit list have left for other services and therefore, his position in the order of merit amongst the non Arunachalee candidates has been upgraded at serial No. 5, if that be so, the claim of the Petitioner is even on a better footing.

12. Be that as it may, in view of the above facts, the Petitioner ought to have been appointed against one of the 7 posts meant for un-reserved candidates having regard to his merit position in the select list. The impugned action of the State Respondents thus cannot be upheld.

13. The impugned appointment order has been made in the year 1999. Mr. Singh has informed this Court that all the appointees are at present serving. In view of the time lag in between. I am not inclined to issue direction to the Respondents to accommodate the Petitioner by dislocating the services of the appointees. It is noticeable that no interim order was made suspending the appointment order. It has however been observed in the order admitting the petition that the

appointment of the Respondent No. 3 would be subject to the result of the petition. The Respondent No. 3, whose name appeared in the waiting list has been appointed by the State Respondents. The said Respondent though served with the notice has not entered appearance in the case.

14. A wait listed candidate cannot enjoy a preference over a selected candidate. The Petitioner as held above has been wrongly denied appointment. The conduct of the Respondent No. 3 does not entitle him to any equitable consideration at the cost of the Petitioner. In that view of the matter, the petition is allowed. The State Respondents are directed to provide appointment to the Petitioner in the post of Lower Division Assistant. In doing so, the State Respondents would explore all possible avenues of not disturbing the Respondent No. 3. But in case no other vacancy is available, the Respondent No. 3 would have to give away to the Petitioner who shall then be appointed in his place.

15. No costs.