
(2005) 05 GAU CK 0043
In the Gauhati High Court
Case No : Writ Petition (C) No. 2072 of 2005

Minu Goswami and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 25-05-2005

Acts Referred:

Assam Public Service Commission (Limitation of Functions) Regulations, 1951 — Regulation 3

Citation : (2005) 4 GLT 608

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : B.D. Konwar, J.M. Konwar and S. Sarkar, for the Appellant; K.N. Choudhury and S. Katakya, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—Heard Mr. B.D. Konwar, learned Counsel for the Petitioners. Also heard Mr. K.N. Choudhury, learned Additional Advocate General, Assam appearing on behalf of the State-Respondents. Mr.S.Katakya, learned Counsel made submissions on behalf of the Respondent No. 3.

2. The Petitioners numbering 30 (thirty) have assailed the legality and validity of the WT Message dated 7.3.2005 issued by the Respondent No. 3(Annexure-P/4) directing the Deputy Registrars and Assistant Registrars of Co-operative Societies not to allow the persons to join the duties as Junior Inspectors of Co-operative Societies.

3. The facts narrated in the writ petition are that the Petitioners having come to know about the existence of the vacancies of the post of Junior Inspectors under the Respondents offered their candidatures before the Respondent No. 3. According to them, their candidatures were processed by obtaining necessary approval etc. from the State Level Empowered Committee (SLEC) and such approval was obtained in respect of 308 vacancies.

4. Apprehending appointment on pick and choose basis ignoring the candidatures offered by the Petitioners, they approached this Court by filing a writ petition registered as W.P.(C) No. 1511/2005. The writ petition was disposed of at the motion stage by order dated 25.2.2005 with the following directions:

Heard Mr. B.D. Konwar, learned Counsel appearing on behalf of the Petitioner and Mr. H.K. Barman, learned Junior Govt. Advocate, Assam appearing for the Respondent No. 1, 2 and 3.

Considering the claim of the Petitioners and with the consent of the all the parties, this writ petition is disposed of with the direction that the Respondent authorities shall consider the case of the Petitioners for appointment to the post of Junior Inspector of Societies along with other similarly candidates.

This writ petition stands disposed of.

5. After the aforesaid order passed by this Court, the Petitioners were appointed under Regulation 3(f) of the Assam Public Service Commission (Limitation and Functions) Regulation, 1951. Their such appointments were for limited duration of four (4) months. However, when the Petitioners reported to their respective places of joining, they were not allowed to do so on the basis of the impugned WT Message dated 7.3.2005. It is the legality and validity of this WT Message which is under challenge in this writ petition. According to the Petitioners there being need to fill up the posts of Junior Inspectors, the Petitioners were rightly appointed and after such appointments, same could not have been withheld by the impugned WT Message.

6. Two separate counter affidavits have been filed, one by the State-Respondents and another by the Respondent No. 3. According to the Respondents, the Petitioners were appointed without any selection. According to them, the File bearing No. CE 16/2001/Pt. from where the appointments were shown issued, in fact does not exist.

7. Further stand in the affidavit is that the Respondents were not aware of the order dated 25.2.2005 passed in W.P. (C) No. 1511/2005 till 11.3.2005 as no certified copies of the same were placed before them. They have pointed out as to how the outgoing Registrar of Co-operative Societies, Assam on his last working day i.e. 28.2.2005 appointed the Petitioners in high haste. According to them, in terms of the order dated 25.2.2005 passed by this Court in W.P. (C) No. 1511/2005, the Petitioners could not have been appointed. They have stated that 26.2.2005 and 27.2.2005 were holidays and thus everything was done with high haste on 28.2.2005 and for that purpose, the order of this Court passed on 25.2.2005 was used as a handle.

8. The Respondents have further stated in their affidavit that the approval of the SLEC has not been obtained and the Petitioners were appointed without any selection. According to them, the Petitioners also could not have been appointed invoking the provisions of Regulation 3(f) of the aforesaid Regulation inasmuch

as such provision is applicable only in respect of Gazetted Officers.

9. In the Counter affidavit filed on behalf of the Respondent No. 3 it has been stated that the Petitioners were appointed on pick and choose basis and on enquiry carried out by the department it was found that no process for appointment of the Petitioners were initiated and that the appointments were made dehors the recruitment rules. In fact, the Respondent No. 3 has issued Office Memorandum dated 9.3.2005 highlighting the illegal appointments of the Petitioners. The Office Memorandum has been issued on the basis of an enquiry conducted.

10. Mr. Konwar, learned Counsel for the Petitioners submits that the Petitioners having been appointed on temporary basis, they should be allowed to continue in their services till holding of regular selection. Emphasizing the need of the department for manning the posts of Junior Inspectors, Mr. Konwar submits that it was on that basis, the Petitioners were appointed and there was nothing wrong in doing so. He placed reliance on the decision of the Apex Court as reported in Pankaj Gupta and Others, etc. Vs. State of Jammu and Kashmir and Others, in which the Apex Court passed an order towards continuation of the services of the illegal appointees (Orderlies, Process Servers and Guards belonging to rural areas and who were appointed on the basis of recommendation of MLA's and MLC's), till holding of regular selection.

11. Countering the above arguments, Mr. K.N. Choudhury, learned Additional Advocate General submits that when there is no denial that the Petitioners were appointed dehors the recruitment rules and on pick and choose basis, the Petitioners cannot claim continuation in their services.

12. Mr. S. Katoky, learned Counsel for the Respondent No. 3 has also made submissions in support of the impugned WT Message. Referring to the revelation made from the enquiry conducted and incorporated in the Office Memorandum, Mr. Katoky submits that the Petitioners cannot claim continuation in their services.

13. I have given my anxious consideration to the submissions made by the learned Counsel for the parties. I have verified the records of the earlier writ proceeding i.e. W.P. (C) No. 1511/2005 on the basis of which the above quoted order was passed by this Court. In the said writ petition filed by the Petitioners, the following prayer was made:

In the premises aforesaid, it is most respectfully prayed that Your Lordships may be pleased to issue a Writ of Mandamus:

(i) Directing the Respondent authorities to appoint the Junior Inspectors of Co-operative Societies in the vacant posts in the Department of Co-Operation, Govt. of Assam by following the due process of recruitment.

(ii) Direct the Respondent authorities to consider the case of the Petitioners for appointment in the post of Junior Inspectors of Cooperative Societies along with other similarly situated candidates, and/or

(iii) Pass such other order or orders as Your Lordships may deem fit and proper in the facts and circumstances of the case.

AND

Pending disposal of the petition, Your Lordships be further pleased to direct the Respondent authorities to consider appointment of the Petitioners in the post of Junior Inspectors along with other similarly situated candidates by following the due process of law and/or pass any such order/orders.

14. The writ petition was disposed of by the above quoted order on 25.2.2005. The days, 26.2.2005 and 27.2.2005 were holidays being fourth Saturday and Sunday respectively. The appointment orders were issued on 28.2.2005 and thus the high haste in which everything was done stares on the face of it. This Court never issued any direction for appointment of the Petitioners. Only direction issued was to consider the case of the Petitioners for appointment to the posts of Junior Inspectors along with other similarly situated candidates. It was on that basis the appointments were made on 28.2.2005 which incidentally was the last day of service of the then incumbent holding the post of Registrar of Co-Operative Societies, Assam.

15. The Respondents have averred that the file in which the appointments order were issued is not available. There is also no denial of the fact that the appointments were made in favour of the Petitioners on pick and choose basis without any selection. Even the approval of the SLEC was not obtained. The Petitioners cannot claim appointment as a matter of right on the basis of the claim made in the writ petition. Even for ad-hoc appointment, there will have to be a process initiated and completed giving equal opportunity to all eligible candidates. Instead, the Petitioners were appointed in high haste taking the above quoted order of this Court as the handle. It gives an impression that everything was set before hand and the outgoing Registrar of Co-Operative Societies, Assam was waiting for some kind of order of this Court. This is precisely the reason as to how the things moved so fast inspite of intervening holidays on 26.2.2005 and 27.5.2005.

16. The decision on which Mr. Konwar, learned Counsel for the Petitioners has placed reliance has not laid down any law as such. The Apex Court in exercise of its power and jurisdiction passed the order in the said case under given facts and circumstances of the case. No ratio of universal application has been laid down. Thus the case is of no help to the case of the Petitioners.

17. If the Petitioners were appointed illegally dehors the recruitment rules on the last day of demitting office by the Registrar of Cooperative Societies, I do not see any reason as to why the Respondents upon detection of the same cannot withhold such appointments. Even otherwise also, the Petitioners were appointed only for a period of four(4) months. Their such appointments were without any selection and were made on pick and choose basis.

18. In view of the above, I do not find any infirmity in the impugned action of the Respondents. No sanctity can be given to the appointment orders issued in favour of the Petitioners which were never issued from any official file, but were issued at the behest of the then Registrar of Co-Operative Societies, Assam, on the date of his retirement.

19. If a decision is taken to fill up any vacant post of Junior Inspector, the Respondents shall do so strictly in-accordance with the recruitment rules giving equal opportunity to all eligible candidates including the Petitioners.

20. In view of the stand of the Respondents in their affidavits, it is desirable rather mandatory on the part of the Respondents to take action against the outgoing Registrar of Co-operative Societies, Assam who was instrumental in making the illegal appointments. He could not have played with the lives of the un-employed youths like that of Petitioners. It is hereby recommended to take action against the said Registrar in accordance with the rules.

21. The writ petition stands dismissed. There shall be no order as to cost.