

(2003) 09 GAU CK 0052
In the Gauhati High Court
Case No : WP (C) No. 4910 of 2000

Moinuddin Ahmed and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 10-09-2003

Acts Referred:

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

Citation : (2004) 1 GLR 606

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : I. Hussain, for the Appellant; R.K. Bora, for the Respondent

Judgement

Ranjan Gogoi, J.—Though 31 petitioners had instituted the present case, to begin with, the learned counsel for the petitioner submits that only two petitioners, i.e., Petitioner No. 13 Shri Dilip Kumar Sarmah and Petitioner No. 25 Shri Gunajit Talukdar are presently in the field. This Writ Petition is, therefore, being considered as having been filed by the aforesaid two petitioners alone.

2. The facts are long and only the essentials are recited hereinbelow :

In the year 1996, the Assam Public Service Commission issued an advertisement for the posts of Fishery Extension Officer in the Fisheries Department of the Government of Assam. The petitioners participated and claim that their names were included in the select list prepared. Though 46 candidates from the select list were given appointment, the petitioners did not succeed in getting appointment. Thereafter, it appears that 40 posts of Fishery Extension Officer fell vacant in the Panchayat and Rural Development Department. The Assam Public Service Commission, on being moved by the Government, for accord of permission to make appointment against the said posts on the basis of the select list prepared for the Fishery Department, declined to accord necessary permission where after the Government by a policy decision resolved to appoint the left over selected candidates as Fishery Extension Officers under Regulation

3(f) of the Assam Public Service Commission (Limitation and Functions) Regulations, 1951. Thereafter on 13.10.1999, 34 such candidates including the petitioners, were appointed under Regulation 3(f) in the Panchayat and Rural Development Department and such appointments were extended from time to time.

3. In the meantime, the Assam Public Service Commission, by an advertisement dated 11.5.2000 invited applications for 40 posts of Fishery Extension Officer in the Panchayat and Rural Development Department. The petitioners took part in the aforesaid selection, and simultaneously instituted the present proceedings praying for regularization of their service. Interim orders were passed by this Court ensuring continuance of the service of the petitioners. Thereafter, the result of the selection pursuant to the advertisement dated 11.5.2000, was published by the Assam Public Service Commission, and a main list of 35 candidates and a waiting list of additional, candidates was published. The names of the petitioners appear at Sl. Nos. 32 and 37 of the waiting list. The select lists having been published, and the selected candidates not having been appointed due to the interim restraint order passed by this Court, at the instance of the selected candidates, this Court by order dated 22.5.2001 modified the earlier order permitting the appointees under Regulation 3(f) to be retained only if the vacancies permitted such retention. Otherwise, it was directed that such Regulation 3(f) appointees will have to make room for the selected candidates. The petitioners, it is admitted at the Bar, lost employment as they had to make room for the duly selected candidates.

4. The pleadings made in the original writ petition as well as the reliefs claimed, read in the light of the subsequent developments as noted above, have really rendered this writ petition infructuous. What was sought for in the present writ application is the regularization of the 3(f) appointment. In the meantime, selection having taken place and the petitioners having participated in such selection, the relief of regularization really would have no place in the altered scenario. However, additional pleadings have been brought on record by means of supplementary affidavits to contend that what this Court has now to consider is the entitlement of the petitioners to appointment on the basis of their position in the select list/waiting list. The grievance expressed is capable of resolution within a narrow compass and having regard to the fact that the present petitioners have been out of employment, this Court has taken the view that technicalities ought not to be allowed to stand in the way of rendering justice to the petitioners and that is how the Court has been able to persuade itself to examine the tenability of the modified reliefs claimed by the petitioners.

5. Pursuant to the order passed by this Court on 21.5.2003, a set of instructions dated 18.7.2003 has been placed on record by the learned counsel for the State respondents, as received by him from the Director of Panchayat and Rural Development, Assam. According to the instructions received by the learned Government Advocate, Assam, 35 of the selected candidates whose names

appeared in the select list pursuant to the advertisement dated 11.5.2000 were given appointments. However, some of the appointees had resigned and two numbers of post of Fishery Extension Officer has been stated to be lying vacant under the Directorate. According to the Respondents, the petitioners, by virtue of their position in the waiting list at Sl. Nos. 32 and 37, are not entitled to appointment and it is the persons at Sl. Nos. 19 and 23, who would be so entitled. As to how the persons at Sl. Nos. 19 and 23 of the waiting list have been found to be entitled, has not been disclosed save and except that some persons, whose names were included in the waiting list, had waived their rights to be appointed by giving their option in the matter. However as the entitlement of the aforesaid persons at Sl. Nos. 19 and 23 is not an issue in the present case, this Court refrains from addressing itself on the said question and considers it appropriate to confine itself to the cases of the writ petitioners done.

6. A law has been cited by Mr. I. Hussain, learned counsel for the petitioners to contend that appointments, against which the waiting list can be operated, must be made in strict adherence to the merit position. The case relied on is reported in Virender S. Hooda and Others Vs. State of Haryana and Another, Mr. Hussain is right in contending that if vacancies exist against which the select list should be operated, such vacancies must be filled in strict adherence to the merit position in the waiting list also. In the instant case, two vacancies are stated to be in existence and the select is stated to have been in operation till 17.7.2003. Whether the appointment of the aforesaid two persons at Sl. Nos. 19 and 23 of the waiting list has been made, is not known. If the same has been made, it will be open for the petitioners to challenge the same, if they are so aggrieved. If, however, appointments are yet to be made, the authority shall, proceed to make appointments against the vacant posts in question strictly by adhering to the merit position in the waiting list and if the petitioners are found to be entitled to appointment on such basis as indicated, consequential benefit would be accordingly afforded.

7. Writ Petition stands answered in terms of the above directions.