
(2014) 02 GAU CK 0068
In the Gauhati High Court
Case No : Writ Petition (C) No. 5076 of 2013

Mominur Islam

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 17-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 02 GAU CK 0068

Hon'ble Judges : P.K. Saikia, J;K. Sreedhar Rao, J

Bench : Division Bench

Advocate : Z. Hassan, for the Appellant; S. Sarma, U.K. Nair, Standing Counsel, Gauhati High Court, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Saikia, J.—Heard Mr. Z. Hassan, learned counsel for the petitioner. Also Heard Mr. U.K. Nair, learned Standing counsel, Gauhati High Court and Ms. S. Sarma, learned counsel for the State respondents. This proceeding has been initiated with the following prayer:--

In the premises aforesaid it is most respectfully prayed that Your Lordships would be pleased to admit this petition, call for the records, issue Rule, calling upon the Respondents to show cause as to why the impugned appointment/promotion letter vide No. DMJ.04/PT/2013/4648-56 dated 12.08.2013 (Annexure-10) of the Private Respondents No. 5 shall not be set aside and quashed and may further direct the Respondents to appointment/promote the petitioner in the post of Lower division Assistant (LDA) and upon such cause or causes that may be shown hearing the parties, perusing the records further be pleased to make the Rule absolute and/or pass order(s) as your Lordships may deem fit and proper.

2. The facts which are necessary for disposal of the present proceeding, in brief, are that the petitioner was appointed as Peon in the office of the learned CJM, Dhubri on 03.02.1995. On being so appointed, he was posted in the office of the

SDJM, Bilasipara same day and has been serving in the same capacity ever since. Respondent No. 5 was appointed as Peon in the office of the CJM, Dhubri vide order dated 01.12.1995 and has been serving as above in the same establishment since then.

3. Respondent No. 3, CJM, Barpeta issued notification dated 12.07.2013 (Annexure-4 to the writ petition) inviting candidatures from the qualified Gr-IV staff in the establishment of CJM for filling up of one post of Lower Division Assistant against the promotional quota reserved for Gr-IV staff of the aforesaid establishment. In the terms of the Rule-6 of the Assam CJM Establishment Rule 1987, such promotion was to have made on the basis of seniority-cum-merit alone.

4. In pursuance to such notification, petitioner and one Md. Saminur Rahman submitted their applications along with all necessary documents to the SDJM, Bilasipara, who, in turn, forwarded such applications to the CJM, Dhubri for necessary action vide forwarding letter dated 17.07.2013. In due course, 3(three) candidates, namely, the petitioner, one Md. Saminur Rahman and respondent No. 5 were considered for promotion for filling up of one post of Lower Division Assistant as against the quota, reserved for departmental candidates on seniority-cum-merit basis.

5. In that connection, respondent No. 3 also constituted a Committee for selection of departmental candidate. Committee conducted its meeting on 7.8.2013 and on the perusal of service records of the candidates, the Committee unanimously recommended the respondent No. 5 as departmental candidate for promotion to post of LDA in the office of the CJM, Dhubri. Pursuant to such recommendation, respondent No. 3 issued promotion order in favor of the respondent No. 5, vide order dated 12.8.2013.

6. However, the petitioner contends that such promotion order was issued in violation of Rule-6(4)(c) of the Assam CJM Establishment (Ministerial) Rule 1987 (in short, the Rule of 1987) since the aforesaid Rule requires that the promotion to the post of the LDA against the quota reserved for qualified Grade-IV staff needs to be made on seniority-cum-merit basis meaning thereby that ordinarily, the senior most qualified Grade-IV staff in the establishment of the CJM is to be promoted to the post of LDA against the 10% promotional post reserved for qualified Grade-IV staff of such an establishment. However, when candidates are evenly positioned on seniority basis, the merit needs to be look into to find out the best of candidates in such a situation.

7. However, in the present case, the petitioner herein was quite senior to all other candidates including the respondent No. 5 and as such, in the terms of Rule 6(4)(c) of the Assam CJM establishment (Ministerial) Rule 1987, the petitioner ought to have been recommended for filling up the post of LDA in the aforementioned establishment against the 10% promotional post reserved for qualified Grade- IV staff. Unfortunately, the State respondents taking into

account some irrelevant matters, such as, caste consideration, had preferred the respondent No. 5 over the petitioner and was given promotion as stated above. The petitioner, therefore, approaches this Court seeking reliefs as stated above.

8. Neither State respondents nor the High Court nor the private respondent has submitted their counter-affidavits. However, Mr. U.K. Nair, learned counsel for the Gauhati High Court advances verbal submission to contend that the order, under challenge, does not suffer from any infirmities, whatsoever, since it was done strictly in accordance with the requirement of the Rules of 1987. According to him, promotion to the post of LDA as against the vacancies, reserved for Gr-IV staff in the establishment of CJM is to be made not only on the basis of seniority-cum-merit but same is also subject to arrangement made in the Assam Schedule Castes and Schedule Tribes (Reservations of vacancies in Services and Posts) Act 1978 (in short the Act of 1978) and the Rules framed there-under.

9. Mr. Nair has, therefore, contended that while Rule 6(4)(c) of the Rules of 1987 requires that promotion to the post of L.D.A. in the establishment of CJM against the, reserved for qualified Gr-IV staff, is to be made on the basis of seniority-cum-merit, Rule 8 thereof again requires that in all cases of appointment by direct recruitment as well as promotion, reservation of vacancies/posts is to be made in the terms of the Act of 1978. For ready reference the Rule 8 is reproduced below:-

In all cases of appointment by direct recruitment as well as by promotions, there shall be reservation in case of candidates belonging to the member of SC/ST as per provision of the Assam Scheduled Castes and Scheduled Tribes (Reservations of Vacancies in services and Posts) Act, 1978 and Rules framed there under. There shall also be reservation for candidates belonging to other Backward Classes including more other Backward Classes as per Govt. instructions contained in O.M. NOABP. 338/83/14 dated 4.1.84 for direct recruitment only. General orders in respect of reservation in favour of each other categories of candidates as may be inforce for time being, shall also be followed.

10. In that connection, it has further been contended that the Act of 1978 requires all the public establishments to maintain a 20 point roster so as to ensure proper representation of the members of the ST and SC in all employments of public nature. As per the above roster, any public establishment, upto 20th point, must have atleast two persons from the Schedule Castes community.

11. Referring to Minutes and Resolutions adopted by Selection Board on 03.08.2013, it has been submitted that although there are 22 sanctioned posts in the establishment of CJM, Dhubri----- yet ----not a single person from SC community has ever been appointed in the grade of LDA in the establishment of CJM, Dhubri which is why the Selection Committee was forced to recommend the respondent No. 5, a member from SC community, to be promoted to the vacant post of LDA against the quota reserved for Gr-IV staff.

12. Learned counsel for State respondents has adopted the arguments advanced by learned counsel appearing for the High Court. We have very carefully considered the rival submissions advanced by learned counsel for the parties having regard to the averments made in the petition under Article 226 of the Constitution of India and documents attached therewith. On a perusal of the records, we have found that there is no dispute over the fact that the petitioner is the senior to the respondent No. 5.

13. There is also no quarrel over the fact that respondent No. 5 is a member from SC community whereas the petitioner is from general community. So situated, when we considered Rule 6(4)(c) in the light of Rule 8 of the Assam CJM Establishment (Ministerial) Services Rules 1987, we have found that the provision of Rule 6(4)(c) is made subservient to Rule 8 of the Rules of 1987 as well. In other words, promotion to the post of LDA in the establishment of CJM as against the quota reserved for qualified Gr.-IV staff of the aforesaid establishment is to be made not only on the basis of seniority cum merit but also taking into account the requirement of Rule 8 of the Rules 1987 as well.

14. Therefore, in our opinion, in matter of promotion of departmental candidates to the post of LDA in the establishment of CJM, the authority concerned needs to look into the representation of SC and ST community in such service apart from the considering such matter also on the basis of seniority-cum-merit. As stated above, since in our instant case, there is no representation in the rank of LDA from the SC community, the State respondents committed no wrong, whatsoever, in promoting the respondent No. 5 to the post of LDA although he is admittedly junior to the petitioner in the grade of peon in the establishment of CJM, Dhubri.

15. In view of above, we are of the opinion that the present proceeding lacks of merit and the same deserves to be dismissed.

16. Accordingly, the present proceeding is dismissed. No costs.