
(2008) 03 GAU CK 0061
In the Gauhati High Court
Case No : Writ Appeal No. 45 of 2008

Monowar Hussain and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 11-03-2008

Acts Referred:

Citation : (2008) 4 GLT 914

Hon'ble Judges : Jasti Chelameswar, C.J; Iqbal Ahmed Ansari, J

Bench : Division Bench

Advocate : A.M. Mazumdar, Z. Hussain and M. Haque, for the Appellant; B.J. Talukdar, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—We have heard Mr. A.M. Mazumdar, learned Senior counsel, appearing on behalf of the Appellants, and Mr. B.J. Talukdar, learned Government Advocate, appearing on behalf of the Respondent Nos. 1 to 5.

2. The present Appellants, as Petitioners in W.P. (C) No. 3477/2007, had put to challenge the selection of 56 persons, as Junior Assistants, in the office of the Deputy Commissioner, Dhubri, their case being, in brief, thus: The advertisement, dated 14.03.2007, issued by the Deputy Commissioner, Dhubri, inviting applications for filling up 47 vacant posts of Junior Assistant was not in accordance with law inasmuch as there was no adequate publicity of the advertisement issued by the authorities concerned. The second ground of challenge to the selection process was that the selection process was not fair inasmuch as there was mass copying by the candidates. The third ground of attack to the said selection process was that out of the three sub-divisions of the district of Dhubri, candidates from one sub-division got selected. The selection of the said 56 Junior Assistants had also been challenged by way of a writ petition, which gave rise to W.P. (C) No. 3646/2007. Apart from these grounds, which the present Appellants had taken in their writ petition for the purpose of sustaining their challenge to the said selection process, the sole Petitioner, in W.P. (C) No.

3646/2007, had also challenged the ultimate selection of the said 56 candidates on the ground that the number of the candidates selected was larger than the number for which the advertisement had been published, for, the advertisement was for filling up of 47 vacant posts, whereas selection was, ultimately, made to fill up 56 posts.

3. By judgment and order, dated 14.02.2008, aforementioned, both the said writ petitions were dismissed. As far as the sole Petitioner in W.P. (C) No. 3646/2007 is concerned, he has not filed any appeal. This appeal has, thus, been preferred by the writ Petitioners in W.P. (C) No. 3477/2007.

4. In the present appeal, the dismissal of the writ petitions is sought to be challenged on three distinct grounds, namely, (i) that there was no adequate publicity of the advertisement; (ii) that mass copying was indulged in by the candidates; (iii) that the posts, which are sought to be filled up, are more in number than what had been advertised and (iv) that out of the three subdivisions of the district, in question, candidates from only one subdivision got selected.

5. As far as the alleged lack of adequate publicity is concerned, it needs to be pointed out that the writ Petitioners-Appellants too had participated in the said selection process. As the writ Petitioners-Appellants had already appeared pursuant to the advertisement, dated 14.03.2007, aforementioned, they cannot have any grievance that there was no adequate publicity or advertisement for filling up of the said posts. Similarly, at the time of hearing, a plea was sought to be taken, on behalf of the Appellants, that though the advertisement was only for 47 vacant posts, the ultimate selection is for as many as 56 posts. This was, admittedly, not a ground of challenge to the selection process in the writ petition of the present Appellants. In such a situation, the dismissal of their writ petition cannot be interfered with on a ground which relates to a question of fact and in respect whereof, no foundation in the writ petition had been laid.

6. Thirdly, it has been contended, on behalf of the Appellants, that there was mass copying in the written examination and the authorities concerned had failed to ensure that no copying, far less mass copying, takes place in the written examination so that the selection process remains fair. As regards the allegation of mass copying, which the Petitioners-Appellants had made, the learned Single Judge concluded that this accusation is not sustainable. The reasons, assigned by the learned Single Judge, on this aspect of the Petitioners-Appellants case, read as under:

In so far delegation of mass copying is concerned, the same has been denied by the Respondents in the affidavit filed. Clear and categorical statements have been made in the said affidavit to show the details of the manner in which supervision of the written examination was conducted. In a situation where the allegation of mass copying has been denied by the Respondents, it will be difficult for the Court to accept the allegations made in the writ petition,

particularly in a situation where one of the Petitioners, i.e., Petitioner No. 1 in W.P. (C) No. 3477/07 Monowar Hussain, was not even called for the written test as he had not submitted a valid application and Anr. Petitioner, i.e., Sri Surajit Gupta W.P. (C) No. 3646/07, has been selected against S.I. No. 50 of the combined merit list.

7. We find no infirmity in the reasons assigned by the learned Single Judge for reaching the conclusion that the accusation of mass copying had not been brought home. This apart, while dealing with this aspect, what may be pointed out is that denying and disputing the Appellants averments, in para 7 of the writ petition, that there was mass copying, the Respondents herein, in their affidavit-in-opposition, asserted as under:

That as regards the statements made in paragraph 7 of the writ petition, the deponent begs to state that all preventive and precautionary measures were taken to conduct the written test in a free and fair manner for which a number of steps were taken as outlined below:

(i) A meeting was held on 5.4.2007 with heads of 9(nine) Educational Institutions along with all concerned officers of the District Administration to chalk out and strategy to hold the written test smoothly. The heads of the concerned educational institution were engaged as the officer-in-charge of the respective Examination Centres besides one Assistant Officer-in-Charge for each centre was engaged from among the Vice Principal, Assistant Head Master or Senior-most teacher as the case may be to assist him with instruction to induct the teachers of the respective institutions as Invigilator vide letter No. DPE. 11/2007/40 dtd 5.4.2007.

(ii) Executive Magistrates were detailed in each of the 9 (nine) examination centres for maintenance of law and order as well as to oversee that the written test was conducted in each centre in a free and fair manner to ensure that there is no unfair practices adopted in the examination halls. In this connection, a meeting was held on 7.4.2007 at 3.30 pm in the Conference Hall of the Deputy Commissioner, Dhubri by the Senior-most Additional District Magistrate, Dhubri, who as in overall charge of conduct of the written test briefed all the Executive Magistrate drafted for duty on 7.4.2007 at 3.30 pm in the conference hall of the Deputy Commissioner about measures to be taken for maintenance of law and order and ensure that no candidate adopts unfair means including use of calculator and cell phones inside the examination halls. On the day of the written test, the Senior-most Additional Deputy Magistrate and two Sub-divisional Magistrates made periodic visits around all the Examination Centre by rotation to ensure that the instructions have been scrupulously followed.

(iii) A Superintendent of Police was requested to provide adequate security in all the 9 (nine) centres to assist the Executive Magistrates and the Officer-in-Charge of each examination centre.

(iv) The question paper was set by one renowned academician of Guwahati,

namely, Dr. Dilip Baruah, retired Professor of Economics Department, Cotton College, Guwahati.

(v) The manuscript of the question paper was brought only on 6.4.2007 through 2 (two) senior and responsible officers of the Administration undersigned and sealed cover.

(vi) The question paper was printed outside the State and brought only on 7.4.2007. Bill of the offset press by deputing two senior and responsible officers who were present personally through the whole exercise of printing of question papers.

(vii) The printed question papers were brought by them in sealed covers centre wise at late night on 7.4.2007 and kept in double locked of Dhubri Treasury on the same night for safe custody which was taken out just one hour before commencement of the written test on 8.4.2007 and distributed to the Officer-in-Charge of each examination centre through the concerned Executive Magistrate.

(viii) There was specific instruction in the admit card itself that no mobile phone and calculator etc. shall be allowed inside the examination hall which was strictly followed.

(ix) The answer-scripts were kept in a double lock of the Dhubri Treasury on the very day of the examination and taken out for evaluation by a team of officers drawn from different Govt. Departments and Lecturers of District Institution of Education Training, Golokganj centrally in the conference hall of Deputy Commissioner, Dhubri at a stretch under supervision of one senior officer, who was assisted by other Executive Magistrates and the proper police guard. Total transparency was maintained in the whole process. Thus, the allegation that the question paper was leaked before the commencement of the examination and there was mass copying by means of mobile phone, etc., are not based on facts.

Copies of Minutes held on 3.4.2007, letter dated 6.4.07, detainment order, dated 6.4.07, letter dated 21.7.07, 5.4.07, bill dated 7.4.07, report dated 21.7.07 from Treasury Officer, Dhubri, model admit card are annexed hereto and marked as Annexures-VI, VII, VIII, IX, X, XI and XII respectively.

8. Reacting to the averments, made above, in paragraph 8 of their affidavit-in-opposition, the Petitioners-Appellants, in their affidavit-in-reply, merely stated that the documents, relied upon by the Respondents that the selection process was a fair one, were made subsequent to the event. While considering this grievance of the Petitioners-Appellants, what needs to be noted is that the above averments made by the Respondents clearly indicate that all steps, which were necessary for the purpose of ensuring that the written examination is conducted in a free and fair manner, had been taken by the authorities concerned. No specific material could be placed on record by the Petitioners-Appellants to show that mass copying, as alleged by the Petitioners-Appellants, had really taken place.

9. Coupled with the above, what can also not be ignored is that the written examination was held on 08.04.2007 and the writ petition was filed as late as on 17.7.2007 and that too, after the final selection list had already been prepared. In their writ petition, the writ Petitioners have offered no explanation as to why they had waited from the date of the written examination, which had been held on 08.04.2007, until the time the select-list was, ultimately, prepared. No explanation, in this regard, is discernible even from the materials on record.

10. In the face of die categorical averments made by the Respondents showing as to what steps had been taken by them to ensure that the entire selection process, including the written examination, was conducted in a free and fair manner and, in view of the fact that the Petitioners had filed to offer any explanation as to why they had waited until the time the result of the selection process was made known, there can be no escape from the conclusion that the reasons, assigned by the learned Single Judge, for not giving credence to the accusations of mass copying cannot be said to be unfounded.

11. Lastly, it has been contended that out of the three sub-divisions of the district, in question, candidates from only one sub-division got selected, hi the absence of any material showing that there was any manipulation in the selection process, the mere fact that the candidates, who got selected, had come from, and/or had appeared at the center(s) of, one sub-division, the selection of the candidates by the authorities concerned cannot be interfered with.

12. Because of what have been pointed out above, we find absolutely no merit in this appeal. This appeal, therefore, fails and the same shall accordingly stand dismissed.