

(2001) 05 GAU CK 0023

In the Gauhati High Court

Case No : Civil Rule No. 2925 of 1997 and WP (C) No. 17 of 1999

Mrinal Kanti Ghosh and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 21-05-2001

Acts Referred:

Citation : (2001) 05 GAU CK 0023

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : A.K. Bhattacharya, Kamal Agarwal, G. Uzir, M. Ahmed and S. Bhattacharya, for the Appellant; H. Rahman, for the Respondent

Judgement

1. As identical questions of fact giving rise to common questions of law are involved, both the writ petitions were heard together and are being disposed of by this common judgment.

2. The essential facts necessary for resolving the controversy that has arisen in the present proceedings are enumerated hereinbelow.

An advertisement dated 31.8.1992 was issued calling for applications for preparation of a selection list for appointment to few posts of Lower Division Assistant-cum-Typist in office of the District and Below District Level Officers of Dhubri district. The petitioners in both the Civil Rules submitted applications in response to the said advertisement dated 31.8.1992 and on the basis thereof were asked to appear in the written examination to be held on different dates. The petitioners appeared in the written examinations and the authority of the Central Recruitment Committee which was entrusted with the responsibility of making the selection, published a list of candidates who had qualified in the written examination and were eligible to appear in the oral interview. The petitioners' case is that they had all qualified in the written examination and had appeared in the interview on different dates. It was at this stage that some of the candidates who failed to qualify in the written examination Instituted a writ

proceeding before this Court being Civil Rule No. 3668 of 1993 challenging the selection of candidates who were declared to have qualified in the written examination and were thus, eligible to participate in the interview. While entertaining the aforesaid writ application this Court directed, as an interim measure, that the preparation of the select list pursuant to the advertisement dated 31.8.1992 shall remain stayed. The aforesaid Civil Rule was dismissed by judgment and order dated 2.5.1995 of this Court.

Thereafter, the petitioner approached the Deputy Commissioner, Dhubri praying for publication of the select list on the basis of the written test and interview held and for appointment on the basis thereof. The petitioners' further case is that as the authority did not publish the select list within a reasonable time. Civil Rule No. 3850 of 1995 was instituted before this Court and during the pendency of the aforesaid writ application, the Deputy Secretary to the Government of Assam, General Administration Department by letter dated 6.10.1995 informed the Deputy Commissioner that in view of the dismissal of the earlier Civil Rule namely, Civil Rule No. 3668 of 1993, the posts in question may be filled up on the recommendation of the Assam Staff Selection Board. It may be mentioned herein that at the relevant point of time, namely, when the advertisement was issued, recruitment to Class-III & IV posts in every district was to be made on the basis of the recommendations of the Central Recruitment Committee which was a district level committee working in each district of the State of Assam. By an Office Memorandum dated 14.9.1993, the method of recruitment in respect of non-Gazetted staff in the district and below district level offices was changed and the Central Recruitment Committees constituted for each district was abolished. The Staff Selection Board constituted under the Assam Staff Selection Board Rules, 1995 was the successor body after abolition of the Central Recruitment Committees by the Office Memorandum dated 14.9.1993. However, the aforesaid Office Memorandum dated 14.9.1993 clearly spelt out notwithstanding the change in policy and abolition of the Central Recruitment Committees, the select list already finalised and published by the Central Recruitment Committee would remain valid until 31.12.1993 and in case where such select list has not been published but the required examinations have been held for the purpose of preparation of the select list, such select list should immediately be published and the same would remain operative upto 31.12.1993.

3. The further case of the writ petitioners as stated in the writ petitions is that notwithstanding the contents in the letter dated 6.10.1995 of the Deputy Secretary to the Government of Assam, as aforesaid intimating the Deputy Commissioner, Dhubri that the posts in question may be filled up on the recommendation of the Assam Staff Selection Board, this Court by order dated 20.2.1996 passed in Civil Rule No. 3850 of 1995 directed the Deputy Commissioner, Dhubri to publish the select list within a period of 15 (fifteen) days. Notwithstanding the aforesaid order as nothing was done, a contempt petition being C.O.P.(C) No. 192 of 1996 was instituted before this Court. The aforesaid contempt petition, however, was dismissed by this Court and the

matter continued to remain in a stalemate. The petitioners who had become overaged in the meantime, claiming a legal right of consideration for appointment on the basis of selection already held, filed the instant writ petitions praying for appropriate directions for publication of the select list on the basis of selection held earlier and also for quashing of the advertisement dated 9.12.1998 which had been issued in the meantime inviting applications for filling up of 15 posts of Lower Division Assistant-cum-Typist in the office of the Deputy Commissioner, Dhubri. According to the petitioners, the aforesaid 15 posts advertised on 9.12.1998 were included amongst the posts earlier advertised by advertisement dated 31.8.1992 in respect of which selections were held and which were covered by earlier orders of this Court. It may be mentioned herein that the aforesaid advertisement dated 9.12.1998 was impugned in Civil Rule No. 2925 of 1997 by filing a Misc. Case namely. Misc. Case No. 17 of 1995 whereas in the other Civil Rule namely, W.P.(C) No. 17 of 1999, the advertisement in question was specifically challenged in the writ petition.

4. Mr. Kamal Agarwal, learned counsel for the petitioner in Civil Rule No. 2995 of 1997, who argued the case of the petitioners in the main, has contended that this Court by order dated 28.2.1996 passed in Civil Rule No. 3850 of 1995 having directed the Deputy Commissioner to publish the select list pursuant to the selection held in the year 1993 in response to the advertisement dated 31.8.1992 and the said order having attained finality in law, all attempts made by the authorities to fill up the posts in question by a fresh selection process including the advertisement dated 9.12.1998 are non est in law being contrary to the order dated 28.2.1996 passed by this Court. The learned counsel, additionally, submits that the petitioners having participated in the selection process held pursuant to the advertisement dated 31.8.1992 and this Court by judgment and order dated 2.5.1995 passed in Civil Rule No. 3668 of 1993 having Invalidated the challenge as regards the said selection, the petitioners have a legal right to be considered for appointment against the posts advertised in terms of the selection already held. The learned counsel has argued that notwithstanding the change in the mode of recruitment that had taken place during the pendency of the various writ petitions before this Court and even subsequently, the law, rules and norms prevailing on the date of the advertisement namely, 31.8.1992 would govern the matter of appointment to the posts in question and it will be open for this Court to pass appropriate orders directing publication of the select list and also all consequential actions on the basis thereof, on the strength of selection already held. Mr. Agarwal contends that if in the meantime there has been a change in the nomenclature and constitution of the body responsible for making selection, this Court has ample powers to direct the new body to finalise the selection on the basis of examination/interview already held. According to the learned counsel, the question of any fresh selection will not arise so as to defeat the accrued rights of the petitioners.

5. Mr. A.K. Bhattacharyya, learned senior counsel supplementing the arguments

of Mr. Agarwal has contended that while it is correct that in the meantime the Assam Staff Selection Board was constituted to make selection for the posts in question by notification dated 14th March, 1995 and thereafter, it is the selection committee constituted under the Assam Public Services (Direct Recruitment to Class-III & IV posts) Rules, 1997 which has been entrusted with the responsibility of making the selection, regardless of the body which has been entrusted with the duty of making the selection, the petitioners have an enforceable right to be considered for selection and consequential appointment on the basis of tests and interview already held and there can be no fresh evaluation of the eligibility/suitability of the petitioners by any such new body that may have come into existence during the intervening period. Mr. Bhattacharyya contends that on the ratio of law laid down by the Apex Court in a number of decisions, it is the law prevailing on the day when the vacancies had occurred that should be determinative and not the change in law effected subsequently. In support, Mr. Bhattacharyya relies on the cases of N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, and in A.A. Calton Vs. Director of Education and Another, Mr. Bhattacharyya further submits that in the facts of the instant case efflux of time would not invalidate either the selection made and/or the select list published pursuant thereto. However, he hastens to add that in the instant case, the select list has not been published but the selection process had been completed. In support of the aforesaid proposition, Mr. Bhattacharyya relies on the decision of the Apex Court in the case of Purushottam Vs. Chairman, M.S.E.B. and Another,

6. Mr. Gautam Unir, learned counsel for the petitioner in W.P.(C) No. 17 of 1999 in his usual frankness has submitted that in view of the submissions already advanced on behalf of the writ petitioners in Civil Rule No. 2925 of 1997, he would not like to burden the Court with repetitions of what has already been argued and he would be content to rely and adopt the arguments already advanced."

7. Mr. H. Rahman, learned Govt. Advocate appearing on behalf of the state respondents in his arguments has reiterated the contents of the affidavit filed in Civil Rule No. 2925 of 1997 particularly, Paras-7 and 8 which are to the effect that as the select list could not be published though the process of selection was completed and in the meantime Central Recruitment Committee had been abolished, the posts will now have to be filled up afresh and the writ petitions have become infructuous.

8. I have considered the rival submissions of the parties. The sole question for determination in the two writ petitions is whether the posts in question are to be filled up on the basis of selection process already completed in the year 1993 by the Central Recruitment Committee which was duly empowered at the relevant time or whether a fresh process of recruitment is to be initiated for filling up the same. The petitioner having participated in the selection held in the year 1993 pursuant to the advertisement dated 31.8.1992 could have, within reasonable

time of the completion of selection process, legitimately claimed finality to the selection proceedings by publication of a select list of successful candidates and for appointment on the basis thereof, the later being in the nature of defeasible right and being subject to the overriding power of the Executive to make the appointments only in the exigencies of service so required. The validity of the selection held in the year 1993 is not in dispute having been adjudged to be by this Court by judgment and order dated 2.5.1995 in Civil Rule No. 3668 of 1993. The only question, therefore, that needs determination is whether the said legal rights of the petitioners, stands abrogated/nullified in any manner, by the efflux of the time and the changes in the recruitment policy and in the constitution of new bodies for making such recruitment that have occurred in the meantime. In view of the law laid down by the Apex Court in the cases cited on behalf of the petitioners, the subsequent changes introduced by the Assam Staff Selection Board Rules, 1995 and other rules of 1997 will have no relevance and the posts will have to be filled up on the basis of rules in force on the date when the vacancies had arisen or were advertised. As the selection process, was hold and completed, except for publication of the select list, in accordance with the law in force on the relevant date, there is no escape from the conclusion that any question of fresh selection on the basis of changes in law brought about subsequently cannot arise and the petitioners are entitled to a consideration of their cases on the basis of selection already held. No question of breach of any rights of such other persons who may have subsequently become eligible to seek employment in respect of posts in question arises in the facts of the present case inasmuch as such rights, if any, were not born at the time when the petitioners were tested on the basis of the selection held in the year 1993.

9. Having held so, the next question to be determined is what is the nature of the relief that can be afforded to the petitioners in the facts and circumstances of the case. As the Central Recruitment Committee which held and conducted the selection in the year 1993 is no longer in existence but the records of selection are available and as admittedly the posts in question also are vacant, such records can be considered by the body now empowered to make recruitment under the provisions of the 1997 rules. Such consideration of records of the earlier selection proceedings will only be for the purposes of preparation of the select list and not for any other purpose. To take any other view would be to deprive the petitioners of a right which has crystalised in them and which could not be enforced earlier for no fault of theirs. The judicial process, if the facts of a given case so warrant, necessarily has to travel back in time to determine the legal entitlements of the parties before it.

10. Considering the totality of the facts and circumstances of the case, the writ petitions are, therefore, disposed of with a direction that the records/proceedings of the selection held in the year 1993 by the Central Recruitment Committee, Dhubri will be taken into consideration by the selection committee constituted under the Assam Public Service Commission (Direct Recruitment to Class-III and IV Posts) Rules, 1997 and the said selection committee on the basis of the said

records will publish the final select list and appointments to the posts in question will be made on the basis of the select list asked to be published. As no specific number of vacancies were intimated in the advertisement dated 31.8.1992, the select list directed to be published by this order will be operative only in respect of such vacancies in the cadre of Lower Division Assistant-cum-Typist in the offices of the district and below district level officers of the Dhubri district as existing on 31.12.1993 which number will have to be worked out by the authority. The entire of the aforesaid exercise will be completed by the State respondents within a period of 3 (three) months from the date of receipt of this order. Consequently, the advertisement dated 9.12.1998 shall stand quashed.

11. Both the writ petitions are disposed of in terms of the aforesaid orders.