
(2008) 12 GAU CK 0032

In the Gauhati High Court

Case No : W.A. No's. 256 of 2006 and 132 of 2008

Mrs. Joynab Ahmed and Another

APPELLANT

Vs

Sri Sahidur Rahman and Others

RESPONDENT

Date of Decision : 10-12-2008

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2009) 1 GLD 126 : (2009) 4 GLT 571

Hon'ble Judges : J. Chelameswar, C.J;B.P. Katakey, J

Bench : Division Bench

Advocate : B.D. Konwar and B. Rahman, for the Appellant; M.R. Pathak and V.M. Thomas, Standing Counsel, Education Department, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Katakey, J.—The Appellants in writ appeal No. 256/2006, who are the Respondent Nos. 6 and 7 in W.P. (C) No. 433/2000, have filed the appeal challenging the judgment and order dated 22.6.2006 passed by the learned Single Judge in the said writ petition, whereby and whereunder the learned Single Judge has set aside their appointments as Assistant Teacher in L.P. Schools in the district of Barpeta and directing consideration of Respondent Nos. 1 and 2 (writ Petitioner Nos. 1 and 2 in the said writ petition) against the posts held by the Appellants in the said appeal, on the ground that the Appellants received lower marks in the selection held for that purpose than the Respondent Nos. 1 and 2. The writ Petitioner No. 3 in the said writ petition has preferred W.A. No. 132/2008 challenging the said judgment and order passed by the learned Single Judge in not setting aside the whole selection process including the select list prepared thereof and in setting aside the appointments of Respondent Nos. 6 and 7 only (Appellants in W.A. No. 256/2006) and in directing consideration of the names of writ Petitioner Nos. 1 and 2 for appointment against such posts.

2. Writ Petition (C) No. 433/2000 has been filed by the Respondent Nos. 1 to 4 in W.A. No. 256/2006 (the writ Petitioner No. 3 is the Appellant in W.A. No.

132/2008) challenging the legality and validity of the select list prepared and published by the District Elementary Education Officer and the Deputy Inspector of Schools, Barpeta in the year 1999 for the purpose of appointment to the posts of Assistant Teacher in L.P., M.E. and M.V. Schools and also the appointments of the Respondent Nos. 6 and 7 therein (Appellants in W.A. No. 256/2006) as well as the Respondent No. 8 and also for a direction to prepare the select list afresh, contending inter alia, that pursuant to an advertisement dated 28.12.1996 issued by the Director, Elementary Education, Assam inviting applications for appointment of 7500 (seven thousand five hundred) Assistant Teachers for L.P., M.E. and M.V. Schools in the State of Assam, the writ Petitioners applied for the post of L.P. and M.E. School teachers under Barpeta district but the authority without showing the merit position and the marks obtained by the different candidates prepared and published a select list in the Office of the Deputy Inspector of Schools, Barpeta in the last week of December, 1999 for L.P. School teachers and started issuing the appointment letters without considering the merit of the candidates and in complete violation of the provisions of the Assam Elementary Education (Provincialisation) Rules, 1977 (in short, "1977 Rules"). It has further been contended in the said writ petition that the Respondent Nos. 6, 7 and 8 therein have been appointed as Assistant Teachers in different L.P. Schools in the district of Barpeta ignoring the writ Petitioners though they received higher marks than the said Respondent in the H.S.L.C. examination and such appointments have been made on political consideration without considering the merits of the respective candidates. According to the writ Petitioners, the selection was made in violation of the 1977 Rules read with the criteria/mythology prescribed by the Government in the guideline dated 28.4.1997 issued by the Secretary to the Government of Assam in the Education Department for selection of candidates for the post of teachers in primary and middle schools. The further contention of the writ Petitioners in the writ petition is that as they secured high marks in the H.S.L.C. examination than the Respondent Nos. 6 to 8 therein, the authority was required to give them more marks, on a scale of one hundred, than the Respondent Nos. 6 to 8 as stipulated in the guideline.

3. The Respondent Nos. 6 and 7 (Appellants in W.A. No. 256/2006) contested the writ petition by filing affidavit-in-op-position contending inter alia that they have been appointed as Assistant Teacher in L.P. Schools under Barpeta district pursuant to the selection conducted under the provisions of the 1977 Rules and on the basis of their position in the merit list prepared by the Selection Board and as published by the authority. The said Respondents in their respective affidavits have denied the allegation of violation of any rules or the guidelines and has contended that the selection was conducted strictly in terms of the statutory rules and the guideline issued for that purpose. No affidavit-in-opposition has been filed by the State Respondents in the writ petition, which necessitated the learned Single Judge to cause production of the records in original particularly the tabulation sheets showing the award of marks to

different candidates, who had appeared in the selection test.

4. The learned Single Judge upon consideration of the guideline issued by the authority for the purpose of awarding the marks in the selection of candidates for appointment as Assistant Teacher in L.P. School and also the tabulation sheets placed before the Court by the learned State Counsel has found that though the writ Petitioner Nos. 1, 2, 3 and 4 had secured 87.7, 91.4, 76.3 and 68 marks respectively, as against 41.8 and 66.4 marks secured by the Respondent Nos. 6 and 7 in the writ petition, they have not been selected and instead Respondent Nos. 6 and 7 have been selected and appointed ignoring the marks obtained by the writ Petitioners in the selection and hence set aside the appointment of the Respondent Nos. 6 and 7 (Appellants in W.A. No. 256/2006) and directed consideration of the writ Petitioner Nos. 1 and 2, against the resultant vacancies, they having secured 87.7 and 91.4 marks in the selection conducted by the authority. Hence, the present appeal.

5. We have heard Mr. N. Dutta, the learned Sr. Counsel for the Appellant in W.A. No. 256/2006, Mr. B.D. Konwar, the learned Counsel appearing on behalf of the Appellant in W.A. No. 132/2008, Mr. V.M. Thomas, the learned Standing Counsel, Education Department, appearing for the State Respondents and Mr. B.D. Das, the learned Counsel appearing for the Respondent Nos. 1 and 2 in W.A. No. 256/2006, who are the Respondent Nos. 6 and 7 in W.A. No. 132/2008.

6. Mr. Dutta, the learned Sr. Counsel for the Appellants in W.A. No. 256/2006 referring to the prayer made in the writ petition filed in W.P. (C) No. 433/2000 has submitted that since the writ Petitioners have not prayed for setting aside the appointments of the Appellants and for consideration of their case for appointment against the posts held by them, the learned Single Judge ought not to have set aside their appointment and directed consideration of the case of the writ Petitioner Nos. 1 and 2 against the resultant vacancies. According to the learned Sr. Counsel, the learned Single Judge ought not to have issued the writ of mandamus without there being any prayer in that regard. It has further been submitted by the learned Sr. Counsel that the Appellants (Respondent Nos. 6 and 7 in the writ petition) have been arrayed as parties in the said writ petition giving an instance of the alleged illegal appointment and has never prayed for setting aside their selection and appointment. Mr. Dutta has further submitted that the writ Petitioners have challenged the entire selection process and not the particular selection of the Respondent Nos. 6 and 7 and the learned Single Judge, therefore, ought not to have set aside the appointment of the Respondent Nos. 6 and 7. Mr. Dutta in support of his contention has placed reliance on a decision of the Apex Court in Chandigarh Administration Vs. Laxman Roller Flour Mills Pvt. Ltd.,

7. Mr. Konwar, the learned Counsel appearing for the Appellant in W.A. No. 132/2008 has submitted that the learned Single Judge having found illegality in the selection process conducted by the authority ought to have set aside the entire selection process including the select list prepared on the basis of such

selection and also the appointments made, as the writ Petitioners in the writ petition have challenged the entire selection process on the ground of violation of the statutory rules and the guidelines issued for that purpose. Mr. Konwar, therefore, submits that the select list prepared pursuant to such selection process undertaken by the authority be set aside and consequently, the appointments of all the Assistant Teachers in the L.P. Schools in Barpeta district be set aside.

8. Mr. Das, the learned Counsel appearing on behalf of the Respondent Nos. 1 and 2 in W.A. No. 256/2006, who are also the Respondent Nos. 6 and 7 in W.A. No. 132/2008, on the other hand, has submitted that the writ Petitioners in the writ petition have not only challenged the select list prepared by the authority for appointment to the posts of Assistant Teacher in L.P. School but also challenged the selection and appointment of the Respondent Nos. 6 and 7 in the writ petition on the ground of violation of the statutory rules and the guidelines issued for that purpose. It has been submitted by Mr. Das that the learned Single Judge upon perusal of the records, as produced by the learned State Counsel, has set aside the selection and appointment of the Respondent Nos. 6 and 7 (Appellants in W.A. No. 256/2006) as they have been selected and appointed ignoring the claim of the writ Petitioner Nos. 1 and 2 though they secured higher marks than those two persons in the selection. According to Mr. Das, since in the writ petition the writ Petitioners have prayed for setting aside the appointments of the Respondent Nos. 6 and 7, therefore, the learned Single Judge has not committed any illegality in setting aside their appointments and directing the authority to consider the case of the writ Petitioners against the resultant vacancies, they having secured much more marks than the Respondent Nos. 6 and 7 in the writ petition. Mr. Das further submits that the decision of the Apex Court in Chandigarh Administration (*supra*) on which Mr. Dutta has placed reliance, is not applicable in the facts and circumstances of this case.

9. Mr. Thomas, the learned Standing Counsel, Education Department producing the records before this Court has fairly submitted that it is a fact that the Appellants in W.A. No. 256/2006 have secured much less marks in the selection than the Respondent Nos. 1 and 2 in the said writ appeal (writ Petitioner Nos. 1 and 2) as the Appellants have secured 41.8 and 66.4 marks respectively, as against the writ Petitioner Nos. 1 and 2, who secured 87.7 and 91.4 marks respectively. Mr. Thomas, the learned Standing Counsel, Education Department further submits that no illegality has been committed by the learned Single Judge in not setting aside the entire selection process and also the select list prepared by the authority as the writ Petitioners have not arrayed all the selected and appointed persons as party in the writ petition. It has further been submitted that the State being not aggrieved has not filed any appeal against the judgment and order dated 22.6.2006 passed by the learned Single Judge in the writ petition.

10. We have considered the submissions of the learned Counsel for the parties"

and perused the pleadings of the parties including the judgment passed by the learned Single Judge. We have also perused the records produced by the learned State Counsel.

11. The process of selection of candidates for appointment as Assistant Teacher in L.P., M.E. and M.V. Schools against the total vacancies of 7500 all over the State of Assam, which includes the vacant posts in Barpeta district, was initiated by the Director of Elementary Education, Government of Assam by issuing the employment notice on 28.12.1996. It is not in dispute that the writ Petitioners and the Respondents in the writ petition applied for selection to the posts of Assistant Teacher in L.P. Schools in Barpeta district and they appeared in the selection test conducted for that purpose. A select list was thereafter, prepared on 13.11.1999 by the Sub-Divisional Level Selection Board containing names of 208 candidates, wherein the names of the Respondent Nos. 6 and 7 in the writ petition (Appellants in W.A. No. 256/2006) and of the Respondent No. 8 in the writ petition (who did not file appeal) find place at Serial Nos. 183, 170 and 181, respectively in the said list, on the basis of the marks obtained by them in the selection being 41.8, 66.4 and 58.2, respectively. While the Respondent Nos. 6 and 7 in the writ petition were appointed as Assistant Teacher in L.P. School and posted in No. 1512 Garemari Gaon L.P. School and No. 115 Ramapara L.P. School, the Respondent No. 8 has not been appointed. It also not in dispute that the writ Petitioner Nos. 1 and 2 (Respondent Nos. 1 and 2 in W.A. No. 256/2006) and the writ Petitioner No. 3 (Appellant in W.A. No. 132/2008) secured 87.7, 91.4 and 76.3 marks, respectively, in the said selection, but their names have not been included in the select list.

12. The 1977 Rules made in exercise of the power conferred by the proviso to Article 309 of the Constitution of India regulating the recruitment and condition of service of teachers of elementary schools, which have been provincialised under the provisions of Assam Elementary Education (Provincialisation) Act, 1974 provides the method of recruitment to the post of Assistant Teacher in L.P./M.E./M.V. Schools. It also lays down the essential qualifications for recruitment. The said Rule also provides for the Constitution of the Selection Committee and lays down the procedure for selection and appointment. In the present appeals, since there is no allegation of violation of the provisions of the rules in Constitution of Selection Committee and in conducting the selection, except in preparing the select list being not on the basis of the marks obtained by the parties to these appeals in such selection, this Court would proceed on the basis that the procedure in that regard has not been violated.

13. A set of guideline has been formulated by the Government of Assam in the Education Department, which was circulated to all concerned by the Secretary to the Government of Assam in Education Department vide communication dated 28.4.1997, relating to the selection of candidates for the post of Assistant Teachers in primary and middle schools (provincialised) pursuant to the aforesaid advertisement issued by the Director of Elementary Education. The said guideline

(Annexure-4 to the writ petition) lays down the manner in which the marks are to be allotted. It provides that in so far as the L.P. School is concerned, the selection has to be made out of a total of 200 marks, out of which 100 marks have been awarded against the performance in the H.S.L.C. examination and whatever percentage of aggregate marks obtained by the candidates in H.S.L.C. or its equivalent examination equivalent numerical marks is required to be given out of 100 marks. 40 marks at the rate of 2 marks per years is to be awarded for teaching experience; 20 marks is to be awarded for undergoing basic training course and remaining 40 marks have been allotted for the interview.

14. The records of selection produced by the State Respondents before this Court reveal that while the writ Petitioner Nos. 1, 2, (Respondent Nos. 1 and 2 in W.A. No. 256/2006) writ Petitioner No. 3 (Appellant W.A. No. 132/2008) and writ Petitioner No. 4 (not Appellant) had secured 87.7, 91.4, 76.3 and 68 marks, respectively out of the total 200 marks, the Respondent Nos. 6 and 7 in the writ petition (Appellant in W.A. No. 256/2006) secured 41.8 and 66.4 marks, respectively. Inspire of securing lesser marks than the writ Petitioners, the name of the Respondent Nos. 6 and 7 find place in the select list prepared by the Selection Committee and accordingly, they have been appointed ignoring the claim of the writ Petitioners.

15. In the backdrop of the aforesaid facts as revealed from the records produced by the learned State Counsel, the question which requires determination is whether the judgment and order passed by the learned Single Judge suffers from any infirmity so as to interfere the same in the Letters Patent Appeal. It is the contention of the Appellants in the writ appeal being W.A. No. 256/2006 that since their appointments have not been specifically challenged in the writ petition and there being no prayer made for appointment of any of the writ Petitioners in any of the vacancies, their appointments cannot be set aside and in their place there cannot be any direction for consideration for appointment of any of the writ Petitioners. Such contention of the Appellants in the writ appeal cannot be accepted in view of the fact that in the writ petition, the writ Petitioners apart from praying for setting aside the select list prepared and published by the Respondent authorities have also challenged the appointment of the Respondent Nos. 6 and 7. In the writ petition, the writ Petitioners' claim is that though they did well in the interview conducted for the purpose of selection they have been ignored by giving undue advantage to the Respondent Nos. 6 and 7 as well as to the Respondent No. 8 in the writ petition. It is no doubt that there is no specific prayer in the writ petition for appointment of any of the writ Petitioners against the resultant vacancy. Even if there is no such prayer for making appointment against the resultant vacancies after setting aside the appointment of the Respondent Nos. 6 and 7, the Writ Court can issue direction to consider the case of any of the writ Petitioners, if on perusal of the records it is found that the writ Petitioners are qualified and in fact received higher marks than the Respondents. As noticed above, the writ Petitioner Nos. 1 and 2 received much more marks than the Respondent Nos. 6 and 7 in the writ petition. The Appellants in W.A. No.

256/2006, who are the Respondent Nos. 6 and 7 in the writ petition in fact, he has not challenged the marks obtained by them as well as by the writ Petitioners in the interview conducted for that purpose.

16. The decision of the Apex Court in Chandigarh Administration (supra) on which reliance has been placed by the Appellants in the said appeal is not applicable in the facts and circumstances of this Case. In the said case, the Apex Court keeping in view the prayer made in the writ petition has observed that since in the writ petition no relief commanding the Chandigarh Administration to issue completion certificate in favour of the writ Petitioner has been sought for, the High Court was not justified in issuing such a mandamus. The Apex Court has observed that unless the allegations are made in the writ petition and the relief to that effect is also prayed for, the High Court is not justified in issuing any order in exercise of the relief prayed for in the writ petition. In the instant case, as noticed above, the writ Petitioners claimed appointment on the basis of the interview conducted for that purpose and also prayed for setting aside the appointments of the Respondent Nos. 6 and 7, apart from challenging the legality and validity of the select list where the names of the Respondent Nos. 6 and 7 appeared. From the averments made in the writ petition, it is clear that the Petitioners claimed appointment. As discussed above, the Respondent Nos. 6 and 7 have been selected though they received much lesser marks than the writ Petitioners in the interview. Hence, in our considered opinion no illegality has been committed by the learned Single Judge in setting aside the appointments of the Respondent Nos. 6 and 7 and in directing consideration of the cases of the writ Petitioner Nos. 1 and 2 only, they having received higher marks than the writ Petitioner Nos. 3 and 4, for appointment against the resultant vacancies.

17. The contention of the Appellant in W.A. No. 132/2008 that there being illegality committed in preparing the select list, as found by the learned Single Judge, the entire list ought to have been set aside, also cannot be accepted in view of the fact that the writ Petitioners even after production of the records before the learned Single Judge have admittedly not made the persons, who have been selected pursuant to such select list and appointed thereafter, as party Respondents in the writ petition. Admittedly, the select list has been acted upon and the appointments have been issued in the year 1996 including the appointment of the Respondent Nos. 6 and 7 and, therefore, in the absence of the persons appointed, no fault can be found in the decision of the learned Single Judge in not setting aside the entire select list, more so when the writ Petitioners could not demonstrate any illegality in preparing such list except the inclusion of the names of Respondent Nos. 6 and 7 (Appellants in W.A. No. 256/2006) in such list.

18. In view of the aforesaid discussion, we do not find any merit in the appeals and hence, the same are dismissed. No cost.