
(2023) 07 GAU CK 0004
In the Gauhati High Court
Case No : Writ Appeal No. 205, 208 Of 2022

Muktar Hussain

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 17-07-2023

Acts Referred:

Citation : (2023) 07 GAU CK 0004

Hon'ble Judges : Sandeep Mehta, CJ;Arun Dev Choudhury, J

Bench : Division Bench

Advocate : P K Goswami, A. Deka, R. Mazumdar

Final Decision : Dismissed

Judgement

A.D. Choudhury, J

1. Heard Mr. A. Deka, learned counsel appearing for the appellants. Also heard Mr. R. Mazumdar, learned Standing Counsel for the Education Department, Assam.

2. The two intra court appeals are directed against the common judgment and order dated 05.05.2022 passed by the learned Single Judge whereby, the writ petitions being WP(C) 4608/2016 (Hasina Dilruba -Vs- State of Assam & Ors) and WP(C)/4838/2016 (Muktar Hussain -Vs- The State of Assam & Ors) preferred by the appellants were dismissed.

3. By way of the aforesaid two writ petitions, the appellants challenged the legality and validity of an order dated 22.07.2016, passed by the Director, (in-charge) Madrassa Education, State of Assam, whereby, the appointment of the appellants as Assistant Teacher were cancelled.

4. The reason for cancellation of the appointments of the appellants were that the selection process by which the appellants were appointed were anomalous and was vitiated by bias as the close relatives of the appellants were Member Secretary and Member of the Selection Committee.

5. It is not disputed by the appellants that their close relatives were part of such Selection Committee, which selected and recommended them for the appointments in question. The basic contention of the appellants before the learned Single Judge as well as before this Court is that after selection and appointment, the appellant became government servant and therefore, before cancellation of their appointments, the principles of natural justice ought to have been adhered to by giving them reasonable opportunity of hearing.

6. The learned Single Judge, relying on the decision of the Hon'ble Apex Court in the case of Aligarh Muslim University -VS- Monsur Ali Khan reported in (2000) 7 SCC 529, negated such contention and concluded that, as it is an admitted position that the Member and Member Secretary of the Selection Committee were close relatives of the petitioners, the selection and recommendation of the petitioners were ex-facie illegal and therefore, issuance of notice would not change such facts and no prejudice shall be caused to the petitioners in absence of notice. Accordingly, the learned Single Judge dismissed the writ petitions and upheld the decision impugned in the writ petitions.

7. Mr. A. Deka, learned counsel representing the appellants argued that principle of natural justice has not been followed while cancelling the appointments of the appellants. According to Mr. Deka, learned counsel, non adherence of the principles of natural justice has not only prejudiced the appellants but also is having far reaching civil consequences upon the appellants. Therefore, the order impugned in the writ petitions cancelling the appointments of the appellants are liable to be interfered with, concludes Mr. Deka, learned counsel.

8. We have given over thoughtful consideration to the arguments advanced by Mr. Deka, learned counsel and also perused the materials available on record.

9. In the case of Ashok Kumar Yadav -Vs- The State of Haryana reported in 1985 4 SCC 417, the Hon'ble Apex Court held that when a member of selection committee is closely related to a candidate appearing in the selection process, the same would vitiate the entire selection process on account of reasonable likelihood of bias affecting the entire selection process.

10. In the case of A. K. Kraipak and Others -Vs- Union of Indian reported in 1969 2 SC 262 while dealing with the Rule against bias affecting the process of selection, the Hon'ble Apex Court concluded that it is not necessary to establish bias and it is sufficient to invalidate the selection process, if it is shown that there is reasonable likelihood of bias.

11. It is well settled that the principles of natural justice mandates that a reasonable opportunity must be given to a person before taking any adverse action against him. The adjudicating authority must disclose all the materials placed before it and must give reasonable opportunity to the affected, to submit his case. A reasonable hearing means, that a person against whom an adverse order is passed, should be informed of the charges against him giving him an opportunity to submit his explanation to the charges and the person is also have

a right to know the material on the basis of which, the allegation is proposed to be decided.

12. In the case of Aligarh Muslim University (supra), the Hon'ble Apex Court culled out two exceptions to the aforesaid principles of natural justice. Firstly, when on the basis of admitted/undisputed facts, only one conclusion is possible, the principles of natural justice would not apply and secondly, even if a prejudice is pleaded such prejudice is required to be proved.

13. The aforesaid settled proposition of law and the facts of the present case, lead this Court to an unhesitant conclusion that the selection of the appellants were vitiated by likelihood of bias inasmuch as the father and brother of the appellants were members of the Selection Committee. As such fact of close relative of the appellants being members of the Selection Committee, being not disputed by the appellants, no prejudice shall be caused to the appellants, if the principles of natural justice is not adhered and no reply to any notice if issued can change the position and conclusion that the selection of the appellants have been vitiated by bias.

14. In view of the aforesaid discussion and reasons, this Court do not find any infirmity in the impugned common judgment and order dated 05.05.2022 passed by the learned Single Judge in writ petition being WP(C) 4608/2016 (Hasina Dilruba -Vs- State of Assam & Ors) and WP(C)/4838/2016 (Muktar Hussain -Vs- The State of Assam & Ors).

15. Accordingly, such decision of the learned Single Judge is upheld. Consequently the present writ appeals fail. Parties to bear their own cost.