
(2013) 08 GAU CK 0056
In the Gauhati High Court
Case No : Writ Petition (C) No. 3379 of 2008

Mukut Sarma

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 26-08-2013

Acts Referred:

Citation : (2014) 1 GLD 196 : (2013) 5 GLT 512

Hon'ble Judges : Arup Kumar Goswami, J

Bench : Single Bench

Advocate : A. Sarma, for the Appellant; P. Baruah, GA and Mr. A. Mertin, for the Respondent

Final Decision : Dismissed

Judgement

Arup Kumar Goswami, J.—By this writ application under Article 226 of the Constitution of India, the petitioner prays for setting aside of the order dated 05.07.2008 passed by the Commissioner, North Assam Division, Tezpur whereby the process of selection and appointment of the petitioner as Mauzadar of Mayang Mauza were quashed. The case projected in this petition, in short, is that the petitioner, who is an Arts graduate, was working as a teacher in a venture school. An advertisement/notice dated 27.07.2006 was issued by the Deputy Commissioner, Morigaon District inviting applications from intending candidates fulfilling the conditions as indicated therein to fill up the post of Mauzadar of Mayang Mauza, which had fallen vacant on the death of the incumbent Mauzadar on 29.05.2006. Pursuant to the said advertisement/notice, the petitioner along with others applied for the said post and the petitioner and the respondents No. 4 and 5 were called for an interview to be held on 03.10.2006. In the interview, the petitioner obtained 85 marks while the respondents Nos. 4 and 5 obtained 51 and 52 marks, respectively. Thereafter, by an order dated 30.03.2007, the petitioner was appointed by the respondent No. 3 as Mauzadar of Mayang Mauza on the terms and conditions mentioned in the said appointment order. The petitioner joined the post of Mauzadar on 07.04.2007 and had furnished sureties

of landed properties of the value of Rs. 8,26,393.00 and also deposited a National Savings Certificate of Rs. 10,000/-.

2. It is pleaded in the writ petition that erstwhile Mayang Mauza in the District of Morigaon was trifurcated to form three new Mauzas, namely, Mayang, Manaha and Ghagua. Shri Ramesh Chandra Deka, on whose death the post of Mauzadar of Mayang Mauza had fallen vacant, was a permanent resident of village-Bhakatgaon of undivided Mayang Mauza. It is further pleaded that respondent No. 4 is neither a resident of Mayang Mauza nor she has any immovable property in the said Mauza. The petitioner, on the other hand, is a permanent resident of Mayang Mauza and has immovable property in the said Mauza. He is a graduate while respondent No. 4 is a Matriculate, which is apparent from the application dated 20.06.2006 filed by the respondent No. 4 to the respondent No. 3 praying for her appointment as a Mauzadar of Mayang Mauza. It is also apparent from the said application that she is a permanent resident of Bhakatgaon under Manaha Mauza.

3. Aggrieved by the appointment of the petitioner as Mauzadar, two separate appeals were filed-one by the respondent No. 4 and the other by the respondent No. 5, before the respondent No. 2.

4. Both the appeals were taken up for consideration by the respondent No. 2 together and thereafter, the order dated 05.07.2008, as mentioned above was passed.

5. I have heard Mr. A. Sarma, learned counsel for the petitioner as well as Ms. P. Baruah, learned State Counsel for respondent No. 1, 2 and 3 and Mr. A. Matin, learned counsel for respondent No. 5. None has appeared on behalf of respondent No. 4, though name of the counsel of respondent No. 4 is shown in the cause list. No affidavit is filed by respondent Nos. 4 and 5. However, affidavit has been filed by respondent Nos. 2 & 3.

6. Mr. A Sarma, learned counsel for the petitioner submits that Chapter-VIII of the Executive Instructions of the Assam Land and Revenue Regulation, 1886 provides for entire spectrum relating to the post of Mauzadar including appointment, qualification for appointment, duties etc. It is submitted by him that a conjoint reading of the provisions, more particularly, paragraphs 115, 116 and 117 of Executive Instructions would go to show that Mauzadar must be a permanent resident of the Mauza. Contention is also advanced that the respondent No. 4 had taken part in the interview pursuant to advertisement/notice dated 27.07.2006 and therefore, subsequently she cannot challenge the initiation of the process of selection of the Mauzadar contending that the post of Mauzadar is a hereditary post and she is entitled to be appointed as such as successor of the earlier incumbent. The learned counsel submits that the Commissioner, North Assam Division, Tezpur was wholly unjustified in quashing the process of selection as well as appointment of the petitioner as the Mauzadar of Mayang Mauza and in directing the respondent No. 3 to dispose of the petition

filed by the respondent No. 4 by following the provisions of Executive Instructions No. 116(ii) and 117 of the Assam Land and Revenue Regulation, 1886 and other relevant laws. It is submitted by him that the respondent No. 4 being not a permanent resident of Mayang Mauza and she not having any immovable property in the said Mauza, she is also not qualified to be appointed as Mauzadar of Mayang Mauza and the Commissioner, North Assam Division, Tezpur committed error apparent on the face of record in not considering the said aspect of the matter.

7. The learned counsel appearing for the respondents have supported the impugned order.

8. From the perusal of the materials on record, it appears that after the death of Ramesh Chandra Deka, the respondent No. 4 had submitted an application on 20.06.2006 to the respondent No. 3 stating that late Ramesh Chandra Deka was a bachelor and she is the only surviving heir of the Mauzadar, late Ramesh Chandra Deka and they were staying together as a joint family. By the said application, she prayed for her appointment as Mauzadar of Mayang Mauza. From the said application it is also apparent that she is a resident of village-Bhakatgaon, Mauza-Manaha. Perusal of the order dated 5.7.2008 goes to show that the respondent No. 4 had not submitted any application in response to the advertisement/notice dated 27.7.2006. The writ petitioner has not been able to bring any material on record to show that she had responded to the said advertisement/notice by submitting any application. That the respondent No. 4 appeared in an interview is not in dispute, but it appears that she had participated in the interview on a mistaken notion that the interview was pursuant to her application dated 20.06.2006. In that view of the matter, I find no force in the contentions of Mr. Sarma that respondent No. 4 having participated in the process of interview pursuant to the advertisement/notice dated 27.07.2006, she is estopped from questioning the legitimacy of the process of selection of the Mauzadar initiated by the advertisement/notice dated 27.07.2006.

9. Chapter-VIII of Assam Land and Revenue Regulation, 1886, provides for Executive Instructions which is exhaustive in nature, covering the entire gamut in relation to Mauzadars. In order to appreciate the other contentions of Mr. Sarma, provisions of paragraphs 115, 116, 117 and 120 of Executive Instructions, to the extent relevant, are reproduced herein below:

115. Mauzadars shall be appointed and dismissed by the Deputy Commissioner subject to the Commissioner's approval in either case. A mauzadar may, however, be suspended by the deputy Commissioner on his own authority. Notice of suspension shall ordinarily be served on the mauzadar by an officer of the status of "Revenue Officer" who shall take over all books and papers of the mauza and any collected revenue at that time in the mauzadars hand. The fact of mauzadars suspension shall immediately be communicated to the raiyats of the mauza by beat of drum at the nearest hat or in any other convenient without

manner and shall be reported to the Commissioner without delay. Mauzadars shall be suspended by Deputy Commissioner only in cases in which it seems likely that their dismissal must follow.

116. In making appointment the following principles shall be, observed as far as possible.

(i) Mauzas inhabited by such indigenous races as Cacharis and Mikirs shall be committed to a mauzadars who himself belongs to the indigenous population.

(ii) Subject to such changes as may be required in order to give effect gradually to the foregoing principle, a mauzadar's successor shall ordinarily be selected from amongst the members of his family-including relations on the female side if no qualified heir is available on the male side. If an heir, other-wise suitable, is a minor, the post may be kept open for him for a period not exceeding three years, an agent being appointed, provided that the Deputy Commissioner is satisfied that the minor is doing his best to qualify himself for the appointment but the family of mauzadar who is dismissed for misconduct loses its hereditary claims.

(iii) When it is necessary to appoint as mauzadar a man who has no family claims to the post he shall as a rule, be selected from a family which is resident in the mauza.

(iv) It is essential that a person who is selected for appointment as mauzadar should be a man who inspires confidence both by his character and by his financial stability.

(v) Qualifications for appointment to the post of mauzadar will include a fair vernacular education, such as is required for the keeping of the mauzadari accounts. It is desirable that the education should have extended to the middle vernacular standard. Further, other things, being equal, preference shall be given to candidates who have higher educational qualifications such as those connected by matriculation or higher passes.

117. A mauzadar shall permanently reside in his mauza with family, but in exceptional cases he may be allowed to reside outside his mauza with the Commissioner's permission.

120. A mauzadar is a public servant whose primary duty is to collect land revenue and other Government dues with the collection of which he is entrusted.

10. Paragraph 115 of the Executive Instructions provides that Mauzadar shall be appointed and dismissed by the Deputy Commissioner subject to the Commissioner's approval in either case. Executive Instructions 116(iii) provides that when it is necessary to appoint as Mauzadar a man who has no family

claims to the post, he shall as a rule, be selected from a family which is resident in the Mauza. Paragraph 116(iv) of the Executive Instructions provides that a person who is selected for appointment as Mauzadar should be a man who inspires confidence both by his character and by his financial stability. Paragraph 116(v) provides that qualifications for appointment to the post of Mauzadar will include a fair vernacular education, such as is required for the keeping of the Mauzadari accounts. It is desirable that the education should have extended to the middle vernacular standard. Other things being equal, preference shall be given to candidates who have higher educational qualifications such as those connected by matriculation or higher passes. Paragraph 117 provides that a Mauzadar shall permanently reside in his mauza with family, but in exceptional cases he may be allowed to reside outside his mauza with the Commissioner's permission. Paragraph 120 provides that a Mauzadar is a public servant whose primary duty is to collect land revenue and other Government dues with the collection of which he is entrusted.

11. From paragraph 116(ii) of the Executive Instructions it is clear that a Mauzadar's successor shall ordinarily be selected from amongst the members of his family including relations from the female side if no qualified heir is available from the male side. There is also provision for keeping a post vacant for a heir who is a minor for a period not exceeding three years. It also provides that family of Mauzadar loses its hereditary claim in the event of Mauzadar being dismissed for misconduct. Thus, scheme of the Executive Instructions is that a family of a Mauzadar will have hereditary claim on the post of Mauzadar.

12. Though in terms of paragraph 117, a Mauzadar is to reside permanently in the Mauza with his family, but in exceptional cases he may be allowed to reside outside his Mauza with the Commissioner's permission. There is no dispute that the respondent No. 4 is the sole heir of the earlier Mauzadar. Even after bifurcation of Mayang Mauza, the elder brother of respondent No. 4 continued to discharge his function as Mauzadar of Mayang Mauza though his residence had fallen in Manaha Mauza.

13. Being the sole heir of the earlier Mauzadar, the respondent No. 4 has a hereditary right for consideration for appointment as Mauzadar. There fore, I am of the considered opinion that the Commissioner, North Assam Division was correct in quashing the selection process and appointment of the writ petitioner and in directing the Deputy Commissioner, Morigaon to start a process of selection of Mauzadar of Mayang Mauza by first disposing of the petition dated 20.06.2006 filed by the respondent No. 4 by following the provisions of the Executive Instructions under Assam Land and Revenue Regulations, 1886. In view of the above discussion, I find no merit in this petition, and, accordingly, the same is dismissed. No costs.