
(2008) 07 GAU CK 0025
In the Gauhati High Court

Nakul Kr. Mazumdar

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

Citation : (2009) 3 GLR 476

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—The question that arises for determination in the present proceeding can be identified as follows:

What would be the legally acceptable stage for stipulating the minimum qualifying marks for being eligible to be selected for appointment?

2. The aforesaid question arises in the following facts:

An advertisement was published on 7.2.2004 by the Conservator of Forests, Karbi Anglong Autonomous Council inviting applications, inter alia, for filling up seven vacant posts of Forester Grade-I under the Council. The selection process was to consist of a written test in three papers comprising of a total of 150 marks. Candidates found eligible in the written test were required to take part in a physical endurance test followed by an interview. The interview segment of the selection consisted of another 50 marks. The petitioner who took part in the selection, though had qualified for the interview, was not included in the list of the finally selected candidates for appointment. On the basis of the result of the selection and the approval granted by the Autonomous Council, the respondent Nos. 12 to 20 in the writ petition were appointed in the post of Forester Grade-1 by an order dated 28.6.2005. The respondent Nos. 21 and 22 were also appointed in the said post by an order dated 3.7.2006. The aforesaid appointments of the respondent Nos. 21 and 22 were, however, on purely temporary basis.

3. The petitioner having failed to qualify in the selection held, submitted an application for being appointed against some available vacant posts of Forester Grade-I. The case of the petitioner was duly processed and approval having been granted by the competent authority of the Autonomous Council, the petitioner was appointed purely on temporary basis in the post of Forester Grade-I by an order dated 20.12.2005. The petitioner, accordingly, joined on 21.12.2005. However, the appointment of the petitioner was cancelled on 21.6.2007 and, consequently, the petitioner was discharged from service on 3.7.2007. Aggrieved by the aforesaid action, the petitioner instituted a writ proceeding before this Court which was registered and numbered as WP(C) No. 4768/2007. The writ petition was dismissed by this Court on 3.10.2007 primarily on the ground that the petitioner, not being a selected candidate, could not have been validly appointed in a public office.

4. Thereafter, the petitioner filed an application dated 2.11.2007 under the provision is of the Right to information Act, 2005 seeking particulars/detailed information with regard to the selection held. In response, the authority under the aforesaid Act forwarded to the petitioner a notice dated 22.11.2004 consisting the roll numbers of the candidates selected for the interview as well as the marks secured by all such candidates in the different segment of the, selection. From the aforesaid materials furnished to the petitioner it transpired that the petitioner had secured a total of 142 out of 200 marks in the selection held. On the basis of the total marks secured, the petitioner was to be placed at the second position in order of merit. However, the break up of marks furnished to the petitioner indicated that while the petitioner secured 124 out of 150 marks in the written test, he had secured only 18 marks in the interview. Contending that the petitioner; on the basis of the marks secured by him, is eligible to be appointed and that his case has been wrongly bye-passed, the appointments of the respondent Nos. 12 to 22 have been assailed in this writ petition wherein a direction has been prayed for appointment of the petitioner in the post in question. The petitioner has also contended that the advertisement dated 7.2.2004 being in respect of seven posts only, the appointments of the respondent Nos. 12 to 22 in eleven numbers of posts is beyond the terms of the advertisement. Hence, appropriate interference of the court has also been prayed for.

5. The respondent Nos. 9, 10 and 11 who were the members of the Selection Committee have filed separate affidavits in the case. While the respondent No. 11 denies any role in the selection process at all, according to the respondent Nos. 9 and 10, they were assigned the duties of interviewing the candidates which had been performed by them. The marks awarded by them in the interview to different candidates have been forwarded to the competent authority. The respondent Nos. 9 and 10 deny any further role or responsibility in the matter, particularly in the matter of finalization and publication of the select list.

6. The respondent No. 7, i.e., the Conservator of Forests, Karbi Anglong Autonomous Council has filed his affidavit in the case. According to the respondent No. 7, though the advertisement was initially for seven posts, nine appointments were made as two vacancies became available in the meantime. Insofar as the appointments of the respondent Nos. 21 and 22 are concerned, according to the respondent No. 7, the said appointments are absolutely temporary and valid until the selection in respect of the said posts is finalised. The respondent No. 7 in the affidavit filed has further stated that the said selection process is being has been initiated. In the affidavit filed the respondent No. 7 has further stated that though not stipulated in the advertisement, prior to the holding of the selection a meeting of the Selection Committee was held on 6.12.2004 wherein a decision was taken that in each segment of the selection process, i.e., written and interview, a candidate, to be eligible for selection, must secure 40% marks. According to the respondent No. 7, the petitioner having secured 18 marks in the interview did not satisfy the above requirement and, therefore, notwithstanding the total marks secured by him, he was not eligible to be included in the select list.

7. The respondent Nos. 13, 15, 16, 17 and 19 as well as the respondent Nos. 14, 18 and 20 who are the selected candidates have also filed their affidavits in the case wherein it has been stated that the selection was held as per the norms and criteria in force and that they have been rightly selected for appointment.

8. I have heard Mrs. R.S. Choudhury, learned Counsel for the petitioner and Mr. A.K. Goswami, learned senior counsel appearing on behalf of the Autonomous Council. I have also heard Ms. M. Dev, learned Counsel for the respondent No. 7, Mr. N. Choudhury, learned Counsel for the respondent Nos. 8 and 11 Mr. G.N. Sahewalla, learned senior counsel for the respondent Nos. 12, 14, 18 and 20 and Mr. T.J. Mahanta, learned Counsel for the respondent Nos. 13, 15, 16, 17, and 19. None has appeared on behalf the remaining respondents, particularly the respondent Nos. 21 and 22.

9. The arguments advanced by the learned Counsel for the petitioner do not question the selection and appointment of respondent Nos. 12 and 20 on any other substantial ground save and except that while making the same the better "right" of the petitioner to be selected and appointed has been ignored. Mrs. Choudhury, learned Counsel for the petitioner has contended that the petitioner had secured a total of 142 marks out of 200 and on the basis of the marks so secured, the petitioner is really placed at serial No. 2 in order of merit. According to the learned Counsel, neither in the advertisement issued nor in any subsequent notice/publication it was mentioned that a candidate to be eligible for selection must secure at least 40% marks in each of the papers of the written test as also in the interview. Therefore, according to the learned Counsel, the reason for not appointing the petitioner as cited by the respondent No. 7 in the affidavit filed, i.e., that the petitioner had failed to secure the minimum qualifying marks in the interview is not a valid and acceptable reason. The learned Counsel

has further argued, relying on the authority of several pronouncement of the Apex Court, that selection by interview is a largely subjective process and, therefore, should not be allowed to have any predominant role in determining the overall suitability of a candidate. On the aforesaid basis, it is the argument of the learned Counsel for the petitioner that the decision of the authority holding the petitioner to be not eligible for selection being founded on the basis of the marks, secured by the petitioner in the interview, the same should not be accepted by the court. Mrs. Choudhury has further argued that the appointment of the respondent Nos. 21 and 22, who are not included in the select list and, in fact, who did not take part in the selection at all is by any stretch of reasoning untenable in law. Reliance has been placed by the learned Counsel for the petitioner on the following decisions of the Apex Court in support of the contention raised:

(i) Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others,

(ii) Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others,

(iii) State of U.P. Vs. Rafiquddin and Others, and

10. Controverting the submissions advanced on behalf of the petitioner, Mr. Goswami, learned senior counsel appearing on behalf of the Autonomous Council and Ms. M. Dev, learned Counsel for the respondent No. 7 have Relied On the records in original placed before the court. In this regard, the learned Counsels have pointed out that by order dated 11.11.2002, a Selection Board had been constituted for recruitment to the vacant posts in the Forest Department consisting of the Executive Member (Forest) of the Council as the Chairman and the following, members:

(i) The Conservator of Forests, Karbi Anglong;

(ii) The Deputy Secretary, i/c, Forest;

(iii) The O.S.D. (Finance);

(iv) The Senior Finance and Accounts Officer; and

(v) The Finance and Accounts Officer(C).

11. The learned Counsels have further pointed out that a meeting of the Selection Board was held on 6.12.2004 wherein a decision was taken that to qualify in the selection a candidate must secure 40% marks in each written paper as well as in the interview. Pointing to the result of the selection which is available on record, the learned Counsels have further submitted that the aforesaid decision of the Selection Board was uniformly applied to all the candidates and that apart from the petitioner, there is another candidate who had secured a total of 143 marks but was not selected for appointment as the said candidate had secured less than 40% marks in the interview. Insofar as the appointments of the respondent Nos. 21 and 22 are concerned, the learned

Counsels have submitted that the appointments of the aforesaid respondents are absolutely fortuitous in nature and are valid only until the posts are filled up on regular basis. In this regard, it has also been argued by the learned Counsels that the petitioner was appointed in a similar manner by order dated 20.12.2005 which was cancelled resulting in the abortive writ proceeding instituted by the petitioner, i.e., WP(C) No. 4768/2007.

12. Mr. G.N. Sahewalla, learned senior counsel and Mr. T.J. Mahanta, learned Counsel who have appeared on behalf of some of the candidates selected and appointed, while reiterating the submissions advanced on behalf of the Autonomous Council and the respondent No. 7, have further submitted that the private respondents had taken part in the selection and have been offered appointment on the basis of their performance as adjudged by the Selection Board. The learned Counsels have argued that the private respondents have been in service for about three years now and, therefore, unless there are very strong and compelling reasons, which do not exist in the present case, the appointments of the private respondents need not be disturbed. In this regard, Mr. Sahewalla has specifically pointed out, by placing before the court the question paper of the written test, that on the basis of the total marks allotted, 40% thereof, i.e., 20 marks was clearly stipulated as the qualifying mark.

13. The rival submissions advanced on behalf of the parties have received the most anxious consideration of the court. Ordinarily and in normal course, stipulations with regard to eligibility including the minimum qualifying marks should be spelt out at the earliest, i.e., in the advertisement that may be issued for the post(s) in question. Such stipulations ensure the required degree of transparency in the selection process which the court would always insist upon. A candidate appearing in a selection for appointment to a public office should be made aware of all such stipulations that govern his eligibility for the post so as to enable him to be in a position to offer his best. Stipulations/conditions incorporated subsequently, though may not be abhorrent to law, will require the highest decree of satisfaction that such subsequent stipulations conform to the needs of the post and that the same has been brought for good, sufficient and relevant reasons and have been uniformly applied to all the candidates. No law has been cited, as possibly none exist, which debar an employer from prescribing the stipulations with regard to eligibility at a later stage. However, in judging such subsequent additions by way of additional or fresh stipulations, the test indicated above will have to be applied.

14. In the present case, though the advertisement did not contain any expressed stipulation with regard to the minimum qualifying marks either in the written test or in the interview, it is clear from the records in original placed before the court that such a decision had been taken by the selection committee. The decision taken with regard to the minimum qualifying marks cannot be said to be irrelevant or extraneous to the selection process in question. The stipulation in the question of the written test with regard to minimum qualifying marks amply

indicates the decision taken in this regard and its uniform application to all candidates. The exclusion of a candidate who had secured higher total marks than the petitioner, for the same reason, i.e., not securing the minimum qualifying marks in the interview, also indicates that the petitioner had not been singled out for any discriminatory treatment. All the selected candidates have secured the minimum qualifying marks in the interview. The fact that most, of them had secured high marks in the interview, by itself and without anything more, will not entitle the court to draw any adverse inference in this regard. All the aforesaid facts are capable of sustaining a reasonable belief that though a minimum qualifying mark in the interview was not initially prescribed, the subsequent incorporation of the said requirement was for good and relevant reasons and the decision making process was concluded by a transparent application of the said criteria to all the candidates in the fray.

15. A point has been raised by the learned Counsel for the petitioner that in view of the subjective nature of the process of interview, the minimum qualifying marks therein should not be allowed to operate prejudicially to a candidate. It will suffice to observe in this regard that every process is subject to its own merits and de-merits. Insofar as interviews are concerned, notwithstanding the several limitations that are inherent in a process of interview, selection on the basis of an interview acting as a supplement to a written test has come to hold the field. In this regard, the Apex Court in *State of U.P. v. Rafiquddin and Ors.* (supra) has clearly laid down that "where selection is made on the basis of written as well as viva voce test, the final result is determined on the basis of the aggregate marks. If any minimum marks either in the written test or in viva voce test are fixed to determine the suitability of a candidate the same has to be respected". It will, therefore, not be possible for the court to hold that it is beyond the power of the employer to prescribe the minimum qualifying marks in the interview as a condition precedent for being selected and appointed.

16. This will bring the court to a consideration of the last submission advanced on behalf of the petitioner, i.e., with regard to the appointments of the respondent Nos. 21 and 22 though they were not included in the select list and had not participated in the selection. The situation is unfortunate. However, even if the said appointments are to be set aside, the petitioner will not derive any benefit therefrom as he cannot be appointed in one of the two posts. That apart, the petitioner has been the beneficiary of a similar appointment earlier. In such circumstances, the court is of the view that the order that would be appropriate to be passed in this regard would be to direct the respondent Council to take immediate steps to fill up the aforesaid two posts on a regular basis after advertising the posts. Such regular appointment, following a selection, shall now be made against the two posts in question within an outer limit of six months from today. The respondent Nos. 21 and 22 may take part in the selection subject to being suitable and eligible.

17. In the light of the discussions that have preceded, the writ petition is

dismissed subject to the observation as above.