

(1995) 10 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 272 of 1995

Nareshchandra Biswas

APPELLANT

Vs

Gauhati High Court

RESPONDENT

Date of Decision : 18-10-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1997) 1 GLJ 484

Hon'ble Judges : N.Surjamani Singh, J

Bench : Single Bench

Advocate : M.K.Dutta, S.Roy, U.B.Saha, Advocates appearing for Parties

Judgement

1. A prayer of the writ petitioner, Sri Naresh Chandra Biswas for publishing the Recruitment Rules for the post of Accounts Officer in the Ministerial Establishment of the District Judge's Court, West Tripura, Agartala in its final form in accordance with paragraph 28 of the Tripura (Courts) Order, 1950 and also a direction to the respondents 1 to 6 and each of them to appoint the writ petitioner to the post of Accounts Officer in the said Ministerial Establishment of the District Judge's Court, West Tripura, Agartala which is lying vacant since 1.4.1995, is the subject matter of the present writ petition. According to the writ petitioner, he was appointed in the post of Lower Division Clerk on 8.4.1957 in the office of the erstwhile District and Sessions Judge, Tripura, Agartala and at present he is working/serving as Sheristadar in the District and Sessions Judge's Court, North Tripura, Kailashahar in the pay scale of Rs.2,0004,410 as he was given promotion to the said post of Sheristadar on 18.4.1994. The respondent No.7 joined the service as Lower Division Clerk on 24.4.1958 and he was promoted to the post of Office Superintendent in the year 1987 in the pay scale of Rs.2,0004,410 against the reserve quota of Scheduled Tribes, although he belonged to Laskar Community and is not a Scheduled Tribes. Respondent 8 and 9 were also promoted to the post of Office Superintendent in the same scale of pay of Rs.2,0004,410 in the year 1990 and 1994 respectively against the

reserve quota of Scheduled Tribes. As per relevant final seniority list of Head Clerk, Nazir etc as on 1.8.1979 published on 15.11.1980 the name of the petitioner is shown at SL No.24 and the name of respondent Nos.7 and 8 are shown at SL No.27 and 40 respectively and whereas the respondent No.9 was a Lower Division Clerk on 1.8.1979 as seen in the document marked Annexure 1 and 1/1 to the writ petition. It is also the case of the writ petitioner that he is senior to respondent Nos.7, 8 and 9 in grade of Office Superintendent/ Sheristadar as the said respondents got promotion only against the reserve quota. The petitioner went on to state that on the basis of recommendation of the Gauhati High Court, the Govt of Tripura created a post of Accounts Officer for the office of the District and Sessions Judge, West Tripura District as the Tripura Civil District was trifurcated into three civil districts and since the creation of the said post, the post was filled up by promotion from amongst the employees holding the post of Sheristadar and the said post of Account Officer has been lying vacant since 1.4.1995 after the retirement of Sri Dilip Ranjan Dam on 31.3.1995.

2. According to the writ petitioner, under paragraph 28 of the Tripura Courts Order, 1950 it is incumbent upon the Gauhati High Court to frame Recruitment Rules for the post of Accounts Officer as mentioned above, and for which Govt of Tripura, Law Department under its letter No.F.I (13)J/78 (Shadow) dated 27V3.1985 addressed to the Registrar, Gauhati High Court, Gauhati forwarded the draft Recruitment Rules for the post of Accounts Officer in the Ministerial Establishment of the District and Sessions Judge, West Tripura District for consideration of the Gauhati High Court, but the said Recruitment Rules for the post of Accounts Officer has not yet been finalised by the authority concerned till today. The petitioner also went on to state that he is retiring on 31.12.1996 and even though he is eligible for the said post of Accounts Officer he will not get the promotional benefit as the Recruitment Rules have not yet been finalised. According to the writ petitioner, his representation dated 14.11.1994 through proper channel claiming the promotional benefit to the post of Accounts Officer and seeking appropriate relief has not been considered or disposed of by the authority concerned till today without any justification.

3. Heard Sri S. Roy, learned counsel for the writ petitioner and also Sri MK Dutta, learned counsel for respondent No.1 and Sri UB Saha, learned Govt Advocate for the other contesting respondents.

4. Sri S. Roy submitted that as far back, in the year 1985 the Govt of Tripura, Law Department communicated the draft Recruitment Rules for the post of Accounts Officers in the Ministerial Establishment of the District and Sessions Judge's Court, West Tripura District, Agartala to the Registrar, Gauhati High Court Gauhati under its office letter/order No.F.I (13J)/78 (Shadow) dated 27.3.1985 as hi Annexure 2 to the writ petition for consideration of the High Court and approval of the said draft Recruitment Rules. Sri Roy drew my attention to the document marked as Annexue 2 and highlighted the real facts in

existence. The existence of the said office orders/letter of 27.3.1985 is admitted by the respondents. For better appreciation of the real points in controversy between the parties, the said office letter/order dated 27.3.1985 as in Annexure 2 to the writ petition is reproduced as hereunder: (not quoted : Editor)

5. As per relevant provisions of law contemplated under paragraph 28 of the Tripura (Courts) Order, 1950 the Recruitment Rules for the post of Accounts Officer in the Ministerial Establishment of the District and Sessions Judge, West Tripura District is to be framed by the Gauhati High Court in exercise of its power conferred upon it. The relevant paragraph 28 of the Tripura (Courts) Order, 1950 is quoted below :

"28. Ministerial Officers of Courts: (1) The ministerial, officers of the District Courts shall be appointed by the District Judge.

(2) The ministerial officers of civil Courts under the control of the District Judge shall be appointed by the District Judge.

(3) Every appointment under this paragraph shall be subject to such rules as the Judicial Commissioner/may make in this behalf.

(4) Any order passed by a District Judge under this paragraph shall be liable to be reserved or modified by the Judicial Commissioner."

6. It is well settled that where the Government or a public authority or a statutory authority or a competent statutory authority has failed to exercise the discretion and power conferred upon it by a statute or a rule or a policy decision of the Government, the High Courts have the power to issue writ of Mandamus or a writ in the nature of Mandamus or to pass orders directing the authority concerned to compel the performance in a proper and lawful manner of the discretion and power conferred upon them. This principle of law finds its place in a case between Comptroller and Auditor General of India, Gian Prakash, New Delhi & another vs. KS Jagannathan & another reported in (1986) 2 SCC 679 wherein the Apex Court held thus :

"20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226" have the power to issue a writ of Mandamus or a writ in the nature of Mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of Mandamus or a writ in the nature of Mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a

public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

7. In" view of the above position, I hereby direct the respondent Nos.1, 2,3 and 4 particularly respondent Nos.1 and 4 to frame the Recruitment Rules for the post of Accounts Officer in the Ministerial Establishment of District and Sessions Judge, West Tripura District and publish the same in the Official Gazette within a period of 45 days from the date of receipt of this judgment and order, and to fill up the vacant post of Accounts Officer in the Ministerial Establishment of District and Sessions Judge, West Tripura District and complete the process of selection and appointment of Accounts Officer in accordance with the relevant rules within a period of one month from the date of publication of the said Recruitment Rules in the Official Gazette.

8. It is made clear that the appointing authority should also consider the case of the writ petitioner by taking into account the principle of law relating to the determination of seniority amongst the candidates promoted earlier by virtue of the rule of reservation on roster with that of the senior candidate in the feeder category who got promotion later on, as laid down by the Apex Court in a case between Union of India & others etc vs. Virpal Singh Chauhan etc reported in AIR 1996 SC 448.

9. With the aforesaid observation and direction, this writ petition is disposed of. Interim order passed on 18.6.1996 stands vacated. No costs.