
(2018) 07 GAU CK 0068
In the Gauhati High Court

Case No : Civil Writ Petitionl No.488 Of 2015, I.A.(Civil) 1670 Of 2018

Nazifur Rohman

APPELLANT

Vs

State Of Assam And 4 Ors.

RESPONDENT

Date of Decision : 19-07-2018

Acts Referred:

Citation : (2018) 07 GAU CK 0068

Hon'ble Judges : NELSON SAILO, J

Bench : Single Bench

Advocate : M. U. Ahmed, DR. B. Ahmed

Final Decision : Disposed Off

Judgement

1. Heard Mr. M.U. Ahmed, the learned counsel for the petitioner and Dr. B. Ahmed, the learned Standing Counsel, Irrigation Department. Mr. S.

Borthakur, the learned counsel appears for the respondent No. 5.

2. The case is listed for admission today and with the consent of the learned counsel appearing for the parties, the writ petition is taken up for disposal.

3. Brief facts for disposal of the case may be narrated at the outset. The petitioner responded to an advertisement dated 26.07.2013 issued by the

Executive Engineer, Sivasagar Division (Irrigation) (respondent No. 4) inviting eligible applicants to apply for one Grade-III post of Junior Assistant

meant for General category under the establishment of the respondent No. 4. The requisite qualification prescribed for the post was H.S.L.C pass

with Diploma in English and Assamese Type Writing with typing speed of 40 and 30 words per minute respectively or diploma in computer application

(DCA) or its equivalent. The scheme of the selection was that written test will be held for 100 marks on the subject of English, Mathematics, and

General Knowledge which will be of 3(three) hours duration. Successful candidates in the written test who are selected on the basis of the cut-off

marks will to be called for typing test in English and Assamese and for viva voice. Typing test would carry 50 marks whereas, viva voice will carry 30 marks.

4. Pursuant to the application submitted by the writ petitioner, he participated in the written test and after being successful, he was called for interview

vide communication dated 27.12.2013 by the respondent No. 4. As per the communication, interview was to be held on 03.01.2014 in the office of the

respondent No. 4. On the day of the interview, typing test of the candidates was also conducted and thereafter, on 04.01.2014, the final result of the

selection which included written test, viva voice, computer test and typing test was declared. The petitioner was placed in the 2nd position while the

respondent No. 5 was placed in the 1st position.

5. Being aggrieved for not having secured the 1st position, the petitioner filed an application under the Right to Information Act through his engaged

counsel on 23.06.2014. Thereafter, a reply to his application was made by the respondent No. 4 vide communication dated 11.07.2014. To the query

made by the writ petitioner as to how many Assamese typing writing machine were available in working condition in the office of the respondent No.

4, the reply was that there were none available in running condition. On the query as to whether the competent authority under whose supervision the

selection was conducted was informed of the exclusion of typing test in Assamese in the interview scheduled, the reply was that there was no record

available informing the competent authority. Lastly, to the query made by the petitioner as to why the exclusion of the Assamese typing test was not

made not known to the candidates till the last moment, the reply was that the reason was not known. The petitioner being aggrieved therefore filed the

present writ petition.

6. Mr. M.U. Ahmed, the learned counsel for the petitioner submits that from the materials made available in the writ petitioner more particularly, from

the advertisement issued on 26.07.2013, the scheme of the selection is plain and clear It included typing test in Assamese amongst other and for

which, 8 (eight) marks was allotted. However, the respondents concerned without giving any prior intimation and against the scheme of the selection,

omitted the typing test in Assamese which has caused serious prejudice to the petitioner and resulted in depriving him from being selected for the post. The said omission done at the last minute apparently is only an with ulterior motive by the authority concerned. He further submits that the writ petitioner secured the highest marks in the written test and that if the typing test was held in Assamese, the writ petition would surely have scored the highest marks over all and be placed in the first position. He therefore submits that the settled position in law is that the rule of the game in a selection process cannot be unilaterally changed by the selecting authority mid-way during the process of the selection. Therefore, the final result arrived at by the selecting authority is clearly vitiated and warrants the intervention of this Court.

7. Mr. M.U. Ahmed however submits that the petitioner at this stage is however not against the appointment and selection of the respondent No. 5 but at the same time, the petitioner deserves to be considered in any other vacancy available in the Grade-III post of Junior Assistant under the establishment of the respondent No. 4. By referring to the related interlocutory application filed by the petitioner, the learned counsel submits that there is a vacancy caused by the retirement of one Sayed Abdul Munir L.D. Assistant in the establishment of the respondent No. 4 and the petitioner may be considered against the said vacancy or any other existing vacancy available since he is on the verge of retirement.

8. Dr. B. Ahmed, the learned Standing Counsel appearing for the Irrigation Department by referring to the final result sheet prepared after the selection process submits that although the petitioner may have scored the highest marks in the written test but however, his over-all marks in the viva voice, computer test and the typing test in English were below from the respondent No. 5 and therefore, there is nothing wrong in the result declared by the selection committee on 04.01.2014. He also submits that after the declaration of the final result, the approval competent authority was sought for and only after the approval was given, the respondent No. 5 came to be appointed on 13.12.2014. He however submits that the case of the petitioner may be considered, if there is vacancy as claimed by the writ petitioner.

9. Mr. S. Borthakur, the learned counsel appearing for the respondent No. 5 submit that there is nothing wrong in the selection process. The

respondent No. 5 scored the maximum marks and therefore, he was rightly placed in the 1st position. He submits that the writ petitioner having participated in the selection process with the other candidates, he cannot have any legitimate grievance. Therefore, the appointment of the respondent No. 5 may not be disturbed.

10. I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. From the rival contention, it will not be necessary to dwell upon the selection process in detail. It is clear from the advertisement issued on 27.06.2013 for the post of Junior Assistant (Grade-III) under the establishment of the respondent No. 4 that the modalities of the test was prescribed. Amongst others, there is a specific mention of typing test in both English and Assamese. Admittedly, typing test in Assamese was not conducted. Although, it cannot be said that if the typing test in Assamese had been conducted, the petitioner would have scored the highest marks in the overall test but the fact remains that due to non-holding of typing test in Assamese, it has brought about an overall change in the selection process. The reply given to the petitioner on his application filed under the Right to Information Act would also clearly reveal that the establishment of the respondent No. 4 was hardly prepared to conduct such typing test in Assamese since they do not have any Assamese type writer in working condition at the relevant point of time. If that was the case, there was no necessity in adding the requirement in the advertisement dated 26.07.2013 so that the entire process of the selection could have been clear to all the contesting applicants. The same having not been done, I am of the considered view that the case of the writ petitioner without disturbing the appointment of the respondent No. 5 be considered by the respondent authorities afresh.

11. Keeping in view the fact that, the petitioner has categorically stated that there is an existing vacancy due to the retirement of an incumbent in the post of Junior Assistant in the General category, I direct the respondent No. 4 to take the initiative for placing the writ petitioner before the Selection Board for considering his case for appointment against the vacancy mentioned by the writ petitioner and or in any other vacancy that may be available under the establishment of the respondent No. 4. It may be noticed that the petitioner by now is almost over aged and therefore, the respondent

concerned shall carry out such exercise as expeditiously as possible and at any rate within the outer limit of 2 (two) months from the date of receipt of

certified copy of this order. It is also made clear that, if the petitioner has become over aged by the time he is considered, condonation of his age may

be favourably considered. The above direction is made without disturbing the appointment of the respondent No. 5.

12. With the above observations and directions, the writ petition stands disposed of.