

(2004) 02 GAU CK 0029

In the Gauhati High Court

Case No : WP (C) No (s) . 5178, 5995 and 6198 of 2003

Niranjan Mahanta and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 19-02-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1), 244(2)

Citation : (2005) 1 GLR 427 : (2004) 2 GLT 1326

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : B.B. Narzary, S. Chouhan, P. Mahanta and R.S. Chouhan, for the Appellant; B. Choudhury and A.K. Goswami, for the Respondent

Judgement

P.G. Agarwal, J.—As prayed for all these three writ petitions were heard analogously and disposed of by this common order.

2. Heard Mr. B.B. Narzary, the learned counsel for the petitioners, Mr. A.K. Goswami, the learned counsel for the Karbi Anglong Autonomous Council and Mr. B. Choudhury, the learned Government Advocate.

3. The matter relates to appointment of various categories of school teachers including L.D. Assistants in various schools of Karbi Anglong District in the State of Assam. The petitioners before us were appointed as ad hoc teachers some time on 10.10.2000 and thereafter they were tried to be replaced by another set of ad hoc teachers and as such they approached this court and this was prevented and this court also directed that the appointments be made in regular course. Subsequently an advertisement was issued inviting applications for as many as 7 categories of teachers and L.D. Assistants. Pursuant to the said advertisement, the writ petitioners had participated in the selection process but in view of the initiation of the selection process, the earlier writ petitions were disposed of by this court with the observation that the selection process will continue. Accordingly the written examinations were held on 1.2.2003 and thereafter, the interview/viva-voce was held on 26.7.2003, 27.7.2003 and

3.8.2003. The petitioners before us were not called for interview and hence, they have approached this court in the present writ petition for quashing of the selection process and for issuing fresh advertisement. The selection has been challenged on the following counts : -

1. The number of posts which are lying vacant or which are going to be filled up pursuant to the advertisement are not mentioned in the advertisement.

2. in the written examination, a common question paper was given to all the categories of candidates which includes subject teachers, classical teachers and even L.D. Assistants although total marks for graduate teachers was made 150.

4. We have perused the Advertisement (Annexure-A) and find that although in the categories of vacant posts, qualifications, pay scale etc. have been mentioned, the number of posts for which the advertisement was issued has not been specifically detailed in the advertisement. Absence of the number of posts in the advertisement is not disputed by the respondent-authority. The question that arises for consideration is whether non-mentioning of the number of posts in the advertisement will ipso facto show that the entire selection process is bad in law. Mr. A.K. Goswami in usual fairness has submitted that it would have been better, if the number of posts were mentioned in the advertisement but for mere non-mentioning of the number of posts in the advertisement, the selection process pursuant to the said advertisement can not be thrown out on that count.

5. Mr. B. B. Narzary, the learned counsel for the petitioner has placed reliance on a decision of the Apex Court in the case of Ashok Kumar and Ors. v. Chairman, Banking Service Recruitment Board reported in (1996) 1 SCC 283 wherein the Apex Court observed :-

"Article 14 read with Article 16(1) of the Constitution enshrines fundamental right to every citizen to claim consideration for appointment to a post under the State. Therefore, vacant posts arising or expected should be notified inviting applications from all eligible candidates for their selection in accordance with their merit. The recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution. The procedure adopted, therefore, in appointing the persons kept in the waiting list by the respective Boards, though the vacancies had arisen subsequently without being notified for recruitment, is unconstitutional. However, since the appointments have already been made and none was impleaded, we are not inclined to interfere with these matters adversely affecting their appointments. However, hereafter the respective Boards should notify the existing and expected vacancies and the Recruitment Board should get advertisement published and recruitment should strictly be made by the respective Boards in accordance with the procedure to the notified vacancies but not to any vacancies that may arise during the process of selection."

6. As stated above, the Apex Court has no doubt provided that the number of posts should be mentioned in the advertisement and this was for the reason that

the selection or selectees pursuant to such selection are entitled to appointment in respect of existing vacancies only and not in vacancies which arising subsequently or during the process of selection. The ratio of law is that the candidates recruited earlier and kept in waiting list could not be appointed to the posts arising subsequent to the notification.

7. In their affidavit-in-opposition, the respondent-Council has stated that at the time of advertisement, the following vacancies existed :-

1. Graduate Assistant Teacher - 33
2. Intermediate Assistant Teacher - 44
3. Hindi Jr. Teacher - 17
4. Classical Teacher (Sanskrit) - 2
5. Instructor for Hindi Training Centre - 2
6. Hindi Teacher (Sr.) -2
7. Subject Teacher (Economics) - 1

8. Upon consideration of the submission, we are of the view that the selection process can not be thrown out for mere non-mentioning of the number of posts or vacancies in the advertisement. It is always better to mention the number of posts or vacancies in the advertisement so as to uniform the candidates and to rule out the future manipulation. However, as the number of vacancies has now been intimated to this court by the Council, we provide that the appointments shall be limited to those vacancies only and should not include any other posts.

9. The learned counsel for the respondent has produced the specimen copy of the written test. Mr. B.B. Narzary, the learned counsel for the petitioner has submitted that there can not be common question paper for selection of teachers of graduate scale or classical teacher of Sanskrit or Hindi junior teacher or Hindi senior teacher etc. and as such the entire selection process needs to be thrown out. Mr. A.K. Goswami on the other hand submits that the petitioners had participated in the said selection process and waited for five months for results to be declared without making any objection. After the announcement of the written test results and when they failed to find their names in the select list or oral interview, they had approached this court and hence they are stopped from agitating against the nature of the written test. Mr. A.K. Goswami has referred to the observations of the Apex Court in the case of Madan Lal and Ors. v. State of J&K and Ors., reported in (1995) 3 SCC 486 wherein the Apex Court has referred to the earlier decision in the case of Om Prakash Shukla v. Akhilesh Kumar Shukla reported in AIR 1986 SC 1043 wherein it has been clearly laid down by a Bench of three learned Judges that where the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner. The decision in Om

Prakash Shukla (supra) was reiterated in Madan Lal (supra). We find that after appearing in the written examination, the petitioners waited for their results to be announced and when their results were announced, their names were missing from the select list and as then they have approached this court in these writ petitions.

10. Mr. Narzary has drawn our attention to the observations of this court in the case of Assam Animal Husbandry & Veterinary Service Association reported in 1999 (2) GLT 121 wherein this court held as follows :-

"We feel in a case e.g. where the constitution of the Selection Board may be challenged to be defective, which fact was within the knowledge of a candidate before he took the chance and appeared before the Selection Board, it would be appropriate case where he may be estopped from challenging Constitution and proceedings of the Selection Board on that ground. But, where infirmities or irregularities come to the knowledge of a candidate or could come to the knowledge of a candidate only during the course of the selection proceedings itself, it cannot be said that such proceedings cannot be challenged merely because the candidate submitted to the selection. It is not that when the interview was in progress and irregularities were noticed the candidate may quit or withdraw from the interview. Normally, he would be there till interview is completed. Such a situation would not bar him to challenge the selection proceedings."

11. In this case, the petitioner has not challenged the constitution of the selection committee but challenged the question paper provided in the written examination which he came to know on 1.2.2003 but the petitioner waited for the result of the written examination to be announced and approached this court when he/they were declared unsuccessful.

12. Mr. A.K. Goswami submits that the common question paper was meant to examine the intelligence/general knowledge and I.Q. of the candidates and it was common examination for different categories of teachers. We have perused the copy of the written common question paper wherein general knowledge regarding Geography of Karbi Anglong District, general knowledge regarding education, Constitution etc. were put to the candidates to assess the suitability of the candidates for the post of teachers. It is further submitted that when a person is going to be appointed as a graduate teacher or Classical Sanskrit Teacher, he must have basic general knowledge and idea about the tribal District where they are going to render services and as such the common written test was found proper.

13. It may be mentioned here that there is no Rules regarding recruitment to the post of teachers in the District of Karbi Anglong and as such it can not be stated that the common written test was violative of any of the provisions or rules. In view of the spirit and requirement for which common written test was conducted, we find no illegality or infirmity in the absence of any rules.

14. There is no dispute at the Bar that Karbi Anglong is a tribal District of Assam and as such the provisions of Article 244(2) applies which provides that the provisions of 6th Schedule shall apply to the administration of tribal areas in the State of Assam. In the case of T. Cajee Vs. U. Jormanik Siem and Another, it was held as follows :-

"This brings us to the Sixth Schedule, and we may refer briefly to the provisions contained therein with respect to the administration of the tribal areas in Assam.

Then we come to paragraph 19, which deals with transitional provisions and lays down that as soon as possible after the commencement of the Constitution, the Governor shall take steps for the constitution of a District Council for each autonomous district in the State under the Schedule and until a District Council is so constituted for an autonomous district, the administration of such district shall be vested in the Governor. It also provides that no Act of Parliament or of the Assam Legislature shall apply to any area unless the Governor by public notification so directs and the Governor in giving such direction with respect to any Act may direct that the Act shall in its application to the area or to any specified part thereof, have effect subject to such exceptions or modification as he thinks fit. The Governor is also given power to make regulations for the peace and good Government of any area and any regulation so made may repeal or amend any Act of Parliament or of the Assam Legislature or any existing law which is for the time being applicable to such area. The power to make regulations is subject to the assent by the President."

15. These requirements were again laid down by the Apex Court in the case of Edwingson Bareh Vs. State of Assam and Others, wherein the Apex Court observed as follows :-

"Before dealing with these points, it would be convenient to refer broadly to the scheme of the Sixth Schedule which contains the provisions in relation to the administration of tribal area in Assam. Article 244(2) provides that the provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam; and that means tribal areas in Assam would be governed not by the other relevant provisions of the Constitution which apply to the other constituent States of the Union of India, but by the provisions contained in the Sixth Schedule. These provisions purport to provide for a self-contained code for the governance of the tribal areas forming part of Assam and they deal with all the relevant topics in that behalf. The areas described in the Table appended to Para 20 of the Sixth Schedule, consisting of Part A and Part B, constitute the tribal areas within the State of Assam; sub-para (1) of the said paragraph so provides. Sub-paragraphs (2), (2A), (2B), and (3) of Para 20 describe the boundaries of the items mentioned in the Table. Part A of the Table originally consisted of six items; the first amongst them was the United Khasi-Jaintia Hills District. The items of "The Naga Hills-District" which was originally included in Part A has been subsequently taken out of Part A and has been added to Part B. Part B which originally consisted of only one item, now consists of two items; the

first item is North East Frontier Tract including other Tracts therein described; and the second is the "Naga Hills - Tuensang Area". Thus Para 20 read with the Table gives a comprehensive description of the tribal areas falling within the State of Assam for whose administration provision is made by the other paragraphs of the Sixth Schedule."

16. It is submitted that no such notification was issued by the Governor at the relevant time but some notification has been issued in the meantime. The question that arises for consideration is whether in the absence of any such notification or rules, the entire selection process or question of appointment of teacher in the district of Karbi Anglong should be brought to stand-still or kept in abeyance. In the present case, we find that the writ petitioners were not selected as eligible candidates in the above District for getting appointments. However, we hold that the concerned authority shall consider the matter and issue necessary notifications to avoid unnecessary inconvenience and for a better administration of justice.

17. In view of what has been stated above, we find no merit in these writ petitions and the writ petitions are accordingly dismissed without any order as to costs. The respondents will be at liberty to proceed further in the matter of appointment pursuant to the selection process. The earlier interim order stands vacated.