
(2019) 08 GAU CK 0090
In the Gauhati High Court
Case No : Writ Appeal No. 47 Of 2018

Nripendra Nath Seal

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 29-08-2019

Acts Referred:

Citation : (2019) 08 GAU CK 0090

Hon'ble Judges : Sanjay kumar medhi, J

Bench : Single Bench

Advocate : R. Mazumdar, H. Bezbaruah, N. Upadhyaya, B.C. Das, D.A. Kaiyum

Final Decision : Dismissed

Judgement

S.K. Medhi, J

1. This intra-Court appeal is preferred against the judgment and order dated 17.11.2017, passed by the learned Single Judge in WP(C) No.2430/2015, whereby, the writ petitioner had unsuccessfully challenged the selection and appointment of the respondent No.5 as Power Pump Operator (PPO) under the Irrigation Department of the Government of Assam.

2. Though in an intra-Court appeal it may not be necessary to again advert to the facts of the case in details, it would be convenient to briefly narrate the background.

(i) An advertisement was published on 24.07.2013 by the Irrigation Department for, amongst others, 2(two) posts of Power Pump Operator (PPO) under the establishment of the Tihu Irrigation Division. Out of the said 2(two) posts, one was reserved for OBC category. It is the case of the petitioner that he belonging to the OBC category and having the requisite qualification, applied for the same and was issued a call letter for the written test scheduled on 19.10.2014. On successful completion of the written examination, interview was scheduled on 26.12.2014, whereby, the intending candidates were directed to appear with all

original documents.

(ii) The petitioner, however, was over aged for the said post as he was about 44 years 11 months as on 01.01.2013, whereas, the upper age limit was 38 years as on 24.07.2013. Situated thus, the petitioner submitted an application to the competent authority in the Irrigation Department for relaxing his age. The projected case is that on consideration of the case of the petitioner, the respondent authority, in accordance with the Office Memorandum dated 04.01.1992 holding the field, accorded age relaxation to the petitioner vide communication dated 20.01.2015 followed by another communication dated 22.01.2015.

(iii) While the first grievance of the petitioner is with regard to his non-selection, the second grievance is the selection and appointment of the respondent No.5, who, according to the petitioner did not even apply for the post. It is the specific case of the petitioner that when the said respondent No.5 had failed to even offer his candidature, the question of selection and appointing him would not arise and therefore, such appointment is liable to be set aside.

(iv) The respondents including the private respondent No.5 had contested the writ petition by filing necessary affidavits-in-opposition. The Department in its affidavit had categorically denied the allegation that the respondent No.5 did not offer his candidature. Defending the selection and consequent, appointment of the respondent No.5, it has been stated that the respondent No.5 fared far better than the writ petitioner and therefore, no case was made out for interference by the Court. It was stated that since selection was made for two Divisions, namely, Barpeta and Nalbari, there was some confusion regarding the entry of the name of the private respondent. However, only because of the same, no illegality or irregularity had taken place and the selection was held by following the due process of law.

(v) The respondent No.5 in its affidavit submitted that the petitioner himself lacked locus standi to file the writ petition as he was not even eligible to apply for the post. The eligibility of a prospective candidate has to be determined as on the last date of submission of candidature and in the instant case, the petitioner was clearly over aged on the date of submission of the application and it was only much later that his age was condoned. Therefore, the petitioner did not have any locus to maintain the challenge. As regards the allegation against him, the respondent No.5 has stated that the same is absolutely without any basis and only because of some confusion occurring in recording his name in the register, his participation in the selection process cannot be questioned.

(vi) Endorsing the submission of the Department, it is the case of the private respondent No.5 that on inter se merits, the respondent No.5 was far superior and therefore, rightly selected and appointed for the post in question.

(vii) The learned single Judge after considering the submissions advanced by the learned counsels and on perusal of materials on record came to a finding that

keeping in view that the advertisement pertains to 2(two) Divisions (Barpeta and Nalbari), the contention of the petitioner that the respondent No.5 did not even submit his application would not be accepted. The learned single Judge also discarded the ground regarding allotment of 25(twenty five) marks for viva-voice and accordingly, the writ petition was dismissed by the impugned judgment.

3. We have heard Shri R. Mazumdar, learned counsel for the appellant alongwith Shri H. Bezbaruah, learned counsel. We have also heard Shri N. Upadhyaya, learned standing counsel, Irrigation Department as well as Shri B.C. Das, learned senior counsel assisted by Shri D.A. Kaiyum, learned counsel for the respondent No.5.

4. Shri Mazumdar, learned counsel for the appellant would submit that the register which has been produced before the Court containing details of the candidates who had appeared in the selection would ex facie demonstrate that the respondent No.5 did not participate in the said selection process. The second leg of argument advanced by the learned counsel for the appellant is that even assuming but not admitting that the respondent No.5 had in fact participated in the selection, he did not have the original certificate certifying him to be from the OBC category. It being an essential condition for all the candidates to appear with the original certificates, failure to produce the original OBC certificate by the respondent No.5 would disentitle him for any consideration to be appointed for the post in question.

5. Per contra, the learned standing counsel, Irrigation Department has explained that only because of the fact that the register did not contain the name of the respondent No.5, it cannot be concluded that the respondent No.5 had not submitted his candidature. Producing the original application of the respondent No.5, the learned standing counsel submitted that there is no force in the argument of the appellant regarding non-participation of the respondent No.5 as he was duly allotted Roll No.81 and in fact, the register which has been produced would sufficiently indicate that the candidate who was originally allotted Roll No.81 did not appear in the examination on eligibility ground and in that place, the respondent No.5 was accommodated. He has further submitted that the petitioner has not alleged foul play or malafide against any person facilitating participation of the respondent No.5. If at all the authorities wanted to bestow undue favour, the respondent No.5's name could have been allotted another Roll Number by putting his name. As regards the OBC certificate, the learned standing counsel, Irrigation Department submits that there were sufficient materials to show that the original OBC certificate of the respondent No.5 was lost. He had submitted a photo-copy followed by a duplicate certificate issued by the competent authority. Further, in spite of the fact that the petitioner was over-aged and on the date of the interview, his age-relaxation order was not available, both the candidates were fairly considered in the examination in which, the respondent No.5 had fared better than the appellant and was accordingly, selected and appointed.

6. Shri B.C. Das, learned senior counsel assisted by Shri D.A. Kaiyum, learned counsel for the respondent No.5 would submit that the writ petition, as such, did not contain any pleadings with regard to non-submission of application by the respondent No.5 and a vague statement was made regarding his participation in the selection process. It is only in the rejoinder-affidavit that the said allegation in this regard has been made. In any case, the learned senior counsel submits that the allegation is absolutely incorrect as the respondent No.5 had submitted his application, which, in fact, has been produced before the Court. As regards the second submission, namely, absence of original OBC certificate, the respondent No.5 had proper explanation, inasmuch as, the original OBC certificate issued to him was stolen and in that regard he had lodged an F.I.R. in the Gurgaon Police Station and while applying for the post in question, he had submitted the photo-copy of the OBC certificate alongwith the F.I.R.. In the meantime, he had applied for a duplicate certificate and the competent authority after verification of the matter had issued the duplicate certificate, the original of which was duly submitted to the authorities. After such submission, there was no ambiguity regarding the category of the respondent No.5.

Defending the judgment of the learned single Judge, Shri Das, learned senior counsel has further submitted that if submission of original certificate is insisted upon by the petitioner as a ground of challenge, the same would be counter-productive, inasmuch as, admittedly, as on the last date of submission of the application forms, the petitioner himself was over-aged and the relaxation of his age had come much thereafter. It is accordingly submitted that since it is an established principle of law that the candidate should possess all the requisite qualification as on the last date of submission of forms, the candidature of the petitioner himself would be liable to be rejected on the threshold. It is, however, submitted that since the OBC status of the respondent No.5 was not in doubt and he had sufficient reasons for not producing the originals of the same, interest of justice was served by accepting the explanation of the respondent No.5 by the authorities. In any case, the respondent No.5 had later on submitted the original OBC certificate which was issued by the appropriate authorities.

7. The rival contentions of the learned counsels for the parties have been duly considered by us. We have also perused the materials on record and the original records including the register in question have also been produced before us, which have been carefully examined.

8. There is no doubt that the register in question containing the names of the candidates does not contain the name of the respondent No.5. However, it is seen that the candidate who was originally allotted Roll No.81 was found ineligible. The explanation put forward by the authorities that the respondent No.5 was, accordingly, adjusted in the said position coupled with the fact of production of the contemporaneous documents, including the application form of the respondent No.5 bearing Roll No.81, persuades us to come to the conclusion that the explanation is reasonable and trustworthy and it was an inadvertent

error in not recording the name of the respondent No.5 while allotting the Role No. We are also of the view that if any malafide intent was there, the name of the respondent No.5 could have been put in the next page of the register by giving the Roll No. in continuation of the last number.

9. As regards the allegation of non-production of the OBC certificate in original by the respondent No.5, we are of the opinion that explanation put forward, alongwith the fact that the said respondent No.5 had indeed produced the certificate in original which had to be issued again on peculiar facts and circumstance, the said ground would not be available to the petitioner, who himself was over-aged at the time of submission of the forms. Though, in the midst of the proceedings, the learned standing counsel was directed to produce the answer script of the respondent No.5 and the petitioner, the same could not be produced as the answer script were not preserved and in absence of any such order from the Court, no fault, as such, can be attributed to the authorities in this regard.

10. In view of the aforesaid facts and circumstances and the discussions, we do not find any case for interference with the Judgment & Order dated 17.11.2017 passed by the learned Single Judge in WP(C) No.2430/2015.

11. Accordingly, this appeal stands dismissed.