
(2019) 05 GAU CK 0118
In the Gauhati High Court
Case No : Writ Petition (C) No. 6720 Of 2014

Pallobi Bordalo

APPELLANT

Vs

State Of Assam And 7 Ors

RESPONDENT

Date of Decision : 30-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 05 GAU CK 0118

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : H Terangpi, T J Mahanta

Final Decision : Dismissed

Judgement

1) Heard Mr. A.R. Tahbildar, learned counsel for the petitioner as well as Mr. N. Goswami, learned Government Advocate for the said respondent. Also heard Mr. B. Chakravarty, learned counsel for the respondents No.5 and Mr. T.J. Mahanta, learned Senior counsel assisted by Ms. S. Chutia, learned counsel for the respondents No.6, 7 and 8.

2) In view of the nature of grievances raised in the present writ present and considering the preliminary objections raised by the respondents No. 6, 7 and 8, this Court is inclined to admit this writ petition by issuing rule returnable forthwith.

3) The matter has been heard on the instance of the learned counsel/ senior counsel appearing for both sides.

4) By this writ petition filed under Article 226 of the Constitution of India, the petitioner by alleging illegality in the matter of appointment of 7 candidates as Office Assistant pursuant to employment notice dated 12.07.2014, has filed the present writ petition with a prayer to set aside the employment notice as well as the appointment made pursuant to the said notice.

5) The learned counsel for the petitioner has submitted that the respondent No.5 had no power and authority to regularize the service of respondents No.6, 7 and 8 who were initially appointed as a "fix pay" Office attendant just after 19 days of such illegal appointments and that too without approval from the Director, Municipal Administration Department of the State. It is submitted that in the affidavit-in-opposition filed by the respondent No.5, i.e. the Chairman, Biswanath Chariali Municipal Board, it was admitted that the private respondents No.6, 7 and 8 are relatives of the staff service under the Biswanath Chariali Municipal Board. Hence, it is submitted that the selection process is vitiated being void, illegal, arbitrary and whimsical and therefore, the selection process be interfered with.

6) Mr. B. Chakraborty, learned counsel for the respondent No.5 has submitted that in para-11 of the affidavit-in-opposition filed by the respondent No.5, while admitting that the respondents No.6, 7 and 8 had relationship with the staff of the Biswanath Chariali Municipal Board, but the further stand is that the said respondents had secured their job by way of their performance in the selection process. He has submitted that the said respondents were promoted to a regular pay scale pursuant to resolution taken in the meeting of the Biswanath Chariali Municipal Board held on 07.09.2014.

7) The learned Senior counsel for the respondents No.6, 7 and 8 has raised a preliminary objection to the effect that the petitioner had participated in the selection process but only after the private respondents No.6, 7 and 8 were selected, the petitioner has challenged only the employment notice dated 12.07.2014, wherein he had participated for which the petitioner has lost the right to challenge the veracity of the employment notice. He has also submitted that all the candidates selected pursuant to the said employment notice have not been made a party to the writ petition and, as such, without hearing them the petitioner was not entitled to any relief in this writ petition. He has also submitted that apart from the stand that the said private respondents No.6, 7 and 8 are relatives of the staff in the Biswanath Chariali Municipal Board, there is allegation of any irregularities in the selection process of the appointed candidates and that the regularization of the service of the respondents No.6, 7 and 8 has nothing to do with the selection process.

8) Having examined the materials available on record, it is seen that the petitioner has questioned the selection process on the ground that in the employment notice nothing was stated that the appointed candidate would be getting a regular pay scale. This fact is admitted by the respondent No.5 in his affidavit-in-opposition. The further ground of challenge is that the respondents No.6, 7 and 8 are the relatives of the members of the Biswanath Chariali Municipal Board. This is also admitted by the respondent No.5.

9) However, it is seen there is no statement in the writ petition to the effect that the staff of the Biswanath Chariali Municipal Board, who are the relatives of the respondents No.6, 7 and 8, were members of the Selection Board. The petitioner

having participated in the selection process did not raise any objection at that point of time or at anytime prior to the declaration of the result of the selection process. Moreover, it is seen that none of the officers of the Biswanath Chariali Municipal Board who are the relatives of respondents No.6, 7 and 8 have been impleaded as respondents herein. In this case there is no allegation of any malice or bias against any of the members of the Selection Board. Accordingly, this Court has no material to hold that merely because the relatives of the private respondents No.6, 7 and 8 are working in the Biswanath Chariali Municipal Board, the selection process is vitiated in any manner whatsoever.

10) It is further seen that if the service of the selected candidates is regularised after 19 days of their initial "fixed pay" appointment, the said event cannot be said to have vitiated the initial selection process in any manner. Moreover, the order of regularization of the respondents No.6, 7 and 8 has not been assailed and therefore, it is not the subject matter of adjudication before this Court. Hence, this Court refrains from making any observation as to the validity of the action of regularization of the service of respondents No.6, 7 and 8. This Court also finds force in the submissions made by the learned Senior counsel for the respondents No. 6, 7 and 8 that all the selected candidates are not made parties to the writ petition and therefore, if the selection process is interfered with, it shall adversely affect the right of other selected candidates too, who are not before this Court.

11) The said submissions of the learned Senior counsel for the petitioner is contested by the learned counsel for the petitioner by referring to the case of Union of India and others Vs. O. Chakradhar, (2002) 3 SCC 146, wherein it has been held that it was not necessary for the petitioner to array all the selected candidates to challenge the selection process. In this regard it is seen that in the said case an enquiry ordered by the Supreme Court of India to be held by the CBI and the report revealed acts of favouritism, selection without interview even on the basis of fake or ghost interview, tampering with the records and fabrication of documents, etc. It was under such circumstances that it was held that the entire selection was vitiated even in respect of those who had already been appointed and, as such, it was held that individual cases of innocents have no relief in such circumstances.

12) In the fact of the present case, it is seen that the selection process being not vitiated by acts of favouritism, selection without interview even on the basis of fake or ghost interview, tampering with the records and fabrication of documents etc., this Court is not inclined to accept that the selection process was vitiated by irregularities as in the case of O. Chakradhar (supra) for which the said case is distinguishable from the facts of the present case.

13) This Court is of the opinion that if the selection process is required to be interfered with otherwise than a situation where the selection process is tainted with gross irregularities in the conduct of the selection or where the selection process is tainted by malice, favouritism, ghost interview, no interview, etc., in

such cases then all the parties who are likely to be affected, ought to have been made a party in the writ petition. Hence, this Court is inclined to hold that this writ petition is bad for non-joinder of necessary parties, i.e. all the candidates who were selected in the selection process.

14) The learned Senior counsel for the respondents No.6, 7 and 8 has pressed in service, the case of Karnati Ravi Vs. Commissioner Survey Settlements and Land Records and others, (2018) 12 SCC 635, where it is laid down that once a candidate i.e. the petitioner has participated in the selection process without any objection, the petitioner cannot later-on challenge the procedure. Under such circumstances and in view of the above discussion, this Court does not find this to be a fit case to interfere with the selection process pursuant to employment notice dated 12.07.2014, and the consequential challenge of the selection and appointment of the respondents No.6, 7 and 8 fails and the writ petition stands dismissed.

15) The rule stands discharged in terms of the said order.

16) No cost.