
(2009) 02 GAU CK 0079
In the Gauhati High Court
Case No : Writ Petition (C) No. 5680 of 2005

Pohar Ali (M.D.)

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 25-02-2009

Acts Referred:

Citation : (2011) 1 GLT 559

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : M.B.U. Ahmed, for the Appellant; H.K. Barman, G.A., for the Respondent

Final Decision : Allowed

Judgement

Hrishikesh Roy, J.—Heard Mr. M.B.U. Ahmed, learned Counsel appearing for the Petitioner. Also heard Mr. H.K. Barman, learned Govt. Advocate who represents the Respondents No. 1, 2 and 3. None appears for the private Respondent No. 4, although service on the said Respondent is complete.

2. The Petitioner herein challenges the appointment of Respondent No. 4 as the Gaonbura of Village Hamlakur under Pub-Barkhetri Mouza of Nalbari District. The Petitioner contends that being the son of the deceased Gaonbura Manhur Ali, he has preferential right to get appointment to the post of Gaonbura.

3. Before proceeding further, recording of some relevant facts is necessary.

3.1 Following the death of father of the Petitioner, the Respondent No. 4 Md. Mujibur Rahman came to be appointed as the Gaonbura on 20.7.95. The Petitioner being aggrieved, successfully challenged the said appointment and by order dated 19.7.2000 (Annexure-I) passed by the second appellate authority, it was held that the appointment of Respondent No. 4 as the Gaonbura was not proper and direction was given for appointment of the Petitioner to the post of Gaonbura. In pursuant to appellate authority's order, the Petitioner was appointed as Gaonbura by the order of the Deputy Commissioner, Nalbari, issued

on 14.8.2000.

3.2 The Respondent No. 4 by filing WP(C) No. 4459/2000 challenged the said appointment of the Petitioner and this Court by order dated 18.8.2000. directed Review of the decision made in favour of the Petitioner, by the appellate authority.

3.3 In pursuant to this Court's order dated 18.8.2000, the Govt. by order dated 1.12.04 directed the Deputy Commissioner, Nalbari to constitute a Selection Committee for selecting a suitable candidate, for appointment as Gaonbura in Hamlakur Village, after giving chance to all the intending candidates. On the basis of comparative selection made thereafter, the impugned order dated 21.7.05 in favour of Respondent No. 4 appointing as the Gaonbura came to be issued.

4. Notwithstanding the service of notice, neither the State authorities nor the private Respondent have filed any response in the present proceeding.

5. In support of his claim for being appointed as Gaonbura, the learned Counsel for the Petitioner has referred to the provisions of Clause 162 of the Executive Instructions, issued under Chapter-VIII of the Assam Land and Revenue Regulation, which provides that while considering appointment for the post of Gaonbura, the appointing authority shall take into consideration (a) the claims of the family of the late Gaonbura, (b) the wishes of the villagers and (c) the views of the Mauzadar, and thereafter appointment be made to the person who is considered the most suitable, for the post.

6. The learned Counsel has also referred to the Division Bench decision of this Court in Narendra Nath Kalita v. State of Assam (1992) 1 GLR 89 where this Court upheld the process of selection of Gaonburas on the basis of the aforementioned criteria provided under the Executive Instructions, issued under Chapter VIII of the Assam Land and Revenue Regulation. Accordingly, it is contended that since the Petitioner is the son of the earlier Gaonbura and is expected to be familiar with the requirements of the job of the Gaonbura in that particular locality, the authorities, in the absence of this disability on the part of the Petitioner, he should have chosen for the post of Gaonbura. Accordingly, it is contended that the choice of Respondent No. 4, by following the above three criteria, cannot at all be justified in law.

7. Mr. H.K. Barman, learned Govt. Advocate submits on the basis of the records available with him that in the selection held, during comparison of merit between the Petitioner and Respondent No. 4, the Respondent No. 4 was found to have secured higher marks than the Petitioner in the viva voce test and accordingly Respondent No. 4 has been selected for appointment to the post of Gaonbura, in preference to the candidature of the Petitioner.

8. The learned Govt. counsel also submits that the Respondent No. 4 is a cousin of the former Gaonbura and accordingly the Respondent No. 4 can also be considered to be a suitable candidate for being appointed as the Gaonbura.

9. Having regard to the Executive Instruction notifying the three criterias for appointment of Gaonbura, it is clear that at first the claim of a family of the late Gaonbura is to be considered. Only if the Petitioner and the Respondent No. 4 are considered to be in the same footings on the first criteria, their respective merit can be made the basis for selection of the more meritorious candidates.

10. But the Respondent No. 4 has not contested the present proceedings and therefore no claim is made on his behalf that he is to be treated as the family of the late Gaonbura. Although the learned Govt. Advocate submits that Respondent No. 4 is a cousin of the earlier Gaonbura, the exact relationship between the Respondent No. 4 and the earlier Gaonbura is not indicated nor any document has been made available for the Court's perusal to conclude, that Respondent No. 4 belongs to the family of late Gaonbura.

11. Under the above circumstances, it is not possible for this Court to conclude that the Respondent No. 4 should be considered as a family of the late Gaonbura and is therefore to be treated at par with the Petitioner who is the son of the late Gaonbura. If Respondent No. 4 cannot be considered as a family of the late Gaonbura, there cannot be any justification to prefer him in selection, by taking note of his merit vis-a-vis the writ Petitioner, as the writ Petitioner being the son of the deceased Gaonbura will have a preferential claim for being selected for the post.

12. As has been held by this Court in Narendra Nath Kalita (supra), the responsibilities of the post of Gaonbura are distinct from other civil post and a claim for appointment to the post of Gaonbura by a family member of the deceased Gaonbura, cannot lightly be brushed aside, in the absence of any material to show that the claiming family member is either unsuitable or disqualified for being appointed to the post of Gaonbura.

13. As the selection of Respondent No. 4 is sought to be supported by the learned Govt, counsel on the basis of comparative merit of the Petitioner and Respondent No. 4, without any indication as to whether the preferential claim of the Petitioner as a family of the deceased Gaonbura has been considered, I am of the view that the present petition is liable to be allowed.

14. Accordingly, the impugned order dated 21.7.05 appointing the Respondent No. 4 as the Gaonbura of Mamlakur village is hereby set aside.

The petition stands allowed accordingly.