

(2003) 07 GAU CK 0059
In the Gauhati High Court
Case No : Writ Petition (C) No. 3043 of 2002

Pranab Kumar Baidya and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 17-07-2003

Acts Referred:

Citation : (2003) 3 GLR 439

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : A.K. Purakayshtha, for the Appellant; M. Gani, G.A., for the Respondent

Judgement

I.A. Ansari, J.—By making this application under Article 226 of the Constitution of India, the petitioners, who claim themselves to be selected candidates for appointment in Grade III posts under the Deputy Commissioner's amalgamated establishment, Nagaon have approached this Court issuance of appropriate writ(s) setting aside and quashing the appointments of the respondents No. 3 to 6 and commanding the respondents to appoint the petitioners in the said posts.

2. In a nut-shell, the case of the petitioners runs as follows :

In pursuance of the advertisement published by respondent No. 2, namely, Deputy Commissioner, Nagaon, in the month of January, 1999, the District Employment Exchange Officer, Nagaon, sponsored the names of the petitioners alongwith others for regular selection to the posts of Grade III in accordance with the provisions of Assam Ministerial Establishment Services Rule, 1967. The petitioners appeared in the selection process and, upon being qualified, they were included in the select list (Annexure-H to writ petition) published finally by the State respondents making it clear that the list would expire on 30.6.2000. Out of 34 persons, who were included in the said select list, the petitioner No. 1 was placed at Sl. No. 21, petitioner No. 2 at Sl. No. 23, petitioner No. 3 at Sl. No. 25 and the petitioner No. 4 at Sl. No. 27 of the said select list. However, the

official respondents concerned, after making some appointments from the said list, appointed the respondent No. 3 to 6, who were not included in the said select list. The appointments of the private respondents aforementioned are, thus, illegal. This apart, the petitioners ought to have been appointed in Grade III post in place of the private respondent aforementioned.

3. The State respondents have not filed any affidavit and have not controverted the averments made in the writ petition by the writ petitioners. The private respondents, who were served with notices close not to contest the case.

4. Situated thus, this Court has to proceed on the premises that the averments made in the writ petition are true and correct.

5. I have perused the materials on record. I have heard Mr. A.K. Purakayashta, learned counsel for the petitioners, and Mr. M. Gani learned Govt. Advocate appearing on behalf of the respondents.

6. Upon hearing learned counsel for the parties and upon perusal of the materials on record, what transpires is that the petitioners participated in the selection process as mentioned hereinabove. The selection process culminated into the selection list (Annexure H to the writ petition), wherein the names of the petitioners were found present. Out of the said select list, some appointments were made. The private respondents Nos. 3 to 6 whose names did not appear in the select list aforementioned, were, however, appointed. This select list was to expire on 30.6.2000. The petitioners approached this Court as early as on 9.6.2000 with the grievance that while denying appointments to them, the private respondents have been appointed. This, in turn, indicates that the appointments of the private respondents were made during the validity of the said select list.

7. What, thus, emerges from the above discussions is that the respondents Nos. 1 and 2, while, on the one hand, denying appointment to the petitioners to Grade III posts as per the select list, appointed the respondents No. 3 to 6 (who had not been included in the select list) to the said posts. The appointment of the private respondents were, thus, wholly contrary to the Assam Ministerial Establishment Service Rule, 1967. If these appointments are allowed to stand good on record the same will cause serious miscarriage of justice.

8. Coupled with the above, it is also of immense importance to note that, since the State respondents have appointed respondents No. 3 to 6 in Grade III post in the said Establishment, it logically follows that the Establishment aforementioned has room for giving appointment to 4(four) persons in Grade III posts and that the said establishment was in need of such working hands. Viewed from this angle, the petitioners have justifying submitted that they ought to have been considered for appointment in the said posts instead of issuing orders of appointment thereto in favour of the respondents Nos. 3 to 6.

9. In the result and for the reasons discussed above, the appointments of the

respondent Nos. 3, 4, 5, and 6 in Grade III posts in the Deputy Commissioner's amalgamated Establishment, Nagaon, are hereby set aside and quashed. The respondents No. 1 and 2 are hereby directed to consider the cases of the petitioners in place of the vacancies caused due to setting aside and quashing of the orders of appointment(s) of the respondents Nos. 3, 4, 5 and 6. The whole exercise, so directed, shall be completed within a period of three months from today.

10. With the above observations and directions, this writ petition shall stand disposed of.

11. No order as to costs.