
(2009) 09 GAU CK 0038
In the Gauhati High Court
Case No : Writ Petition (C) No. 738 of 2009

Premadhar Konwar and Others	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 07-09-2009

Acts Referred:

Constitution of India, 1950 — Article 16, 16(2)

Citation : (2010) 3 GLR 846

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : N. Dutta, N.N.B. Choudhury, S. Borthakur and U.K. Deka, for the Appellant; B.J. Ghosh and M. Bhuyan, for the Respondent

Judgement

Amitava Roy, J.—The select list empanelling candidates recommended for appointment on contractual basis as Gram Rozgar Sahayak ("the Sahayak") in various Gaon Panchayats selected within the Dhemaji Development Block, has come under challenge in the instant proceeding. The process in connection therewith had been initiated by the notice dated 7.1.2009 issued by the Project Director-cum-Member Secretary (Selection Committee), District Rural Development Agency, Dhemaji, inviting applications therefor, for the implementation of programmes under the National Rural Employment Guarantee Act ("the NREG").

2. I have heard Mr. N. Dutta, senior advocate assisted by Mr. N.N.B. Choudhury, advocate for the petitioners and Mr. B.J. Ghosh, learned Government Advocate appearing on behalf of the official respondents Also heard Mr. M. Bhuyan, learned Counsel for the respondent Nos. 6 to 14.

3. The petitioners" pleaded version is that they are of permanent residents of Dhemaji district of the State of Assam, and in the year 2006 they had been appointed as Sahayak on contractual basis in different Gaon Panchayats under the Dhemaji Development Block. The Government of Assam having approved the engagement of such Sahayaks for the implementation of NREG, the Director of

Panchayat and Rural Development Department vide his letter dated 27.10.2008 addressed to all the Deputy Commissioners of the State, laid down the procedure for selection of candidates to be appointed as such. The norms, inter alia, mentioned age limits to be between 21 and 35 years respectively as on 1.1.2008.

4. By the notice dated 7.1.2009 alluded hereinabove, applications were invited from the intending candidates for filling up the posts of Sahayak under the Dhemaji district. The petitioners, accordingly, offered their candidature for the said post under the Dhemaji Development Block. The petitioners, have conceded that the petitioner Nos. 1 and 2 at that point of time were over aged judged by the stipulation to that effect as above, but the concerned authority accepted their applications as well, in view of the decision to extend preference to the existing incumbents; Call letters for the interview were, thereafter, issued on 22.1.2009, and the petitioners appeared before the Selection Board and claim to have performed extremely well. The impugned select list on being published, they, however, found themselves to be left out therefrom. On queries being made, they were informed that the petitioner Nos. 1 and 2 have been excluded for being over aged and the petitioner Nos. 3 and 4 as not being residents of the concerned Gaon Panchayat. Disputing the validity of these grounds, the petitioners have cited instances, where, candidates over aged in terms of the criteria prescribed had been selected in different Gaon Panchayats and that candidates being residents of different villages other than those in the respective Gaon Panchayats, for which they had been selected, have also been enlisted for appointment. According to the petitioners, in view of the maximum age limit for Government service, which is 38 years with further relaxation of 3 years for OBC candidates, the rejection of the candidature of the petitioner Nos. 1 and 2 on the purported ground of over age is untenable.

5. This Court by order dated 25.2.2009, while issuing rule, in the interim restrained the official respondents from filling up four posts of Gram Rozgar Sahayak under the Dhemaji Development Block without its leave.

Though, no affidavit in-opposition has been filed by the respondent Nos. 6 to 14 selectees, they have submitted an application registered as MC No. 1760/2009, seeking modification and/or clarification of the interim order passed. In their application, they having endorsed the validity of the selection process, and have underlined, in particular, the criteria contained in the guidelines circulated by the notification dated 27-10-2008 to accord preference to the candidates belonging to a particular Gaon Panchayat so as to make an effort for appointment of local candidates as far as possible. While stating that their names figure in the impugned select list at Sl. Nos. 4, 5, 6, 7, 9, 11, 12, 14 and 15, these respondents have claimed themselves to be the permanent residents of the respective Gaon Panchayats. According to them, the petitioners are the residents of the following Gaon Panchayats:

Petitioner No.

Name

Gaon Panchayat

1.

Sri Premadhar Konwar

Ghuguha Gaon Panchayat

2.

Sri Rajib Gogoi

Naruathan Gaon Panchayat

3.

Sri Pankaj Gogoi

Aradhal Gaon Panchayat

4.

Sri Siva Dutta

Ajuha Gaon Panchayat

Pleading that the Gaon Panchayats to which they belong, are different from those of the petitioners, they have pleaded that as in spite thereof no appointment whatsoever, have been made by misconstruing the interim restraint, the order dated 25.2.2009 to the said effect needs to be vacated or modified accordingly.

6. Mr. Dutta, has persuasively urged that the norm of preference to a candidate based on his/her residence in a Gaon Panchayat being obviously repugnant to the guarantee of equality of opportunity in matters of public employment enshrined in Article 16 of the Constitution of India, the same is to be regarded as non est in law. The learned senior counsel has submitted that the application of such criteria to exclude a candidate, who has either performed better than or is at par with others, generally, would be patently discriminatory and unconstitutional. According to Mr. Dutta, therefore, this condition of preference could not have been invoked to exclude the petitioners. Citing instances of selecting candidates of age in excess of the outer limit prescribed in several other Gaon Panchayats, the learned senior counsel has pleaded that having regard to the decision taken to accord preference to the working Sahayaks, disqualification of petitioner Nos. 1 and 2 on the ground of over age is also not sustainable in law and on facts. Having regard to the fact that recruitment is being made to a public office to be best served by efficiency, Mr. Dutta, has argued that the selection for the Sahayaks should be only on the basis of merit. Judged by the standard, according to him, the petitioners ought to be selected in the post involved and in the facts and circumstances of the case, an appropriate direction to that effect needs to be issued.

7. Mr. Ghosh, the learned State counsel has not, as such, resisted the proposition founded on Article 16 of the Constitution of India. While insisting on the justifiability of the age limits contained in the parameters formulated for the selection, the learned State counsel with reference to the official records, has argued that even by the measure of merit, the petitioner Nos. 2 and 4 cannot be enlisted for appointment on a comparative assessment of the performance of the candidates. Mr. Ghosh, has furnished to the court the following particulars vis-a-vis the candidates already selected and the petitioners:

Position in order of merit

Sl. Nos.

Name of Candidate

Gaon Panchayat

Marks obtained

Position in order of merit

1.

Dimba Gogoi

Ajuha

34.47

70

2.

Jyoti Prasad Bora

Naruathun

49.65

13

3.

Ajoy Gogoi

Ghuguha

50.53

10

4.

Lambit Kachari

Bhatdaria

56.01

2 (Respondent No. 6)

5.

Jiten Borgohain

Hatigarh

50.60

9 (Respondent No. 7)

6.

Maneshwar Chutia

Chamrajan

47.32

20 (Respondent No. 8)

7.

Arabinda Sonowal

Jiadhal

50.60

11 (Respondent No. 9)

8.

Bishnu Bora

Bishnupur

55.11

5

9.

Mintoo Bhuyan

Uttar Dhemaji

57.88

1 (Respondent No. 10)

10.

Bishnu Saikia

Lakhi Pathar

37.60

53

11.

Dipak Gogoi

Moridhal

54.73

7 (Respondent No. 11)

12.

Biren Borgohain

Gohaingaon

55.66

3 (Respondent No. 12)

13.

Monuj Kr. Doley

Aradhal

48.26

17

14.

Prasanta Dihingia

Khubolia

49.60

14 (Respondent No. 13)

15.

Jatin Borgohain

Dakhin Dhemaji

41.92

40 (Respondent No. 14)

Sl. Nos.

Name of Candidate

Gaon Panchayat

Marks obtained

Position in order of merit

1.

Pramadhar Konwar

Ghuguha

54.73

6 (Petitioner No. 1 over aged)

2.

Rajib Gogoi

Naruathan

47.93

19 (Petitioner No. 2)

3.

Pankaj Gogoi

Dhemaji Town

54.48

8 (Petitioner No. 3)

4.

Shiva Dutta

Gohaigaon

48.65

16 (Petitioner No. 4)

8. Mr. Bhuyan, has pleaded, as well that to set at rest the controversy, the select list be remade strictly on the basis of merit.

9. The pleadings available and the arguments advanced have received the due consideration of this Court. The petitioners have admitted that at the time of their response to the notice offering candidature, the petitioner No. 1 and 2 were marginally over aged having regard to the prescription to that effect. Their assertion of the administrative decision to extend preference to the in service Sahayaks has not been refuted, as such. The averments made by them about selection of over aged candidates in Sisi and Pub-Muchkhowa Gaon Panchayat under Machkhowa Development Block as well as other candidates for the post of Accredited Engineer and Account Assistant posts, have also remained

uncontroverted.

Be that as it may, such a breach, if any, per se, in the opinion of this Court would not entitle them to a direction for condonation of their overage. The arguments based on Article 16 of the Constitution of India, however, appear to be well founded and significantly has not been refuted by the respondents.

10. The guidelines circulated by the notification dated. 27.10.2008 outlining the procedure for selection of candidates amongst others as Sahayak mandate that first preference should be given to the candidates of the particular Gaon Panchayat and in the event of non availability of suitable candidate from such Gaon Panchayat(s), the candidature of an applicant from outside the Gaon Panchayat(s) would be considered. The notice dated 7.1.2009 inviting candidature from the eligible candidates indicates that for the post of Sahayak preference would be given to candidates with Science and Commerce background. It further mentions that preference would be given to candidate from local Gaon Panchayat area. Having regard to the unambiguous sanction contained in Article 16(2) of the Constitution of India, this precept of preference to candidates based on their residence in a particular Gaon Panchayat cannot be sustained. The application of this norm to select the candidates in the instant process, thus, cannot be approved. As the proposed appointments are to be made to a public office, the recruitment essentially has to be on the basis of some constitutionally acknowledged measure. Merit, competence and suitability, the index whereof, would be the performance of the candidates at the interview together with the accreditation awarded for their relevant academic achievements is, thus, the most assuring measure. The official records containing, inter alia, the chart reflecting the comparative assessment of the candidates otherwise disclose adherence to the above tenets.

11. On a perusal of the facts and figures contained in the above extracts vis-a-vis the performance of the candidates selected and the petitioners, it is clear that subject to the other criteria referred to in the guidelines dated 27.10.2008 as well as the notice dated 7.1.2009, the petitioners are entitled to be placed at Sl. Nos. 6, 8, 19 and 16 respectively. Judged by the yardstick of merit, the inter se positions of the selected candidates and the petitioners would have to be adjusted, so much so that the first 15 candidates on the basis of the marks secured, if not otherwise ineligible as per the guidelines dated 27.10.2008 and 7.1.2009 to the exception of the norms of residence deserve to be selected for appointment to the posts.

12. In the above view of the matter, the instant writ petition is disposed of with a direction to the official respondents to redraw the select list on the basis of the merit and performance of the candidates irrespective of their residence Gaon Panchayat wise and subject to the other conditions and norms as well as the formalities, process their cases for appointment to the advertised posts of Sahayak. The issue of over age is, however, left to them to decide in the facts and circumstances of the case.

The miscellaneous application being M.C. No. 1760/2009, accordingly stands disposed as well. No costs.