
(2004) 08 GAU CK 0048

In the Gauhati High Court

Case No : C.R. No's. 5258 and 5259 of 1998

Puspalata Pator and Another

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 30-08-2004

Acts Referred:

Citation : (2004) 3 GLT 261

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : A.C. Buragohain, N. Baruah, A.J. Saikia and E. Sarma, for the Appellant; G.A., J.L. Sarkar and S. Deka, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—These two writ petitions have been filed praying for a direction to the Respondents to appoint the Petitioners to the post of Instructor, Cutting and Tailoring in the Bamuni Vocational Training Centre, Nagaon. Since the writ petitions are based on same set of facts raising the same question of law and as agreed to by the learned Counsel for the parties, they were taken up for analogous hearing and are being disposed of by this common judgment and order.

2. In both the writ petitions the Petitioners claimed that the aforesaid post of Instructor is reserved for Scheduled Tribe candidate and they are entitled to be appointed against the said post on the basis of their selection and inclusion of name in the select list. However, it is the Respondent No. 4 belonging to OBC category, who has been appointed against the post by order dated 26.2.1998. As per the averments made in the writ petitions, the Petitioners in both the writ petitions belong to Scheduled Tribe (ST) community and the posts in question being reserved for ST candidate, they are entitled to be appointed against the said post pursuant to their selection for the same.

3. As per the averments made in the writ petitions, applications were invited

through the Morigaon Employment Exchange by the Sub-divisional Welfare Officer, Morigaon for appointment against the said post. The Petitioners offered their candidatures and they were invited for interview scheduled to be held on 2.1.98. According to the Petitioners the Respondent No. 4 was not sponsored by the Employment Exchange, his name not being registered with the same and that he was illegally invited for the interview.

4. Pursuant to the interview conducted for the post, a select list was prepared in which the name of the Respondent No. 4 appeared at serial No. 1 as against the positions of the Petitioner in C.R. No. 5258/1998 at serial No. 2 and that of the Petitioner in C.R. No. 5259/1998 at serial No. 3. The Respondent No. 4 was shown as OBC and the Petitioners were indicated as ST (P) in the select list. The marks secured by the candidates were also indicated, according to which the Respondent No. 4 secured 34 as against 33 each secured by the Petitioners. However both the Petitioners have claimed for appointment in preference to the Respondent No. 4 on the aforesaid ground of the post being reserved for in favour of ST (P) candidates.

5. Pursuant to the aforesaid selection of the Respondent No. 4 and his position at SI. No. 1 in the merit list, he was appointed by an order dated 22.6.1998. Although the whole basis of the claim of the Petitioners is on the basis of their stand that the post is reserved for ST (P) candidates, nothing has been produced in support of their such claim.

6. An affidavit-in-opposition has been filed by the Respondent No. 4 in C.R. No. 5259/1998 denying the contentions raised in the writ petition. As regards the plea of the Petitioners that his name was not registered with the Employment Exchange, it has been stated in the affidavit that he having come to know about the requisition placed with the Employment Exchange, submitted an application to the Employment Exchange making a request to sponsor his name as well and it was on that basis his name was also sponsored. The Employment Exchange registration of the Respondent No. 4 has been indicated in the affidavit.

7. The Respondent No. 4 has also filed an additional affidavit. In the affidavit-in-opposition, it is the stand of the Respondent No. 4 that the post in question is not reserved post but is open for all candidates i.e. a general category post. The post being a general category post and he having secured higher merit position than the Petitioners, he has been rightly appointed to the post, the Respondent No. 4, asserts in the affidavit-in-opposition.

8. An affidavit-in-reply has been filed by the Petitioner in C.R. No. 5259/1998. Apart from reiterating the stand regarding not sponsoring the name of the Respondent No. 4, the Petitioner has placed reliance on a letter dated 15.9.98 to bring home the assertion made that the post is reserved for ST (P) candidate. The said letter dated 15.7.98 was issued by the Sub-divisional Welfare Officer, Morigaon and addressed to the Chief Executive Officer, Assam Tribal Development Authority stating inter alia that while giving appointment, weightage

was to be given to the candidate selected purely on merit basis with genuine preference to ST/SC selected candidates. It is only on the basis of such observation made in the said letter, the Petitioners have projected their plea that the post is reserved for ST (P) candidate. Learned Counsel for the Petitioners argued reiterating and reaffirming the stand in the writ petitions. On the other hand, the learned Government Advocate and the learned Counsel for the Respondent No. 4 supported the impugned selection and appointment.

9. As regards the plea of the Petitioners that the name of the Respondent No. 4 was not sponsored by the Employment Exchange, same is not at all tenable inasmuch as it is on record that his name was duly sponsored. It is true that initially the name of the Respondent No. 4 was not sponsored, but it was so done on the basis of the request made by the Respondent No. 4 by submitting application. It is in this context the Apex Court has emphasized the need of not restricting the selection only to the candidates sponsored by the Employment Exchange. If any reference is required, one may refer to the decisions of the Apex Court as reported in *Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others*, and *Raj Kumar and Others Vs. Shakti Raj and Others*, If the name of the Petitioner was also sent by the employment Exchange on the request made by him on the basis of his registration with the Employment Exchange, no fault can be attributed to such a process. The Petitioners cannot claim consideration of their case alone to the exclusive of others.

10. As regards the plea that the post being reserved for ST (P), none of the Petitioners has been able to bring home the position by adducing any materials. As noticed above, the whole basis of the claim is the letter dated 15.7.98 by which weightage was directed to be given on merit with preference to ST/SC candidate. From such an observation made in the letter, it cannot be said that the post is a reserved post for ST (P) candidate. Mere assertion of the Petitioners that the post is reserved for ST (P) candidate is not enough, something more is required. As has been observed by the Apex Court in the case of *Bharat Singh and Others Vs. State of Haryana and Others*, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ Petitioner, must plead and prove such facts by evidence which must appear from the writ petition. In the instant case, the Petitioners have miserably failed to adduce any evidence/materials to substantiate their such claim.

11. The aforesaid letter dated 15.7.98 does not suggest that the post is reserved for ST (P), rather it suggests for appointment on merit basis with preference to SC/ST candidate. Even if this letter is taken into account, the preference as emphasized would mean, preference to SC/ST candidate, only if the merit of two or more candidates is equal. There cannot be any preference to the Petitioners who secured lesser marks and obtained lower merit positions than the Petitioners.

12. Interpreting, the word "preference", in the context of selection and appointment, the Apex Court in the case of *The Secretary, Andhra Pradesh Public*

Service Commission Vs. Y.V.V.R. Srinivasulu and Others, observed in para 10 and 11 of the judgment as follows:

The word "preference" in our view is capable of different shades of meaning taking colour from the context, purpose and object of its use under the scheme of things envisaged. Hence, it is to be construed not in an isolated or detached manner, ascribing a meaning of universal import, for all contingencies capable of an invariable application. The procedure for selection in the case involves a qualifying test a written examination and an oral test or interview and the final list of selection has to be on the basis of the marks obtained in them. The suitability and all round merit, if had to be adjudged in that manner only, what justification could there be for overriding all these merely because, a particular candidate is in possession of an additional qualification on the basis of which, a preference has also been envisaged. The Rules do not provide for separate classification of those candidates or apply different norms of selection for them. The "preference" envisaged in the Rules, in our view, under the scheme of things and contextually also cannot mean, an absolute en bloc preference akin to reservation or separate and distinct method of selection for them alone. A mere rule of preference meant to give Wreightage to the additional qualification cannot be enforced as a rule of reservation or rule of complete precedence. Such a construction would not only undermine the scheme of selection envisaged through the Public Service Commission on the basis of merit performance but also would work great hardship and injustice to those who possess the required minimum educational qualification with which they are entitled to compete with those possessing additional qualification too, and demonstrate their superiority meritwise and their suitability for the post. It is not to be viewed as a preferential right conferred even for taking up their claims for consideration. On the other hand, the preference envisaged has to be given only when the claims of all candidates who are eligible are taken for consideration and when any one or more of them are found equally positioned, by using the additional qualification as a titling factor, in their favour vis-a-vis others in the matter of actual selection.

11. Whenever, a selection is to be made on the basis of merit performance involving competition, and possession of any additional qualification or factor is also envisaged to accord preference, it cannot be for the purpose of putting them as a whole lot ahead of others, dehors their intrinsic worth or proven inter se merit and suitability, duly assessed by the competent authority. Preference, in the context of all such competitive scheme of selection would only mean that other things being qualitatively and quantitatively equal, those with the additional qualification have to be preferred. There is no question of eliminating all others preventing thereby even an effective and comparative consideration on merits, by according en bloc precedence in favour of those in possession of additional qualification irrespective of the respective merits and demerits of all candidates to be considered. If it is to be viewed the way the High Court and the Tribunal have chosen to, it would amount to first exhausting in the matter of selection all those, dehors their inter se merit performance only those in

possession of additional qualification and take only thereafter separately those with ordinary degree and who do not possess the additional qualification. Assuming for consideration without even accepting the same to be right or correct view to be taken, at least among the class or category of those possessing the additional qualification, inter se merit performance should be the decisive factor for actual selection for appointment and relief could not have been granted to the Respondents for the mere asking only on the basis of the interpretation of the provision to someone who came to Court, ignoring the fact that those before the Court at any rate in spite of the view taken do not come up to the level of selection considered in the context of numerous others with higher ranks of merit performance, in addition to they being also in possession of the additional qualification, as those before the Court. That apart, the old rule relating to the post of ACTO, which has become obsolete having been superseded, or even the advertisement if it has stated on the basis of the obsolete rule, that preference will be given first to candidates who possess a degree in Commerce and degree in Law, secondly, to those who possess a degree in Commerce and thirdly, to those who possess a degree in Law, cannot either support the claim of Respondents 1 to 3 nor in any manner lend credence to the interpretation placed by the High Court and the Tribunal. The word "first" has to be construed in the context of even giving preference only in the order and manner indicated therein, inter se among more than one holding such different class of degrees in addition and not to be interpreted vis-a-vis others who do not possess such additional qualification, to completely exclude them en bloc.

13. The respective merit of the Petitioners and the Respondent No. 4 has been noticed above and the Respondent No. 4 scored a march over both the Petitioners on merit. Thus even if the said letter is taken into account, the Petitioners cannot claim appointment over the Respondent No. 4, their merit positions being lower than the Respondent No. 4.

14. For the foregoing reasons and discussions, I do not find any merit in both the writ petitions raising the same very contentions.

15. The writ petitions stand dismissed, without, however, any order as to costs.