
(2005) 09 GAU CK 0088

In the Gauhati High Court

Case No : Writ Petition (C) No. 164 (K) of 2004

Puthuto Natso and Others

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 16-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Executive Business Rules — Rule 58

Citation : (2006) 4 GLT 372

Hon'ble Judges : Brojendra Prasad Katakey, J

Bench : Single Bench

Advocate : Taka Masa Ao, for the Appellant; Y. Longkumar, B.N. Sarma and Apok Pongener, for the Respondent

Final Decision : Allowed

Judgement

B.P. Katakey, J.—By this writ petition the Petitioners have challenged the proceeding of the selection committee meeting held on 23.7.2004 selecting the Respondent No. 4 for appointment as Assistant Inspector in the Directorate of Land Resources, Govt. of Nagaland and a consequential order of appointment dated 4.8.2004 issued by the Director, Land Resources appointing the Respondent No. 4 as Assistant Inspector.

2. I have heard Mr. Taka Masa, the learned Counsel for the Petitioner, Mrs. Y. Longkumer, the learned State Counsel appearing on behalf of the Respondent Nos. 1, 2 and 3 and Mr. B.N. Sarma, the learned Senior Counsel assisted by Mr. Apok Pongener, the learned Counsel appearing for the Respondent No. 4.

3. Mr. Taka Masa, the learned Counsel for the Petitioners has submitted that the Petitioners were initially appointed as Assistant Inspector in the erstwhile Department of Waste Land Development vide order of appointment dated 8.5.2000 issued by the Director pursuant to the selection made by the selection committee selecting them and others for appointment to the said post. The Petitioners were appointed in a regular scale of pay and though their initial order

of appointment was for a period of 1 (one) year, the same was extended from time to time by the competent authority by issuing various orders of extension and are still serving in the said capacity as Assistant Inspector. According to the learned Counsel, the Respondent No. 4 was initially appointed as watershed Development Team Member in the Directorate of Wasteland Development, Govt. of Nagaland at a fixed pay of Rs. 5,000/-, for a period of 1 (one) year against the IWDP Project, which is a Centrally Sponsored Project sponsored by the Govt. of India and his appointment against the said Project was also extended from time to time by issuing various orders. According to the learned Counsel for the Petitioners, 2(two) regular posts of Assistant Inspector in the Directorate of Land Resources fell vacant and pursuant to the decision taken by the Directorate, a selection committee was constituted for the purpose of selection of candidates for appointment against the said post. The selection committee held its meeting for selecting candidate on 23.7.2004 and selected the Respondent No. 4 and another for appointment against the said post and consequently the order of appointment dated 4.8.2004 was issued. Mr. Taka Masa, the learned Counsel for the Petitioners has submitted that the minimum educational qualification prescribed for appointment to the post of Assistant Inspector was fixed by the Directorate of erstwhile Department of Wasteland Development vide Notifications dated 7.11.1995 as well as on 7.4.1998 stipulating therein that the minimum educational qualification for appointment to the said post is B.Sc. (Agri), B.Sc. (Forestry), B.Sc. (Horticulture, B.E. (Agri)/B. Tech (Agri). According to the learned Counsel, since the Respondent No. 4 is admittedly a Master degree holder in Botany is not qualified to be appointed as Assistant Inspector having not possessed the minimum requisite educational qualification for the said post. The learned Counsel in support of his contention has placed reliance on the office Memorandum dated 7.11.1995 issued by the Joint director, Wasteland Development formulating the guideline for recruitment of Grade-III workcharge staff stipulating therein the minimum educational qualification for the post of Assistant Inspector as well as the Notification dated 7.4.1998 issued by the Director of the said Department formulating the guideline for recruitment of field staff in Wasteland Development Department, Govt. of Nagaland wherein the minimum educational qualification for different posts, including the post of Assistant Inspector has been laid down. According to the learned Counsel for the Petitioners, the Directorate of Wasteland Development, pursuant to the vacancy occurred in the post of Assistant Inspector, has decided to fill up the said post in its meeting dated 19.6.2003 by regularizing the Assistant Inspectors and Watershed Development Team Members who are working on workcharge basis and having minimum educational qualification for the post of Assistant Inspector, by reiterating the minimum educational qualification required for the said post. According to the learned Counsel, since the Respondent No. 4 does not possess the minimum requisite educational qualification, his selection to the post of Assistant Inspector and consequent order of appointment is illegal and therefore requires to be interfered with. The learned Counsel has further submitted that it is apparent from the proceeding dated 23.7.2004 of the selection committee that

all the members of the selection committee constituted for the purpose of selection of candidate for the post of Assistant Inspector were not present, inasmuch as the said selection board was constituted with the Director as Chairman, Joint Director as Member and Dy. Director (Administration) as Member Secretary; but in the selection committee the Dy. Director (Administration) was not present and the Dy. Director (Planning) was present and they have selected the Respondent No. 4. Since the constitution of the selection committee is not in accordance with the selection committee constituted by the Directorate, the selection made by the said committee is bad in law, and therefore, the appointment of the Respondent No. 4 on the basis of the selection made by the said committee is also illegal. The further submission of the learned Counsel is that it appears from the proceeding of the selection committee that it has decided to select candidate on the basis of seniority and performance of existing Assistant Inspector and WDT members; but the Respondent No. 4 was selected solely on the basis of the seniority without making any reference to his performance in the service career, and therefore, according to the learned Counsel, even assuming the Respondent No. 4 has the requisite educational qualification, his selection on the basis of the seniority alone is bad in law as the same is contrary to the procedure adopted by the selection committee in selecting the candidates.

4. Mrs. Y. Longkumer, the learned state Counsel appearing on behalf of Respondent Nos. 1, 2 and 3, relying on the affidavit-in-opposition filed on their behalf has submitted that the department of Land Resources is mainly implementing the scheme sponsored by the Govt. of India and therefore, the guideline issued by the Govt. of India for the purpose of appointment of the person and also the educational qualification of such person shall prevail while selecting any person for appointment in the Directorate of Land Resources. According to the learned State Counsel, the Govt. of India has issued the guideline for watershed development Scheme sponsored by it and in terms of the said guideline, the Watershed Development Team Members can be appointed who holds the professional Degree in Agriculture, Horticulture, Veterinary Science, Civil or Agricultural Engineering or Post Graduation in Botany, Economics, Sociology, Social Work. Since the Respondent No. 4 is a Post Graduate in Botany, he is therefore qualified to be appointed as Watershed Development Team Member and consequently as Assistant Inspector in the Department of Land Resources. According to the learned Counsel, the initial selection of the writ Petitioners as Assistant Inspector and the Respondent No. 4 as Watershed Development Team member was made by the same selection committee and on the basis of the same interviews pursuant to the Advertisement issued in the year 1999 and 2000 wherein the minimum educational qualification was stipulated and both the writ Petitioners and the Respondent No. 4 having qualified in terms of the said advertisement and appointed thereafter, the writ Petitioners cannot now say that the Respondent No. 4 is not qualified for appointment as Assistant Inspector as the persons are

appointed either as WDT member or as Assistant Inspector, by choice only pursuant to the advertisement issued for filling up of the post of watershed Development Team members. The further submission of the learned State Counsel is that the Notification dated 7.4.1998 issued by the Director fixing the minimum qualification for appointment of Assistant Inspector cannot be enforced as the same has not been approved by the Government. Mrs. Y. Longkumer has further submitted that the selection committee has decided to adopt a procedure and the said procedure has been applied to all concerned, including the Petitioners, thereafter the selection committee selected the Respondent No. 4 and another for appointment as Assistant Inspector and the order of appointment was issued to the Respondent No. 4 pursuant to such selection. According to the learned State Counsel, as the selection committee has selected the Respondent No. 4 on good and sufficient ground, the same may not be interfered with by the writ Court in exercise of its power under Article 226 of the constitution of India.

5. Mr. B.N. Sarma, the learned Senior Counsel appearing on behalf of Respondent No. 4 has submitted that fixation of educational qualification by the Director by issuing the Office Memorandum dated 7.11.95, Notification dated 7.4.98 and in the minutes of the officers meeting held on 19.6.2003 for appointment to the post of Assistant Inspector is wholly illegal as under the Rules of Executive Business, the Director has no power and authority to lay down the service conditions for recruitment to any post, as such power is vested on the Personnel and Administrative Reforms Department, Govt. of Nagaland. In the instant case, according to the learned Sr. Counsel, since the Personnel and Administrative Reforms Department did not formulate any service rules or laid down any services conditions, including the educational qualification for appointment to the post of Assistant Inspector, the Office Memorandum and the Notification issued by the Director laying down the educational qualification for appointment to the post is wholly without jurisdiction, and therefore, cannot be enforced. The further submission of the learned Senior Counsel is that in the year 1999 and 2000 2 (two) advertisements were issued by the Director of Wasteland development Department for the purpose of recruitment to the post of Watershed Development Team member. Pursuant to first advertisement issued in the year 1999 the Respondent No. 4 applied and selected. Thereafter he was appointed as WDT member vide order of appointment dated 2.6.1999 alongwith others. Mr. B.N. Sarma, the learned Senior Counsel has further submitted that pursuant to the advertisement issued in the year 2000 for the said post of WDT members, the writ Petitioners applied; but they were appointed as Assistant Inspector in the regular scale not on the basis of the merit; but by their choice only. According to the learned Senior Counsel, since the writ Petitioners and the Respondent No. 4 were appointed pursuant to the similar advertisement issued, all having the minimum requisite educational qualification in terms of the advertisement, the authority has rightly selected and appointed the Respondent No. 4 as Assistant Inspector. Mr. B.N. Sarma, the learned Senior Counsel has

further submitted that since the department in question is implementing the Centrally Sponsored Scheme financed by the Govt. of India, the guideline issued by the Central Government stipulating the educational qualification for appointment shall prevail and in the instant case, since the guideline issued by the central Government prescribed Master Degree in Botany as one of the educational qualifications for being appointed, the Respondent No. 4 is duly qualified for appointment as Assistant Inspector and hence the challenge to his appointment on the ground of having not possessed the minimum educational qualification cannot be accepted.

6. I have considered the submissions of the learned Counsel for the parties and also perused the records produced by the learned State Counsel being file Nos. D/LR/ GEN-2/2004 and D/LR/ESTT-7/2004. The case of the writ Petitioners as it appears from the pleadings as well as the submission of the learned Counsel is that the Respondent No. 4 being the Master Degree holder in Botany is not qualified to be appointed as Assistant Inspector in the Department of Land Resources, which was formerly known as the Department of Wasteland Development. According to the writ Petitioners, the Director of Wasteland Development department vide Office Memorandum dated 7.11.1995 and Notification dated 7.4.1998 has laid down the minimum requisite educational qualification for appointment to the said post and the Respondent No. 4 do not possess such qualification. The further case of the Petitioners is that the selection of the Respondent No. 4 was done on extraneous consideration and he was selected solely on the basis of the seniority without taking into account his performance as WDT member though the selection committee has decided to select candidate on the basis of seniority and performance. The further case of the Petitioners is that the selection committee which has selected the Respondent No. 4 is not the selection committee constituted by the Director.

7. The Joint Director of Wasteland Development department vide Office Memorandum dated 7.11.1995 has issued the guideline for recruitment to Class-III work-charge staff of the Department wherein the minimum qualification for the post of Assistant Inspector has been stipulated. It has further been stipulated in the said Office Memorandum that the qualified candidates who possessed the said minimum qualification will be recommended to the Government to be appointed on work-charge basis till the regular vacancy arises and they will be regularised as and when vacant post arises or when the posts are created in the Department of Wasteland Development. It has further been stipulated that the regularisation will be made on merit basis and according to their Annual Confidential Report (ACR). The Director vide Notification dated 7.4.1998 has also laid down the minimum educational qualification for different posts in the Directorate of Wasteland Development, including the post of Assistant Inspector as B.Sc. (Agri), B.Sc. (Forestry) B.Sc. (Horticulture), B.E. (Agri)/B. Tech. (Agri). In the Notification dated 7th April, 1998 it has further been stipulated that the appointment of WDT member will be purely on workcharge basis for a period of one year, which may be extended depending upon their performance; but not

more than the project period for which they are working, as their services are co-terminus with the Project for which they were appointed. The Director of Wasteland Development in its meeting dated 19.6.2003 has also reiterated the educational qualification for the post of Assistant Inspector. It has further been reflected in the proceeding of the meeting of the officers of the Directorate held on 19.6.2003 that the directorate has decided to fill up two regular posts of Assistant Inspector fell vacant due to retirement and resignation of two officers by regularising the Assistant Inspectors and WDT members working on work-charge basis and having minimum qualification. Such regularisation was also decided to be made on the basis of merit and seniority.

8. The Director of Wasteland Development Department in the month of February, 1999 as well as on 1st February, 2000 issued two advertisements for filling up of the post of Member Watershed Development Team under the Integrated Wasteland Development Project (IWDP) Department of Wasteland Development, Govt. of Nagaland. The Respondent No. 4 pursuant to the first advertisement issued in the month of February, 1999 applied for the said post and on the basis of the selection he was appointed as WDT member at a fixed salary. The writ Petitioners, pursuant to the advertisement dated 1.2.2000 also applied for the post of member, WDT. However, they were selected by the selection committee in its meeting dated 1.3.2000 for appointment to the post of Assistant Inspector, Department of Wasteland Development in order of merit. Pursuant to the said selection, the Petitioners and others were appointed as Assistant Inspector in the regular scale of pay vide order dated 8.5.2000. It is thus evident from the selection of the writ Petitioners held on 1.3.2000 that they were selected for the post of Assistant Inspector pursuant to the Office Memorandum dated 7.11.1995 issued by the Joint Director as well as the Notification dated 7.4.1998 laying down the minimum qualification for appointment to the said post of Assistant Inspector and also the stipulation that the qualified persons shall be appointed as Assistant Inspector initially on ad hoc basis. The appointment of the writ Petitioners and the Respondent No. 4 were on adhoc basis and initially for a period of one year, which has subsequently been extended from time to time. The contention of the Respondents that the writ Petitioners and the Respondent No. 4 were selected by the same interview board and on the basis of the same interview, therefore, cannot be accepted as evidently the Respondent No. 4 was appointed as WDT member at a fixed pay pursuant to the advertisement issued in the month of February, 1999 and on the basis of the selection made in terms of the said advertisement and on the other hand the writ Petitioners were appointed on the basis of the advertisement dated 1.2.2000 and pursuant to their selection made on 1.3.2000 for the post of Assistant Inspector in a regular scale of pay. In fact the appointment of the Respondent No. 4 as well the writ Petitioners as WDT member and the Assistant Inspector respectively were approved by the Government vide order dated 4.5.2000 and the Government never at any point of time objected the selection of the writ Petitioners for appointment as Assistant Inspector in the regular scale of pay and that of the

Respondent No. 4 as WDT member on a fixed pay.

9. According to the learned Counsel for the state as well as the private Respondent, the educational qualification for the post of WDT member and Assistant Inspector are same. In support of the said contention, Clause (30) of the guideline issued by the Government of India, Ministry of Rural Development has been pressed into service. Clause (30) of the said guideline provides that project implementation agency shall carry out its duties through the Watershed Development Team which will consist of at least 4 members, one each from the discipline of Forestry, Plant Science, Agri Science, Civil/Agricultural Engineering and Social Science. According to the state Respondents, since the Respondent No. 4 is a Master Degree holder in Botany, he is qualified to be appointed as member of WDT. The further contention of the Respondents is that the advertisement issued in the month of February, 1999 and on 1.2.2000 also stipulates Master Degree in Botany as one of the Minimum educational qualifications for appointment as WDT Member, and therefore, the requisite qualification for being appointed as WDT member and Assistant Inspector are same. It is evident from the Clause (30) of the guideline issued by the Govt. of India as well as the advertisement issued in the month of February, 1999 and 2000 that it has stipulated the minimum educational qualification for being appointed as WDT member; but not as the Assistant Inspector in a regular department of the Govt. of Nagaland. The said guideline as well as the advertisement issued are relating to the appointment of persons employed for implementation of the Integrated watershed Development Project (IWDP) and hence the contention that the same guideline shall have to be followed while making appointment to the post of Assistant Inspector in the regular department of Govt. of Nagaland cannot be accepted and hence rejected.

10. Now it has to be seen whether the Director has any power to prescribe minimum requisite qualification for being appointed in department of Govt. of Nagaland. As discussed above, the Joint Director vide Office Memorandum dated 7.11.1995 and the Director vide Notification dated 7.4.1998 has laid down the minimum requisite qualification for appointment of Assistant Inspector. Rule 58 of the Rules of Executive Business of Govt. of Nagaland provides that the Personnel and Administrative Reforms Department shall be consulted for advice by other departments in the matters relating to the framing of service rules and general principles relating to service. Clause (2) of the First Schedule to the Rules of Executive Business only empowers the administrative reforms branch of the Personnel and Administrative Reforms Department for framing of rules regulating the conditions of service of Govt. Servant, including revision and relaxation thereof as well as of policy matter relating to the recruitment and promotion as well as the service conditions. In the instant case the Specific stand of the Government is that the Notification dated 7.4.1998 issued by the director laying down the minimum qualification has not been approved by the Government. The writ Petitioners have also not been able to show the power of the Director to stipulate the minimum educational qualification and also that the

same was approved by the Personnel and Administrative Reforms Department. Therefore, the Directorate of waste land Development Department (now the Department of Land Resources), has no authority to stipulate the educational qualification required for recruitment in any post, including the post of Assistant Inspector. It is for the Personnel and Administrative Reforms Department to stipulate the minimum educational qualification for any post, including the post of Assistant Inspector. Hence, the contention of the writ Petitioners that the Respondent No. 4 was not qualified to be appointed as Assistant Inspector, in view of the Office Memorandum dated 7.11.1995 and Notification dated 7.4.1998 cannot be accepted. At the same time the contention of the Respondents that the recruitment to the post of Assistant Inspector in a regular Department is to be made on the basis of minimum educational qualification fixed in terms of the guideline issued by the Govt. of India in respect of IWDP Project also cannot be accepted for the reasons recorded above.

11. It appears from the records of selection to the post of Assistant Inspector of Land Resources Department, produced by the Government that a selection committee consisting of Director as Chairman, Joint Director as Member and the Dy. Director (Admn.) as Member Secretary was constituted for the purpose of selection. It also appears from the minutes of the selection committee proceeding dated 23.7.2004 that the said selection committee consisted of the Director, Joint Director and Dy. director (Planning) and not the Deputy Director (Admn.). The selection committee has decided to recommend the names of candidates for filling up of 2 regular posts of Assistant Inspector in the Land Resources Department on the basis of seniority and performance of existing Assistant Inspectors and WDT Members who were appointed up to the year 2000. The selection committee considered the cases of the writ Petitioners as well as the Respondent No. 4 alongwith another candidate viz., Shri L. Bennet. It is evident from the said proceeding that the Respondent No. 4 was selected only because he is the senior-most WDT Member being a Member of 1999 batch. His performance as WDT Member has not been considered by the selection committee while recommending his name for appointment though the selection committee has decided to select the candidate on the basis of seniority and performance. The selection committee has thereby violated its own criteria fixed while selecting the Respondent No. 4. The records produced by the Government also reveals a very disturbing state of affair. The records revealed the existence of a letter dated 24.5.2004 issued by the Minister, Wasteland Development Department to the director, wasteland Development directing him to appoint the Respondent No. 4 as Inspector against any available vacancy on priority basis. The selection committee thereafter held its meeting on 23.7.2004 and selected the Respondent No. 4 for appointment as Assistant Inspector without even considering his performance as WDT Member. The selection of the Respondent No. 4, is therefore, contrary to the procedure decided to be followed by the selection committee itself while selecting the candidate. The existence of the directing issued by the Minister of the Department goes to show that the

selection committee was influenced by the said direction of the Minister in selecting the Respondent No. 4, and therefore, his performance as WDT Members ignored. Moreover, the selection committee which selected the Respondent No. 4 is not the selection committee constituted by the Directorate, constitution of which is also available at page 8 of the record.

12. In view of the above, the selection of the Respondent No. 4 to the post of Assistant Inspector cannot be held to be legal and valid being contrary to the own procedure decided to be followed by the selection committee and also being influenced by the direction issued by the Minister, Wasteland Development Department and by a committee, which has not been constituted by the Directorate. Hence the selection as well as the appointment of the Respondent No. 4 dated 4.8.2004 to the post of Assistant Inspector is set aside. The state Respondents are directed first to stipulate the minimum educational qualification for being appointed as Assistant Inspector in the land Resources Department and then to select the candidate to the said post of Assistant Inspector on the basis of the seniority and performance of the existing Assistant Inspectors and WDT Members having such qualification, as decided by the directorate. However, the selection and appointment of Shri L. Bennet has not been interfered with as his selection and appointment is not under challenge.

This writ petition is accordingly allowed. No costs.