
(2014) 07 GAU CK 0015
In the Gauhati High Court
Case No : WP (C) No. 3483 of 2014

Rajendra Nath Borpuzari

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 23-07-2014

Acts Referred:

Citation : (2015) 1 GLD 654 : (2014) 4 GLT 700

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : K.N. Choudhury, Sr. Advocate and R. Dubey, Advocate for the Appellant; S. Sumoria, SC, Agri., P. Kataki, SC, AAU, and P.N. Goswami, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Biplab Kumar Sharma, J.—The petitioners presently working in Assam Agricultural University have filed this writ petition challenging the Annexure-2 advertisement dated 27/06/2014 inviting applications for the post of Vice Chancellor, Assam Agriculture University. For a ready reference, the said advertisement is quoted below:-

APPOINTMENT OF VICE CHANCELLOR OF ASSAM AGRICULTURAL UNIVERSITY

Selection Committee constituted by the Governor of Assam and Chancellor of Assam Agricultural University (AAU) vide GSA. 90/2008/169 dated 19/05/2014, invites applications for the post of Vice Chancellor, Assam, Agricultural University, from eminent scientists, academicians and administrators with background of Agriculture, Veterinary and Fishery Education, Research and Extension with ten years experience and proven leadership and administrative capabilities as provided for in the Assam Agricultural University Act 1968.

The tenure for the post of Vice Chancellor is 5(five) years subject to the maximum age as is prescribed or may be prescribed under the relevant Act. Persons having age nor more than 64 years as on the date of this advertisement

can apply.

Interested individuals may send four hard copies of application and a soft copy giving details resume, along with vision statement for the university. Names and address of three distinguished individuals well acquainted with the work of the applicant shall also be mentioned.

Applications may be sent to:

Sri. Sudeep Chakraborty Deputy Secretary to the Governor of Assam, Rajbhavan, Gauhati (Assam).

so as to reach the addressee on or before 15th July 2014, Name of the post & name of the University should be written on the envelope. Applications received after the due date shall not be considered.

If considered necessary by the committee, short-listed candidates may be invited for a personal interaction, for which no TA/DA will be paid.

The Committee may not limit its selection to the applications received in response to the advertisement and reserves the right to consider any other eligible person for the post.

Date: 27th June 2014

Sd/- CHAIRMAN, SELECTION COMMITTEE

2. The petitioners have identified themselves in the writ petition as follows:-

2. That the petitioner No. 1 is the Principal Scientist at the Dept. of Livestock Products Technology College of Veterinary Science, Assam Agricultural University, Khanapara, Guwahati -781022 and has done Ph.D in Veterinary Sciences (Meat Science and Technology) and has been the Associate Professor in various College of Veterinary Science and has also completed Ad-hoc Research Projects as Principal Investigator, as Co-Principal Investigator and as Principal Investigator/ Consortium Principal Investigator. The petitioner No. 1 was also an Expert Member of the Selection Committee at the West Bengal University of Animal and Fishery Sciences, Kolkata and has published many Research Publications, Full Length Paper in Conference/Seminars, Abstracts in Conference/Seminars and Technical Bulletin/Extension Bulletin. 3. That the Petitioner No. 2 is the Principal Scientist at the Directorate of Weed Science Research centre, Jorhat Centre in the Department of Agronomy, Assam Agricultural University, Jorhat-13, Assam. The Petitioner No. 2 has completed & received his Ph.D Degree in Agronomy with Minor in Soil Science & supporting in Agricultural Statistics from Assam Agricultural University, Jorhat in the year 1998 and has been working in the Assam Agricultural University since 1988. The petitioner No. 2 has been holding various posts in the said University viz. Junior Scientist (Agronomy), Associate Professor (Agronomy), Senior Scientist (Agronomy), Principal Scientist (Agronomy) etc.

3. As stated in the writ petition, the respondent No. 6 is going to retire on 25/07/2014 as Vice Chancellor of the University on completion of 5(five) years tenure. A Selection Committee has been constituted for appointment of the successor Vice Chancellor vide notification dated 19/05/2014 (Annexure-1). Be it stated here that the Governor of Assam is the Chancellor of the University and the Selection Committee is entrusted with the responsibility of recommending 3 (three) names for appointment as Vice Chancellor.

4. According to the petitioners, the advertisement impugned in this writ petition has been issued to suit the selection of the respondent No. 6 who is the present Vice Chancellor. In this connection, the petitioner has referred to the provisions of Section 19 of the Assam Agricultural University Act, 1968 vis-a-vis the above quoted advertisement. For a ready reference, Section 19 as quoted in the writ petition is reproduced below:-

19.(1) The Vice-Chancellor shall be a whole-time officer of the University. He shall be a eminent scholar and administrator with background of Agriculture, Animal Husbandry and Veterinary Education, Research and Development. The first Vice-Chancellor after the commencement of this act shall be appointed by the Chancellor for a period not exceeding five years and on such terms and conditions as the Chancellor may determine. Subsequent Vice-Chancellor shall be appointed by the Chancellor for a panel of three names submitted by a Selection Committee consisting of:-

(a) One eminent agriculturist scientist or educationist nominated by the Board.

(b) The Director general of Indian Council of Agricultural Research.

(c) A nominee by the State Government.

(2) A member of the Selection Committee shall not be a member of the Board of Management or employee of the University.

(3) The Vice-Chancellor shall normally hold office for a term of five years and shall be eligible for reappointment for one additional term of five years. The emoluments and other conditions of service of the Vice-Chancellor shall be such as may be determined by the Chancellor.

(4)

(5) In the temporary absence of the Vice-Chancellor, the senior most officer amongst the Deans should temporarily carry on the routine duties of the office. Where the post of Vice-Chancellor fall permanently vacant either by resignation or otherwise, the vacancy shall be filled by the Chancellor in accordance with provisions of sub-section(1) of this section and the Vice-Chancellor so appointed shall hold office for full term of five years.

5. The petitioners have also referred to the Annexure-3 notification dated 10/05/1977 so as to contend that by amending section 19(3) of the Act, the following proviso was added.

Provided that no person shall hold the office of the Vice Chancellor beyond the age of 65 years.

6. The petitioners have challenged the advertisement on the ground that the same could not have included the expressions Academicians and Fishery and also that there could not have been the prescription of age limit of 64 years to offer candidature. It will be pertinent to mention here that although the petitioners have assailed the advertisement but they are not applicants for the post of Vice Chancellor. According to the petitioners, the impugned advertisement has gone beyond the provisions of the Act of 1968. It is the further plea of the petitioners that for the post of Vice Chancellor, the minimum tenure being 5(five) years and the respondent No. 6 being left with little more than one year to attain the age of 65 years, cannot be an applicant for the said post. The basic thrust of the petitioners towards challenging the impugned advertisement in reference to the purported in-eligibility of the respondent No. 6 to hold the post of Vice Chancellor is in paragraph 14 and 15 of the writ petition, which are quoted below.

14. That it is humbly submitted that the Selection Committee has included a new subject of "Fishery" and "proven leadership and administrative capabilities" in the Advertisement, which does not feature in Section 19(1) of the Assam Agricultural University Act of 1968. Moreover, Section 19(3) and (5) speaks loud when affirming that the Vice-Chancellor cannot hold the office beyond the age of 65 years and the person so appointed shall hold the office for full term of five years but quite surprisingly, the Selection Committee has kept 64 years of age as the cut of date for applying for the post, which itself is the abuse of the process of appointment. In such situation, if the Selection Committee recommends the name of the Respondent No. 6 for the new post, it would strictly violate the fundamental provisions laid down under the Act.

15. That the petitioners state that this Writ Petition has been filed challenging the Advertisement dated 27/06/2014 by which an attempt has been made to select the Respondent No. 6 as Vice Chancellor of Assam Agricultural University. Though he is not eligible for the selection, therefore, the question raised by the Petitioners is legal in nature without going into the merits of the qualification of the Respondent No. 6. In this context, it is pertinent to mention herein that there are very serious allegations of corruption and administrative irregularities against the respondent No. 6 which has also been raised by the Petitioners in other forums, the rebuttal of which has also led to filing of separate defamation cases by the Petitioners individually against the Respondent No. 6 which however is not the subject matter of the present writ petition. The petitioners reserve their right to file additional affidavit to bring on record such activities of the respondent No. 6.

7. In addition to the above and as noted above, it is the further case of the petitioners that the expression Academicians and Fishery have been incorporated in the impugned advertisement beyond the scope of the aforesaid provisions of Section 19 of the Act. As to what is the plea of the petitioners regarding the

prescription of maximum age limit of 64 years has been noted above.

8. The writ petition was first entertained on 18/07/2014 and was adjourned to this date enabling the respondent No. 6 and other respondents to obtain instruction in the matter. The respondent No. 6 has already filed a counter affidavit denying the pleas raised in the writ petition.

9. Mr. K.N. Choudhury, learned senior counsel assisted by Mr. R. Dubey, learned counsel for the petitioners in his persuasive pursuits has submitted that the impugned advertisement being contrary to the relevant provisions of the Act of 1968, no selection should be allowed to be conducted on the basis of the said advertisement. According to him, everything has been done in a hush-hush manner only to suit the present Vice Chancellor i.e. the respondent No. 6. He has placed reliance on the decision of the Apex Court reported in *Madan Mohan Sharma and Another Vs. State of Rajasthan and Others*, .

10. Countering the above arguments, the learned counsel representing the respondents, namely Mr. S. Samaria, learned Standing Counsel, Agriculture; Mr. P. Kataki, learned Standing Counsel, Assam Agricultural University and Mr. P.N. Goswami, learned counsel representing the respondent No. 6 have submitted that the writ petition is pre-mature. According to them, the petitioners being not candidates in response to the advertisement, cannot challenge the same. They also submit that had it been a case of favouring the respondent No. 6 on extraneous consideration, he could have been granted extension without taking recourse to any further selection. Referring to the last clause of the advertisement they have also submitted that the same would clearly indicate that the authority is only interested to get the best deserving candidate for the post of Vice Chancellor.

11. Mr. P.N. Goswami, learned counsel representing the respondent No. 6 referring to the counter affidavit filed has also submitted that the petitioners are only interested in thwarting the process of selection with their hidden agenda. Referring to a decision of the Apex Court reported in *Mrs. Kunda S. Kadam Vs. Dr. K.K. Soman and Others*, he has also submitted that the petitioners cannot pre-judge the issue with their own perception, more particularly, when they themselves are not contenders for the post of Vice Chancellor.

12. I have given my anxious consideration to the submissions made by the learned counsel for the parties and have also gone through the entire materials on record including the decisions on which the learned counsel for the parties have placed reliance. On being suggested that the matter can be resolved without litigating any further by removing the apprehension of the petitioners as reflected in the writ petition and to that extent the impugned expression Academicians and Fishery can be removed and the petitioners can also offer their candidatures in terms of the last clause of the advertisement, the learned counsel for the petitioners has submitted that since the whole basis of the advertisement and the selection to be held is illegal with the sole purpose to suit

the respondent No. 6, no useful purpose will be served even if such a provision is made for the petitioners.

13. As will be seen from the provisions of Section 19 of the Act, the Vice Chancellor shall be a whole time Officer of the University. He shall be a eminent scholar and administrator with background of Agriculture, Animal Husbandry and Veterinary Education, Research and Development. It is in this context, the learned counsel representing the respondents have submitted that the expressions Academicians and Fishery are not opposed to the eligibility criteria laid down in Section 19 of the Act. As regards the prescription of maximum age limit of 64 years/eligibility to offer candidature, they submit that even if the provision for not being able to hold office beyond 65 years is accepted, then also the respondent No. 6 having not reached this age is quite eligible to respond to the advertisement.

14. In the counter affidavit filed by the respondent No. 6, his personal informations relating to his qualification, service particulars, contribution in the education and research etc. have been brought on record. He has also brought on record the adverse comments made by the University authority against both the petitioners in respect of certain conducts attributed to them. It is the submission of Mr. P.N. Goswami, learned counsel for respondent No. 6 that because of such misconduct the petitioners, they are not eligible and/or suitable to become the Vice Chancellor and being annoyed/aggrieved by the action taken against them by the University Authority, have taken recourse to the instant writ proceeding with unfounded allegations.

15. In *Modan Mohan Sharma (Supra)*, on which the learned counsel for the petitioner has placed reliance, the Apex Court was concerned with change of educational qualification during the currency of the selection. It was held that recruitment could be made only according to advertised educational qualifications and that changes brought out in the Rules during the pendency of the advertisement could not affect the eligibility conditions. In the said case during the pendency of the selection process, the eligibility criteria were changed and the date for submission of the application in pursuance to the advertisement in question was also extended. It was in such circumstances, it was held that once the advertisement had been issued on the basis of the circular obtaining on that particular time, the selection process was to continue on that basis and not on the basis of the criteria made subsequently.

16. In the instant case, we are not concerned with the kind of situation which was involved in *Modan Mohan Sharma (Supra)*. It is not a case of bringing any subsequent eligibility criteria after the impugned advertisement. The grievance on which the petitioners have structured the writ petition is the incorporation of the aforesaid two expressions Academicians and Fishery. In the Rules in question, there is no definite specifications as such. In respect of the candidate being an eminent scholar and administrator with background of Agriculture, Animal Husbandry and Veterinary Education, Research and Development, it can

very well be argued that an eminent scholar necessarily will have to be an Academician. Similarly, the expression Fishery can be said to be included in the field of Agriculture, Research and Development. However, no opinion is expressed in this regard.

17. As regards the prescription of maximum age limit of 64 years, the petitioners cannot be said to be aggrieved persons. It is not their case that they having exceeded the age of 64 years, because of the said prescription they are now ineligible to offer their candidatures. Although the impugned advertisement has been issued by the Chairman of the Selection Committee with the said prescription of maximum age limit of 64 years but it appears that the same is on the basis of the recommendation made by the Government of Assam in the Agriculture Department (Annexure-O to the counter affidavit).

18. It was argued that having regard to the prescription of normal tenure of 5 (five) years, the selected Vice Chancellor must be of such age so as to enable him to hold office for five years and thus the respondent No. 6 upon his selection will not be entitled to hold office for five years as he is about to reach the age of 64 years. Apart from the fact that the provisions of the Act do not provide for any such stipulation of minimum five years of service, it has also been brought on record that earlier Vice Chancellors had held office with the terms of less than four years. Section 19(3) of the Act makes the position clear when it uses the expression "normally". Thus, while the Vice Chancellor shall normally hold the office for a term of five years but it could be less or more than that. Thus, it cannot be said that the prescription of age limit of 64 years has been incorporated in the advertisement only to suit the respondent No. 6.

19. Above apart, had it been the intention of the respondents to favour the respondent No. 6 with the selection, they would not have made the provision in the advertisement permitting consideration of any other eligible person other than the applicant for the post.

20. The selection has not yet been conducted. At this stage, it is not certain as to whose candidatures would be accepted after conducting the selection, the Selection Committee will have to prepare a panel containing 3 (three) names and as per the requirement the same will have to be placed before the Chancellor for his approval etc. In fact as per the provisions of amended Section 19 of the Act, it is the Chancellor who on the basis of a panel consisting of 3 (three) names submitted by the Selection Committee, shall have the power to appoint one of them.

21. In *Mrs. Kunda S. Kadam (Supra)*, the Apex Court was concerned with appointment through Public Service Commission. The Public Service Commission had recommended the name of the appellant but even before a decision was taken by the concerned department, a writ petition was filed which was dismissed in limine by the learned Single Judge, but on appeal, a Division Bench allowed the same reversing the order of the learned Single Judge. The Division

Bench was of the view that the appellant did not possess one of the qualifications. It was held by the Apex Court that the writ petition was premature inasmuch as the recommendation made by the Public Service Commission was yet to be considered by the Corporation. In paragraph 3 of the judgment, it was observed thus:-

3. We consider that the time has not arrived for the court to adjudicate upon the merits and that the writ petition on itself was premature. The normal procedure should have been for the recommendation of the Public Service Commission to be considered by the Corporation. It was open to the Municipal Corporation to accept the recommendation or not to accept the recommendation. The learned Attorney-General, appearing for the Corporation, says that it was open to the Corporation to ask for other names and make its own choice. We are not called upon to state what the powers of the Corporation in such a situation are. It was also open to the State Government even if the Corporation had made an appointment to confirm or not to confirm it, depending on its own view of the matter. We mention all this only to emphasize that it was too early for a writ petition to be entertained and decided on the merits.

22. As in the said case in the instant case also the selection is yet to be conducted. Thereafter the Selection Committee will have to recommend three names. It is only thereafter the Chancellor will have to made appointment in consideration of the same. Thus, there are ifs and buts, and the respondent No. 6 may or may not be selected. Thereafter recommendation in his favour, if any, will again have to be gone into by the Chancellor.

23. Thus, in my considered view, the writ petition is pre-mature but I hasten to add that it will always be open for the petitioners to challenge the recommendation of the selection Committee, if approved by the Chancellor and the petitioners are aggrieved by the same, subject however, the legal issue that might be raised by others. No opinion is expressed in this regard at this stage. It will also be open for the petitioners to offer their candidatures without prejudice to their rights and contentions. It is further directed that the Selection Committee shall conduct the selection strictly in accordance with the provisions of the Act.

24. With the above direction and observation, the writ petition stands disposed of, without however, any order as to costs.