

(2008) 07 GAU CK 0034
In the Gauhati High Court

Ranjit Kumar Das

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 29-07-2008

Acts Referred:

Citation : (2009) 3 GLR 81

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amitava Roy, J.—The petitioner in essence, is aggrieved by the denial of appointment against 10 per cent posts reserved for sons and unmarried daughters of retired teachers of LP/ME/MV schools of the State in terms of the notification in force at all relevant times.

2. I have heard Ms. K. Devi learned Counsel for the petitioner, Mr. M.R. Pathak, learned Standing Counsel, Education Department and Mr. P. Talukdar, learned Counsel of the respondent Nos. 5 to 15.

3. The petitioners pleaded case is that, he belongs to "Koibarta" community of the scheduled caste. His father Sri Purna Purna Kanta Das retired as the Headmaster of Dakhinpat MV School, Dakhinpat in the year 1998. According to him, following the superannuation of his father, he applied before the competent authority of the department for being appointed against the afore mentioned quota. After a duly conducted process he was selected and placed at Sl. No. 109 in order of merit in the select list prepared. As the petitioner even thereafter in spite of persisting endeavours was not appointed, he approached this Court with WP(C) No. 1449/2004 which was disposed of on 4.3.2004 with the following operative directions

Accordingly, this petition is disposed of with a direction to the respondent-authority to consider the case of the writ petitioner strictly in compliance with the provisions of the scheme as aforesaid and subject to eligibility and selection. No

appointment shall be made without selection.

Accordingly to the petitioner, persons below him in order of merit in the aforesaid select list were appointed, but he was unjustifiably denied the same. He has averred that on receipt of the above order of this Court, the Deputy Inspector of Schools, Majuli was required to furnish his response to the queries made in this regard. In his reply, the Deputy Inspector of Schools, Majuli by his letter dated 6.4.2004 confirmed that the petitioner was a duly selected candidate. The said authority by his subsequent letter dated 5.5.2004 confirmed that the selection was held on 30.7.1998 and that the probable number of vacancies at the time of advertisement therefore was 47. It was further mentioned that having regard to the number of vacancies and the quota reserved for the categories of candidates under which the petitioner had applied, he could not be accommodated in view of his position in the select list. It was also admitted that 10 persons below him in the select list were appointed pursuant to the direction of local MLA, Majuly. As in spite of the above, the petitioner was denied the appointment, he being left with no alternative, has approached this Court.

4. The respondent No. 2, Director of Elementary Education, Assam in his affidavit has, in substance, reiterated the above facts. It has been admitted that the selection had been held in terms of the advertisement published on 29.12.1996.

5. The respondent Nos. 5 to 15, candidates appointed in terms of the same selection have contended that their appointment are valid, they having been selected and that the allegation of intervention of the local MLA in the process in face of the above, does not in any manner invalidate their induction in service. According to them, as the petitioner has claimed appointment against 10 per cent reserved quota, his interest is not affected in any manner by their appointment. They have averred that in all 47 candidates were empanelled in the list prepared on the basis of the selection held.

6. Ms. Devi, has emphatically urged that in view of the order dated 4.3.2004 passed by this Court in WP(C) No. 1449/2004, considering the petitioner's position in the merit list, he could not have been denied appointment. According to her, as persons below the petitioner have been accommodated also against 10 per cent reserved quota, he is entitled to a writ of mandamus to be appointed against the existing vacancies of that quota as on date. The learned Counsel for the petitioner has also assailed the appointment of the private respondents on the same plea.

7. Mr. Pathak referring to the photocopy of the select list pertaining to the selection has submitted that the number of vacancies to be filled up being 447, posts earmarked for the reserved category as involved in the instant case come to 4.7, i.e., 5. Therefore, 5 posts were available to be filled up by the selected sons and unmarried daughters of retired school teachers in terms of the government policy in force. With reference to the records, Mr. Pathak has submitted that two candidates namely, Sri Prabin Goswami and Sri Amulya Kalita

though figured in order of merit much below the petitioner have been appointed against the said quota and he had been denied the same. Pathak with reference to the list of the candidates appointed admitted that names of Prabin Goswami and Mr. Amulya Kalita appear at SI. Nos. 160 and 236 in the select list. Admittedly, the name of the petitioner appears at SI. No. 109. Mr. Pathak has further pointed out that the afore mentioned two candidates had in fact secured 76, 74 marks respectively compared to 78 awarded to the petitioner.

8. Mr. Talukdar has reiterated the pleaded stand of the private respondents contending that revelations from the official records, notwithstanding, the same do in any view impair their appointments."

9. The pleadings of the parties and the arguments advanced have been duly considered. The fact that a selection was held for filling up 47 posts of teacher in LP Schools in Majuli Sub-Division of Sibsagar district is not in dispute. The petitioner had staked his claim for appointment against 10% reserved quota for the sons and unmarried daughters of retired school teachers of the State. Having regard to the percentage of posts earmarked for the afore mentioned of category, the number available to them in the said selection on simple arithmetic comes to 5. The extracts of the official records produced before this Court reveal that 3 candidates were appointed against the said quota, two of whom admittedly were placed before the petitioner in order of merit. It is, thus, apparent that on one hand though two more vacancies were available and the petitioner figured higher in order of merit above the two candidates, i.e., Prabin Goswami and Amulya Kalita, he was denied the appointment. No reason is forthcoming for the same.

As the underlying principle for such appointment against the reserved category candidates as well is merit, there appears to be no justifiable reason not to appoint the petitioner in view of his participation in the selection vis-?-vis his merit position therein. It is more intriguing as to how candidates below him in order of merit could be accommodated by overlooking him. The state respondents have also not furnished any reason to keep the other two posts unfilled.

10. This Court by order dated 4.3.2004 had required the respondent authorities to appoint the petitioner in compliance with the provision of the scheme subject to his eligibility and selection. The petitioner having been selected and being in superior merit compared to the two persons above named, he in law, had a right to be considered for such appointment. The record do not reveal any convincing reason to the contrary.

True it is, the selection was held in the year 1998 and since then a decade has passed. It however, transpires from the official exchanges that the issue had been initiated by the departmental authorities and it was only in 2004 that the petitioner was advised to participate as a fresh candidate against the reserved quota.

11. This Court in the similar facts and circumstances considers it appropriate to issue a writ of mandamus as prayed for. However, having regard to the time lag in between, this Court does not consider it appropriate to enquire into the validity of the appointment of the respondent Nos. 5 to 15.

12. This petition, therefore, stands allowed with a direction to the state respondents to appoint the petitioner to any vacant post in any LP school in the State in the quota above mentioned with utmost expedition. This direction has been issued in the peculiar facts and circumstances of the case and would not be construed to be a precedent for future. No costs: