

(2010) 05 GAU CK 0036

In the Gauhati High Court

Case No : Writ Petition (Civil) No(s).5444 of 2008; 3680, 4965, 4966 of 2009

Rantu Kumar Lahkar and Ors.

APPELLANT

Vs

State of Assam and Ors.(And other cases)

RESPONDENT

Date of Decision : 29-05-2010

Acts Referred:

Citation : (2012) 2 GLR 471

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : Mr. A. Bhattacharjee and Mr. A. Chakraborty for the petitioners., Mr. H. Bhuyan for the respondents., Advocates appearing for Parties

Judgement

1. The petitioners having been declared unsuccessful in the written examination at the initial stages of the process of selection for the post of Junior Assistant in the office of the Heads of Department, Assam, initiated vide the advertisement dated 7.3.2007 published in the local daily "Khabor" have approached this court for judicial intervention and redress. They alleged that the process has since been vitiated by incurable infirmities and, hence, deserves to be annulled. The contextual facts differ marginally and having regard to the challenge laid, the petitions were heard analogously.

2. I have heard Mr. A. Bhattacharjee, learned counsel for the petitioners in WP(C) No.368 of 2009, WP(C) No.4965/2009 and WP(C) No.4966/2009 and Ms. R. Baruah, learned counsel for the petitioner in WP(C) No.5444/2008, Ms. H. Bhuyan, learned State Counsel represented the official respondents.

3. The pleaded versions of the parties in short are unavoidably essential to lay the factual preface. The petitioners claim to be academically qualified for the post aforementioned and at the relevant point of time were empanelled in the jurisdictional District Employment Exchanges. By the advertisement aforementioned, candidature was invited from the intending and eligible persons complying with the norms mentioned therein for unspecified posts of Junior

Assistants in the office of Heads of Department, Assam. Apart from enumerating the educational and other qualifications as well as the age limits, it was mentioned that the applicants would have to appear in written examination in General English, General Knowledge and Simple Arithmetic and those who qualified therein would have to appear in Type writing Test both in English and Assamese Languages and viva voce test. The petitioners asserted that all of them responded to the advertisement and eventually were issued admit cards by the concerned respondent authorities. As scheduled, they also appeared in the written examination held on 23.3.2008. The results of the written examination were declared on 30.11.2008 by the Director of Employment and Craftsman Training, Assam, in the local daily the "Tribune" and the successful candidates were called for type writing and computer test as well as for viva voce test scheduled to be held on 17th, 18th and 19th of December, 2008. According to the petitioners, though they had fared well in the written examination and having regard to their academic qualification and performance they ought to have qualified for the next segments of the selection process to their shock and surprise, the results declared disclosed otherwise. They were, thus, not called for the type writing, computer test and viva voce. Alleging following anomalies they approached this court to invalidate the selection process :

1. The advertisement neither mentioned the number of vacant posts nor the apportionment there of in conformity with the law of reservation.
 2. In some of the admit cards the venue of the written examination was not mentioned and many candidates did not receive the same as well for which the Director of Employment and Craftsman Training had to issue notice in the newspaper to enable them to collect the same.
 3. Out of 20103 admit cards issued only 10,103 candidates received the same.
 4. The secret code for the written examination normally used to maintain confidentiality was not adhered to.
 5. Though the children of the members of the Examination Committee participated in the process they (members) did not abstain therefrom.
 6. Three candidates who did not receive admit cards were in terms of the order of this court in WP(C) No. 1347/2008 (Mohanbasi Arjya and Others v. The State of Assam and Others) allowed to appear in a separate written examination held on 23.3.2008. Thus, two written examinations on different dates were held for the same posts.
 7. Cut off marks, if any, for the selection of candidates is unknown.
 8. The process was conducted in contravention of the norms contained in the office memorandum dated 31.7.1975 prescribed by the Government of Assam, Appointment (B) Department, in this regard.
4. The Director of Employment and Craftsman Training, Government of Assam, in

his affidavit filed in WP(C) No.5444/2008 while denying the imputations levelled against the process has averred that as the vacancies sought to be filled up were distributed over various offices of the Heads of Department in the State, it was not possible to specify the number thereof in the advertisement as well as to indicate the extent of reservation applicable thereto. It was, thus, open for all categories of candidates to apply for the post. As the requirement/ requisition of the various offices of the Heads of Department of the State were received subsequently, the candidates selected were recruited against the same by rigorously applying the law of reservation in all respects. While reiterating the contents of the advertisement, the answering respondent has contended that the omission to mention the marks of the various examinations/tests as well as the viva voce per se did not vitiate the process. He has asserted that the selection board comprising of the following persons was constituted as per the office memoranda No.ABP.101/75/Pt./I/4 dated 31/7/1975 and ABP. 123/2001/257 dated 23.10.2006 read with the provisions of the Assam Directorate Establishment (Ministerial) Service Rules, 1973 ("the Rules") :

- (i) Director of Land Records, Government of Assam Chairman
- (ii) Director of Employment and Craftsmen Training Member
- (iii) Director of Agriculture, Government of Assam, Member
- (iv) Director of Higher Education, Government of Assam, Member

5. The deponent has stated that the selection board decided to hold the written test on 23.3.2008 with the following break up of marks for the subject in the written examinations :

General Knowledge 50

General English 50

Arithmetic 50

6. He further averred that the admit cards were issued to all the applicants and information to that effect was also circulated in the newspaper (Ajir Agradoot) on 14.3.2008 and accordingly 10,325 candidates took the written examination. The answering respondent clarified that all the posts were meant for the office of the Heads of Department of the State and not at the district level and as such the question of allotment district wise did not arise. According to him, the results of the written examination were declared on 30.11.2008 and the 1112 successful candidates were called for computer/type test as well as the viva voce by individual call letters as well as by informing them through the newspaper. The deponent averred that the petitioners did not perform well to qualify for the computer/typing test and the viva voce and having regard to the number of candidates category wise (General/Reserved) for the vacancies available (1x5) they did not come within the zone of eligibility. By applying the said norms, the following cut off marks were adhered to.

Category Cut of marks

General 65

OBC 60

SC 52

ST (P) 44

ST(H) 30

7. The deponent denied that separate cut off marks were used for different categories of candidates for different districts. The fact that three candidates were allowed to take a separate examination on 30.3.2008 in terms of the order of this court passed in WP(C) No.1348/ 2008 was, however, admitted. The answering respondent denied the averment that the children of the members of the Committee/Board had participated in the process. The marks obtained by the petitioners in WP(C) No.5444/2008 were also set out in the affidavit to indicate that they had secured less than the cut off marks relatable to the corresponding categories. While mentioning that in all 272 candidates were selected, the break up thereof has been furnished as herein below :

Unreserved 125

OBC/MOBC 36

SC . 33

STH 34

STP 40

PHYSICALLY HANDICAPPED 4

8. The answering respondent further stated that the final select list had been published on 23.2.2009. The challenge made has been dismissed to be wholly misconceived and the deponent has endorsed the validity of the selection process in all respects.

9. The learned counsel for the petitioners while reiterating the various counts of challenge carried by their pleadings had additionally contended that not only the norm of cut off marks had not been earlier disclosed, the same differed district wise, thus, rendering the selection a farce. As a public participatory process is, thus, vitiated by gross illegalities it ought to be nullified, they urged.

10. Ms. Bhuyan in reply maintained with reference to the records that it would be apparent therefrom that the charges levelled against the selection are wholly unfounded and as the same has been conducted strictly in accordance with the extant guidelines and the Rules with uniform application of the criteria evolved, no interference therewith is warranted.

11. The pleadings on record and the arguments put forward have received the due consideration of this court. That the petitioners, their reservations outlined hereinabove against the process notwithstanding, had participated therein till their elimination without any cavil is a matter of record. On receipt of the admit cards, they took the written examination and being unsuccessful thereat, have donned the gauntlet to impeach the same. Though apparently the advertisement did not disclose the number of posts, the explanation that it was not feasible then in absence of full response from the various offices of the Heads of the Department of the State and that eventually those being available, the finally selected candidates were accommodated against the same in order of merit and in compliance of the law of reservation cannot be lightly cast aside. The omission to mention the number of posts in the advertisement though not per se approvable, in the interest of transparency of a process of the kind initiated thereby, it is not an irrefutable index either of want of any assessment whatsoever. The selection on such a failing in isolation, thus, cannot be adjudged to be invalid. Noticeably none of the petitioners had been inconvenienced by the nonmentioning of the venue of the written examination in their admit cards. Those who allegedly had suffered so are also not before this court affirming this shortcoming in the process. Not only the allegation regarding participation of the children of the members of the selection board or the examination committee in the selection is vague, the same has been categorically denied by the Director of Employment and Craftsman Training, Government of Assam. The omission to use a secret code on the answer scripts as well cannot be construed to be vitiation of the process in absence of specific instance of malpractice as a consequence thereof. It is too omnibus an averment to denounce a process otherwise administered by responsible Government officials even to launch a fact finding enquiry on the basis thereof. The post written examination anomalies, faintly made also lack in precision and certainty.

12. The records reveal that the selection board had decided to call for the candidates for computer typing test as well as viva voce five times the number of the posts category wise in order of their performance in the written examination. By applying the said criteria those who had secured marks as furnished in the affidavit in opposition of the Director of Employment and Craftsman Training, Government of Assam, could be accommodated. The answer scripts of the petitioners called for by this court for scrutiny having regard to their respective categories, thus, bear out the justification for their ineligibility to participate in the typing/computer test, viva voce, etc. Their answer scripts, on a perusal also do not divulge any apparent anomaly to reject the evaluation thereof. To infer otherwise based on the individual perceptions of the petitioners of better performance would be wholly speculative. Not only the norm visavis the zone of eligibility and the application of the cut off marks is informed with rationality and logic, the same having been applied uniformly to all concerned, there is no apparent illegality to defile the process thereby. That their prospects in the selection had suffered a set back for conducting a separate test for the

petitioners in WP(C) No.1347/2008 in absence of any tangible material to that effect would also be presumptive. This is more so as the said test had to be conducted in deference to the directions of this court. This as well does not have the potential ipso facto to invalidate the entire process. Not only the selection board had been constituted in accordance with the office memoranda dated 31.7.1975 and 23.10.2006, no breach or violation to decisively and incurably desecrate the exercise is decipherable. The assailment is clearly omnibus and indeterminate without any veritable foundation inadequate to invoke the extraordinary jurisdiction of this court to sustain the same and annul a process otherwise taken to its logical end. A selection pursuit of the kind undertaken ought to be necessarily transparent, fair, objective and legal so as to inspire public confidence, however, each and every impingement there of on imputations general, vague and unfounded ought not to be entertained.

13. The select list prepared discloses application of the norms of reservation, the posts having been duly distributed amongst the candidates contemplated thereby. On the face of it, no contravention in this regard is discernible.

In the wake of the above, the challenge is construed to be unsustainable. The petitions lack in merit and are dismissed. No costs.