

(2024) 11 GAU CK 1277
In the Gauhati High Court
Case No : WP(C) Of 2947 Of 2024

Ratul Bania

APPELLANT

Vs

Special Judge Cbi And Nia

RESPONDENT

Date of Decision : 28-11-2024

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2024) 11 GAU CK 1277

Hon'ble Judges : Manish Choudhary, J

Bench : Single Bench

Advocate : K.K. Mahanta, N. Begum, G. Baishya

Final Decision : Dismissed

Judgement

Manish Choudhary, J

1. The instant writ petition under Article 226 of the Constitution of India is preferred seeking inter-alia a direction to the respondent authority to consider and appoint the petitioner in a Grade-IV post of Peon in the establishment of the Special Judge, CBI & NIA, Assam at Guwahati.

2. The case projected on behalf of the petitioner, in brief, is that by an Advertisement dated 29.03.2022, a process of recruitment was initiated to fill up a vacancy in Grade-IV post of Peon in the establishment of the Special Judge, CBI & NIA, Assam at Guwahati. Responding to the said Advertisement, the petitioner submitted his candidature. Call Letters were issued to the eligible candidates to appear in an interview/viva-voce before a Selection Board on 13.03.2023. After completion of the process, a selection list was published on 31.03.2023. In the selection list dated 31.03.2023, one Ranjit Thapa was shown selected for appointment to the post of Peon. The said selected candidate could not, however, be offered appointment due to certain anomalies in his testimonials. While publishing the selection list on 31.03.2023, a waiting list containing the names of two candidates was also published and the petitioner's

name figured at serial no. 2 in the said waiting list.

3. It is the further case of the petitioner that the respondent as the Appointing Authority had thereafter, issued an Order of Appointment dated 21.06.2023 in favour of the candidate at serial no. 1 in the said waiting list. On receipt of the Order of Appointment, the said candidate, Pradip Bhakat joined in the post of Peon in the establishment of the respondent. But in the month of November, 2023, Pradip Bhakat expired. As a result, the vacancy has arisen again in the Grade-IV post of Peon in the establishment of the Special Judge, CBI & NIA, Assam at Guwahati, for which the recruitment process was initiated by the Advertisement dated 29.03.2022.

4. In the above facts and circumstances, the petitioner has approached this Court by the instant writ petition seeking the above direction in the nature of mandamus.

5. I have heard Mr. K.K. Mahanta, learned senior counsel assisted by Ms. N. Begum, learned counsel for the petitioner and Mr. G. Baishya, Standing Counsel, Gauhati High Court [GHC] for the sole respondent.

6. Mr. Mahanta, learned senior counsel appearing for the petitioner has submitted that since the vacancy has arisen in the Grade-IV post of Peon for which the recruitment process was initiated on 29.03.2022, it is incumbent on the part of the respondent to offer appointment to the petitioner for the said post. It has been submitted that the validity of the waiting list, prepared on 31.03.2023, is still in force. When no offer of appointment was made to him despite arising of the vacancy in November, 2023, the petitioner submitted a representation before the respondent on 02.02.2024 seeking consideration of his appointment in the said resultant vacancy in the post of Peon. As the respondent did not pay any heed to the representation of the petitioner, the petitioner has to approach this Court by the instant writ petition seeking inter-alia a direction to the respondent to consider his appointment in the said vacant post of Peon in the establishment of the respondent. The learned senior counsel has pointed out that the respondent authority has already once acted upon the waiting list, which has attained the status of the main selection list after the original select list became obsolete with ineligibility of the sole selected candidate. With the waiting list-cum-selection list having been revived with the demise of the appointed candidate, there can be no good and valid reason for not considering and appointing the petitioner from that waiting list-cum-selection list prepared for filling up the vacancy. Mr. Mahanta has further contended that the post of Peon is a Grade-IV post and it is a post in the lowest rung of the hierarchy in the establishment of the respondent. The petitioner belongs to the Other Backward Category [OBC] and as such, the case of the petitioner has to be considered from the standpoint of equity as well as hardship. It is his submission that in the event a direction is made for consideration of appointment of the petitioner in the vacant Grade-IV post of Peon, no injustice would be caused to anyone. To buttress his such submissions, he has referred to a Judgment and Order dated 10.12.2008 passed

by a coordinate bench of this Court in a writ petition, W.P.[C] no. 5137 of 2008 [Mamata Bhuyan vs. the Gauhati University and others].

7. Mr. Baishya, learned Standing Counsel, GHC appearing for the respondent has submitted that after completion of the selection process, a selection list and a waiting list were prepared and published on 31.03.2023. The selection list contained the name of the lone selected candidate. In the waiting list, names of two candidates had figured. Upon verification, the sole selected candidate whose name figured in the selection list, was found ineligible due to his over-qualification. When the lone selected candidate from the selection list was found ineligible, an appointment order was issued in favour of the candidate figured at serial no. 1 in the waiting list on 21.06.2023. On receipt of the appointment order, the said candidate had joined in the Grade-IV post of Peon on 23.06.2023. Simultaneous with such joining, the waiting list stood exhausted. Though the petitioner's name figured at serial no. 2 in the waiting list, the petitioner has no surviving claim to the Grade-IV post of Peon after the order of appointment was made on 21.06.2023 in favour of the candidate whose position at serial no. 1 was higher in the waiting list than the petitioner at serial no. 2 and when in response to the order of appointment, that candidate had joined in the then vacant post of Grade-IV [Peon] on 23.06.2023. It is not open therefore, for the petitioner to contend that with the creation of vacancy in the same Grade-IV post of Peon due to the demise of the incumbent a right has accrued in his favour to be considered for appointment in the said vacant Grade-IV [Peon] post. As a vacancy has arisen in the said Grade-IV post of Peon in the above facts and circumstances, it has been decided to initiate a fresh recruitment process to fill up the said vacancy and it is open for the petitioner to participate in the fresh recruitment process. To buttress his submissions, Mr. Baishya has relied upon the decisions in *State of Punjab vs. Raghbir Chand Sharma and another*, [2002] 1 SCC 113, and *Thrissur District Cooperative Bank Limited vs. Delson Davis P. and others*, [2021] 14 SCC 407. With such contentions, Mr. Baishya has submitted that the instant writ petition is bereft of any merit and therefore, is liable to be dismissed. He has further submitted that when the law on a point is well settled then there cannot be any consideration on equity qua the settled law.

8. I have given due consideration to the submissions of the learned counsel for the parties and have also gone through the materials brought on record by the parties through their pleadings.

9. By an Advertisement dated 29.02.2022, the office of the respondent invited applications from eligible candidates to fill up the following vacant post in Grade-IV, Peon and the conditions of eligibility mentioned therein were as under :-

The Advertisement further mentioned that the list of the candidates found eligible to appear for interview/viva-voce after scrutiny of applications would be published in the website of the District Judiciary, Kamrup [Metro] for the candidates' reference. The selection process would comprise of interview/viva-voce [30 Marks]. It was further mentioned that concealment of educational

qualification, age, date of birth, etc. would lead to automatic disqualification of the candidature, even if provisionally selected, without intimation.

10. After receipt of the applications of the candidates in response to the Advertisement dated 29.02.2022, the applications were scrutinized. Thereafter, admit cards were issued to the candidates whose applications were found valid after scrutiny, to appear in an interview/viva-voce before a Selection Board, on 13.03.2023, scheduled to be held in the office of the Special Judge, CBI & NIA, Assam at Guwahati. The candidates were also asked to bring all the original documents at the time of interview/viva-voce.

11. After the interview/viva-voce, held on 29.03.2023, and pursuant to a resolution taken by the Selection Board on 30.03.2023, the office of the respondent published the selection list and the waiting list, in the following manner :-

12. After publication of the selection list and the waiting list, the candidature of the selected candidate, Sri Ranjit Thapa, upon verification, was found ineligible due, to his over-qualification, as stipulated in the Advertisement dated 29.03.2022. It was in such situation, it was decided to issue the order of appointment in favour of Sri Pradip Bhakat, whose name figured at serial no. 1 in the waiting list. The order of appointment for the Grade-IV post of Peon in the office of the Special Judge, CBI & NIA, Assam at Guwahati was made in favour of Pradip Bhakat on 21.06.2023. On receipt of the said order of appointment, Pradip Bhakat joined in the said post on 23.06.2023 and after joining, he started discharging his duties.

13. It has been averred in the counter affidavit, filed on behalf of the sole respondent, that Pradip Bhakat, who was working in the Grade-IV post of Peon under reference, expired on 15.11.2023. It is stated that initially, the unfortunate news of demise of Pradip Bhakat was verbally intimated to the office of the Special Judge, CBI & NIA, Assam, Guwahati and for a long time, the news of death of Pradip Bhakat was not formally intimated to the office of the Special Judge, CBI & NIA, Assam, Guwahati. It was only in May, 2024, the family members of Late Pradip Bhakat submitted a Death Certificate, issued on 17.05.2024, recording the death of Pradip Bhakat at the office of the Special Judge, CBI & NIA, Assam, Guwahati. After receipt of the Death Certificate of Late Pradip Bhakat, it has been decided to initiate a fresh recruitment process for filling up the vacancy in the Grade-IV post of peon in the office of the Special Judge, CBI & NIA, Assam, Guwahati and for that purpose, a Selection Board has already been constituted under the Chairmanship of the respondent, with the Special Judge, CBI Court no. 2 and the Special Judge, CBI Court no. 3 as its other members. The Selection Board held one of its Meetings on 29.06.2024 wherein a resolution was adopted to initiate a fresh process of selection by publication of an advertisement to invite applications. The respondent has averred that in view of the pendency of the instant writ petition, the Selection Board has decided to await for the outcome of the writ petition, though no

interim order has been passed in the instant writ petition.

14. From the above discussion, the undisputed facts which have emerged are that in the selection process undertaken pursuant to the Advertisement dated 29.03.2022 for the lone vacancy in the Grade-IV post of Peon, one Ranjit Thapa was selected for appointment. But, the candidature of Ranjit Thapa was found ineligible due to his over-qualification, in terms of the stipulation contained in the Advertisement dated 29.03.2022. In view of rejection of candidature of Ranjit Thapa for the afore-stated reason, the Selection Board/Appointing Authority decided to act upon the waiting list and issued an appointment order dated 21.06.2023 in favour of the candidate named Pradip Bhakat, whose name figured at serial no. 1 in the waiting list. It is not in dispute that on receipt of the appointment order dated 21.06.2023, Pradip Bhakat joined in the Grade-IV post of Peon on 23.06.2023 by submitting his joining report. After joining in the Grade-IV post of Peon in the office of the Special Judge, CBI & NIA, Assam, Guwahati, Pradip Bhakat continued to discharge his duties till his demise on 15.11.2023.

15. A waiting list prepared in connection with a selection process by the appointing authority/selection authority is a list of eligible and qualified candidates who in order of merit are placed below the selected candidate or the last of the selected candidates in the selection list. A waiting list is mainly prepared to ensure that the working in the office does not suffer if the selected candidate does not join or few of the selected candidates do not join for one or the other reason and also if, the candidature[s] of the selected candidate[s] is/are found ineligible for one or the other reason. The candidate in the highest position in the waiting list in the order of merit may have a right to stake a claim that he may be appointed if the selected candidate does not join. Once the selection process initiated for a vacant post is complete and appointment is made, that selection process comes to an end. If any vacancy arises on the appointee having joined the post, leaves the same or dies, the resultant vacancy has to be treated as a fresh vacancy and to fill up such vacancy, a fresh selection process is to be initiated. In other words, if the selected candidate joins and thereafter, resigns from the post or dies during service, it gives rise to a fresh vacancy and such a vacancy cannot be filled up from a candidate from the waiting list whose position is just below the selected candidate who had earlier joined in that post.

16. If any waiting list has been prepared along with the selection list, such waiting list stands exhausted with the joining of the selected candidate in the post for which the selection process has been undertaken. If for any reason, the selected candidate does not join, the appointment can be offered to the candidate in the highest position in the waiting list, if it contains more than one name and on being so offered, if such a candidate joins the post then the waiting list cannot be acted upon further. It is to be considered then that the waiting list has spent its

force. Even if the 1st ranked candidate from the waiting list who has been offered the post, after joining leaves the post or resigns from the post or dies while in service, at a later point of time, the resultant vacancy cannot be filled up by acting upon the earlier waiting list, which has already been exhausted and has spent its force.

17. In *Raghubir Chand Sharma [supra]*, the State of Punjab, in 1987, invited applications for a post of Assistant Advocate General. From amongst the applicants a panel of three candidates was made by the Interview Board, which had interviewed them. The first respondent was placed at no. 3 in the panel. The first in the panel was appointed and joined the service but resigned after about a month. The second ranked candidate on the select panel on his own, by a letter, expressed that he was not interested and even if offered, would not accept the appointment. Thereupon, the State filled up that post by promotion from a lower post. The first respondent as the writ petitioner with a claim that he being the third ranked candidate in the select panel, should have been offered the appointment, preferred a writ petition before the High Court. The writ petition was allowed by a learned Single Judge of the High Court and when an intra-court appeal was preferred by the State, the Division Bench dismissed the appeal.

17.1. When an appeal was preferred before the Hon'ble Supreme Court against the Judgment of the Division Bench of the High Court, the Hon'ble Supreme Court has held as under :-

4. We have carefully considered the submissions of the learned counsel on either side. In our view, the judgment rendered by the learned Single Judge as well as the Division Bench of the Punjab and Haryana High Court cannot be sustained. As rightly contended for the appellant State, the notification issued inviting applications was in respect of one post and the first candidate in the select panel was not only offered but on his acceptance of offer came to be appointed and it was only subsequently that he came to resign. With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select panel prepared, the panel ceased to exist and has outlived its utility and, at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently.

..... We find no rhyme or reason for such a claim to be enforced before courts, leave alone there being any legally protected right in the first respondent to get appointed to any vacancy arising subsequently, when somebody else was appointed by the process of promotion taking into account his experience and needs as well as administrative exigencies.

18. The facts, in brief, in the case of *Thrissur District Cooperative Bank Limited [supra]*, were that in a selection process undertaken by the appellant bank for filling up a vacancy in the post of Data Entry Officer in the bank, the respondent

no. 1 was included in the list having secured second rank while another candidate named Mr. T.D. Rolly stood first. Mr. Rolly joined the service and he was appointed as the Data Entry Officer. After sometime, Mr. Rolly resigned from service as he got better placement in some other institution. The respondent no. 1 as the writ petitioner preferred a writ petition before the High Court and the High Court after examining the background facts, had observed that the appropriate course was to have appointed the respondent no. 1 as he had a right to be considered for appointment. The Hon'ble Supreme Court has held that when once the selection process is complete and appointment has been made, that process comes to an end and if any vacancy arises on the appointee having joined the post, leaves the same, it must be treated as a fresh vacancy and fresh steps to fill up the fresh vacancy are to be undertaken.

19. The reliance on behalf of the petitioner in the decision in Mamata Bhuyan [supra] is found misplaced. The petitioner therein was pursuing the LL.B. course. As per the regulation and syllabus of the respondent University for the LL.B. course, a student was required to obtain the degree within five years from the date of his/her first due examination in the LL.B. Preliminary course. When the petitioner availed her last special chance to clear one paper of the LL.B. Final Examination to complete the LL.B. course, by appearing in the examination on 21.01.2008, she was unsuccessful. The petitioner approached the High Court by a writ petition seeking a prayer to afford her one more opportunity to clear the only paper left in the Final Examination of the LL.B. course. Having regard to the facts and circumstance of the case, the Court had reached a view that the petitioner should be granted an opportunity to clear the only back paper in the Final Examination of the LL.B. course by way of an exception to the stipulated rigidity of the regulation of the respondent University on equitable consideration. While granting such relief, the Hon'ble Court had made it clear that such direction had been issued having regard to the extraordinary fact situation of the case and the decision is not to be considered as a precedent and by way of any relaxation of the prescription of the University regulation.

20. When the principle discernible from the decisions in Raghbir Chand Sharma [supra] and Thrissur District Cooperative Bank Limited [supra] is examined with the fact situation obtaining in the case in hand, this Court finds that the said principle is applicable proprio vigore to the case in hand. When the law on a point is settled, the question of considering a case on equity in ignorance of the settled position of law does not arise.

21. Thus, after examining the fact situation obtaining in the case in the light of the afore-stated settled position of law, the case of the petitioner, projected in this writ petition, is not found merited. The entire basis of the claim of the petitioner herein was the waiting list wherein his name figured at serial no. 2 but the waiting list has already been exhausted and spent its force, after the appointment having been offered to the candidate, Pradip Bhakat whose name figured at serial no. 1 in the waiting list, on 21.06.2023, he joined the post on

23.06.2023. In such factual scenario, the waiting list cannot be held to have revived with the demise of Pradip Bhakat, the incumbent who was serving in the Grade-IV post of Peon, on 15.11.2023.

22. The only natural course open for the appointing authority, that is, the Special Judge, CBI & NIA, Assam, Guwahati in such a situation is to initiate a fresh process of selection to fill up the vacancy arising in the Grade-IV post of Peon in its office due to demise of the incumbent. It is found that the office of the Special Judge, CBI & NIA, Assam, Guwahati has already taken a decision to initiate a fresh process of selection to fill up the said vacancy in Grade-IV [Peon] by inviting applications from candidates with the publication of an advertisement. It is open for the petitioner to participate in such fresh process of selection, if he fulfills the conditions of eligibility to be stipulated in such advertisement.

23. In view of the discussion made and for the reasons assigned hereinabove, the writ petition is found bereft of any merits. Resultantly, it deserves to be dismissed. It is accordingly dismissed. There shall, however, be no order as to cost.