
(1996) 05 GAU CK 0032
In the Gauhati High Court
Case No : Writ Appeal No. 243 of 1995

Rupak Kumar Bhattacharjee and Another	APPELLANT
Vs	
State of Meghalaya and Another	RESPONDENT

Date of Decision : 28-05-1996

Acts Referred:

Citation : (1996) 2 GLJ 150

Hon'ble Judges : V.K.Khanna, C.J. and A.K.Patnaik, J

Bench : Division Bench

Advocate : A.Roy, A.Sharma, N.S.Deori , N.M.Lahiri, B.K.Das, B.Durta,
Advocates appearing for Parties

Judgement

V.K.Khanna, J.—The present appeal has been filed against the judgment of the learned Single Judge dated 22.5.95 passed in Civil Rule No.77 (SH) of 1991.

2. We have heard Mr. BK Das assisted by Mr. A. Roy for the petitioners/appellants, Mr. NM Lahiri, Advocate General for the State of Meghalaya assisted by Mr. A. Sarma, Senior Govt. Advocate for the respondents.

3. The brief facts for the purposes of adjudicating the dispute raised in this appeal are that, admittedly, the petitioners/appellants were working at the relevant time and also at the present moment as Sub Engineer Grade I in pursuance of their appointment made under Regulation 3 (f) of the Meghalaya Public Service Commission (Limitation of Functions) Regulations, 1972, hereinafter referred to as the Regulations 1972. Admittedly, for regular selection, the Meghalaya Public Service Commission (MPSC) held an interview and recommended the names of 40 (forty) persons for regular appointment as Sub Engineers Grade I (Civil) under the Public Health Engineering Department. The names of the appellants also appeared in the aforesaid select list which has been annexed as Annexure IV to the appeal. The petitioners/appellants had approached this Court with a prayer that despite regular selection by the MPSC, Shillong, the respondents have arbitrarily refused regular appointment to them

and they are being allowed to continue only under Regulation 3(f) of the Regulations, 1972.

4. The learned Single Judge negated the plea raised by the learned counsel for the petitioners/appellants on the ground that they can appear in the fresh selection which will be held by the MPSC.

5. Mr. BK Das, the learned counsel for the appellants has urged before us that in the present writ appeal, an affidavit has been filed on behalf of the Chief Engineer, Public Health Engineering Department, Meghalaya and in paragraph 4 of the aforesaid affidavit it has been stated that on 1.7.89, the Adviser (PHE) after approval by the Government appointed twelve out of the select list of forty candidates and all of those twelve candidates were tribals (Khasi/Jaintia). In paragraph 5 it has been stated that although forty candidates were recommended by the MPSC, three amongst the selected candidates were not qualified in terms of the advertisement itself and hence not appointed and, therefore, twenty five nontribals selected were not appointed and then the Adviser (PHE) requested the Government to accord approval for appointment of the said twenty five persons selected by the MPSC.

6. In paragraph 6 of the aforesaid affidavit, a categorical statement has been made that the Government by their letter dated 22.5.90, expressed the Government's inability to accord approval for appointment of the twenty five candidates as further appointment of nontribals would run counter to the Government's accepted policy of reservation for tribals. It is basically on this decision of the Government that even though the petitioners/appellants are continuing in service under Regulation 3 (0 as Sub Engineer Grade I for the last seven years and even after having duly selected by the MPSC have not been permanently absorbed in service.

7. The crucial question which arises for determination in this case is as to whether the decision taken, by the Government that the appointment of the candidates selected by the MPSC could not be made in view of the reservation policy is applicable to the State of Meghalaya is correct or not; and whether the action can be said to be arbitrary requiring interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution.

8. Mr. NM Lahiri, the learned Advocate General for the State of Meghalaya has produced before us the Reservation Policy which is applicable in the State of Meghalaya. The aforesaid Reservation Policy is spelt out from a letter of the Commissioner and Secretary to the Govt. of Meghalaya which has been sent specifically for the purposes of this appeal. As far as the present case is concerned, paragraph 2 of Resolution No.PER.222/71/138, dated 12.1.72, would be relevant which runs as follows :

"2. If sufficient number of suitable candidates for filling up the reserved vacancies is not available from the respective classes in any particular year, then such vacancies will be available to others. But the deficiency in the number of

Scheduled Tribes and Scheduled Castes will be carried forward to the next recruitment year and made good in the recruitment of that year, provided that the reservation on account of the deficiency shall not be carried forward for more than one year. After the expiry of the second year, these reservations shall be treated as lapsed. It has also been decided that at no time shall the number of normal reserved vacancies and the "carry forward" vacancies together exceed 90 percent of the total number of vacancies in that year."

9. From a bare perusal of the own policy of reservation which has been spelt out in paragraph 2 of the aforesaid Resolution as quoted above, it would be clear that if suitable number of candidate for filling up the reserved vacancies are not available from the respective classes, then such vacancies would be available to others (emphasis provided). It will be pertinent to note that the aforesaid paragraph 2 of the Resolution takes care of the Reservation Policy as the reserved vacancies which had not been filled up will be carried forward and made good in the subsequent recruitment year. From the aforesaid, it is therefore clear that the decision of the Government that approval for appointment of the twenty five persons selected runs counter to the Government's accepted policy in our opinion is not correct; on the other hand the policy itself contemplates g that in such a situation appointments should be offered to other categories of the employees including the general category of candidates. In our opinion, the decision of the Government as communicated in the letter dated 22.5.90 was therefore arbitrary and liable to be struck down.

10. It has not been disputed that the appellants are continuing in service though it has been labelled that their continuance is under Regulation 3 (f) of h the Regulations. 1972. However, we are of the opinion that mere labelling of the appellants" appointment under Regulation 3 (f) of the Regulations. 1972 would not be conclusive. It has not been denied that the vacancies are there. In fact, as has been quoted above, the Adviser (PHE) had requested for filling up the vacancies from the persons who had been selected by the MPSC.

11. The appellants have been working in the department since a very long time and their continuance in service in our opinion, will be treated to be in pursuance of the regular selection made by the MPSC. It is however being made clear that this order is confined to the special facts of this case and will be confined only to the present two appellants.

12. For the "reasons stated above, the present appeal is allowed in terms of the observations made in this judgment. However, looking to the entire facts and circumstances of the case, the parties shall bear their own costs.