

(1990) 01 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 791 of 1989

Samir Mazumdar

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 12-01-1990

Acts Referred:

Assam Ministerial District Establishment Service Rules, 1967 — Rule 6
Constitution of India, 1950 — Article 226

Citation : (1990) 2 GLR 108

Hon'ble Judges : J.M. Srivastava, J;B.P. Saraf, J

Bench : Division Bench

Advocate : J.M. Choudhury and A. Deka, for the Appellant; B. Banerjee, Government Advocate, for the Respondent

Judgement

J.M. Srivastava, J.—In response to an advertisement in March 1988 by the Deputy Commissioner, North Cachar Hills, Haflong for recruitment to the posts of Lower Division Assistants, the Petitioner submitted applications. For certain reasons, immediate action for selection could not be taken. On 30.11.88, however the clearance by Government was given and written test was held on 8.1.89, followed by interview and a select list was prepared and notified on 30.3.89. Petitioner's name find place in the select. The Deputy Commission who had held the selection, retired on 31.3.89. The Respondent No. 2 herein took over as Deputy Commissioner. When the relevant file for appointment was placed before him on 1.4.89, some (sic) were stated to have been found. The Respondent No. 2 considered the matter and having come to the conclusion that he could accept the selection made, referred the matter to the Commissioner, Hills Barak Valley Division by letter dated 12th April, 1989 who in took up the matter by letter dated 25th April, 1989 with the Government of Assam in the Personnel Department. The Government of Assam in General Administration Department, by letter dated 1st June, directed that in case the selection made was not in accordance with Rule 6 of the Assam Ministerial District Establishment Service, Rules 1967, hereafter referred as the rule the posts could be re-

advertised and recruitment made under the aforesaid rules. It was further directed that while re-advertising the posts the candidates who earlier applied for the posts in response to the earlier advertisement Should be given chance to appear in the recruitment tests without realization of application fee, The Respondent No. 2 on 14th June 1989 issued fresh advertisement Annexure T, wherein it was clearly lited that the candidates who bad applied earlier in response to the Advertisement dated 22.3.89, could apply again without deposit of application fee.

2. The Petitioners are aggrieved and have come to this Court. Sri J.M. Choudhury, learned Counsel appearing on their behalf, has submitted that the Petitioners were selected in a selection test which conducted in accordance with rules, and having Seen selected the Petitioners have the right to appointment. Sri Choudhury has further submitted that in the Rules, there is no provision for cancellation of examination conducted and that the select list prepared was not even cancelled.

3. We have also heard Sri B. Banerjee, learned Government Advocate for the Respondents.

4. On consideration of the submissions for the parties and the materials placed before us, we are unable to accept that the action taken by the Respondent No. 2 was unwarranted or unjustified. In the affidavit-in-opposition, the Respondent No. 2 bad clearly asserted that when he had taken over charge on 1.4.89 and the file for appointment was put up before him, he bad not found any result sheet or any other documents relating to the selection made, in it, that subsequently on 4.4.89 and 5.4.89 his Head Assistant had received certain envelopes containing papers and when the same were opened on 7.4.89 some mark sheets of the written test and the interview held etc. were found, together with a note which bad been prepared and signed by the then Deputy Commissioner on 31.3.89 to the effect that the answer scripts had been destroyed after the interview. The said note is Annexure-1 with the affidavit-in-opposition. The Respondent No. 2 has also stated that in the mark sheet for the written examination, which is Annexure - 11 with the counter affidavit even though 408 candidates had appeared the names of only 153 have been given in the mark sheet and that the marks of only 230 candidates have been shown, and that what happened to marks of 158 candidates was not known while it is to be that the Petitioners could not possibly offer any explanation for the above anomalies in the conduct of the selection test held, the fact remains that the same were very material and it shall just not be possible for this Court to ignore the same while considering whether the action taken by the Respondent No. 2 was justified or not. In our opinion, the very fact that the answer scripts were destroyed even before any action had been taken on the select list prepared, is enough to think that the select list prepared was not such as can be accepted or upheld by this Court. As noted earlier, the absence of names of 153 candidates who had taken the written test in the mark sheet, further reinforces the conclusion that the selection test

held and select list dated 30.3.89 should not be sustained.

5. The Respondent No. 2 has in the affidavit-in-opposition stated about a series of other irregularity and infirmities in the selections held, inter alia non - consideration of the provision for reservation of seats for Scheduled Castes and Scheduled Tribe under the relevant law applicable in Assam and accordingly we think that the select list prepared on 30.3.59 cannot be sustained.

6. In so far as the contention for the Petitioners that the Petitioners loners had the right consequent upon inclusion of their names in the select list, we are not impressed with the submission, for selection order to create such a right must be fair and proper selection in accordance with rules, While it is true that the selection purported to have be made in pursuance of the Rules, it is clear from the facts (sic) above that the selection was not fair and accordingly cannot considered to be selection in accordance with rules.

7. In so far as the submission that there is no power to cancel examination held or that select list prepared on 30.3.89 was not (sic) cancelled, the fact that action lifts been taken to conduct fresh examination, shall amount to cancellation of the select list dated 11.3.89. We also think that the authority concerned, i.e. the Respondent No. 2 in consultation with the Government of Assam having bound, the selection earlier held was not fair the authorities could (sic) action for fresh selection. In any case, we are not inclined to interfere with the action taken by the Respondent No. 2, in view the facts and circumstances brought out, in exercise of powers under Article 226 of the Constitution of India.

8. The Petitioners have been allowed to appear in the fresh examination without payment of application fee, etc., which in the circumstances of the case, in our opinion takes adequate care of their interest.

9. It has been brought to our notice that one person was appointed in the meantime on ad-hoc basis. It is made clear that the said appointment shall be subject to the selection to be made in response (sic) the fresh advertisement dated 14th June, 1989 (Annexure-T)(with affidavit in opposition).

10. With the above direction and observations, this petition is disposed of. No costs.