
(2008) 01 GAU CK 0060
In the Gauhati High Court

Santosh Mishra

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 18-01-2008

Acts Referred:

Citation : (2008) 2 GLT 419

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amitava Roy, J.—The provisional list of candidates for the post of Extension Officer (Panchayat) and Extension Officer (Women & Children), circulated by the office order dated 25.07.2000, for filling up 11 posts of Extension Officer (Panchayat) and 15 posts of Extension Officer (Women & Children), forms the subject matter of challenge in the instant proceeding. The petitioner prays for annulment of the said list and consideration of his case for appointment to the post of Extension Officer (Panchayat) along with all other eligible candidates. This Court while issuing notice on 10.01.2001, had made, appointments on the basis of the said list subject to the result of the instant petition.

2. I have heard Mr. N. Choudhury, learned Counsel for the petitioner and Ms. H. Bhuyan, learned State counsel for the official respondents.

3. Sans unnecessary details, the petitioner's pleaded case in short, is that he is a graduate in Arts and was appointed as Lower Division Assistant on 17.11.1990, in the Office of the Project Director, District Rural Development Agency, Cachar, Silchar initially for a period of one month. The term was extended from time to time for nearly seven years, whereafter he was adjusted against a permanent vacancy on 21.09.1997. The petitioner has thus claimed to be serving under the Director, Panchayat and Rural Development, Assam, Guwahati, without an break.

4. An advertisement was issued on 21.10.1991 by the respondent No. 3, Director of Panchayat & Rural Development, Assam, for filling up 52 posts of Extension

Officer (Panchayat) and 21 posts of Extension Officer (Women & Children). The petitioner submitted his candidacy for the post of Extension Officer (Panchayat) in time. Thereafter, District Level Committees, with the following composition, were constituted at the district level to conduct the selection:

5. The District Level Committees were required to hold written and oral tests/ interview for making the selections. The applications received, were thus forwarded to the respective districts. The Cachar District Committee, accordingly asked the petitioner to appear in the written test on 09.05.1993. The petitioner having taken written test as above, he was asked to appear before the interview board for viva-voce on 10.06.1994. The petitioner claims that a select list was thereafter drawn up and displayed on the notice board, wherein, his name appeared at Sl. No. 8. The respondent authorities, however, refrained from making any appointment therefrom and instead allowed many ad-hoc appointees to continue in the posts, though they did not qualify in the selection.

6. One Swapan Kumar Seal and another, subsequent thereto, filed a writ petition being C.R. No. 4216/1996, before this Court, praying for an order for publication of the select list. The respondents therein, did not file any affidavit and by order dated 07.05.1997, this Court while disposing of the petition, directed the State authorities to publish the result within two months from the date of receipt of the order.

7. Review Application No. 129/1997, was thereafter, filed by the respondent No. 3, seeking a review of the order dated 07.05. 1997, which ultimately was not pressed and this Court closed the same on 01.06.1999. In W.P.(C) No. 3196/1999, on the same issue, this Court passed an order on 30.06.1999, in the same lines as in C.R. No. 4216/1996. It was at this stage that the impugned provisional list was published, which the petitioner contends, is without any basis. He was alleged that candidates named therein, have been picked up at random by totally disregarding the merit position in the select list. By way of instance, he has asserted that Sushanta Kumar Roy (Sl. No. 53), who was placed at Sl. No. 20, in the select list forwarded by the Cachar District, has been included in the impugned list to the exclusion of the petitioner and 17 others figuring at Sl. No. 2 to 19 in the district list. As following the publication of the provisional list, steps were being taken by the respondent No. 3, to call the persons named therein for interview, the petitioner being aggrieved, approached this Court.

8. The respondent No. 3, Director, Panchayat & Rural Development, Assam, in his counter, has denied that the petitioner was engaged or appointed as a Lower Division Assistant against any permanent vacant post in his establishment. The facts regarding the advertisement dated 21.10.1991, the posts involved and the participation of the petitioner in the process, have been admitted. The answering respondent, has also admitted the constitution of the District Level Committees for appointment to the posts of Extension Officer (P) in the Block Development Offices. The petitioner's version of appearing in the written test and the oral

interview, has not been disputed. The answering respondent has also admitted that after the completion of the selection at the district level, the merit lists of the selected candidates, were submitted by the Deputy Commissioner and Chairman of the concerned District Level Selection Committee to the Government. It has been asserted that in between, the respondent No. 3, was divested of the power of appointment, which however, was restored on 03.08.1994, whereafter the merit lists were forwarded to him for processing and necessary follow up action.

The answering respondent has referred to the various orders passed by this Court in the aforementioned writ petitions requiring him to publish the result of the selection within a time schedule. While contending that it was not feasible to adhere to the time frame fixed by this Court, as the merit lists from a few districts, did not reach in time, it was realized at that stage that the posts involved were State Level Posts, transferable in nature and that appointments at the district level, was not permissible. It was thereafter decided that a second round of oral interview be conducted for standardizing the merit lists of different districts and prepare a final select list for appointment. For this, it was decided to draw up a provisional select list of the candidates on the basis of the marks secured by them in the written test. This was on 23.12.1999.

9. In the meantime, a ban on recruitment to all posts had been clamped by the Government on 06.12.1999 and the proposed interview was thereafter decided to be held after the withdrawal of the ban. Meanwhile, however, 41 posts of Extension Officer (Panchayat) and 6 posts of Extension Officer (Women & Children), had been filled up by the Government under the Assam Public Services (Appointment of family members of persons killed by Extremists) Rules, 1992 (hereafter for short referred to as the "Rules") and, therefore, it was recommended that the pending process be confined to the remaining posts. Resultantly, the impugned provisional list was published/circulated by the order dated 25.07.2000, issued by the Director of Panchayat & Rural Development, Assam, incorporating the reasons therefor.

10. The answering respondent reiterated that the provisional list was prepared on the basis of the marks secured by the candidates in the written test held on 09.05.1993, at the district level and that the name of the petitioner and many other candidates from Cachar district, did not appear therein, as their performance were inferior to those of the candidates making their place therein. It has been maintained that the impugned list had been prepared in order to ensure an uniformity in the selection from amongst the candidates, recommended by the various districts, by subjecting them to a final round of interview/test to be conducted at the State level. Accordingly, in terms of the Government letter No. PDDE/33/99/120, dated 29.08.2000, a board with the following members was constituted for conducting the final selection:

11. The Board decided to hold a test/interview for filling up eleven posts of Extension Officer (P) and fifteen posts of Extension Officer (W & C) from

27.11.2000 to 30.11.2000. Accordingly, 88 and 120 candidates, were called for the test/interview respectively for the two categories and following the publication of the lists of selected candidates and on receipt of the clearance by the State Level Empowered Committee, they were appointed vide orders No. PDDE(II) 19/99/50-51, dated 15.03.2001 and PDDE(II) 19/99/48-49, dated 15.03.2001. The answering respondent in the circumstances, has refuted the petitioner's plea of arbitrariness and discrimination and has contended that his claim being devoid of merit, is liable to be rejected.

By an additional affidavit, filed by the said respondent, the above narration has been substantially reiterated.

12. In his two additional affidavits, the petitioner has averred that in the year 2002, 29 vacancies in the post of Extension Officer (P), had been filled up on compassionate ground and that presently, there are 28 vacancies in the said post. In particular, he has referred to one post each of Extension Officer (P) lying vacant under Sonai Development Block and Narsingpur Development Block in the district of Cachar. The petitioner, however, has admitted that appointments to the posts of Extension Officer, under the respondents, are made on State level.

13. Mr. Choudhury, has persuasively argued that as the impugned list had been prepared dehors the interse merit of the candidates adjudged by different District Level Committees, it is per se, perfunctory and invalid and, therefore, all consequential actions on the basis thereof, are liable to be adjudged invalid and non est in law. The purported basis as claimed by the respondents for drawing up the impugned provisional list, in the facts and circumstances of the case being not sanctionable in law, the same is ipso facto, null and void. The respondents having initiated a process for adjudging the interse merit of the candidates at the district level, the inexplicable departure from the said norm to administer the same at the State level for appointment, has rendered the whole exercise non-transparent, unfair and unjust, he urged. Mr. Choudhury, argued that there being no intelligible criteria for selecting the candidates to be accommodated in the impugned provisional list, the same is unsustainable in law and, therefore, holding of the interview thereon and the appointments made, are non est in law. The learned Counsel, therefore, prayed for writ of mandamus to the respondents to consider the petitioner and other similarly situated candidates for being appointed to the posts advertised on the basis of their performance at the district level. In the alternative, he urged that the selection of candidates for a final round of interview, as proposed, may be directed to be drawn up on the basis of their performance judged by the aggregate of marks secured in the written as well as the oral interview at the district level. Mr. Choudhury, also questioned the bona fide of the respondents in filling up a substantial number of posts advertised, pending the completion of the process related thereto.

14. Ms. Bhuyan, per contra, has urged that as the posts involved, are of the State level, the decision to conduct a final round of test/interview by State Level Committee of the candidates based on their performance in the written tests, is

perfectly valid and the petitioner has no accrued right to either resist or challenge the same. The impugned provisional list having been drawn up on the basis of the marks secured by the candidates in the written examination, the petitioner cannot have any grievance cognizable in law. Moreover, as the candidates finally selected, have been appointed on being cleared by the State Level Empowered Committee, no interference with the process at this stage ought to be made.

15. The pleadings of the parties and the arguments advanced have been duly considered. The parties are not in difference on the initiation of the process for appointment to 52 posts of Extension Officer (P) and 21 posts of Extension Officer (W&C) by the advertisement dated 21.10.1991, holding of written test and interview by the respective District Level Committees and the preparation of select list, district wise. It was at that stage that some of the candidates approached this Court with writ petitions, praying for a direction to the respondent authorities to publish the select list(s), so prepared. At that juncture, the process took a different turn and the provisional select list was published on 25.07.2000, proclaiming that a final round of interview/test, would be conducted at the State level, as the posts involved, were State Level posts in terms of the Govt. decision vide U.O. No. Com./P&RD/3/98, dated 23.12.1999. It was inter alia, disclosed in the office order dated 25.07.2000, accompanying the provisional list that in the meantime, in view of the some appointments made, 11 posts of Extension Officer (P) and 15 posts of Extension Officer (W&C), would be filled by the exercise proposed to be undertaken.

The petitioner noticeably, in his additional affidavit dated 25.03.2007, has admitted that the appointments made in the meantime to the posts of Extension Officer (P), were of the State level. He has not categorically denied that the posts sought to be filled up, are not State level posts as asserted by the State authorities. His principal grievance is that in the face of his position in the select list prepared by the District Level Committee for Cachar, he ought to have been included in the impugned provisional list 25.07.2000. Further, as selections were held at the district level, there was no justification to prepare a State wise list.

16. The official records contained in file No. PDDE(II) 19/99, of the Director of Panchayat & R.D. Estt. I & II, Branch, enumerate the sequence of events leading to the publication of the impugned provisional list dated 25.07.2000 and eventual appointments on the basis of the steps taken thereafter. It transpires therefrom that the written test and viva-voce for the posts, were conducted at different districts by the District Level Committees for which question papers and answers scripts were supplied from the Directorate. The written tests/interviews were held on 09.05.1993. On receipt of the merit lists from all districts, except one or two and on a further scrutiny, it having transpired that the posts are State level posts and, therefore, district wise selection was not permissible, it was suggested by the Directorate of Panchayat and Rural Development, Assam on 19.12.1999, that candidates three times the existing vacancies be called for a second round

of interview for final selection to standardize the merit lists prepared by different districts. Suggestion was also made for constitution of a committee at the State level to conduct the final test/interview. The proposal was approved vide U.O. No. Com. P&RD/3/98, dated 23.12.1999, by the Commissioner & Secretary, Panchayat and Rural Development, Assam, whereafter, the impugned Office order dated 25.07.2000, was passed publishing the list of candidates selected for the final round of test/interview for the posts, which by then, had remained vacant to be filled up thereby. It is evident from the letter dated 25.07.2000, that in the meantime, 41 posts of Extension Officer (P) and 6 posts of Extension Officer (W&C), had been filled up under the Rules and that the accompanying provisional list was not final and that an interview/test would be held as and when the subsisting ban on recruitment would be withdrawn for appointment to the remaining 11 posts of Extension Officer (P) and 15 posts of Extension Officer (W&C). The provisional list was categorical to state that the candidates therein, had been selected on the basis of written test already held. Thereafter by Order No. PDDE.(II). 19/99/19, dated 13.10.2000, a State Level Board was recommended to be constituted for conducting the selection from that stage with the following composition:

17. The said Board in its meeting held on 08.11.2000, decided to hold a written test of 30 marks and viva-voce of 70 marks and fixed 27 to 30th November, 2000 for the said purpose. Accordingly, the candidates in the provisional select list dated 25.07.2000, were called to attend the test as well as the viva-voce and thereafter, on the basis of their performance, the Board prepared a panel of selectees for 11 posts of Extension Officer (P) and 15 posts of Extension Officer (W & C). The Directorate of Panchayat and Rural Development, Assam, thereafter on 26.12.2000, published the final list of the recommended candidates. By letter No. PDDE(II) 19/99/48-49, dated 15.03.2001, the Deputy Secretary, Government of Assam, Panchayat & Rural Development conveyed the approval of the Government to the said select list. Prior thereto, the State Level Empowered Committee, vide their U/O. No. 636, dated 15.03.2001, had cleared the list for appointments. The Director of Panchayat and Rural Development, Assam, was thereby asked to take necessary follow up action. On the very same date by office order Nos. PDDE(II) 19/99/48-49 and PDDE(II) 19/99/50-51, dated 15.03.2001, the candidates, as selected, were appointed as Extension Officer (P) and Extension Officer (W & C), against the posts for which the final round of selection have been conducted.

18. In course of the arguments, the Director of Panchayat and Rural Development, Assam by his letter No. DPRD/LC/Pt.49/06/63, dated 07.09.2007, had apprised the learned State counsel that the petitioner had secured 49 marks in the written test and by the yardstick applied, he being not eligible to be called for the final round of interview/test, was not included in the provisional select list. That the petitioner had secured 49 marks in the written test, is also obvious from the list of candidates for the post of Extension Officer (P), prepared by the District Level Committee, Cachar, (Annexure-5 to the writ petition). It is apparent

therefrom that the petitioner had been placed at Sl. No. 8, in order of merit, in view of his aggregate marks including the marks obtained by him, in oral test. The petitioner has not disputed that the candidates in the impugned provisional select list had been arrayed on the basis of the marks obtained by them exclusively in the written test. He has not asserted, either that on the same measure, he ought to have been included in the said list. His claim is apparently based on the aggregate marks awarded to him. There is no convincing material on record to negate the contention of the State respondents that the posts are State level posts. As is disclosed by the records, the respondent authorities had taken a conscious decision for filling up the posts by conducting a second round of interview for final selection to standardize the merit list and for the said purpose, called candidates three times the existing vacancies. The State authority in this regard applied the touchstone of marks secured by the candidates in the written test that was conducted simultaneously in all districts on 09.05.2003, on the same set of questions paper forwarded by the Directorate to all the district centres.

19. In the above premise, the norm of performance in the written test for drawn up a list of candidates three times the number of vacancies for final round of interview/test, cannot be denounced as arbitrary, irrational illogical or preposterous. The written test having been conducted on the same set of question papers on the same date, the performance of the candidates therein, was a realistic and sensible benchmark for identifying the candidates for assessing their suitability for final selections. An outer limit of three times the number of vacancies was delineated and the petitioner having failed to make the mark with a score of 49 in the written test, in the opinion of this Court, he cannot entertain a genuine grievance for his exclusion. The decision to hold the test/interview at the State level, considering the nature of the post also cannot in absence of any recorded input to the contrary be dismissed as arbitrary, unconscionable and invalid. The State authorities having construed the posts to be State level posts, they comprehended a logical scheme to administer the process as deemed fit and proper. No legal bar to this course has been demonstrated or illustrated.

20. This Court, while issuing notice did not injunct the process, which as noticed hereinabove, has in the meantime, been completed and the candidates selected, have been appointed in the year 2001. The selection process subsequent to the impugned provisional list, has not been assailed in the instant proceeding independently on merits. It is, therefore, inessential to probe into that aspect of the executive pursuit.

21. On a totality of the considerations as above, I am, thus of the unhesitant conclusion that the challenge laid in the instant proceeding, lacks in substance and is therefore, rejected. The petition in the result, is dismissed. No costs.