
(2005) 02 GAU CK 0070
In the Gauhati High Court

Shahejul Hussain Saikia

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 11-02-2005

Acts Referred:

Citation : (2005) 106 FLR 711 : (2005) 2 GLT 241

Hon'ble Judges : D. Biswas, Acting C.J.; Amitava Roy, J

Bench : Division Bench

Judgement

D. Biswas, A.C.J. and Amitava Roy, J.—Are the wards of retired teachers belonging to any level from the Primary to the Secondary stage of education in the State of Assam entitled to be accommodated on appointment against the quota of vacancies reserved for them without facing a selection for assessment of merit is the question raised in the present bunch of appeals. The learned Single Judge in the impugned judgment and order has answered in the negative.

2. We have heard Mr. J. Ahmed, learned Counsel for the appellants and Mr. S. Munir, learned Standing Counsel, Education Department for the respondents.

As the appeals bear a common question, dilation on individual facts is not called for. Suffice it to mention that the appellants are the wards of retired Assistant Teachers/Head Masters of Lower Primary and Middle English Schools of the State. Following their superannuation, the appellants applied for their appointments against the reserved quota of vacancies earmarked for them in terms of the extant policy of the Government. After a fruitless wait for a considerable length of time, the appellants/writ petitioners approached this Court seeking redress, their contention, being that the policy of the Government notwithstanding providing for their appointment against the quota of vacancies reserved for them, the respondent authorities have failed to provide them therewith without any justification thus calling for issuance of a writ of mandamus to the said effect.

3. The learned Single Judge relying on the decision of this Court in Syed Samsul Hoque Vs. State of Assam and Others, , dismissed the petitions holding that the

petitioners were not entitled to automatic appointments or any consideration for appointment without any selection and, therefore, were not entitled to the relief as prayed for.

4. The learned Counsel for the appellants has argued before us that in terms of the Government Policy contained in the notification currently in force, the appellants are entitled to be considered against the vacancies earmarked for the sons or unmarried daughters of retired teachers from Primary to Secondary levels and that, therefore, rejection of their right to be considered for such appointment in terms thereof is per se erroneous besides being prejudicial to them.

5. In reply, the learned State Counsel contended that the related notification having provided for consideration of the wards of retired school teachers against the aforementioned vacancies on the basis of merit, they cannot claim as a matter of right to be provided with the appointment ipso facto. Assessment of merit being the necessary pre-condition, the learned Single Judge, according to him, was perfectly justified in passing the impugned judgment and order.

6. The learned State Counsel in support of his submission placed before us, written instructions to the above effect as well as the notification dated 23.7.99 on the topic in force as on date.

7. It transpires from the scripted stand of the State respondents that the Government of Assam in the Education Department initially prescribed 10% of posts for appointment of sons and daughters of retired L.P. School Teachers for appointment in L.P. Schools. The percentage was upgraded to 20% by notification dated 6.6.92, which, however, came to be restored to 10%, by a subsequent notification dated 8.4.97. The facility was then confined only to sons and daughters of retired L.P. School Teachers and the wards of retired M.E., Junior Basic, Sr. Basic, Madrassa, High School and Higher Secondary Schools were excluded from the quota prescribed. Appointments were to be limited to the post of Assistant Teacher in L.P. Schools only. Noticing that recruitment to the L.P. School teachers is governed by provisions laid down in Rule 3 of the Assam Elementary Education (Provincialisation) Rules, 1977 (hereafter referred to as Rules) it was insisted that the wards of the L.P. School Teachers should also be selected by the Sub-Divisional Level Advisory Committee (Committee envisaged under the Rules for conducting selection thereunder) before being considered for appointment against the reserved quota. Selection of the wards of the retired L.P. School Teachers was considered to be essential having regard to the prescription of Rule 3 of the Rules as well as the fact that the number of candidates applying for appointment far exceeded the vacancies reserved. The roster points proportionate to the percentage of posts so reserved were also identified to accommodate the selected wards.

8. By the notification No. B(3) 149/99/9 dated 23/7/99, the benefit of appointment against the 10% reservation quota was extended to the sons or

unmarried daughters of retired teachers of Primary to Secondary levels of education according to merit. For ready reference, the relevant excerpt from the notification is set out herein below-

In supersession of the Government Notification No. A(I)E341/92/S2 dated 8/4/97 regarding 10% reservation quota against the vacancies in L.P. School for the wards of L.P. School Teachers, the Govt. in Education Department decided to extend the benefit of reservation to the sons or unmarried daughter of retired teachers from Primary to Secondary level teachers within the approved quota of 10% (ten PC) according to merit. The Government reiterated that while filling up these categories of candidates, the roster point as communicated vide Government letter No. B(2)H667/94Pt.-I dated 1st July, 1997, be strictly followed.

9. In the above premises, the wards of the retired Primary to Secondary Level Teachers are entitled to be considered against 10% quota of vacancies prescribed for them on assessment of their merit.

10. The decision of the Government to extend the above benefit for a particular category of candidates is apparently within the realm of its policy subject to the conditions enumerated herein above. The State authorities while evolving and framing the policy were consciously mindful about the prescription of the Rules mandating selection in the indispensable condition precedent for appointment thereunder. Appointment of teachers to all levels of education in the State is governed by independent enactments requiring assessment of merit by selection. Insistence for the test of merit to be the criteria for appointment against the reserved quota of vacancies for the sons and unmarried daughters of retired teachers, therefore, is in consonance with the edicts of the relevant legislation otherwise governing the process for appointment of teachers to the schools imparting education from the Primary to Higher Secondary levels. The prescription of merit as the condition precedent for appointment against the reserved quota, therefore, per se cannot be faulted with. Indeed the conditions enumerated in the notification dated 23.7.99 have not been questioned either before the learned Single Judge or before us. These are, therefore, binding on the appellants. The appellants having claimed the benefit as comprehended in the policy as eventually reflected in the above notification, their rights there under have to be essentially guided by the conditions contained therein. The reasons cited by the authorities to insist on selection thus appear to be logical. The inescapable conclusion is that assessment of merit is the sine qua non to evaluate the suitability of a ward of a retired school teacher to consider him or her for appointment against the reserved quota of vacancies under the aforementioned notification. As a corollary any claim for automatic appointment against such vacancies in the teeth of the categorical prescription of assessment of merit cannot be countenanced.

11. This Court in *Samsul Hoque and Anr.* (supra), rejected the plea of an analogy between the appointments of wards against the reserved vacancies with compassionate appointments and determined that the sons and daughters of the

retired school teachers were not entitled to automatic appointments without any selection. The impugned judgment and order, therefore, according to us does not call for any interference.

12. We are, however, of the opinion having regard to the back ground of the policy and the stipulations contained in the above notification that the deserving wards of the school teachers contemplated therein have a right to be considered for appointment against the reserved quota of Vacancies, their merit on assessment so permitting. The grievance expressed on behalf of the appellants before us is that the dismissal of the writ petitions may come in the way of consideration of their cases in terms of the notification. Admittedly the appellants till date have not faced any selection for such appointment.

13. In that view of the matter, while agreeing with the eventual conclusion of the learned Single Judge, we wish to close this appeals observing that as and when a selection process for appointment to the posts comprehended in the above notification is initiated, the cases of the appellants, if they participate therein along with others, would be considered in terms of the policy in force and depending on their merit so assessed, they would be considered for appointment against the available quota of vacancies subject to their satisfying the other conditions of eligibility as may be prescribed. We, however, make it clear that this should not be construed to be a direction by us to the respondents to appoint the appellants or any of them to any post.

14. The appeals stand disposed in the above terms. No costs.