

(2011) 07 GAU CK 0071
In the Gauhati High Court
Case No : Writ Petition (C) No. 1723 of 2010

Shri Bhupen Bharali and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Assam Junior Forest Service Rules, 2005 — Rule 7(23)
Constitution of India, 1950 — Article 14, 15, 226, 309

Citation : (2012) 1 GLD 289

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : A. Rashid, Mr. D.F.A. Ahmed and Ms. Toyasmin, for the Appellant;
B.J. Ghosh, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—When the State, for the purpose of making of selection to a given post, prescribes a particular qualification in an advertisement, which, if insisted upon, would lead to arbitrary selection or which is in violation of the relevant requirement rules, whether the State has the freedom to waive or ignore such a prescribed qualification, while holding the selection process and making appointment, and whether the selection made by ignoring or waiving such a prescribed qualification is sustainable in law? This is the moot question, which has arisen for determination in this writ petition. The material facts, which are not in dispute, and which have led to this writ petition, in a nutshell, be set out as under:

(i) The Assam Junior Forest Service Rules, 2005 (in short, "the said Rules") framed under the proviso to Article 309 of the Constitution of India, relate to appointment to the posts of, amongst others, Animal Keeper. Rule 7(23)(b) prescribes the general qualification for the post of Animal Keeper as class VIII passed or equivalent.

(ii) An advertisement was published, on 8.9.2008, by the office of the Principal

Chief Conservator of Forest, Govt. of Assam, for recruitment to the posts of Animal Keeper. While the minimum educational qualification, for the post of Animal Keeper, in the advertisement, prescribed was Class VIII passed or equivalent, which was in tune with Rule 7(23)(b) of the said Rules, one of the prescribed additional eligibility conditions, in terms of the said advertisement, was that the candidate must have the experience of working, in the field of wild life areas, in Zoo.

(iii) The present petitioners have been working, on casual basis, as Animal Keeper, in the State Zoo, at Guwahati. The petitioners accordingly applied for the post of Animal Keeper and appeared for selection. As the State respondents have selected the respondent Nos. 4 to 9 (hereinafter referred to as the "private respondent"), who have no experience of having worked as Animal Keeper in the field of wild life areas in Zoo, the petitioners, with the help of this application, made under Article 226 of the Constitution of India, have challenged the selection and appointment of the "private respondents" on the ground that the "private respondents" are outsiders and they, having no experience of working, in the field of wild life areas, in Zoo, though required by the advertisement (whereunder the requirement has been made), could not have been validly appointed to the posts Animal Keeper.

2. I have heard Mr. A. Rashid, learned counsel, for the petitioners, and Mr. B.J. Ghosh, learned Govt. Advocate, for the State respondents. None has appeared on behalf of the "private respondents".

3. It is, first, contended by Mr. Rashid, learned counsel, for the petitioners, that since the "private respondents" have not appeared in this writ petition and they have not resisted the writ petition, the reliefs, which the petitioners have sought for, namely, that the selection and appointment of the "private respondents" be set aside and quashed, because their selection, according to Mr. Rashid, was illegal and, instead of the "private respondents", the petitioners, who have the experience of working as Animal Keeper in the field of wild life areas in Zoo, be directed to be appointed. Suffice it to point out, in this regard, that a writ petition is not decided by default. Merely because the "private respondents" have not appeared and contested the writ petition, the same cannot be made a ground for allowing the writ petition.

4. Irrespective of the fact as to whether a person, impleaded as a respondent, in a writ petition, does or does not resist the writ petition, the person, who comes as a writ petitioner, must satisfy the Court that he is entitled to the relief, which he has sought for, and/or his to an appointment be sustaining.

5. It is next contended by Mr. Rashid, learned counsel for the petitioners, that having prescribed experience as an essential qualification for appointment to the post of Animal Keeper in Zoo, the State respondents could not have selected outsiders, such, the "private respondents", who had no such experience; where all the petitioner had the experience of working as Animal Keepers, though on

casual basis. While considering this aspect of the case, it needs to be noted, as already mentioned above, that the said rules do not prescribe experience as one of the conditions of eligibility. Notwithstanding, therefore, the fact that the advertisement had prescribed experience as one of the conditions of eligibility, any selection, made by insisting upon such an eligibility criterion, would have been wholly illegal and arbitrary inasmuch as a selection cannot be made contrary to, or in violation of, the relevant recruitment rules. Merely because of the fact that the condition of eligibility prescribed, in the form of experience as Animal Keeper, in Zoo, has not been adhered to by the State respondents, while, ultimately making the selection, the selection of the "private respondent" cannot be regarded as bad in law if their selection is, otherwise, validly made. Except for the fact that the "private respondents" did not have the experience of working as Animal Keeper, in field of wild life areas, in Zoo, no other reason has been assigned by the petitioners for challenging the recruitment of the "private respondents" as Animal Keeper.

6. Coupled with the above, it is also worth noticing that having prescribed the essential eligibility criteria under a recruitment rule, the State cannot prescribe any other additional condition, which is inconsistent with, or in violation of, the relevant recruitment rules. Notwithstanding, therefore, the fact that the State prescribed, in the advertisement, experience as an essential eligibility criterion, the State had the undoubted freedom, or rather compulsion, of not insisting upon such a condition of eligibility and the selection of the "private respondents", without insisting upon experience, which had been prescribed in the advertisement, would not make the selection and appointment of the "private respondents" bad in law.

7. Otherwise also, it is of great significance to note that a selection cannot, in the light of the relevant recruitment rules, remain confined within the persons, who have been working, on casual basis, as Animal Keeper in Zoo. Admittedly, there was no selection process for selecting the petitioners as Animal Keepers on casual basis. Their appointments, therefore, on casual basis, as Animal Keepers, was nothing, but arbitrary and contrary to the principles governing public employment. When it comes to the question of making regular recruitment to a sanctioned post, such a recruitment process has to be kept open to the outsiders too. There is, admittedly, no Zoo having wildlife, in the State of Assam, other than the one at Guwahati, where the petitioners have been working as Animal Keepers on casual basis. Confining within those, who have the experience of working on the basis of arbitrary appointment as Animal Keeper, would have been in violation of the guarantee, which has been provided by Article 14 and 15 in the realm of public employment. (See Secretary, State of Karnataka and Others Vs. Umadevi and Others,).

8. The question, therefore, of anyone other than a person, who may have come to be appointed arbitrarily as Animal Keeper in the Zoo at Guwahati, no other person, in the facts and attending circumstances of the present case, could have

acquired experience in the said field. Such a condition, if insisted upon, would have made the whole selection process nothing, but arbitrary, illegal and a farce, because selection, in such a situation, would have remained per force confined within the present petitioners, because they are the only ones, who have the experience. No wonder, therefore, that the said Rules do not prescribe experience as essential conditions of recruitment, because it is not possible to have experience without being appointed as Animal Keeper.

9. Situated thus, it becomes clear that the selection and appointment of the "private respondents" do not call for any interference by this Court in exercise of this Court's powers under Article 226 of the Constitution of India. The writ petition is wholly without merits and stands accordingly dismissed. No order as to costs.