
(2012) 04 GAU CK 0007
In the Gauhati High Court
Case No : Writ Petition (C) No. 3812 of 2009

Shri Debasish Saha

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 11-04-2012

Acts Referred:

Citation : (2012) 3 GLD 366

Hon'ble Judges : Anima Hazarika, J

Bench : Single Bench

Advocate : Y.S. Mannan, Mr. C.K. Nath, Mrs. U. Sharma and Mr. N.J. Dutta, for the Appellant; P. Chakraborty, SC, Ed. Deptt. and Mr. K. Bhattacharjee, for the Respondent Nos. 1, 2, 3 and 4 Respectively, for the Respondent

Final Decision : Dismissed

Judgement

Anima Hazarika, J.—By filing this writ petition, a writ of Mandamus has been sought for, directing the respondents, more particularly, respondent No. 2 to appoint the petitioner as Subject Teacher in Mathematics at Sishu Pathsala Higher Secondary School (hereinafter to be referred to as SPSHS School), Dhubri on the basis of merit as per select list dated 28.08.2007 with a further prayer for setting aside and quashing the selection of respondent No. 4 by the State Level Approval Committee without being selected in the select list dated 28.08.2007. Heard Mr Y.S. Mannan, learned counsel appearing for the petitioner. Also heard Ms Papia Chakraborty, learned Standing Counsel, Education Department appearing for respondent Nos. 1, 2 and 3 and Mr. Kalyan Bhattacharjee, learned counsel appearing for respondent No. 4.

2. The petitioner's case in brief is that, the petitioner after obtaining M.Sc. degree in Mathematics as well as B.Ed. was appointed on 08.02.1985 as Demonstrator in Chemistry at R.B.P.H.S. School on being selected by the competent authority. The service of the petitioner in the post of Demonstrator in Chemistry in the said School was regularized with effect from 15.02.2001 and thereafter on his own request, the petitioner was transferred and posted in the

same capacity i.e. as Demonstrator in Chemistry at SPHS School, Dhubri vide order dated 20.06.2003.

3. While serving as such in the SPHS School, the petitioner had submitted a representation on 18.02.2004 before the respondent No. 2 requesting to upgrade the service of the petitioner in the vacant post of Subject Teacher in Mathematics in SPHS School, he having the eligibility criteria for holding the post of Subject Teacher in Mathematics. The Inspector of Schools, DDC, Dhubri, accordingly, forwarded the same to the higher authority for necessary action. But in the meantime, the service of the petitioner was confirmed on 23.04.2004 in the post of Demonstrator in Chemistry, meaning thereby, the post he was holding was permanently retained.

4. In the meantime, respondent No. 2 issued an advertisement in the "Assam Tribune" in its issue dated 03.06.2007 for appointment of Subject Teachers in various schools in Assam, numbering 158 vacant posts, including one post of Subject Teacher in Mathematics at SPHS School, Dhubri. The petitioner being eligible and qualified had applied for the said post alongwith others. Subsequently, he participated in the selection test and he was duly selected for the post of Subject Teacher in Mathematics in SPHS School. Accordingly, the petitioner's name appeared in the select list dated 28.08.2007. The said select list was thereafter forwarded to the respondent No. 2 for approval. However, apprehending filling up of the vacant post of Subject Teacher in Mathematics in the SPHS School, prior to the present selection, the petitioner approached this Court whereby the Court vide order dated 09.12.2005 directed not to fill up the post without due procedure of law. But the official respondents, after selection, has appointed the respondent No. 4 as Subject Teacher in Mathematics in SPHS School though the petitioner has been working in the school, as a Subject Teacher in Mathematics also. However, petitioner was surprised to know that in the approved list of State Level Approval Committee, Assam, the name of the petitioner has been replaced by respondent No. 4. The name of the petitioner did not find place in the said list, whereas, the petitioner has been selected by the School Selection Committee and was placed at Serial No. 1. Therefore, his entitlement to the post cannot be denied and hence, the writ petition questioning the legality and validity of the selection for appointment of respondent No. 4. The instant writ petition came up for consideration on 07.09.2009 whereby the Court while admitting the writ petition directed to maintain status quo.

5. An affidavit-in-opposition has been filed by the respondent No. 2 controverting the averments made in the writ petition contending inter alia the following points, viz.,-

(i) The Assam Secondary Education (Provincialised) Service Rules, 2003 (hereinafter to be referred to as Rules only) do not contemplate for up-gradation to the post of Subject Teacher in any Higher Secondary School.

(ii) Rule 7 of the aforesaid Rules provides for recruitment to the post of Post-

Graduate Teachers in provincialized schools and selection procedure through direct recruitment i.e. through advertisement, interview and selection. The selection is made based on marks, on academic performance and on interview as stipulated in Schedule-I.

(iii) As per the advertisement so made for filling up of the post of Subject Teacher in Mathematics in SPHS School, the School Selection Committee conducted the interview and selection as required under the Rules and based on marks of academic performance and interview marks, wherein the petitioner secured 142.6 marks (academic-117.6 + interview- 25) and the respondent No. 4 secured 169.56 marks (academic - 150.56 + interview - 19) respectively and based on securing such marks, the respondent No. 4 secured highest position and accordingly placed in the 1st position.

(iv) Thereafter, the State Level Approval Committee has forwarded the panel of candidates having highest marks both in academic performance and interview marks to the Government and accordingly, the Government has approved the selected candidates for appointment.

6. The respondent No. 4 has contested the case by filing an affidavit-in-opposition. An additional affidavit has also been filed for taking judicial notice of the comparative statements of marks obtained from the office of the respondent No. 2 through Rights to Information Act. The following facts are pleaded controverting the pleadings made in the writ petition viz.

(i) Admittedly, the petitioner was holding the post of Demonstrator in Chemistry as a confirmed employee and he post of Subject Teacher in Mathematics was lying vacant for which the advertisement was issued for filling up the said post and therefore, the selection made by the School Selection Committee as Subject Teacher in Mathematics in the School do not have sanction as per recruitment Rules, and selection of the petitioner has not been approved by the State Level Approval Committee, as it would reveal from the record, more so, when his name did not find figure in the list approved by the State Level Approval Committee.

(ii) The certificates enclosed in the affidavit-in-opposition of the respondent No. 4 would clearly shows that he has secured 1st class in B.Sc., 1st class 4th position in M.Sc. in order of merit and B.Ed. degree from the Gauhati University and as such he is a better candidate than the petitioner.

(iii) The marks obtained by the candidates in the interview would disclose that the respondent No. 4 has, obtained 169.56 marks compared to the petitioner who has obtained 142.6 marks and as such, the State Level Approval Committee, Assam has recommended for appointment of the respondent No. 4 in the post of Subject Teacher in Mathematics in preference to the petitioner.

7. The petitioner has filed an affidavit-in-reply against the affidavit-in-opposition so filed by the official respondent No. 2 wherein it was contended inter alia that the School Selection Committee conducted the interview and selection as per

provisions of Rules, 2003 and the School Selection Committee having unanimously selected the petitioner for appointment in the post of Subject Teacher of Mathematics on the ground that he was working in the said post and having P.G. Degree in the relevant subject, which was sent for approval to the State Level Approval Committee and therefore the said State Level Approval Committee has no other option but to accord approval as provided under the Rules and hence, the appointment of the respondent No. 4 as Subject Teacher in Mathematics cannot be sustained, more so, when Rule 7(2)(b)(ii) of the Rules provides that Graduate Teachers with Post Graduate degree in relevant subject of the same school will get a preference in selection for appointment of Post Graduate Teacher.

8. In the above background, the learned counsel appearing for the parties were heard at length. Perused the pleadings of the contesting parties along with the annexures appended thereto as well as the provisions of Rules referred to by the parties. Rule 7 of the Rules which deals with the recruitment to the post of Post Graduate Teacher of provincialised Higher Secondary Schools and selection procedure being relevant In the present case in hand is quoted herein below :

7. Recruitment to the post of Post-Graduate Teacher of Provincialised Higher Secondary School and Selection Procedure:

(1) Recruitment to the Post-Graduate Teacher of Provincialised Higher Secondary Schools shall be made by direct recruitment only on the basis of advertisement, test and interview to be conducted by the School Selection Committee constituted under Rule 8(c).

(2) Direct recruitment shall be made on the basis of selection made by the School Selection Committee as per procedure hereinafter provided-

(a) The Member-Secretary of the School Selection Committee shall ensure the vacancy position of posts in the school with sanction number, allotment and retention order of those posts from concerned Inspector of Schools and collect applications through advertisement locally at least in one local news paper in addition to the circulation of the copy of advertisement in the neighbouring Public office both government and NGO's is to be ensured after obtaining approval from Inspector of Schools concerned;

(b)(i) On receipt of applications from the eligible candidates the School Selection Committee shall hold the interview. Selection will be made on the basis of marks secured by the candidates in the manner provided in. Schedule-1. The School Selection Committee shall prepare the panel of candidates with double the number of vacancies against the vacancies advertised;

(ii) Graduate Teachers with Post-Graduate degree in relevant subjects of the same school will get a preference in selection for appointment of Post-Graduate Teacher;

(c) The select list prepared by the School Selection Committee be forwarded to

the Director of Secondary Education for approval through the concerned Inspector of Schools;

(d) The State Level Approval Committee for according approval of the panel of selection for Post-Graduate Teacher made by the School Selection Committee shall be as follows--

Chairman : Director of Secondary Education.

Member : Addl. DSE/Jt. DSE (GB Estt.)

Member-Secretary : D.D.S.E. (i/c GB (Estt.)Br;

(e) After approval of the State Level Approval Committee the Director of Secondary Education, Assam shall appoint the candidates observing all formalities.

(f) Any appointment made from outside the select list shall ab-initio be invalid except the appointment made on compassionate ground by the Government.

(g) The validity of the select list shall not exceed beyond one year from the date of publication.

Schedule-I deals with distribution of marks for selection of Post Graduate Teacher is quoted hereinbelow :

Schedule-I

SELECTION OF POST GRADUATE TEACHER

Selection of Post Graduate Teacher shall be made on the basis of marks obtained out of a total marks of 250, which shall be distributed as under--

(a) 25 marks should be kept apart for the viva part of interview.

(b) 25% of the percentage of marks secured at the HSLC as well as that in the Higher Secondary Examination and 50% marks secured at the Graduate level should be credited to the candidate.

(c) 100% percentage of marks secured by the candidate at the Post Graduate level should be credited to the candidate.

(d) A weightage of 10 marks and 5 marks should be credited to the candidate for 1st Class Major and 2nd Class Major respectively.

(e) A weightage of marks for B.Ed. and 15 marks for M.Ed. degree should be credited to the candidate.

9. The learned counsel for the petitioner argued that the appointing authority has ignored the provision of Rule 7(2)(b)(ii) while assessing respective marks of petitioner vis-a-vis respondent No. 4, inasmuch as, the petitioner's experience as a serving teacher of the school as provided by the above Rule has not been considered.

The learned counsel appearing for respondent No. 4 in reply to the contention made by the learned counsel appearing for the petitioner has submitted that Schedule I quoted hereinabove provides the marks to be distributed in different heads for selection of Post Graduate Teacher. But perusal of the Schedule-I would reveal that no such provision for crediting marks by counting previous experience has been provided therein. The learned counsel for the respondent No. 4 further submits that when two candidates having stood on same merits, but only one has to be chosen, then and then only question of preference arise. In the instant case, the petitioner and respondent No. 4 were not placed in the same position rather the respondent No. 4 secured 169.56 marks, whereas the petitioner had secured only 1426 marks. I, find sufficient force in the submission made by the learned counsel appearing for respondent No. 4. I do not find any irregularity in the selection and appointment of respondent No. 4 on scrutiny of the materials on record.

10. The admitted facts established in the pleadings would show that the petitioner was confirmed as Demonstrator in Chemistry in the School on 23.04.2004. The official respondents issued an advertisement for filling up of various posts of Subject Teacher throughout Assam, including the post of Subject Teacher in Mathematics in the SPHS School and accordingly the selection was made. The petitioner secured 142.6 marks whereas respondent No. 4 secured 169.56 marks and the State Level Approval Committee had forwarded the panel of candidates having highest marks both in academic, performance and interview marks to the Government and accordingly, the Government has approved the selected candidates for appointment. Perusal of the aforesaid Rules along with the facts pleaded would show that there is no violation and/or infraction of Rules while selecting the candidates for appointment of Subject Teacher in Mathematics in SPHS School, Dhubri. Accordingly, the respondent No. 2 issued appointment letter on 3.9.2009 to the respondent No. 4 for appointment to the post of Subject Teacher in Mathematics at SPHS School, Dhubri. On receipt of the appointment letter, respondent No. 4 went to join in the School on 12.09.2009 and submitted his joining report to the Principal, SPHS School, Dhubri wherein, the Principal of the School put a note that in view of the order passed on 07.09.2009 by the Court, he is not in a position to take any decision until and unless it is decided by the appropriate authority. In consequence thereof, the respondent No. 4 could not resume his duties in terms of the appointment letter due to the status-quo order passed by this Court.

11. In view of the discussions made hereinabove, the writ petition is found to be devoid of any merit and the same is dismissed status quo order passed earlier stands vacated. As a result, there is no legal bar in accepting the joining report of respondent No. 4 by the Principal of the school in compliance of this order. The parties are allowed to bear their own cost.