
(2017) 06 GAU CK 0011
In the Gauhati High Court
Case No : 323 of 2016

Sri Bhabesh Das, S/o Sri Khargeswar Das	APPELLANT
Vs	
The State of Assam, represented by the Commissioner & Secretary to the Government of Assam, Education (Secondary) Department, & Ors.	RESPONDENT

Date of Decision : 05-06-2017

Acts Referred:

[Assam Secondary Education \(Provincialized\) Service Rules, 2003](#), Rule 8(4)

Citation : (2017) 06 GAU CK 0011

Hon'ble Judges : Ajit Singh, Manojit Bhuyan

Bench : DIVISION BENCH

Advocate : M Choudhury, DK Sarmah, A Talukdar, P Chakraborty

Final Decision : Allowed

Judgement

1. This intra-court appeal has been filed by the appellant challenging the legality and validity of the impugned judgement and order dated 11/08/2015 passed by the learned Single Judge in Respondent No.6's WP(C) No. 5996/2012, by which, his selection and appointment on Grade-IV post in the Barajol High School, Nalbari has been declared as illegal.
2. The brief facts are these. Respondent No. 6 - Dharani Kalita- was initially appointed as a Grade-IV employee in Barajol High School, within Nalbari District, Assam, pursuant to a letter dated 20/1/2006 issued by the Inspector of Schools, In-charge, Nalbari District and he joined the said School on 21/1/2006. However, he was allowed to withdraw his monthly salaries from another School with effect from 1/1/2006. But his salary was subsequently discontinued and he was informed by the authorities that such adjustment was not proper.
3. The Director of Secondary Education, Assam, on 12/9/2012, directed the Inspector of Schools of Nalbari District to recruit Grade-IV staff in provincialized High/Higher Secondary Schools in the District under provisions of the Assam

Secondary Education (Provincialized) Service Rules, 2003. Accordingly, the Headmaster of the said School advertised for the post on 26/10/2012. Both Respondent No. 6 and appellant participated in the selection process, and appeared in written test held on 18/11/2012, as well as in the viva-voce held on 4/11/2012. But, Respondent No.6 could secure only 05 marks whereas appellant secured 32 marks and hence the appellant was selected. Consequently, appellant was appointed in the vacant Grade-IV post.

4. Respondent No.6 then challenged the selection process on the ground that the Selection Committee was not properly constituted as required under Rule 8(4) of the said Rules inasmuch as, instead of the Senior-most Graduate Teacher of the School, the second senior-most Teacher was included in the Selection Committee. Further, the son of the President of the Selection Committee participated in the process and the Vice President of the School Managing Committee also appeared in the interview. Due to the aforesaid reasons, Respondent No.6 contended that the selection is vitiated and as such, liable to be set aside. He also prayed for regularisation of his service.

5. Respondent No.4 - School Managing Committee- while countering the allegations contended that Respondent No.6 could not do well in the examination and he could not succeed as the selection was purely on the basis of merit. It was also contended that the Senior-most Teacher of the School presided over the meeting held on 24/10/2012 and he recused to become a Member of the Selection Committee and in such circumstances, the 2nd Senior-most Teacher of the School was included in the Selection Committee as per resolution of the meeting held on 21/11/2012. The records of the selection process placed before the Court also divulged that Respondent No. 6 could secure only 05 marks whereas appellant secured 32 marks.

6. The learned Single Judge by the impugned order has allowed the writ petition holding the selection of appellant as illegal, for, the Selection Committee being constituted contrary to the Rules and cancelled the appointment of appellant. The learned Single Judge also directed that fresh process of selection for filling up the vacant post be initiated after advertisement. So far the prayer for regularisation of the service of Respondent No.6 is concerned, it was observed by the learned Single Judge that his initial appointment on 20/1/2006 being itself illegal and in violation of the statutory service rules, he could not be considered for regularisation. Being aggrieved, appellant has filed this present appeal.

7. After hearing the learned counsel for the parties and perusing the records, we are of the considered view that merely because the Selection Committee was not constituted with the Senior-most Graduate Teacher of the School as one of its Members, the selection would not be automatically vitiated. It is true that the Rule provides for constituting the Selection Committee with the Senior-most Graduate Teacher of the School which impliedly means and includes the available Senior-most Teacher of the School. And as the Senior-most Teacher recused himself from being a Member of the Selection Committee, the inclusion of the

2nd Senior-most Graduate Teacher of the School into the Selection Committee in his place was proper and legal. There may be many circumstances when the Senior-most Graduate Teacher might recuse himself from participating or might be indisposed to function as a Member and in such eventualities, his replacement by the next senior-most Teacher in the Selection Committee would not be an illegality.

8. It is pertinent to mention herein that there is hardly any whisper of bias levelled by Respondent No. 6 against the 2nd senior most graduate teacher. It is not the case of Respondent No. 6 that only because of the inclusion of the 2nd senior most teacher of the school in the selection committee; he could not qualify in the selection process. His only contention was that since the selection committee was not constituted with the senior most graduate teacher of the school, the entire selection was vitiated with which we do not agree.

9. From evaluation copy of Grade-IV recruitment-Annexure-2-which shows the marks obtained by the candidates in both written test and viva-voce, it is evident that appellant secured 26 marks and Respondent No. 6 secured only 01 mark out of 30 marks in the written test. It is not the case that Respondent No.6 secured higher marks in written test and due to the inclusion of the 2nd senior most teachers, appellant was given more marks in viva-voce to deprive him from his legitimate dues. Besides, there were other candidates who got even much more marks than Respondent No.6. In fact, the position of Respondent No.6 is much below in the merit list and non-appointment of appellant would in no way confer any better right on Respondent No.6 to get appointment. Further, there is no material on record to even remotely justify the allegation of Respondent No.6 that other members of the selection committee were not properly selected. So, there is no reason to even remotely suggest that they improperly selected appellant and rejected Respondent No.6.

10. Right to challenge the constitution of the selection committee at the fag end being unsuccessful in the selection process is not open to Respondent No.6 in view of the settled position of law as held by the Supreme Court in *Dhananjay Malik-versus-State of Uttaranchal* reported in (2008) 4 SCC 171. While referring to an earlier judgment, the Supreme Court has observed as under:-

"In *Madan Lal vs. State of J & K*, (1995) 3 SCC 486, this Court pointed out that when the petitioners appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned, the petitioners took a chance to get themselves selected at the said oral interview. Therefore, only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed writ petitions. This Court further pointed out that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not

properly constituted. In the present case, as already pointed out, the writ petitioners- respondents herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done.

9. In a recent judgment in the case of Marripati Nagaraja vs. The Government of Andhra Pradesh, (2007) 11 SCR 506 at p.516 SCR this Court has succinctly held that the appellants had appeared at the examination without any demur. They did not question the validity of fixing the said date before the appropriate authority. They are, therefore, estopped and precluded from questioning the selection process."

11. In view of the aforesaid discussions, we find sufficient merit in the instant appeal and in our considered view, the impugned judgement and order passed by the learned Single Judge is not sustainable. The selection of appellant and his consequential appointment was made purely on the basis of merit and we do not find any reason to interfere with the same.

12. Accordingly, the appeal is allowed and the impugned judgement and order passed by the learned single judge is hereby set aside.