

---

**(2012) 09 GAU CK 0071**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 1504 of 2008**

Sri Madhab Roy

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

---

**Date of Decision :** 13-09-2012

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2013) 2 GLT 886

**Hon'ble Judges :** Anima Hazarika, J; Amitava Roy, J

**Bench :** Division Bench

**Advocate :** G. Kakati Das, Ms. P. Chakraborty, Mr. S. Hoque and Mr. M. Deka, for the Appellant; S.S. Dey Standing Counsel, Gauhati High Court, Mrs. S.B. Choudhury, S.K. Das and Mrs. S. Chakraborty, for the Respondent

**Final Decision :** Allowed

---

## Judgement

Amitava Roy, J.—The present challenge under Article 226 of the Constitution of India seeks annulment of the orders dated 05.01.2008 and 12.02.2008 of the respondent No. 2 appointing the proforma respondent Nos. 3, 4 and 5 to the post of Peon in the Office of the District & Sessions Judge, Karimganj. We have heard Ms. P. Chakraborty, Learned Counsel for the petitioner. Also heard Mr. S.S. Dey, learned Standing counsel, Gauhati High Court for respondent No. 2 and Ms. SB Choudhury, Learned Counsel appearing for the proforma respondent Nos. 3, 4 and 5.

2. The pleaded case of the petitioner sans unnecessary details is that after having been engaged as a part time menial on daily wage basis in the Office of the District & Sessions Judge, Karimganj vide order dated 07.10.2004, he continued in various capacities thereafter on the same arrangement, however, with intermittent breaks. Though in the process he was once terminated w.e.f. 01.12.2007, he was engaged again as part time menial w.e.f. 08.01.2008. According to him, he is continuing as such with breaks as on date.

The petitioner has averred that the proforma respondent Nos. 3, 4 and 5 were engaged after him also on temporary basis and though all of them were at par on every essential aspect, vis-?-vis, their claim for regular appointment and or regularization of their services, vide the orders impugned they were appointed as peon against substantive vacancies in the Office of District & Sessions Judge, Karimganj to his exclusion and without following any procedure prescribed contemplated by law.

3. According to the petitioner, in view of blemishless services rendered over the years w.e.f. 07.10.2004, he was entitled to be considered for regular appointment to the post of Peon lying vacant at all relevant times and/or for regularization of his services in that capacity.

4. The respondent Nos. 1 and 2 in their affidavit while admitting the engagement of the petitioner as a casual employee since 17.10.2004 with breaks had pleaded that the proforma respondent Nos. 3, 4 and 5 had been appointed on the basis of the recommendations to that effect of the concerned Selection Board. According to the answerable respondents no application for regular appointment had been submitted by the petitioner and that instead of bringing his grievances to the notice of the concerned authorities, he rushed to this Court for redress. That the impugned appointments had been made in the exigency of service has been underscored.

5. The proforma respondent Nos. 3, 4 and 5 while generally endorsing the above pleaded stand of the respondent Nos. 1 and 2 have with particular reference to the Government Memorandum No. BB. 32/2007/01(B/S) dated 17th March, 2007 asserted that the plea of non-compliance by the Selection Board of any prescribed procedure is wholly unsustainable and thus the challenge lacks in merit and ought to be rejected in limine.

6. The Learned Counsel for the parties have abided by their pleaded stands. Mr. Dey has further relied upon the relevant office records impugned pertaining to their appointments. He has further submitted that as on date there is no rule framed enjoining a procedure for appointment to Grade IV post in the Office of District & Sessions Judge as well as the Chief Judicial Magistrate in the State of Assam.

7. We have duly considered the pleaded facts and the arguments advanced. We have taken note of the documents as well as the records laid before us by the learned Standing counsel, Gauhati High Court.

8. Undoubtedly at all relevant times, the petitioner and the proforma respondent Nos. 3, 4 and 5 were engaged temporarily as a casual/daily wage employee in the Office of District & Sessions Judge, Karimganj. Noticeably the petitioner's plea of having been engaged earlier than the proforma respondent Nos. 3, 4 and 5 in that capacity has remained unrefuted by the respondents. Though the respondent Nos. 1 and 2 in their affidavit have not unreservedly accepted the petitioner's version of flawless services, no particular instance has been cited to

dislodge such claim of his. It is also not denied by the respondents that, although with breaks, the petitioner is still engaged in the same capacity in the Office of District & Sessions Judge, Karimganj. It is not disputed by the respondents that at the relevant point of time when the recommendations by the Selection Board as referred to in the impugned orders had been made, the petitioner had been continuing in his capacity in the same establishment and was thus logically entitled to have his case considered at par with the proforma respondent Nos. 3, 4 and 5 either for regular appointment to the existing vacant posts of peon or for regularization of services as permissible in law.

9. Be that as it may, it is plainly clear from the impugned orders that appointment of the proforma respondent Nos. 3, 4 and 5 had been made on the basis of recommendations of the Selection Board read with the aforementioned Office Memorandum dated 17.03.2007.

10. The Office Memorandum dated 17.03.2007 deals with relaxation of the requirement prior approval of Finance (SIU) Department for filling up of the vacant posts under this Court and in the Subordinate Judiciary. A plain reading of this Office Memorandum in our view does not either indicate or approve complete abandonment of a procedure contemplated by law for appointment to public posts even in absence of statutorily framed rules for the purpose.

11. A thorough perusal of the original records pertaining to the impugned appointment reveals that a note was put up before the District & Sessions Judge Karimganj on 02.01.2008 indicating, inter alia, that two posts of peon were likely to be vacant in the event of promotion of an LDA and a Process Server and that the same might be filled up by selection from the existing casual employees. The note referred to the candidature of Sri Alam Choudhury (proforma respondent No. 3) and Sri Mohan Nath (proforma respondent No. 4) then serving as Bungalow Peon and Peon on casual basis on daily wages. Reference was also made to another post of Peon lying vacant in the same establishment consequent thereupon the sudden demise of Dipak Kalita, peon, against which his widow had requested for compassionate appointment. It was proposed that candidature sought for this post be secured by soliciting names from the local employment exchange for direct appointment. On 05.01.2008, thereafter a Selection Board headed by the District & Sessions Judge, Karimganj recommended for appointment of proforma respondent Nos. 3 and 4, considering the exigencies of service. According to the Board, in view of the urgency, the two posts of peon ought to be filled up by casual wage earner and bungalow peon. It deferred the filling up of the other post.

12. The records further reveal that another note dated 06.02.2008 was laid before the District & Sessions Judge, Karimganj. This time the candidature of proforma respondent No. 5 was laid before the Selection Board for consideration of his prayer for appointment as peon in the Office of the aforementioned authority. On 12.02.2008, the Selection Board having felt the urgent necessity of peon for proper functioning of the establishment of learned Munsiff, Karimganj

recommended the appointment of proforma respondent No. 5, the then Bungalow Peon, in the third post of peon. The appointment orders followed.

13. In absence of any Rules framed by the appropriate authority outlining the procedure for appointment to Grade IV posts in the establishment of Subordinate Judiciary, it is incumbent, in our view having regard to the posts to which the recruitment is to be made, that the exercise to be undertaken has to be fair, objective, transparent and participatory in nature.

14. The above disclosures from the records reveal that the processes of appointment of the proforma respondent Nos. 3, 4 and 5 were initiated by the orders dated 02.01.2008 and 06.02.2008 laying their candidature before the Selection Board. Even assuming that the proforma respondent Nos. 3 and 4 had applied for appointment and or regularization of their services against the vacant posts of peon then existing in the Office of the District & Sessions Judge, Karimganj, in our comprehension, the Selection Board ought to have, in essential terms, advertised the said posts soliciting participation of candidates eligible therefor and ought not to have confined the process to the three applicants i.e. the proforma respondent Nos. 3, 4 and 5 and, that too, to the exclusion of the petitioner who then admittedly was also rendering his services in a similar capacity akin to them (proforma respondent Nos. 3, 4 and 5). In other words, even if the omission on the part of the Selection Board to advertise the posts is condoned, in the facts and circumstances of the case, having regard to the pressing urgency for appointments, in our opinion, the case of the petitioner should not have been excluded from the process. It is the pleaded case of the petitioner that he was eligible for appointment at the relevant point of time.

15. To reiterate, the Office Memorandum dated 07.03.2007 is of no significance or relevance to validate the process of appointment of the proforma respondent Nos. 3, 4 and 5.

16. In the above view of the matter, on a cumulative consideration of the relevant facts, we are constrained to hold that the process undertaken by the Selection Board, as transpires from the original official records culminating in the impugned appointments of proforma respondent Nos. 3, 4 and 5 cannot be sustained in law.

17. The above determination notwithstanding, as the decisive consideration of the appointing authority had been the institutional exigencies, subsistence whereof, as on date, is not disputed, we permit the continuance of the proforma respondent Nos. 3, 4 and 5 in their present capacity on purely temporary basis with a direction to the District & Sessions Judge, Karimganj to initiate a fresh process for regular appointment to the posts held by them strictly in accordance with law. In the process so commenced it would be open for the petitioner and the proforma respondent Nos. 3, 4 and 5 to participate. If by then, amongst others they have crossed the age of eligibility they would be at liberty to file appropriate representation for condonation thereof. The District & Sessions

Judge, Karimganj would ensure that the process is public participatory in nature. In the matter of assessment of comparative suitability of the candidature, having regard to the services rendered by the petitioner and the proforma respondent Nos. 3, 4 and 5, the Selection Board would accord due weightage towards past experiences gained and services rendered by them at the time of making final selection. The process, as ordered, in the singular facts and circumstances should be completed within a period of 6(six) months from today, the time frame provided being the outer limit for all intents and purposes. Needless to say the continuance of the proforma respondent Nos. 3, 4 and 5 in their respective posts would be subject to the final outcome in the selection process as required by this order. The writ petition is allowed in the above terms. No costs.