

(2008) 07 GAU CK 0002
In the Gauhati High Court
Case No : W.A. No. 548 of 2005

Sri Nishi Nath Sarma

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 28-07-2008

Acts Referred:

Assam Public Service Commission Regulations, 1951 — Regulation 3, 3(1)
Constitution of India, 1950 — Article 14, 16

Citation : (2009) 120 FLR 433 : (2009) 1 GLD 374

Hon'ble Judges : Jasti Chelameswar, C.J.; Anima Hazarika, J

Bench : Division Bench

Advocate : N. Dutta, D.K. Das, R.S. Choudhury, A.M. Mazumdar, S.K. Sarma and S. Deka, for the Appellant; B. Goyal, G.A., A.K. Goswami, D.K. Sharma, S.K. Medhi, K. Gupta, J. Chutia and N.N. Hazarika, for the Respondent

Final Decision : Allowed

Judgement

1. Chelameswar, C.J.—This is an appeal presented against the order dated 24.6.2005 made in WP (C) No. 62/2003 by the 7th Respondent.

2. This Appellant was initially appointed temporarily as Extension Officer (Fishery). Pursuant to such an appointment he was posted at Srijangram Development Block, Bongaigaon and joined the service on 15.10.1999. Sometimes later an advertisement inviting applications for filling up of 40 numbers of posts of Fishery Extension Officer was issued. The Appellant was one of the applicants who responded to the advertisement. In the selection process that ensued, the Appellant was shown at SI No. 16 of the select list dated 19.1.2001.

3. In the meanwhile WP(C) No. 4910/2000 came to be filed. All that the Appellant says is that due to an interim order dated 8.1.2001 in the said writ petition this Court directed not to oust anybody working under Regulation 3(1) of the APSC Regulation, 1951. Subsequently the said order came to be modified in Misc. Case No. 617/2001 permitting the Respondents to appoint all the selected

candidates from out of the select list dated 19.1.2001 referred to earlier.

4. It appears that, in the meanwhile by a proceeding dated 8.11.2001 the Appellant's original temporary appointment was sought to be terminated challenging the same the Appellant herein once again approached this Court by way of WP(C) No. 7940/2001. By an order dated 22.11.2001 this Court directed the Respondents therein not to remove the Appellant from service except for the purpose of accommodating the persons who have been placed above the Appellant in the select list dated 19.1.2001.

5. The Director of Panchayat and Rural Development Department by his communication dated 18.5.2002 sought the approval of the Secretary to the Government of Assam, Panchayat and Rural Development Department for extending the temporary employment of the Appellant herein. It is strange to notice that by the date of the said communication and order of this Court dated 22.11.2001 referred to earlier modifying the earlier order, was already in existence. None of these orders have been specifically referred to by the Director Panchayat and Rural Development in the communication dated 18.5.2002.

6. As the situation stood thus, by an order dated 17.7.2002 the Director of Panchayat and Rural Development Department chose to regularize the service of the Appellant herein alongwith the service of another person who was similarly situated. The relevant portion of the order reads as follows:

Subject to production of final police verification report and in pursuance of Approval of State Level Empowered Committee communicated vide Government Letter No. RDD 103/2001/35 dated 28.6.2002 and also approval accorded vide Government Letter No. RDD 103/2001/72 dated 17.7.2002, the service of the following Extension Officers (Fishery) working under Regulation 3(f) of APSC Regulation, 1951 are hereby regularized as Extension Officer (Fishery) in the scale of pay of Rs. 3580-90-4480-120-4720-EB-120-5200-175-6600-250-8100-325-8750/- p.m. plus all other allowances as admissible under rules with effect from 19.1.2001, i.e. with effect from the date of recommendation by the APSC vide their letter No. 50 PSC/DR-26/2/98-99 dated 19.1.2001.

7. Two strange facts can be noticed from the said order. While on one hand the order refers to the select list dated 19.1.2001 on the other hand it purports to regularize the service of the Appellant, who had by then been working on temporary basis. It is worthwhile mentioning here that the advertisement which preceded the select list dated 19.1.2001 was issued for filling up 40 posts of Extension Officer (Fishery). The State of Assam and its officers instead of appointing the successful candidates in the select list conducted by the Assam Public Service Commission chose to appoint only the Appellant and another person by the proceedings dated 17.7.2002.

8. In the meanwhile the present writ petition being WP(C) No. 62/03 came to be filed by two writ Petitioners. The Appellant herein was the 7th Respondent

therein. The case of the writ Petitioners is that in the select list dated 19.1.2001 the Petitioners were shown to be more meritorious than the Appellant herein and the other Respondents in the said writ petition. The Petitioners therein were not given appointment but the Appellant and the others were illegally appointed. The Respondents (authorities) to the writ petition took the defence that by a letter dated 7.7.2002 the Petitioners therein had given up their right of appointment though found meritorious in the select list dated 1.1.2001, therefore, the Appellant and another were appointed. The writ Petitioners in the above mentioned WP(C) No. 62/03 disputed the genuineness of the said letters. Thereupon this Court referred those letters to handwriting expert for comparison of the signatures of the Petitioners. By a communication dated 18.6.2005 the handwriting expert opined that the signatures on the letters dated 7.7.2002 are not the signatures of the writ Petitioners.

9. A learned Judge of this Court by the order under appeal, therefore, directed that the appointment of the Appellant herein and another who are lower in the merit list dated 19.1.2001 than the writ Petitioners be cancelled and the writ Petitioners be appointed.

10. The Appellant subsequently filed Review Petition No. 78/2005 of the above mentioned order in the WP(C) No. 62/2003 dated 24.6.2005 on the ground that the Appellant did not receive notice of the writ petition. Apart further inferior merit position in the select list dated 19.1.2001 were also appointed by the State and therefore, if at all the claim of the writ Petitioners is to be upheld people with such further inferior merit position should give way to the writ Petitioners but not the Appellant herein.

11. By an order dated 31.8.2005 the learned Judge who heard the review petition rejected the review petition on the ground that though people with a merit position inferior to the Appellant were appointed by the State such appointments were made pursuant to an order of this Court in WP(C) No. 5228/03 dated 27.1.2004 and, therefore, those appointments could not be disturbed. Hence the present appeal.

12. The facts are not in dispute. The only submission made by the learned Counsel for the Appellant is that once it is found by the learned Judge by the judgment under appeal that people with inferior merit than that of the Appellant had been appointed the Appellant cannot be thrown out of the service to accommodate the writ Petitioners. According to the learned Counsel for the Appellant people with least merit should give way in a situation like this. The fact such people came to be appointed by virtue of an order of this Court does not confer any better right on them than what Articles 14 and 16 of the Constitution of India give them.

13. A copy of the judgment in WP(C) No. 5228/03 is placed before us. It appears from the said order that the Petitioners therein, two in number, were placed at SI. Nos. 19 and 23 of the select list dated 19.1.2001. It further appears from the

judgment that of the 40 posts sought to be filled up through the said selected process two posts at Roster Point Nos. 63 and 91 were reserved in favour of SC and ST(P), the same could not be filled up. It is not clear for what reason, as the Government did not chose to file an affidavit in opposition in the said writ petition. It appears from the above judgment that the Director of Panchayat and Rural Development Department by his letter dated 5.7.2003 recommended for the filling up of the above mentioned two posts by candidates belonging to the open category subject of course to the condition that such posts would be carried forward in the next recruitment. It appears from the judgment that it was further recommended by the Director of Panchayat and Rural Development that the writ Petitioners therein be appointed against those posts. It is not known why such a recommendation came to be made as it as already indicated hat the State chose to remain silent in the s aid writ petition. Faced with such a situation the learned Judge who heard the matter directed as follows:

The statements made in the writ petition remain uncontroverted. The learned State counsel has not been able to produce any material to the contrary. On a consideration of the available materials on record. I therefore, dispose of this writ petition with a direction to the State Respondents, more particularly, the Commissioner and Secretary to the Government of Assam, Panchayat and Rural Development (C) Department, Dispur-Respondent No. 1 to Act in terms of the decision contained in the letter dated 5.7.2003 (Annexure 5 to the writ petition) and take necessary steps for appointment of the Petitioners against the aforementioned two vacant posts.

14. The entire episode demonstrates the utter lawlessness and chaotic administration of the Panchayat and Rural Development Department. While the process was initiated for filling up of 40 posts, appointment orders were issued on piecemeal basis without any application of mind to the relevant facts of the case. It is not very clear from the record as to how the Respondents 6 and 7 to this appeal who are inferior in merit to the Appellant were recommended to be appointed by the Director of Panchayat and Rural Development Department by the letter dated 5.7.2003. As already noticed, the State conveniently chose to remain silent when the present Respondents 6 and 7 approached this Court by way of WP(C) No. 5228/03 which resulted in a direction for their appointment. The entire episode, in our view, demonstrates either an absolute lack of coordination among the various machineries of the department in question or in the alternative there are sinister designs behind the silence of the concerned officer. The net result is, the process of this Court is throughly abused resulting in the present chaotic State of affairs.

15. The Respondents 6 and 7 though served did not chose to appear in the present appeal and defend/justify their appointments nor did the State explain the circumstances under which the Director of Panchayat and Rural Development Department by his letter dated 5.7.2003 recommended the appointment of the said Respondents.

16. In the circumstances while we do not propose to interfere with the judgment under appeal by disturbing the direction given in favour of the writ Petitioners (Respondents herein) we quash the appointment of the Respondents 6 and 7 and direct the State to consider the case of the Appellants herein and the Respondents 6 and 7 for appointment to the posts in accordance with law.

17. The appeal stands disposed of.