
(2012) 02 GAU CK 0044
In the Gauhati High Court
Case No : Writ Petition (C) No. 6135 of 2011

Sri Romesh Ch. Chutia and Others	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 2 GLD 645

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : S.S. Dey and D. Borgohain, for the Appellant; A.D. Choudhry, SC Edn., for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The petitioners involved in this two writ petitions are serving as Assistant Inspector "of Schools in the Education Department. While in the 1st writ petition being WP(C) No. 216/2011, the prayer of the petitioners is to issue a direction to the respondents to enhance the quota of promotion to the cadre of Inspector of Schools from the existing 25% to 50%; in the 2nd writ petition being WP(C) No. 6135/2011, in addition to the above prayer, further prayer is to set aside and quash the advertisement No. 10/11 issued by the Assam Public Service Commission (APSC) for 16 posts of Deputy Director/Inspector of Schools in the Education (Secondary) Department. As could be gathered from the pleadings raised in the writ petition, according to the petitioners there is need and justification to increase the promotional quota upto 50% from the existing 25% as provided for under Rule 5(3) of the Assam Education Service Rules, 1982. It has been contend that the members of the Assam Education Service (Class-I) Officers Association has been praying for necessary amendment of the said Rules of 1982 for enhancement of promotional quota in the cadre of Deputy Director of Public Instruction/Inspector of Schools. It has further been contended that since there is proposal to amend the Rules towards increasing of quota,

pending consideration of finalization of such proposal/the respondents ought not to have and could not have issued the impugned advertisement No. 10/11 proposing to fill up 16 posts of Deputy Director/Inspector of Schools by way of direct recruitment.

2. I have heard Mr. S.S. Dey, learned Sr. Counsel, assisted by Ms. D. Borgohain, Learned Counsel for the petitioners. I have also heard Mr. A.D. Choudhury, learned Standing Counsel, Education Department. Advancing an altogether different argument than the pleaded case of the petitioners, Mr. Dey, Learned Counsel for the petitioners submits that when provisions of the aforesaid 1982 Rules do not provide for any direct recruitment to the post of Inspector of Schools from the open market, the respondents could not have issued the advertisement proposing to fill up the posts of Deputy Director/Inspector of Schools through open competition to be conducted by the APSC. Being confronted with the queries made by the Court as to how the petitioner can take altogether different stand during the course of argument than what has been pleaded in the writ petition, Mr. Dey, Learned Counsel for the petitioners submits that since the question raised is essentially a legal question, the Court will not non-suit the petitioner on that count.

3. Mr. Choudhury, learned Standing Counsel, Education Department, referring to the pleaded case of the petitioners, which is enhancement of prescribed quota for promotion (25% to 50%) submits that the petitioner cannot be permitted to argue altogether a different case than what has been pleaded in the writ petition.

4. Mr. Dey, Learned Counsel for the petitioners to bring home his point of argument has referred to certain provisions of the aforesaid Rules of 1982, which includes Rule 2(g); Rule 3; Rule 5; Rule 6; Rule 8; Rule 12 and finally Schedule-I and II to the said Rules. According to him reading together, the said provisions, there is no mandate in the said Rules to fill up the post of Deputy Director/Inspector of Schools by way of direct recruitment from open market. According to him, both the quotas i.e. 75% by direct recruitment and 25% by promotion are required to be filled up from amongst the Assistant Inspector of Schools.

5. Rule 5 prescribing the method of recruitment both by direct recruitment and promotion to various cadres, also prescribes recruitment to the cadre of Inspector of Schools 75% by direct recruitment and 25% by promotion. For a ready reference, Rule 5(3)(a) is quoted below :

5. (3)(a) by direct recruitment upto 75% with qualification prescribed under R.8 in the cadre of Dy. Director and by promotion upto 25% in the cadre of Dy. Director from the select list of Assistant Inspector, Assistant Inspectress of Schools and Assistant Directors, Vocational Guidance and Assistant Directors, Planning and Co-ordination having five years experience in the post of possessing at least Second Class Masters Degree

6. According to Mr. Dey, Learned Counsel for the petitioner, the aforesaid direct recruitment upto 75% with qualification prescribed under Rule 8 in the cadre of

Deputy Director and promotion upto 25% in the cadre of Inspector of Schools are required to be made from the select list of Assistant Inspector of Schools who possess the requisite qualification. According to him had the intention of the legislature being otherwise it would have been made clear in the Rule as has been done in the case of appointment to the post of Assistant Inspector of Schools. He further submits that if the provisions of Rules 6, 8 and 12 and Schedule I and II are read together, it will be clear that there is no room for direct recruitment by inviting application from the open market.

7. I have given my anxious consideration to the submissions made by the Learned Counsel for the parties and have also gone through the entire materials on record. Appreciating the same, my conclusions are as follows :

8. As noted above, the whole basis of the case of the petitioners involved in these two writ petitions is the proposed amendment to the Rule to extend the quota of promotion to the post of Inspector of Schools from 25% to 50%. According to them, unless and until necessary, amendments to the aforesaid Rules of 1982 enhancing the promotion quota are brought to the rules, the respondents cannot take recourse to the mode, of direct recruitment, as is sought to be done through the impugned advertisement. In addition to the prayer for direction to the respondents to bring necessary amendments to the Rules enhancing the quota of promotion, further prayer made in the writ petition being WP(C) No. 6135/ 2011 to set aside and quash the advertisement, by which process of direct recruitment has been initiated.

9. Needless to say that a process for recruitment cannot be allowed to be stalled on the ground that there is proposal for amendment of the Rules As to whether the proposed amendment would come to reality or not is not known at this stage. Even assuming that proposed amendment, of the Rule would be materialized enhancing the prescribed quota of promotion to 50% from 25%, same will have only prospective a location. The Writ Court exercising its power of judicial review under Article 226 of the Constitution of India cannot act on presumption, more particularly when the rules as it stands today, prescribes only 25% quota for promotion.

10. The second round that has been raised by Mr. Dey, Learned Counsel for the petitioner is that irrespective of the pleaded case of the petitioners, since the question of law has been raised in reference to the aforesaid provisions of 1982 Rules, this Court is required to answer the said question of law.

11. As per the own understanding of the petitioners the provisions of 1982 Rules provide for direct recruitment (75%) and promotion (25%) to the cadre of Inspector of Schools. Mr. Dey, Learned Counsel for the petitioners has argued in reference to Rule 5(3) of the Rules that although the quota of direct recruitment (75%) and promotion (25%) are mentioned in the rules, but they are meant only for Assistant Inspector of Schools and the quota of 75% (direct recruitment) cannot be filled up by open competition.

12. Rule 5(1) of the said Rules, prescribes the method of recruitment to the post of DPI etc. which is by way of direct recruitment. On the other hand the post of Additional Director etc. is to be filled up by way of promotion in the manner prescribed in the Rule 11. Rule 5(3) makes the provision for recruitment to all other posts inclusive of the post of Inspector of Schools. As per Rule 5(2) (a) 75% of the said post is required to be filled up by direct recruitment and 25% by promotion. What Mr. Dey, Learned Counsel for the petitioner has contended is that the expression "by direct recruitment upto 75% with qualification prescribed under Rule 8 in the cadre of Deputy Director and by promotion upto 25% in the cadre of Deputy Director from the select list of Assistant Inspector" is to be read conjointly and reading in that manner, it will appear that both the quotas i.e. 75% and 25% are meant only for the Assistant Inspector of Schools and thus in any selection involving direct recruitment and promotion, the selection must confine only to the Assistant Inspector of Schools. I am afraid such an argument cannot be accepted for the simple reason that Rule 5(3) clearly prescribes that 75% of the posts of Inspector of Schools shall be filled up by direct recruitment and remaining 25% by promotion. The whole fallacy is in the manner in which the aforesaid expression has been read. The said expression has been read together so as to club both direct recruitment and promotion together towards confining only the Assistant Inspector of Schools for consideration against both the quotas.

13. Merely because the post of Assistant Inspector of Schools for which Rule 3(b) specifically provides for examination to be conducted by the Commission, but in the case of Inspector of Schools, no such expression finds mention in Rule 3(a), it can be said that 75% quota prescribed for direct recruitment is to be confined only to Assistant Inspector of Schools. This position will be clear on a reading of Schedule II of the Rules, prescribed under Rule 8, 5 (1). Clause-3 to Schedule II prescribes the qualification for recruitment to the post of Inspector of Schools, which reads as follows :

3. Inspector/Inspectress of Schools and Deputy D.P.I. Second Class Master Degree having uniformly brilliant career and possessing teaching experience in schools and colleges for ten years or administrative experience for at least 10 years of which 5 years must be in teaching.

14. The aforesaid Clause 3 of Schedule II does not indicate that the post of Inspector of Schools is to be filled up only from amongst the Assistant Inspector of Schools. Had it been the intention, the minimum requirement of service in the cadre of Assistant Inspector of Schools etc. would have prescribed in the said clause. Not to speak of any such prescription, there is not even any whisper of the post of Assistant Inspector of Schools in Clause 3 of Schedule II.

15. On being queried, the Learned Counsel for the Education Department has submitted that since the inception of the 1982 Rules, the posts of Inspector of School have all along been filled up 75% by direct recruitment and 25% by promotion. This settled position cannot be altered at the instance of the

petitioners and that too on the basis of the pleadings raised in the writ petition about which discussions have been made above. For all the aforesaid reasons, I do not find any merit in the writ petitions and accordingly both the writ petitions are dismissed.