
(2008) 01 GAU CK 0008
In the Gauhati High Court

State of Tripura and Others	Vs	APPELLANT
Dulali Rani Dutta		RESPONDENT

Date of Decision : 08-01-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2008) 2 GLT 412

Hon'ble Judges : R.B. Misra, J;H. Baruah, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.B. Misra, J.—Heard Mr. S. Chakraborty, learned Counsel for the appellants and Mr. S. Talapatra, learned senior counsel assisted by Mr. B. Banerjee, learned Counsel for the respondent.

2. The present writ appeal has been preferred against the judgment and order dated 22.02.2007 passed by the learned Single Judge of this Court in Civil Rule No. 436 of 1997 whereby the prayer of the writ-petitioner, respondent herein, for being considered as an Assistant Teacher (Primary) in a Government School in handicapped quota on the ground of discrimination and unfair treatment in reference to Articles 14 and 16 of the Constitution was allowed with a direction that the State Authorities are to consider the case of the writ-petitioner for appointment to the post earmarked for the physically handicapped category persons in terms of the notifications dated 15.2.1996 and 16.2.1996 issued by the Director of School Education, Government of Tripura. As directed by learned Single Judge the performance of the writ petitioner in the selection process already held was to be considered and the age of the writ petitioner was not to come in the way of consideration of her case and the entire process was to be completed within 3 (three) months from the receipt of the order.

3. In order to appreciate the facts it is necessary to indicate that the writ-petitioner respondent is an orthopaedically handicapped person having 40

percent disability and is in possession of Madhyamik (School final) and is eligible for being appointed as an Assistant Teacher (Primary) in a Government School. The name of the writ-petitioner was registered in the Employment Exchange of North Tripura District in the physically handicapped women category having registration number is PH(W)/W/8/80 dated 31.12.1980. In view of the notification dated 15.2.1996 and 16.2.1996-she applied to the post of Assistant Teacher (Primary), where, the selection was to be made at State level and total 101 (63+38) posts were earmarked for physically handicapped category persons. The writ-petitioner, was interviewed along with others on 11.9.1996 at R.K. Institution, Kailashahar. However, despite her best performance, she was not selected. It appears that out of 101 vacancies specifically earmarked for physically handicapped category persons only 80 posts were filled up and 3 posts under physically handicapped category were filled up in Kailashahar Sub-Division where the writ-petitioner had appeared.

4. In reference to the query of the writ-petitioner it was indicated by the State authorities that the appointments were given on sub-divisional basis and those who were found qualified in Kailashahar Sub-Division were given appointments. According to the appellant under a policy decision, the State was not obliged to fill up all the posts and to give appointments to all the persons and was at liberty to make selection at Sub-Division level.

5. Whereas the submissions of Mr. S. Talapatra, learned Counsel for the writ-petitioner were appreciated and were given due weightage, so much, so, on the point that the State authorities had not indicated in the notification or in the Advertisement that the selection and appointment to the posts earmarked for physically handicapped persons was to be on sub-division wise. According to Mr. Talapatra it was nobody's case that the writ-petitioner was not physically handicapped and was not eligible for being appointed to the post of Assistant Teacher (Primary) meant for physically handicapped candidates. Since the State authorities had notified the vacancies in the Advertisement for the entire State and at subsequent stage no corrigendum was ever issued. The candidates were also never communicated for selection process and appointment to be made on sub division basis. Since the writ-petitioner bona fide being eligible participated in the selection knowing fully well that the selection to the post was being made at State level, therefore, the selection having been made by the State authorities at sub divisional wise was unwarranted therefore the writ petitioner was discriminated and unfairly treated depriving her from her legal rights.

6. According to Mr. S. Talapatra, the State authorities have also not notified or indicated by any notification/memorandum or communication that how many posts were being allocated to sub division-wise, so much so, three vacancies specifically to be filled up in Kailashahar Sub-Division were also not even indicated prior to selection:

7. On the basis of the materials on record and keeping in view the pleadings of the parties, learned Single Judge has arrived at a conclusion that out of 101

posts notified as vacancies meant for physically handicapped candidates at the State level only 80 vacancies were filled up and 21 vacancies still remained to be filled up. According to learned Single Judge there could not be any reason not to give appointment to the writ petitioner who had merely secured relatively lower marks than those who were given appointment, whereas, sufficient number of vacancies were still available. More so, when the selection was to be made at the State level and not at the sub divisional level. Learned Single Judge has rightly observed that rationalization of marks in respect of the candidates appearing in selection process in different Sub-Division centers have also not been made by the State Authorities. Learned Single Judge has rightly observed that denial of appointment to the writ petitioner by confining the selection to the posts earmarked for Kailashahar Sub-Division through an internal arrangement, without notifying that the selection process would be undertaken Sub-Division wise, indicates lack of transparency in the selection process and the selection made in such manner was contrary to the process indicated in the notifications dated 15.2.1996 and 16.2.1996 of Director of School Education.

8. In our considered view Learned Single Judge has rightly opined that the writ petition had not been fairly treated by the State authorities in the matter of consideration of her candidature for appointment against physically handicapped category posts and the rights of the writ petitioner under the provisions of Articles 14 and 16 of the Constitution have been violated.

9. The State authorities are obliged to fill up the vacancies after finalization of the selection conducted in terms and conditions indicated in the advertisement unless the aspirants/candidates were notified about the change in the parameters by way of timely issued corrigendum in the name of policy measure or statutory requirement. The State authorities shall not be allowed to change the parameters at the time of issuing appointment giving unfair treatment to the selected candidates as in the instant case no minimum marks were fixed for successful candidate and the writ-petitioner cannot also be said unsuccessful.

10. We have heard learned Counsel for the parties. We have gone through the records and We are of the considered view that the State authorities, the appellant herein, have published the advertisement dated 15.2.1996 and 16.2.1996 indicating the selection of candidates for appointment against physically handicapped category to be made against 101 posts at State level and at no stage any corrigendum/memorandum/notification/modification was ever issued. The writ-petitioner bona fide being eligible has participated in the selection process and was interviewed in reference to the notification/declaration/advertisement. The selection at Kailashahar Sub-Division was finalized appointing only three persons keeping as many as 21 vacancies vacant in the entire State without any cogent reason.

11. We are of the considered view that the learned Single Judge has carefully considered all the aspects and has rightly held that the writ petitioner has not been given fair treatment in respect of the matter of her consideration for

appointment against physically handicapped category posts of Assistant Teacher (Primary) in a Government School in the State of Tripura and the writ-petitioner's legal right has been violated under Articles 14 and 16 of the Constitution of India. The impugned order dated 22.2.2007 requires no interference, as such we do not find any illegality and impropriety in the impugned order. We do not find any merit in the writ appeal, accordingly the same is dismissed. We express our trust and hope that the judgment and order impugned in the present appeal would be complied with by the State authorities within 3 (three) months from the presentation of the certified copy of this order.