

(2009) 11 GAU CK 0013

In the Gauhati High Court

Case No : Writ Petition (C) No's. 905 and 1135 of 2008 and 2979 and 2539 of 2009

Syed Ali Shikdar and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 12-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2010) 4 GLR 436 : (2010) 2 GLT 64

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : P.K. Goswami, A.C. Borbora, A.M. Mazumdar, Y.S. Mannan, U. Sarma, A. Choudhury, N.J. Das, P.K. Das, B.D. Goswami, A. Talukdar, J.M. Gogoi, P.D. Nair, M.B. Buragohain and G. Alam, for the Appellant; K.N. Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

Hrishikesh Roy, J.—Heard Mr. A.C. Borbora, senior advocate and advocates Mr. B.D. Goswami, Mr. G. Alam who are representing the petitioners in these 4 writ petitions. Mr. K.N. Choudhury, learned Addl. Advocate General makes submissions on behalf of the State respondents.

2. The petitioners claim appointment to the post of Constables in the Assam Police in pursuant to their participation in the selection process, after they offered their candidature by responding to the advertisement dated 17.1.2000. The advertisement did not specify any specified number of vacancies.

3. For the record it may be noted that WP(C) No. 1135/2008 and WP(C) No. 905/2008 have been filed in pursuant to the order passed by the Supreme Court on 23.11.2007 in WP(C) (Civil)Nos. 418/2007 and 442/ 2007, which were filed by the petitioners in these 2 writ petitions. However, WP(C) 2979/2009 and WP(C) 2539/2009 have been filed independent of any such order.

4. Before proceeding further it may be appropriate to take note of the order passed by the Apex Court on 23.11.2007. Being relevant and short the same is extracted hereinbelow for ready reference:

These petitions have been filed under Article 32 of the Constitution of India.

From a bare perusal of the order and the materials on record, we find that there is already an order passed by the High Court of Assam at Guwahati and the petitioners have already been selected but no appointment has yet been made. Since that order has been passed to consider the case of the writ petitioners for appointment in accordance with the policy decision of the State Government, the petitioner should move the High Court under Article 226 of the Constitution. Mr. R.K. Das, Learned Senior Counsel appearing on behalf of the petitioner submits, on instruction, that he will move the High Court in a month from today. If such an application is filed by the writ petitioner, the High Court is requested to dispose of the same as early as possible. The writ petitions are disposed of accordingly.

5. As can be seen from the above direction, the Supreme Court referred to an order passed by the High Court, which purportedly indicates that the petitioners have been selected in pursuant to the recruitment process following the advertisement made on 17.1.2000. The Learned Counsels for the petitioners refer to the High Court order dated 24.5.2004 in a batch of 147 writ petitions including WP(C) No. 720/ 2001, to contend that the Supreme Court was referring to this order of the High Court and that the right of the writ petitioners have been purportedly crystallized through this order of the High Court passed on 24.5.2004.

6. As the petitioners stake their claim on the order dated 24.5.2004, whereby the learned Single Judge disposed of about 147 writ petitions, a careful examination of the said proceeding of the High Court would be in order.

7.1 In dealing with the contour of the cases the learned Judge recorded as under:

...2. By an advertisement published in the newspapers on 17.1.2000, applications were invited for recruitment of constables in different Battalions of the Assam Police. In the advertisement in question, the number of posts that were proposed to be filled up were not indicated and though the minimum conditions of eligibility for appointment were stipulated, the norms which would govern the recruitment were also not mentioned. A very large number of candidates applied pursuant to the advertisement issued and over 20,000 of them having satisfied the recruitments of eligibility were called to undergo the selection process. The selection, it must be noted, was held in the District Headquarter in all the 23 Districts of the State. After the conclusion of selection process and even after on the expiry of a reasonable period of time thereafter, as no select list was published, a large number of writ applications were filed, wherein the relief claimed for was for a direction to the respondents to publish the select list and thereafter to make appointments in accordance therewith.

While the aforesaid writ applications were pending before this Court, as appointments of constables were being made by the respondents, another set of writ petitions were filed calling into question the aforesaid appointments as well as the selection process itself. Thereafter, it appears that a second advertisement was issued on 26.7.2002 proposing to recruit about 1300 more Constables in the Police Battalion. Another batch of writ applications was filed questioning the validity of the aforesaid second advertisement dated 26.7.2002, wherein it was contended that appointment of eligible candidates should be made on the basis of the earlier selection held and the respondents should be restrained from proceeding with the second process of recruitment sought to be initiated by the advertisement dated 26.7.2007. All the writ applications being interconnected and having raised a core question, which was perceived to be common, were heard together by this Court on 5.12.2003.

7.2 The court order dated 24.5.2004 reveals that the High Court relied upon an Inquiry Report which recorded that select list was not published in newspaper in pursuant to selection exercise following the advertisement dated 17.1.2000. The learned court also found that the records of selection have been destroyed and in the absence of relevant records the court expressed its helplessness to reach a positive conclusion in the matter. The court opined that it is not possible to determine as to whether select list were prepared arbitrarily or have been prepared legitimately and accordingly recorded that -

...the truthfulness and correctness of either of the 2 situations would forever remain in doubt....

...In the present case, no material whatsoever is available to enable the court to reach any positive conclusion as regards the validity of the exercise undertaken at the Headquarters.

7.3 The court in its order dated 24.5.2004 further recorded that the destruction of records has virtually pre-empted the court from arriving at the truth in the matter.

7.4 On the basis of the above conclusion, the High Court by its order dated 25.4.2004 declined to interfere with the recruitment exercise undertaken by the Government in pursuant to the advertisement dated 17.1.2000, which were under challenge in the writ petitions.

But this order of the High Court can not in my view be construed to be an order giving court's approval to the selection process.

8. In these 4 writ petitions, the petitioners could not show that their names appear in any select list. In fact in para. 3 of the WP(C) 905/ 2008, it is specifically recorded that That the petitioner begs to state that after having been declared medically fit, they have been accordingly waiting for the publication for the select list by which they would be appointed as Constables against the vacancies advertised. From the above pleadings of the writ petitioners, it is clear

that while the writ petitioners claim participation in the recruitment process but their pleaded case is that, no select list has been published.

9. In the counter affidavit filed by the respondents it is stated that in pursuant to the advertisement dated 17.1.2000, 2831 candidates were selected and all of them have been appointed within 31.3.2001 in the vacancies available. It is specifically averred that all selected candidates were appointed. Consequently it can be inferred that the Government's stand is that the petitioners were not selected.

10. It may further be noticed that after the first advertisement on 17.1.2000, two subsequent initiatives for recruitment of Constables were undertaken by issuing advertisements on 26.7.2002 and on 21.8.2004. By the last advertisement, i.e., 21.8.2004, 5486 posts were advertised and eventually all 5486 candidates selected in pursuant to the advertisement made on 21.8.2004 have been appointed, of course at different times and, through this Court's and the Supreme Court's orders. This selection process made in the year 2004. This selection process made in the year 2004, was subjected to scrutiny by the Supreme Court and after having recorded that there were proper advertisements and that the selection proceeded on the basis of the notified guidelines, the interference by the High Court was found to be unjustified. Accordingly the Supreme Court in its judgment of *Sadananda Halo and Others Vs. Momtaz Ali Sheikh and Others*, upheld the selection process. Consequential declaration in favour of the selected candidates were also made by the Supreme Court.

11. As regards the right of writ petitions to get appointment on the basis of their purported selection made in the year 2000, it may be appropriate to also take note of the order passed by this Court on 22.1.2004 in WP(C) 720/2001 and 94 connected petitions. In this order the High Court held that the recruitment of Constables should proceed, but not on the basis of advertisement issued on 26.7.2002, but with a fresh advertisement, indicating the precise number of vacancies. Following this order dated 22.1.2004, applications were invited to fill up 5486 posts of Constables, by the advertisement dated 21.8.2004.

12. Having regard to the contentions advanced by the counsels appearing for the parties, and on scrutiny of the records, I am unable to find any material to show that the writ petitioners have been selected for appointment in pursuant to the advertisement made on 17.1.2000. It hardly needs to be recorded that mere participation in the recruitment process would not give anyone a right to appointment. In fact they pleaded for publication of the select list. That apart, following the selection in pursuant to the notice dated 21.8.2004, all the 5486 advertised vacancies have been filled up.

13. On a specific query posed by the court as to whether the Supreme Court in its order dated 23.11.2007 could have referred to any other order (barring the order dated 24.5.2004 and 22.1.2004 noticed earlier), the counsels were emphatic in their reply that no other High Court order was under consideration of

the Supreme Court. The Apex Court itself did not say that petitioners are selected. In the backdrop of this contention, I have examined both the orders of the High Court and in my view, the said orders does not in any way establish that the writ petitioners herein were selected and have a right of appointment. Therefore, this Court must comprehend the purport of the Supreme Court's order dated 23.11.2007 in this perspective only.

14. In the above circumstances, I do not find any enforceable right of the writ petitioners to claim appointment as they are unable to show and the court is not in a position to conclude that they were selected, in pursuant to the advertisement dated 17.1.2000. In the absence of any select list and having noted that the selection records have been destroyed (as recorded by the court on 24.5.2004), it wouldn't be appropriate after a decade, to pass any direction for their appointment, particularly for the posts of constables for which physical fitness is an essential pre-requisite.

15. In view of above I do not find any merit in these cases and the same are dismissed without any order on costs.