

(2003) 12 GAU CK 0011
In the Gauhati High Court

Case No : Writ Petition (C) No. 8 of 2000 and Civil Rule No. 4740 of 1998

Syed Samsul Hoque

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 12-12-2003

Acts Referred:

Citation : (2004) 2 GLR 220 : (2003) 3 GLT 583

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : A.S. Choudhury, I. Hussain and A. Maleque, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The question raised in this writ petition is as to whether the sons and daughters of retired L.P. School teachers are entitled to be considered for appointment against 10% quote of vacancies in the post of L.P. School teachers as per policy of the Government of Assam whether to going through the process of selection for the purpose of such appointment. While admitting the writ petition, by order dated 5.1.2000, same was directed to be listed along with Civil Rule No. 4740/ 98.

2. Mr. A.S. Choudhury, learned senior counsel appearing on behalf of the writ petitioners in both the cases strenuously urged that having regard to the policy decision of the Government towards reservation of 10% vacancies of L.P. School teachers for the sons and daughters of the retired L.P. School teachers, those vacancies are required to be filled up against the quota prescribed and there is no question of any detailed procedure of selection etc. Advancing his argument, the learned senior counsel submitted that the Principle involved for compensation appointments are equally applicable towards appointments of the sons and daughters of the retired School teachers. According to Mr. Choudhury, the L. P. School teachers are lowly paid employees and the Government having regard that aspect of the matter in its wisdom formulated the policy of appointment of

their sons and daughters after their retirement from service on attaining the age of superannuation prescribing a particular quota/reservation.

3. On being pointed out that the issue raised in this writ petition is no longer res-integra in view of the earlier decisions deciding the issue whereby it has been held that the operation of the quota/reservation would require the person concerned to be selected candidate, Mr. Chowdhury submits that a different view is required to be taken having regard to the very concept of prescribing the quota for the sons and daughters of the retired L.P. School teachers and for that matter, if need be the matter is required to be referred to a Division Bench.

4. The learned State counsel appearing for the respondents submitted that in view of the policy decision holding that the operation of the quota would require the petitioners to be a selected candidate which admittedly they are not, the writ petitions do not merit any consideration and the same are liable to be dismissed.

5. I have given my anxious consideration to the issue raised by Mr. A. S. Choudhury, learned senior counsel appearing for the petitioners. The basic thrust of the argument of Mr. Choudhury is that the State Government having prescribed a particular quota for appointment of sons and daughters of the retired teachers, there is no question of any selection against the said quota and the petitioners are entitled to be appointed against the vacancies of the said quota. According to Mr. Choudhury, the same very principle relating to compensation appointment is also applicable in the case of appointment of sons and daughters of retired teachers. According to Mr. Choudhury, the Government with the intention of providing employment to them has laid down the quota and the same does not involved any selection like that of compensation appointment. According to Mr. Choudhury since the L.P. School teachers are lowly paid employees, the Govt. in its wisdom has prescribed the quota like that of the quota prescribed for compassionate appointment. Since there is no question of any regular selection in the matter of compassionate appointment, in the case of consideration of appointment of sons and daughters of the retired L.P. School teachers also there cannot be any question of regular selection. According to Mr. Choudhury, the learned senior counsel, they are entitled to be appointed automatically against the prescribed quota of vacancies without any selection.

6. I have given my consideration to the submissions advanced by the learned counsel for the parties. I could have disposed of the writ petitions following the decisions of this Court on the issue raised. In those decisions it has been held that the operation of the quota would require the person concerned to be a selected candidate. However, Mr. Choudhury made a submission that the aforesaid view is incorrect and that there is scope of dis-agreement and in such eventually the matter is required to be placed before a Division Bench.

7. The principle involved in the matter of compassionate appointment is that on the sudden demise of the bread earner of the family, a consideration is made for appointment of eligible and suitable member of the family, i.e., wife, son, and

daughter to mitigate the immediate hardship of the family. In the case of appointment of sons and daughters of the retired L.P. School teachers, same is not the case. Their father or mother as the case may be, after rendering full tenure of service go on retirement on attaining the age of superannuation. The arguments advanced by Mr. Choudhury is that the L.P. School teachers are lowly paid employees and after their retirement the respective family faces great hardship and the Government has prescribed the quota providing employment opportunity without any selection to mitigate the hardship. If this, argument is to be accepted, I am afraid same will lead to an anomalous situation in which the sons and daughters of all categories of lowly paid employees would make a demand for appointments without any selection. This cannot be a criteria for appointment. Although the rules do not provide for any such reservation for the sons and daughters of retired L.P. School teachers, the Govt. with the issuance of the communication as disclosed in the writ petition has prescribed the quota/reservation. Since the question of irregularity or validity of such prescription is not the question involved in this writ petition, I am not expressing any opinion on the same. However, the issue could be decided in appropriate cases if the same is made a subject matter of challenge in a writ petition.

8. In view of the above discussions I held that the sons and daughters of the retired L.P. School teachers are not entitled to any automatic appointment and or any consideration for appointment without any selection. The quota/reservation prescribed for them will operate only in respect of a selection like that of any other quota prescribed for appointment pursuant to a selection. There is no question of applying the same very yardstick which is applied in the matter of compassionate appointment to this category of aspirants. Accordingly, there is also no question of referring the matter to a Division Bench since there is no any dis-agreement with the decisions arrived at on the issue in the earlier writ proceedings.

Accordingly, both the writ petitions are dismissed. No order as to cost.