
(2002) 10 GAU CK 0021
In the Gauhati High Court
Case No : WP (C) No. 2391 of 2000

Tapan Malakar

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 08-10-2002

Acts Referred:

Assam Ministerial District Establishment Service Rules, 1967 — Rule 2(4)

Citation : (2003) 2 GLR 278

Hon'ble Judges : B. Biswas, J

Bench : Single Bench

Advocate : N. Choudhury and S.C. Kayal, for the Appellant; B. Choudhury, G.A. and B. Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

D. Biswas, J.—The petitioner was initially appointed as a Process Server Peon by the order dated 8th November, 1994 passed by the District Deputy Registrar of Cooperative Societies. Thereafter, he was absorbed as Lower Division Assistant by an order passed by the same authority on 31.12.1997. His absorption was challenged by another Process Server Peon. The Additional Registrar of Cooperative Societies, by the order dated 17th April, 2000 (Annexure-4) informed the Zonal Joint Registrar of Cooperative Societies that the appointment of the petitioner to the post of Lower Division Assistant was made in contravention of the existing Rules. The Zonal Joint Registrar by the letter dated 8th May, 2000 (Annexure-5) directed the Deputy Registrar of Cooperative Societies to take necessary action in this behalf. The petitioner filed this petition challenging the aforesaid decisions communicated vide letter dated 17th April, 2000 and 8th May, 2000. This Court while issuing notice of motion suspended the operation of the aforesaid two orders (letters) thereby preventing the Deputy Registrar from passing any consequential order of reversion to the post of Process Server Peon.

2. I have heard Mr. N. Choudhury, learned counsel for the petitioner and Mr. B.

Choudhury, learned State counsel. Mr. B. Banerjee also made submission on behalf of Respondent No. 7.

3. The order of absorption passed on 31st December, 1997 reads as follows :

"ORDER

Sri Tapan Malakar, Process Server, Office of the Asstt. Registrar of Cooperative Societies, Ramkrishnanagar is absorbed as Lower Division Assistant against the existing vacancy of Scheduled Caste (Back-log) in the scale of pay Rs. 1065-20-1225-30-1345-EB-20-1435-40-1635-50-2035-60-2095 P.M. & other allowances as admissible under Rules and placed under the disposal of Sub-Registrar of Cooperative Societies (Audit) Ramkrishnanagar. This appointment is purely temporary & may be terminated at any time without assigning any reason thereof.

Sd/- (S. C. Barman) Distt. Deputy Registrar of Coop. Societies. Karimganj."

4. It would appear that a Grade-IV employee has been absorbed against a Grade-III post without undertaking any selection process, Mr. Choudhury, learned counsel for the petitioner tried to justify this order of absorption on the ground that there is no recruitment rules in force regarding selection and appointment of L. D. Assistant and, as such, the appointing authority was competent to pass the order of absorption. The learned counsel further argued that the petitioner has been serving as an L.D.A. on absorption for more than four years and, therefore, it would not be permissible to disturb his status as L.D.A. at this belated stage. Shri Choudhury further pointed out that the Assam Ministerial District Establishment Service Rules, 1967 are not applicable to the Cooperative Department and, hence, the petitioner cannot be ousted for non-compliance of any provisions incorporated thereof.

5. I have perused the provisions of the Assam Ministerial District Establishment Service Rules, 1967. The Rules of 1967 are applicable to the District Establishments as defined in Sub-rule (4) of Rules 2. The District Establishment as defined reads as follows :

"(4) "District Establishment" means and includes all Non-Gazetted ministerial staff in the office of the Deputy Commissioner, Sub-Divisional Officers, Sub-Deputy Collectors and Block Development Officers of the District;

Note:- Offices of Deputy Commissioners and Sub-divisional Officers shall include branches like Supply, Textile, Election, Revenue, Excise, Development and other general branches."

6. It appears from the aforesaid definition that the District Establishment do not include the Cooperative Department of the State Government. Section 3 of the Assam Cooperative Societies Act, 1949 provides for appointment of Registrar of Cooperative Societies for supervision, assistance, counsel and control of registered societies and for development of co-operative movement and control

over all co-operative education. It further provides appointment of other persons to assist the Registrar. If the provisions of Sub-rule (4) of Rules 2 of the Rules of 1967 and Section 3 of the Act of 1949 are read together, there remains no doubt that the provisions of the Rules of 1967 do not ipso facto apply to the Cooperative Department of the State. However, the Registrar of Cooperative Societies by the letter dated 1st October, 2002 addressed to the Additional Senior Government Advocate informed that the District Offices under the Cooperative Department follow the Assam District Establishment Service Rules, 1967 for promotion, etc. This clarifies the stand of the respondent State that the aforesaid Rules of 1967 are applicable to the Cooperative Department. Shri Choudhury, learned Counsel for the petitioner submitted that in earlier occasions the Department has made promotion without following the provisions of the Rules of 1967. This submission of Shri Choudhury is not of much significance. Even if there is, no rule in force, the post of Lower Division Assistant cannot be filled up arbitrarily by pick and choose method. The post will have to be filled up by selection after advertisement following the roster of reservation for SC and ST candidates. A certain number of posts may be kept reserved for being filled up by the eligible candidates from the Grade-IV staff. Obviously, there is no reservation of any post for Grade-IV staff in the instant case. Therefore, the absorption of the writ petitioner as L. D. Assistant, which is in next higher grade above the post he was holding at the relevant time is not permissible. The matter would have been otherwise had it been a case of absorption/appointment by way of selection from amongst the eligible members of the Grade-IV staff. Unfortunately, this is not so in the instant case.

7. The Registrar of Cooperative Societies vide letter dated 1st October, 2002 indicated that the Department is following the Rules of 1967 for the purpose of promotion. There is no reason for this Court to reject the above contention. The writ petitioner, as per Rules of 1967, was not eligible for consideration for appointment as L. D. Assistant since he had not completed seven years of service as Grade-IV employee. Thus, viewed from both the angles, the absorption of the writ petitioner as L. D. Assistant appears to be not sustainable in law. On this context, the impugned decisions communicated vide letters dated 17th April, 2000 and 8th May, 2000 cannot be interfered with.

8. I have duly considered the argument that the writ petitioner is working as LDA for the last 5 years and, hence, his status as LDA may not be disturbed. The absorption of the petitioner as LDA was arbitrary and, therefore, void ab initio. Moreover, his reversion is not likely to unsettle any settled position. Situated thus, his absorption as LDA cannot be approved by this Court.

9. In the result, the writ petition is dismissed. Consequent thereupon, the stay order granted earlier shall stand vacated. The respondent authority is directed to fill up the posts of LDA strictly in accordance with the Rules of 1967 vis-a-vis the policy of reservation for SC/ST candidates.

10. No order as to cost.