
(1992) 03 GAU CK 0023
In the Gauhati High Court
Case No : Civil Rule No. 2349 of 1990

T.R.Manjula Das

APPELLANT

Vs

State of Assam & Others

RESPONDENT

Date of Decision : 23-03-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 14, 16, 16, 226

Citation : (1993) GLR 90 Supp

Hon'ble Judges : S.K.Homchaudhuri, J and S.N.Phukan, J

Bench : Division Bench

Advocate : A.M.Mazumdar, N.Saikia, P.Prasad, P.Roy, Advocates appearing for Parties

Judgement

S.K. Homchaudhuri, J.—Petitioners' case is that she is a member of the Schedule Caste Community. She has a uniformly brilliant academic career throughout her school and college education. She was also a recipient of the merit scholarship. In the year 1986 petitioner passed the final examination of B.D.S. from the Gauhati University and having successfully completed the rotating compulsory internship for a period of 6 months, she was awarded the B.D.S. degree by the Gauhati University. Thereafter on 6.7.87, the petitioner joined the Regional Dental College & Hospital, Gauhati (in short the Dental College) as House Surgeon and successfully completed the course on 5.1.88. After completion of the House Surgeon ship in the Department of in the Regional Dental College & Hospital she was appointed as a Senior House Surgeon in the same department for a further period of 6 months. The Principal of the Dental College being satisfied with the services rendered by her in the Dental College has given a certificate.

2. In June, 1988, the Assam Public Service Commission, hereinafter referred to as APSC, by its advertisement No. 3/88 published in the "Dainik Ason" in its issue dated 10th June, 1988, invited applications from the eligible candidates for recruitment to the posts of Resident Surgeon and Demonstrator for the Regional

Dental College, Gauhati. The prescribed qualification for the said posts of Resident Surgeon and Demonstrator as per the advertisement was :

"Qualification: A registered and recognised B.D.S. Degree with 6 (six) months experience as House Surgeon in a recognised Dental College or Dental wing of a Medical College. Preferences will be given to the candidates possessing higher qualification viz. M.D.S. in any Specialty of Dentistry obtained from a recognised institution".

3. The petitioner having all the requisite qualifications has applied for consideration of her candidature either for the post of Resident Surgeon or for the post of Demonstrator. The APSC by its letter dated 1.2.89 asked the petitioner to appear on 8th Feb./89 before the APSC with all original certificates and diplomas for selection and the petitioner appeared in the interview on the specified date before the APSC.

4. Petitioner's further case is that although respondent No. 5, Dr. Chandana Kalila, Respondent No. 6, Dr. Gilarani Hazarika Bora, Respondent No. 7 Dr. Anjan Kr.Saikia and Respondent No. 8 Dr. Mitali Bora Negi, did not have the requisite qualification were, however, called for interview by the APSC for the said posts on 21.2.89. Besides, Respondent No. 4 Dr. Rajib Acharyya, who did not appear before the APSC on 8.2.89 was, however, given a chance to appear on 21.2.89. Petitioner has annexed a letter of the APSC dated 6th Feb. '89 addressed to the Secretary to the Govt. of Assam, Health & Family Welfare (B) Department by which the APSC sought immediate clarification as to whether the experience as House Surgeon for the period of 6 (six) months as prescribed in the advertisement was an additional requirement after the award of the B.D.S. degree or period of 6 months compulsory experience. It was further intimated that pending receipt of clarification candidates who were earlier rejected by the APSC for not possessing the additional qualification of experience as House Surgeon for the period of 6 (six) months were being provisionally called for interview subject to the condition that their candidature was liable to be rejected, incase, the 6 (six) months experience as House Surgeon was required after the award of the B.D.S. degree. In reply thereto the Govt. of Assam. Health & Family Welfare (B) Deptt. in their letter dated 22.2.89 intimated the APSC that under the existing regulations of the Gauhati University to be eligible for the award of B.D.S. Degree each candidate after passing the final B.D.S. examination shall undergo a compulsory rotating internship for a period of 6 months to the satisfaction of the University and that would remain as such until reviewed or modified by the Gauhati University. It was further intimated that the concerned candidates who did not possess the additional qualification of experience as House Surgeon for the period of 6 months might be informed that calling for interview and selection would not confer any claim for appointment to the post unless the required qualification for the post was relaxed or the existing regulation of the Gauhati University was modified. The Govt. of Assam, Health & Family Welfare.

(B) Department ultimately by letter dated 4.4.89 intimated the APSC that on further examination of the matter it was found that experience as House Surgeon for the period of six months was to be treated as an additional requirement after the award of B.D.S. Degree. The aforesaid letters of APSC dated 6.2.89 and the letters of the Govt. of Assam dated 22.2.89 and 4.4.89 have been annexed to the petition as Annexure 4,5 and 6 respectively.

5. In spite of the fact that Respondents No. 5,6,7 and 8 were called for interview provisionally pending receipts of clarification from the Govt. and in spite of the fact that it was clarified by the Govt. that candidates who do not possess experience for House Surgeon at least for a period of 6 months after obtaining B.D.S. Degree were not eligible for selection for the post of Resident Surgeon/ Demonstrator, the APSC considered the candidature of the Respondents No. 5,6,7 and 8 along with the petitioner and other eligible candidates and selected them by the impugned letter No. 60 PSC/DR2/25/8788 dated 29th March, 1989 and recommended them for appointment amongst the five candidates in order of merit for Resident Surgeon and five candidates in order of merit for the posts of Demonstrator. But the petitioner who possessed all the requisite qualification for appointment to either of the post of Resident Surgeon or Demonstrator and who is also a member of Schedule Caste Community has, however, not included in the select list. Thereafter on the basis of the aforesaid recommendation of the APSC, Govt. of Assam, Health & Family Welfare (B) Deptt. by the impugned notification dated 5th September, 1989 (Annexure 9) to the petition) appointed respondent No. 4, Dr. Rajib Acharyya, Respondent No. 7 Dr. Anjan Kr. Saikia, Respondent No. 8 Dr. Milali Bora Negi to the post of Demonstrator in the Dental College. Again on the basis of the said recommendation, Govt. of Assam, Health & Family Welfare (B) Deptt. by subsequent notification dated 21 March, 1990 (Annexure 9 to the petition) appointed Respondent No. 5 Dr. Chandana Kalita, Dr. Bhabatosh Kr. Roy and Respondent No. 6 Dr. Gita Rani Hazarika Bora to the post of Demonstrator in the Regional Dental College, Guwahati. Petitioner's case is that inclusion of Respondent No. 5, 6, 7 and 8 in the select list on the basis of merit was arbitrary, illegal and without jurisdiction, in as much as, neither of them were found eligible for selection and appointment for the post of Resident Surgeon nor Demonstrator and there could not be any rational or intelligible differential for not recommending the name of the petitioner in the select list when the petitioner possess the requisite qualification. In the Writ petition, the petitioner also contended that she being the only qualified candidate belonging to Schedule Caste Community she deserved preferential treatment in the matter of selection and appointment and that in the interview she did fairly well, in as much as, one of the Members of the APSC, Dr. L.C. Hazarika even asked the petitioner to intimate as to which of the posts Resident Surgeon or Demonstrator she preferred to join. Petitioner also alleged in the petition that as per provision of APSC (Limitation of Function) Regulation, 1951, Govt. of Assam deputed Dr. P.D. Bora by letter No. HLV.817/84/71 dt. 3.2.89 as a Technical Expert to assist the APSC for selecting the candidates for the post of Resident Surgeon/

Demonstrator. However, Dr. B.R. Bhuyan, Principal of the Regional Dental College, Gauhati appeared in the interview held by APSC and Dr. P.D. Bora was sent back. In para 10 of the petition the petitioner has contended as follows:

"10. That the petitioner begs to state that the respondent No. 4,7 and 8 are favorites of the Principal, while Dr. Chandana Kalita, Respondent No. 5 was the cousin of Sri Kamala Kalita, the Minister, Health etc. and respondent No. 6 Smt. Gita Rani Hazarika Bora is the wife of the then Minister, Shri Atul Bora. Favoritism and nepotism have played a dominant role in their selection. As such the impugned select list and the appointment is liable to be quashed."

6. After receipt of notice the Respondent No. 2 APSC has filed affidavitinopposition. Other respondents have not filed any affidavitinopposition. Respondent No. 2 in the affidavitinopposition stated that petitioner was not the only candidates belong to Schedule Caste community, in as much as, Dr. Mitali Bora Negi Respondent No. 8 was also a member of the said community. Respondent also stated that both Dr. B.R. Bhuyan, Principal of the Regional Dental College and Dr. P.D. Bora were deputed as Technical Expert by the Govt. and since there were few member of candidates, (lie services of Dr. P.D. Bora was not utilized. As against the contention No. 2 in para 9 of the affidavitinopposition contended as follows:

"9. That as regards contents made in paragraph 10 of the Writ application the deponent states that the allegations are baseless. The Principal, Regional Dental College, performed his assigned role as an expert adviser only. The Commission took the candidates' performance in the interview as relevant and nothing else."

Besides the aforesaid contention/rebuttal, the Respondent No. 2 in the affidavitinopposition more or less has not disputed the material facts stated in the Writ petition, namely, Respondents No. 5,6,7 and 8 did not possess the requisite qualification of possessing experience as a House Surgeon for the period of 6 months after obtaining the B.D.S. degree. The respondent No. 2 has also not disputed the contention of the petitioner about the correspondences made by letter dt. 6.2.89 seeking the clarification from the Govt. by Respondent No. 2 and reply of the Govt. as per letter dt. 22.2.89 and 4.4.89 (Annexure 4, 5 and 6 to the petition).

7. We have heard Mr. A.M. Majumdar, learned counsel for the petitioner and Mr. P. Prasad, learned counsel for the respondent No. 2 APSC and Mr. P Roy, learned Govt. Advocate. Mr. Majumdar has submitted that admittedly the Respondent No. 5, 6,7 and 8 did not possess the requisite qualification and mat initially their candidature were cancelled by the APSC. However, they were again called for interview provisionally, pending getting clarification from the Govt. It having been clarified that experience as House Surgeon for a period of 6 months after obtaining B.D.S. degree was an additional prescribed qualification for being eligible to be selected and appointed, the APSC acted illegally and without jurisdiction in selecting the respondents No. 5,6,7 and 8 and recommending

them for appointment in the impugned select list. The selection of unqualified candidates by the APSC and recommending them for appointment on the basis of relative merit leaving the qualified candidates out of the select list is ex facie arbitrary, discriminatory and violative of petitioner's fundamental right guaranteed under Article 14 and 16 of the Constitution, in as much as, the unequal have been treated equally. Mr. P. Prasad, learned counsel for the APSC has not disputed the fact that prescribed qualification for selection to the post of resident Surging Demonstrator was a recognised degree of B.D.S. plus 6 months experience as House Surgeon in any recognised Dental College or Dental Wing of Medical College after obtaining the degree. Six months compulsory internship after passing the B.D.S. final examination was prerequisite for awarding degree of B.D.S. Mr. Prasad has, however, submitted that Respondent No. 5,6,7 and 6 were called for interview with intimation to the Govt. By letter dated 6.2.89 (Annexure 4 to the petition) and consequently they were selected on the basis of relative merit and the APSC forwarded the select list in order of merit, but the APSC has nothing to do with the appointment. Mr. P. Roy, learned Govt. Advocate has submitted that the Govt. has appointed the Respondent No. 4, 5 and 6 along with others on the basis of select list forwarded by APSC.

8. We have considered the submissions made on behalf of the petitioner as well as on behalf of the Respondents. No records have been produced before us by the APSC. This Court in exercise of jurisdiction under Article 226 of the Constitution shall not ordinarily scrutinize the selection made by the APSC on the basis of relative merit with the help of Technical Expert. In the instant case, allegation of the petitioner is that although admittedly the Respondents No. 5,6,7 and 8 did not possess the qualification, have however been selected by the APSC. When the petitioner has approached this Court contending that candidates who did not possess the minimum required qualification have been selected and recommended for appointment by the APSC ignoring the qualified candidates, this Court which is entrusted by the Constitution with the obligation to enforce the Rule of Law, cannot fold its hand and remain a silent spectator. It is not disputed that the respondent No. 5, 6, 7 and 8 did not possess the requisite minimum qualification for consideration for selection to the post of Resident Surgeon/ Demonstrator and that from the correspondence, Annexure 4 and 5, it is clear that though Respondents No. 5, 6, 7 and 8 were called for interview provisionally as a special case but their selection was subject to condition that calling for interview or selection would not confer any right to them to be appointed against the vacant posts unless the required qualification for the posts was relaxed or the existing regulation of the Gauhati University was amended. The existing Regulation of the Guahati University for conferring degree of B.D.S. is prescribed in the "Regulation and Syllabi of Bachelor of Dental Surgery (B.D.S.) Examination 1982. The Regulations approved by the Standing Committee amongst other is as follows :

"(1) Internship:

(i) Each candidate shall after passing the final B.D.S. Examination undergo a compulsory Internship to the satisfaction of the University for a period of 6 months in the Institutes recognised by the Dental Council of India so as to be eligible for award of the degree of B.D.S. by the University".

It is not the case of Respondents that prescribed qualification, namely, in addition to possessing the B.D.S. degree, a candidate must possess the experience of House Surgeon for the minimum period of 6 months was subsequently relaxed. It is also not the case of the Respondents that the existing relevant Regulations of the Gauhati University was amended in the interim. The APSC, in our opinion, ought to have confined the selection on the basis of relative merit from amongst the eligible candidates, in other words, the candidates possessing the prescribed qualification should have been selected on the basis of relative merit. The APSC has acted illegally and without jurisdiction in considering the unqualified candidates along with qualified candidates and selected the unqualified incumbents, namely, Respondents, No. 5,6,7 and 8 on the basis of relative merits. Such selection is tantamount to treating the unequal equally in violation of the fundamental rights of qualified candidates guaranteed under Articles 14 and 16 of the Constitution.

9. For the reasons stated above, we have no hesitation to hold that the selection of Respondents No. 5, 6,7 and 8 on the basis of relative merit for appointment to the post of Resident Surgeon and Demonstrator as recommended by the APSC by the impugned memo dated 29.3.89 is illegal, without jurisdiction and void and is liable to be quashed.

10. The selection of Respondent No. 5, 6, 7 and 8 for the post of Resident Surgeon or Demonstrator as per select list recommended by the APSC by the impugned notification dated 29th March, 1989 having been found as void, their appointment to the post of Demonstrator/Resident Surgeon on the basis of the said selection has to be treated as irregular.

11. From the impugned select list forwarded by the APSC by Memo dated 29th March, 1989 we find that only three incumbents, namely, Dr. Swarge Jyoti Kalila, Dr. Bhabatosh Kr. Roy and Dr. Rajib Acharyya had possessed the requisite qualification and, as such, their selection has not been disturbed. In para 4 of the petition it is stated by the petitioner that on 8.2.89 she along with Dr. Swarge Jyoti Kalita, Dr. Bhabatosh Kr. Roy, Dr. Dilip Goswami and Dr. Santanu Kr. Bhattacharjee appeared in the interview and that Respondent No. 4 Dr. Rajib Acharyya did not turn up although he was called for interview on 21.2.89 in view of the fact that he did not receive the call letter for interview fixed on 8.2.89. Undisputedly except Dr. Rajib Acharyya all the persons called for interview on 21.2.89 as a special case did not possess the prescribed qualification of experience as House Surgeon for a minimum period of 6 months. Consequently, in all, 6 candidates possessing the requisite qualification for appointment to the post of Resident Surgeon and Demonstrator appeared before the APSC in the interview held on 8.2. 89 and 21.2.89 and out of them only 3 candidates,

namely, Dr. Swarge Jyoti Kalita, Dr. Bhabalosh Kr. Roy and Dr. Rajib Acharyya found place in the select list by the APSC by its letter dated 29th March, 1989. The selection of Respondents No.5,6,7 and 8 having been found void it has become necessary for the APSC to recast the select list on the basis of relative merit of the 6 (six) qualified candidates for filling up the vacant posts. Petitioner's case is that she belongs to Schedule Caste Community and the same is not disputed. The another candidate belonging to Schedule Caste Community was Respondent No. 8 Dr. Mitali Bora Negi. But her selection having been found void for not possessing prescribed qualification, the petitioner remains to be the only candidate belonging to Schedule caste community for selection to the post of Resident Surgeon/Demonstrator. As such, while recasting the select list the APSC have to take into consideration that petitioner deserved preferential treatment in the matter of selection to which she is entitled to under the provision of law.

12. From the impugned memo dated 29th March, 1989 Annexure 7 to the petition, we find that candidates were interviewed with the help of Expert Adviser Dr. B.R. Bhuyan, Principal of the Regional Dental College, Guwahati. The assessment of the relative merit by the Expert Adviser for the technical post naturally weight heavily in the matter of selection by the APSC. We would like to observe that the petitioner who served as House Surgeon and Senior House Surgeon in the Regional Dental College was given a certificate regarding her satisfactory performance by Dr. B. R. Bhuyan, Principal of the Regional Dental College (the Expert Adviser in the matter of selection by the APSC) on 1.2.89 (7 days before the interview), a copy of which is annexed to the petition as Annexure I.

13. In the result, the petition is allowed. The selection of Respondents No. 5, 6, 7 and 8 as recommended by the impugned letter dated 29th March, 1989 is set aside and quashed. The APSC is directed to recaste that select list on the basis of relative merit of qualified candidates as reflected in the interview held by the APSC keeping in view that candidates belonging to Schedule caste community is legally entailed to get preferential in the matter of selection and to forward the said revised select list to the Govt. within a period of 2 months from the date of receipt of this order.

14. In view of the fact that after receipt of the recommendation of the APSC by the impugned letter dt. 29.3.89, 6 (six) selected candidates as per the select list were appointed against the 6 vacant posts of Demonstrator and that there were only 6 qualified candidates before the APSC including the petitioner, who is the only candidate belonging to scheduled caste community, we direct the Govt. of Assam, Health & Family Welfare (B) Department to appoint the petitioner against any vacant post of Resident Surgcon/Demonstrator/Registrar of Regional Dental College, Guwahati within a period of one month from today temporarily till her appointment is regularized after receipt of revised select list from the APSC. We make no order as to costs.