

(2015) 05 GAU CK 0069
In the Gauhati High Court
Case No : Writ Petition (C) No. 4330 of 2012

Utpal Goswami and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 05-05-2015

Acts Referred:

Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1978 — Section 4
Constitution of India, 1950 — Article 16(4-B)

Citation : (2015) 2 GLT 1055

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : P.J. Saikia, A.K. Gupta and M. Kechii, for the Appellant; B. Gogoi, SC and B.J. Ghosh, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J—Heard Mr. P.J. Saikia, learned counsel for the petitioners and Mr. B. Gogoi, learned Standing Counsel, Finance Department. Also heard Mr. B.J. Ghosh, learned Government Advocate, Assam. Challenge made in this writ petition is to the order dated 02.03.2012 (Annexure-G), passed by the Deputy Commissioner, Karbi Anglong, cancelling the selection process for filling up vacancies in the post of Junior Accounts Assistant in the Diphu Treasury, pursuant to the advertisement dated 30.01.2012.

2. Facts of the case may be briefly noted.

3. Office of the Deputy Commissioner (Treasury Establishment), Karbi Anglong, issued an advertisement dated 30.01.2012, inviting applications from intending candidates for filling up 8 (eight) vacancies in the post of Junior Accounts Assistant. It was stated that candidates would have to appear in a written test of 3 (three) papers comprising of General English, General Mathematics and General Knowledge of 100 marks each. Short listed candidates would be called for viva voce and computer test. It was further stated that out of the 8 (eight)

vacancies, 6 (six) were back log vacancies earmarked for ST (P) - 2, SC - 2 and OBC/MOBC-2. In other words, out of 8 (eight) notified vacancies, 6 (six) were backlog vacancies for reserved category candidates and 2 (two) were open vacancies earmarked for unreserved category. Petitioners belong to unreserved as well as reserved categories of ST(P), SC & OBC. They responded to the advertisement issued and submitted their applications. Written test was held on 19.02.2012. Petitioners qualified in the written test and thereafter, they were asked to appear in the interview on 27.02.2012. It appears that because of a local bandh call, the interview could not be held on 27.02.2012 and thereafter, it was held on 28.02.2012. Petitioners appeared in the interview and according to them, they had performed well. While they were waiting for declaration of result, the impugned order dated 02.03.2012 was passed cancelling the selection. Aggrieved, present writ petition has been filed

4. On 13.09.2012, this Court while issuing notice observed from a perusal of the impugned order and other documents placed on record that grounds given for cancellation of the selection prima facie did not appear to be bona fide and relevant. It was further observed that Deputy Commissioner appeared to have been influenced by extraneous factors which led to cancellation of the selection. Accordingly, operation of the impugned order dated 02.03.2012 was suspended.

5. On 29.07.2013, Smt. Catherine Terongpi, Treasury Officer, Diphu, filed an affidavit. It is stated that no post was reserved for ST (H) candidates as per the advertisement. 32 (thirty-two) candidates qualified in the written examination but there were no ST (H) candidates. Because of a bandh call on 27.02.2012 interview was scheduled on the next date, i.e. 28.02.2012. It is stated that the roster points maintained in the Treasury Office do not conform to the prevailing norms. There was also lack of transparency in the process of interview. Therefore, cancellation of selection process was done bona fide and was justified.

6. In the reply affidavit, petitioners have stated that though there was no backlog vacancy earmarked for ST (H) candidates, a large number of candidates belonging to the local Karbi Tribe had appeared in the written test but they did not qualify for the interview. Advertisement dated 30.01.2012 was issued after consulting the roster maintained in the office of the Deputy Commissioner. There is no backlog vacancy for ST (H) category in the cadre of Junior Accounts Assistant. In fact, reservation for ST (H) candidates has already been exhausted, inasmuch as, all the roster points earmarked for ST (H) has been filled up. In such circumstances, cancellation of the selection process was not justified.

7. On 29.01.2015, this Court passed the following order:-

"After hearing the matter at some length, Court is of the view that following information should be placed before the Court by Mr. B. Gogoi, learned Standing Counsel, Finance Department:-

(1) Whether the cadre of Junior Accounts Assistant in the Treasury is maintained

district-wise or State-wise?

(2) If the answer to the above is district-wise, in that case, total cadre strength of Junior Accounts Assistant in the Treasury establishment of Karbi Anglong district;

(3) The present position depicting men in position in the cadre of Junior Accounts Assistant in the Treasury establishment of Karbi Anglong district with break-up of various categories such as, SC, ST(P), ST(H) and un-reserved.

Let the above information be placed before the Court on the next date."

8. Thereafter, on 04.03.2015, Mr. B. Gogoi, learned Standing Counsel furnished the relevant information based on which the following order was passed:-

"In terms of the order dated 29.01.2015, learned Standing Counsel submits on the basis of written instruction that cadre of Junior Accounts Assistant in Diphu Treasury is maintained district-wise. Total cadre strength of Junior Accounts Assistant in Diphu Treasury, which is the establishment of Karbi Anglong district, is 18. Out of the cadre strength of 18, 10 posts are presently lying vacant, 8 posts are being manned by the following personnel:-

1. Dharmeswar Barman, ST (H),
2. Miss Eva Singhoo, ST (H),
3. Ujjal Kumar Tanti, MOBC,
4. Kripanjali Handique, OBC,
5. Apurba Kumar Choudhury, Un-reserved,
6. Pradip Kumar Dey, Un-reserved,
7. Md Abu Rafique, Un-reserved, and
8. Bimal Basumatary, ST (P).

In view of the information furnished case be now posted for admission hearing on 19.03.2015."

9. From the information furnished by Mr. Gogoi, and as incorporated in the order dated 04.03.2015, it is seen that the cadre strength of Junior Accounts Assistant in the Diphu Treasury is 18 (eighteen), out of which 8 (eight) posts have been filled up. 10 (ten) posts are lying vacant and the advertisement dated 30.01.2012 covers 8 (eight) vacancies, which would mean 2 (two) more additional vacancies to be filled up in due course. From the order dated 04.03.2015, it is evident that already 2 (two) candidates belonging to ST (H) category are in service. It is submitted at the bar that as per the roster maintained in terms of the Assam Scheduled Castes and Scheduled Tribes (Reservation of Posts in Services) Act, 1978, as amended in 2012, the roster points earmarked for ST (H) have been filled up. As per Section 4 of the

aforesaid Act, five percent of the posts in each cadre shall be reserved for ST (H). The said percentage is required to be worked out by every appointing authority in relation to the number of posts comprising each cadre in a service. In a cadre comprising of 18 (eighteen) posts like the Junior Accounts Assistant, the percentage of reservation earmarked for ST (H) works out to .9 which is 1. As per the model 100 point roster, the 10th roster point is earmarked for ST (H). Thus, against the quota of 1, already 2 (two) ST (H) candidates are in position in the cadre of Junior Accounts Assistant. Therefore, there is no question of any backlog vacancy in so far as ST (H) category is concerned. On the other hand, in view of the backlog vacancies for other reserved categories, those have been carried forward in terms of Article 16(4-B) of the Constitution of India.

10. Having noticed the above, impugned order dated 02.03.2012 may now be adverted to. For a ready reference, the same is quoted hereunder:

"Whereas it has been made to appear before me by the members of Selection Board for recruitment for the post of Jr. Accounts Assistant in Treasury Establishment, Diphu vide letter dtd. 02.03.2012 that anomalies are caused to have been occurred during the process of recruitment for the post of Jr. A.A. at Treasury Establishment, Diphu

AND

Whereas the Director, Accounts and Treasuries, Assam being a member of the Selection Board observed that the Roster having been maintained by the Treasury Office, Diphu does not conform to the prevailing norms. He opines that correction of the Roster is the pre-requisite to the selection and appointment of the candidates. Therefore, the advertisement dated 30.01.2012 also consequently invites rectification

AND

Whereas in the process of viva-voce, the members of selection committee learnt that the daughter, son-in-law of the member secretary of Selection Board appeared in the written test and one of them also appeared in the viva-voce. Therefore, there is every likelihood of seemingly unfairness on the part of the member secretary of the selection board in manifestation of justice

AND

Whereas one Apurba Choudhury, Jr. A.A. of Diphu Treasury was detailed for assisting in printing and stitching of question papers for the written examination, also had the access of question papers in process of written test. It is also learnt during the viva-voce session by the members of selection board that Smt. Novanita Choudhury was also a candidate who happened to be the wife of Sri Apurba Choudhury, Jr. A.A. of Diphu Treasury. Therefore, in this case also there is every likelihood of seemingly unfairness on the part of the staff engaged in connection with the conduct of written test in manifestation of justice

AND

Whereas the Director, Accounts and Treasuries, Assam, who is also a member of the Selection Board conveyed his opinion over telephone today at 3-15 PM that on the grounds of the above mentioned anomalies and for the sake of transparency, justice and giving due and equal opportunity to all, the entire process of selection so far completed should be cancelled and fresh process of recruitment may be initiated.

AND

Whereas in view of the foregoing facts, I am inclined to conclude that there is lack of transparency in process of interview and the Roster maintained by the Treasury Office does not conform to the laid down norm of the extant Rules of the land and there is every likelihood that merit of the candidates is compromised, if not interfered, therefore keeping all facts and materials on record I cancel the entire process of selection of candidates for the post of Jr. Accounts Assistants of Treasury Establishment in terms of advertisement No. DT. Estt/Recruit/75/07-12 dt 30.01.2012. The Treasury Officer is directed to take up the Roster issue with the government and call for fresh recruitment process on receipt of Government direction in this regard."

11. From a reading of the above, it appears that selection process has been cancelled on 3 (three) grounds:-

(i) Firstly, roster maintained by the Treasury Office, Diphu, does not conform to the prevailing norms.

(ii) Daughter and son-in-law of the Member Secretary of the Selection Board appeared in the written test and one of them also appeared in the viva voce. Therefore, there was likelihood of bias on the part of the Member Secretary.

(iii) One Junior Accounts Assistant of Diphu Treasury, Sri Apurba Choudhury was entrusted with the duties of printing and stitching of question papers for the written examination. His wife, Smt. Novanita Choudhury was a candidate, who qualified in the written test and appeared in the viva-voce. Therefore, there was likelihood of unfairness in the selection.

For the aforesaid three reasons, the selection has been cancelled.

12. Coming to the first ground, on the face of it, the same is not only vague but is also not based on the record, which is apparent from the information furnished by the learned Standing Counsel and which has been incorporated in the order dated 04.03.2015. As discussed above, there is more than adequate representation of ST(H) candidate in terms of the roster in the cadre of Junior Accounts Assistant. In such circumstances, question of having any backlog vacancy for the ST(H) category does not arise. In fact, no complaint or objection was raised by anybody complaining of ignoring the roster point meant for ST(H) candidate.

13. Coming to the second ground, namely, appearance of daughter and son-in-law of the Member Secretary of the Selection Board in the written test and one of them having qualified therein, whereafter, appeared in the viva voce, it is seen that vide order dated 17.02.2012, Deputy Commissioner, Karbi Anglong had constituted a Selection Board for recruitment of Junior Accounts Assistant in Diphu Treasury. The following were the members of the Selection Board:-

14. It is seen from the above that Treasury Officer, Diphu Treasury was the Member Secretary and the same Treasury Officer has sworn the affidavit filed before this Court on 29.07.2013. Both her daughter and son-in-law had appeared in the written test, but only the son-in-law was short listed. It is stated that the son-in-law of the Member Secretary is Sri Karan Cherry. Mr. Gogoi, learned Standing Counsel submits that Sri Karan Cherry had written to the Deputy Commissioner, Karbi Anglong, on 01.03.2012, with drawing his candidature from the selection. Treasury Officer, i.e., the Member Secretary in her affidavit did not deal with this aspect of the matter. In any case, in view of withdrawal of candidature of the son-in-law, this ground is also not available for cancellation.

15. Coming to the third ground of cancellation, namely, participation of Smt. Novanita Choudhury as a candidate in the selection process while her husband, an employee of Diphu Treasury, was entrusted with the duties of printing and stitching of question papers for the written examination, from the documents placed before the Court, it appears that though Smt. Novanita Choudhury had qualified in the written test she has secured the lowest marks in the viva-voce, which is 4.4 amongst the 32 candidates, who had appeared in the viva-voce; 31 out of the 32 candidates have secured more marks than her. Therefore, her participation in the selection does not materially affect the outcome in any manner.

16. Thus, from the above discussion, it is quite evident that there was no valid justification at all for cancellation of the selection process.

17. Cancellation or annulment of a selection process is a very drastic measure and should be resorted to only as the last option if no other option is available to save the selection. This is the approach adopted by the Courts while examining the challenge to a selection process. If the Courts have adopted such a standard, it goes without saying that the executive authority must also maintain a similar standard before resorting to such a drastic measure. Sanctity of a selection process has to be protected as well as respected.

18. At this stage, Mr. Gogoi, learned Standing Counsel submits that authority of the approval given by the Finance (SIU) Department for filling up the 8 (eight) vacancies was delivered on 29.02.2012. In view of the finding arrived at, the Finance Department shall do the needful to extend the authority to ensure conclusion of the selection process.

19. In the light of the above discussions, this Court is convinced that cancellation

of the entire selection process pursuant to the advertisement dated 30.01.2012 was not at all justified and cannot be sustained. Accordingly, order dated 02.03.2012, is hereby set aside and quashed. Deputy Commissioner, Karbi Anglong, shall now proceed with the matter and finalize the selection in accordance with law within a period of 30 (thirty) days from the date of receipt of a certified copy of this order. Writ Petition is accordingly allowed, but without any order as to costs.