

(2019) 09 GAU CK 0006

In the Gauhati High Court

Case No : Writ Petition (C) No. 6080 Of 2013

Uttam Daolagupu And Anr.

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 03-09-2019

Acts Referred:

Assam Scheduled Caste And Scheduled Tribe (reservation Of posts In services) Act
1978 — Section 4

Citation : (2019) 09 GAU CK 0006

Hon'ble Judges : Prasanta Kumar Deka, J

Bench : Single Bench

Advocate : M Goswami, M. Sarania, D. Doley, R. Boro

Final Decision : Dismissed

Judgement

1. Heard Mr. M. Sarania, learned counsel for the petitioners and Mr. D. Doley, learned Government Advocate for Assam.

2. The petitioners are graduates and belong to Scheduled Tribe Hills community of the State of Assam. They applied to appear in preliminary examination of Combined Competitive Examination 2013 for screening of candidates for main examination to the Assam Civil Service (Jr. Grade) and its allied services conducted by the APSC issued vide advertisement No. 6/2013 published in the Assam Tribune on 13.08.2013. In the said advertisement altogether 309 posts of ACS (Jr. Grade) sought to be filled up including other allied services out of which 90 posts were shown to be advertised for requirement to the ACS (Jr. Grade) services. In the said advertisement no post for Scheduled Tribe (H) community candidate is earmarked though there is a 7% reservation of post in services as per the provisions of Assam Scheduled Caste and Scheduled Tribe (reservation of posts in services) Act 1978 (as amended) (herein after referred as Act 1978). There ought to have been 5 posts reserved for the Scheduled Tribe (H) candidates. The respondent authority with mala-fide intention has not shown the reservation of posts for Scheduled Tribe (H) in services in the said

advertisement. Accordingly, this writ petition is filed seeking for the following reliefs:-

"In the premises it is therefore prays that Your Lordships may be pleased to admit this petition call for records, issue Rule calling upon the respondents to show cause as to why a writ in the nature of Mandamus and certiorari or any other appropriate write order or direction shall not be issued re respondents:-

(a) To transmit and certify the records relating to the posts advertise vide impugned advertisement No. 06/13 (Annexure- "1") including the cadre strength of ACS (Jr. Grade) officers reflecting the utilization of roster point posts category wise services and/or

(b) After scrutiny, if roster point vacancy of posts is exist in respective ST(H) to pass necessary order/direction to issue corrigendum in respect of the Advt. No. 6/2013 issued by APSC showing the actual reservation in roster point posts in ACS (Jr. Grade) including allied services meant for ST (H) incumbents and

(c) After hearing the counsel and perusal of the records your lordship may make the rule absolute and/or pass necessary order/orders as your lordships may deem fit and proper. And during the pendency of the writ petition your Lordship's may be pleased to direct the respondent authority not declare the result of the Preliminary Examination of the Combined Competitive Examination 2013 conducted by APSC in pursuance to the advertisement No. 06/2013. And for this act of kindness your petitioners as in duty bound shall ever pray".

3. Mr. Sarania submits that as per the Act, 1978 and the Rules 1983 made thereunder all appointment to services and posts to be filled up by direct recruitment must reserve @ 7% SC, 10% ST(P) and 5% ST(H) in the manner set out in the schedule in the vacancies reserved for the candidates belonging to the said categories. But in the subject advertisement altogether 90 posts are to be filled up by direct recruitment for the post of Assam Civil Service (Jr. Grade) but in respect of ST(H) no post has been shown as reserved. In compliance of the Central Government direction vide OM No. 36012/2/96-Estt.(Res) dated, 2nd July, 1997 issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) Govt. of India, the State of Assam amended the said Act of 1978 which was notified in the Assam Gazette on 21.08.2012 and as per the said amendment of 2012, the section 4 of the 1978 Act was substituted. As per the earlier rules, the reservation was on the vacancy based and after the amendment it was post based reservation. The respondent authority on the basis of wrong interpretation of the said amendment erroneously worked out showing the reserved posts meant for ST(H) were fully utilized giving retrospective effect of the amended provision of the Act inasmuch as the amendment came into force with effect from 21.08.2012. Prior to 2012 the reservation policy was against the vacancy based reservation and as such the required percentage of reservation ought to have been calculated on the basis of the vacancies of posts sought to be filled up by the authority on the resultant

vacant posts after 21.08.2012. As per model 100 point roster the ST (H) incumbent is earmarked at post No. 10, 30, 50, 70 and 90. Even in the said post based roster also the ST(H) incumbents are at least entitled 5 post in ACS (Jr. Grade) but the respondent authority in the advertisement indicated there was no reservation post for ST(H) and SC categories for the post of ACS (Jr. Grade) due to full utilization of the prescribed percentage of reservation. There is arbitrariness in the action of the respondents to deprive the petitioners inasmuch as the amendment and the substitution in the Act 1978 has no retrospective effect and as such the roster point reserved post in services sought to be filled up by the advertisement on the basis of vacancies of post after 21.08.2012 is an arbitrary act on the part of respondents.

4. The respondent nos. 3 and 4, APSC filed an affidavit-in-opposition thereby admitting the contents of the advertisement. The respondent no. 1 also filed an affidavit-in-opposition along with the additional affidavit. As per the direction of this court, the respondent no. 1 by filing the additional affidavit put on record the breakup of 564 candidates as per the new 100 point post based roster of the Government of Assam indicating the vacancy position of the reserved categories post. As on 01.01.2012, the reserved posts for ST (H) are earmarked in serial nos. 10, 30, 50, 70, 90, 110, 130, 150, 170, 190, 210, 230, 250, 270, 290, 310, 330, 350, 370, 390, 410, 430, 450, 470, 490, 510, 530, 550, 570, 590, 610 and 630 which covers 32 posts in total. At the time of requisition to the Assam Public Service Commission out of 474 serving ACS (Jr. Grade), there were 32 officers belonging to ST(H) category and 62 officers of SC category who were appointed under reserved posts of ST (H) and SC respectively and as such even after 90 posts (as per the advertisement) along with the 474 existing officers are considered together then 5% reservation of for ST(H) would be 28 posts and 7% reservation for SC would be 39 posts as prescribed by the Amendment Act, 2012. Thereafter during the selection process of the Combined Competitive Examination, 2013 though 90 post were advertised for ACS (Jr. Grade), there was no reservation for ST(H) category due to full utilization of the prescribed percentage of reservation which is clearly mentioned in the advertisement.

5. Mr. Doley, referring to the said stand of the respondent no. 1 submits that as there are no vacancy for the post for ST(H) as per the 100 point roster, accordingly it was rightly mentioned in the advertisement and the petitioners grievances have no valid basis.

6. I have given due consideration to the submissions of the learned counsel. The respondent State that is the respondent no.1 vide affidavit-in-opposition clearly stated that at the time of requisition to the APSC there were 474 serving ACS (Jr. Grade) officers out of which 32 officers belonging to ST(H) category and 62 officers belonging to SC category were holding the roster point posts meant for the said categories. After considering the subsequent 90 posts for ACS (Jr. Grade) it comes to total 564 posts and the absorption in the reserved categories posts are also shown as per the Annexure-1. This Annexure-1 as per Mr. Sarania

cannot be accepted and the calculation shown on the basis of the said utilization of the said post reserved for the ST(H) includes candidates who entered into the cadre in the year 1992, etc. and the said persons who held the posts in the year 1992, etc are mostly promoted and as such some posts under the 100 point roster had fallen vacant in the year 2011-2012. The said posts were not considered by the respondent no.1 before the advertisement was published and as such the reliance of Annexure-1 in the affidavit-in-opposition of respondent no. 1 is not proper. The said submission cannot be accepted because as per the new 100 point post based roster, the reserved post for ST(H) are earmarked on the basis of the total posts of the cadre and the 5% reserved post for ST(H) candidate, comes to 28 posts but as per the Roster Register of ACS (Jr. Grade) Officers as on 01.01.2012 as per 100 point post based roster, there are 32 posts in total. Accordingly after taking into account the advertised 90 nos. of post in the grade there is no increment of the number of posts from 32 which the ST(H) incumbents are already holding i.e. the present strength under the 100 point post based roster considering the advertised 90 nos. of posts. Under the said circumstances, it cannot be held that the contention in the advertisement that there was no reservation for ST(H) due to full utilization of the prescribed percentage of reservation of those reserved category in the grade is baseless. For the said reason, the contention of Mr. Sarania that there was wrong interpretation by the respondent authority of the amended provision also cannot be accepted because as per the 100 point post based roster number of posts already filled up is 32 i.e. much higher than the prescribed 28 nos. of post.

7. On perusal of the writ petition, it is found that the petitioners applied in the general category but as per the submission of Mr. Sarania, they could not succeed and therefore, they have challenged the advertisement which in my opinion also cannot be permitted inasmuch the petitioners are estopped from filing the writ petition once they have accepted the terms of the advertisement dated 13.08.2013 in the Assam Tribune.

8. In view of the said discussion, this writ petition is dismissed, however no cost.