
(2022) 12 GAU CK 0036

Gauhati High Court

Case No: Writ Appeal No. 35 Of 2017

Beauty Gogoi

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision: Dec. 22, 2022

Acts Referred:

- Code Of Civil Procedure, 1908 - Order 1 Rule 9

Hon'ble Judges: R.M. Chhaya, CJ; Soumitra Saikia, J

Bench: Division Bench

Advocate: J. Deka, R.K. Borah, S. Borthakur

Final Decision: Dismissed

Judgement

Soumitra Saikia, J

1. This appeal is directed against the common Judgment and Order dated 16.11.2016 passed in a bunch of writ petitions in which W.P(C) No.

843/2016 was the lead case.

2. The present appeal is, however, filed by the five appellants who had jointly filed W.P.(C) No. 848/2016. The facts as noticed from the pleadings are

that the appellants had been engaged as Anganwadi Workers in ICDS Project in the District of Nagaon. The appellants assailed the selection process

by which selections were made available for appointments/promotions for 284 posts of Supervisors constituting 25% of reserved quota for in-service

Anganwadi Workers employed under the Social Welfare Department.

The appellant No. 1 was engaged as Anganwadi worker in Khagarijan ICDS Project, Nagaon, vide office order dated 17.05.1995 issued by

respondent No. 5 and her date of joining was 25.05.1995.

The appellant No. 2 was engaged as Anganwadi Worker in Khagarijan ICDS Project vide office order dated 20.02.1995 issued by respondent No. 5

and her date of joining was 20.02.1995.

The appellant No. 3 belongs to the Scheduled Tribe (Plain) Lalung Community and she was engaged as Anganwadi Worker in Khagarijan ICDS

Project, Nagaon vide office order dated 17.05.1995 issued by respondent No. 5 and her date of joining was 20.05.1995.

The appellant No. 4 was engaged as Anganwadi Worker in Lawkhowa ICDS project, Nagaon vide office order dated 10.06.1991 issued by

respondent No. 6 and her date of joining was 20.06.1991.

The appellant No. 5 was engaged as Anganwadi worker in Lawkhowa ICDS Project, Nagaon vide office order dated 25.01.1991 issued by the

respondent No. 6 and her date of joining was 26.01.1991.

3. All the petitioners have undergone necessary training/courses from time to time and have discharged their duties as Anganwadi workers till date in

the respective centres.

4. By Notification dated 04.06.2012, the Government of Assam and Social Welfare Department laid down the norms and guidelines for selection of

candidates for appointment/promotion to the post of Supervisors against 25% reserved quota from amongst the in-service Anganwadi workers. As per

the said Notification, the selection was to be made on the basis of oral interviews comprising of a total of 100 marks. The distribution of such marks

were specified in the notification itself. The in-service Anganwadi workers were required to submit application for appearing in the selection test

before the respective Child Development Project Officer, who in turn was required to submit the papers along with a consolidated list of candidates

before the concerned districts of Social Welfare Officers and which was ultimately required to be submitted to the Director, Social Welfare Assam.

The process of Selection and interview was to be held by the District Level Selection Committee and the final merit list was to be prepared by the

duly constituted State Level Selection Committee on the basis of the records of the individual mark-sheets of the members of the District Level

Selection Committee and the comparative statement prepared by the District Social Welfare Officers. The final merit list was to be prepared by

strictly on the basis of merit and the same was to be published by the Director, Social Welfare.

5. All the writ petitioners before the learned Single Judge including the present appellants had submitted their applications as per procedure. On

05.07.2014, a decision was taken in a meeting held amongst the Director, Social Welfare and Officers of the Establishment Branch, for constitution of

a District Level Committee for conducting written examination for appointment to the post of Supervisors against the 25% reserved quota. The said

minutes of the meeting held on 5.07.2014 was brought to the knowledge of the Commissioner and Secretary, Government of Assam, Social Welfare

Department for due consideration and necessary action. The Government in the Social Welfare Department agreed to the proposal of Directorate for

constitution of District Level Committee for conducting written examinations as per the guidelines and laid down procedure. The approval was

communicated by the Department vide letter dated 30.09.2014. In January, 2016 the writ petitioners including the present appellants were issued admit

cards for appearing in the written examination which was held district wise on 17.01.2016. For the 284 posts of Supervisors constituting 25% of

reserved quota, over 12,000 in-service Anganwadi Workers appeared in the written examinations. A list of 1144 candidates securing the cut-off marks

and above and qualifying for the viva-voce test was uploaded on the official website on 27.01.2016. The interview/viva-voce, thereafter, was held in

which the 1097 candidates appeared and eventually the final merit list of 250 selected candidates was uploaded in the official website on 02.02.2016

followed by another final merit list of 73 candidates uploaded on 05.02.2016. Appointments were offered to 284 candidates after final scrutiny of the

two lists by removing those roll numbers found duplicated in the lists. The selected candidates joined the post of supervisors on 08.02.2016.

6. The learned Single Judge upon hearing the Bunch of Writ petitions, had categorised the petitioners under two categories namely, category-A

comprising of candidates who did not qualify in the written test, and Category-B namely for candidates who qualified in the written test but were not

finally selected pursuant to the viva-voce. The present appellants fall under category-A, namely, that they had appeared for the written tests but were

not called for the viva-voce. All the petitioners including the appellants had challenged the selection held on the ground that the decision of the respondent State to conduct the selection by way of the written tests followed by viva-voce was in violation of notified norms and guidelines vide notification dated 04.06.2012. According to the writ petitioners, the selection held was for the departmental promotion to the posts of supervisors against 25% reserved quota from amongst the in-service Anganwadi Workers and therefore, the selection held pursuant to the notification dated 04.06.2012 is wholly contrary to the norms published and therefore, the selection ought to be interfered with and set aside and quashed.

7. The respondents contested the case of the petitioners. The respondent State contended that for the appointment/promotion to the post of supervisors against 25% reserved quota, the selection made through written test and viva-voce was necessary to bring in transparency. It was contended that the notification dated 04.06.2012 did not specifically restrict conduct of any written examination. It was further contended that there was no allegation of any irregularities or mischief being resorted to by any quarter during the process of holding the written test and the subsequent viva-voce leading to the publication of the final merit list. The State also contended that the appointments have been made to the selected candidates in respect of the 284 posts and the same are not under challenge. It was contended that the petitioners having appeared in the written examination and submitted to the selection process cannot be now permitted to turn around and challenge the selection process without there being any specific allegations in respect of the conduct of the selection process.

8. The learned counsels representing the some of the selected candidates, who are arrayed as parties, also disputed the contentions raised by the writ petitioners before the learned Single Judge. The learned counsel had relied on the contentions made by learned Government Advocate appearing for the State.

9. The learned Single Judge considered the contentions raised and dismissed the writ petitions by holding that there is no apparent illegality or arbitrariness in the conduct of the selection process. The learned Single Judge held that there is no allegation of any change in the rules of the game.

The learned Single Judge held that if the petitioners were aggrieved by the decision of the respondent state to conduct the written test for the selection purpose then they should have endeavoured to seek the remedy available under law at the opportune moment rather than waiting to take part in the selection process and then upon having failed in the selection then turn around to challenge the selection procedure. In so far as the appellant No. 3 is concerned, who had claimed that she is a Scheduled Tribe (Plains) candidate and inspite of having secured 43 Marks in the written test she had been discriminated and was not called for the viva-voce tests where the cut-off marks under that category was only 31; the learned Single Judge held that no due diligence has been shown by the petitioners and therefore equity cannot come to the aid at the belated stage. The writ petitioners were accordingly dismissed as being devoid of merit.

10. Aggrieved by the order of the learned Single Judge, the present writ appeal has been filed.

11. At the outset, it is noticed that the selection procedure undertaken relate to the year 2016. No interim order was granted by this Court suspending the appointments of the selected candidates. Although the respondents No. 8, 9, 10 & 11 have been arrayed as parties to the writ petition, they being selected candidates, their appointments, however have not yet been specifically challenged in the writ petition and consequently in the present writ appeal as well.

12. The Notification No. SWD 198/2004/222 dated 04.06.2012 issued by the Department of Social Welfare, Government of Assam notifies the norms and guidelines for selection of candidates for appointment or promotion to the post of supervisors against 25% reserved quota from amongst the in-service Anganwadi Workers. The eligibility criteria under Clause-A. The norms and guidelines regarding the selection process and the distribution of marks are prescribed under Clause-B.

Under Clause-B(1), it is provided that the selection shall be made on the basis of oral interview. The said oral interview is to be held by the State

Level Selection Committee constituted vide Government Notification No. SWD. 426/2008/2 dated 16.12.2008, on the date which is to be notified by

the Chairman of the said committee. The detailed procedure for conducting of the selection including the submission of application form etc. are prescribed in the said notification.

Under Clause-B(12), it is prescribed that all other rules and procedure of the State/Central Government that conform to the present requirements but not incorporated here in above shall also be followed accordingly.

Under Clause-B(13), it is provided that in the event of any dispute, the decision of the State Government shall be final and binding on all concerned.

Under Clause-B (14), it is provided that if any question arises relating to the interpretation of these norms and guidelines, the decision of the Government in the Social Welfare Department shall be final.

13. It is also seen from the pleadings that three of the appellants namely appellants No. 1, 2 & 3 had submitted a representation to the Commissioner

and Secretary, Government of Assam, Social Welfare Department and the Director, Social Welfare, Government of Assam vide representation dated

08.02.2016. In para 2 of the said representation, it was stated that the admit cards were handed over to the said appellants on 13.01.2016 from which

it was noticed that written examination would be held on 17.01.2016. The petitioners represented the entire selection process was not conducted as

per the norms and guidelines prescribed vide notification dated 04.06.2012 and as such no appointments or promotions should be made to those

promotional post of supervisors for in-service Anganwadi Workers against 25% reserved quota and also to hold the selection process afresh. The said

representation, however, was not disposed of and meanwhile the selection process having commenced the appellants participated in the selection

process and consequently having failed to clear the written examination and they were not called for the viva voce. In the absence of any specific

allegations that there were large scale anomaly or illegalities in conducting the written test and/or the viva voce, the only question which fell for

consideration before the learned Single Judge was whether the selection process can be questioned in view of the fact that there was a decision taken

at the Government level to conduct a written test and thereafter, shortlist the candidates for the viva voce.

14. Before this Court, the arguments made before the learned Single Judge was reiterated. It was urged that the written test/examination which was conducted was in violation of the norms and guidelines laid down in the Notification and therefore, the entire selection process is vitiated and the same should be set aside and quashed and the respondents be directed to conduct a fresh selection process. It was urged that although the representation was submitted before the Department, the same remain unattended and since the written test was conducted within a few days after issuance of the admit cards, the appellants had no options but to submit themselves to the said selection process in spite of lodging the objections.

15. In a recent Judgment of the Apex Court rendered in State of Uttar Pradesh Vs. Karunesh Kumar and Ors. reported in (2022) SCC Online SC 1706, it was held that the principle governing changing the rules of the game would have no applications when the change is with respect to the selection process but not the qualification or eligibility. It was held that after the advertisement is made followed by an application made by candidate with further progress, no rule can be brought in disqualifying the candidate to participate in the selection process. However, the employer shall always have adequate discretion with an element of flexibility in selecting an employee. Interference can only be made when a selection is arbitrary or contrary to law. Relevant Paragraph of the Judgment is extracted below:

“25. The same is the position under the 2015 Rules by which the Commission is required to send the merit list alone to the appointing authority which it actually did and in case of non-joining, the vacancies are carried forward to the next process of selection, as has been rightly done by the authority in the present case. An employer shall always have adequate discretion with an element of flexibility in selecting an employee. Interference can only be made when a selection is arbitrary or contrary to law, which we do not find to be the case in the present matter. The approach of the High Court is like a visually impaired person looking for a black cat in a dark room when the cat itself is not there.”

(Emphasis Supplied)

16. Similarly in Anupal Singh and Ors. Vs. State of Uttar Pradesh reported in (2020) 2 SCC 173, the Apex Court held while dealing with an issue

regarding revision of vacancies in OBC Category, reiterated the law laid down by the Apex Court in catena of judgments earlier that where the

selection of successful candidates is challenged, they should be impleaded in the proceedings in terms of Order I Rule 9 CPC. Relevant paragraph of

the said judgment of the Apex Court are extracted below:

“72. When the selection of successful candidates is challenged, depending upon the facts and circumstances of the case, the successful

candidates ought to be put on notice about the filing of writ petition by impleading them by issuance of notice in accordance with law vide

Poonam v. State of U.P. [Poonam v. State of U.P., (2016) 2 SCC 779 : (2016) 2 SCC (Civ) 297] In the present case, we are not inclined to

go into this question in view of the order passed by the High Court dated 4-6-2015 [Manish Upadhyay v. State of U.P., 2015 SCC OnLine

All 9461] . In Manish Upadhyay v. State of U.P. [Manish Upadhyay v. State of U.P., 2015 SCC OnLine All 9461] , the High Court asked

the writ petitioners/private respondents' lawyer to implead the incumbents as parties who have been selected for the post in question. Before

the High Court, Mr Ajay Kumar, learned counsel representing the U.P. Public Service Commission submitted that he would supply at least

names of ten successful candidates along with the details and by the order of the court, the counsel appearing for the writ petitioners were

directed to serve notice upon those ten candidates. In such facts and circumstances, we are not inclined to go into this question as to

impleading/non-impleading of all the successful candidates in the writ petition.”

(Emphasis Supplied)

17. The arguments rendered by the appellants have been duly taken note of. However, in view of the law laid down as above by the Apex Court, we

find that there is no infirmity in the judgment of the learned Single Judge which requires our interference in an intra-court appeal. In view of the

authoritative pronouncements of the Apex Court upholding the employers discretion to adopt different procedures while selecting an employee, it cannot

be held the decision of the respondent department to conduct a written test would be contrary to the norms and procedures. The employer will have

the liberty to decide on the procedure for selection in the interest of fairness and transparency. Further as also enunciated by the Apex Court in

Anupal Singh (Supra), any prayer for interference in a selection process where the selected candidates have already been appointed, will require those

selected candidates to be arrayed as party respondents. In the present appeal, there are five appellants and four selected candidates who are arrayed

as respondents No.8, 9, 10 & 11. There is no other averment that there is anomaly or illegality in the selection and subsequent appointment of the

private respondents save and except the averment that the respondent department conducted a written test which is not prescribed in the Notification.

18. In view of the discussions above, the Judgments relied upon by appellants before the learned Single Judge and reiterated before this Court have no

application to the facts and circumstances of this case and the same are not come to the aid of the appellants.

19. In view of the discussions above, we find no merit in this appeal and the writ appeal is accordingly dismissed. No order as to cost.