

## Jakir Hussain Vs State of Assam and Others

**Court:** Gauhati High Court

**Date of Decision:** March 16, 1998

**Acts Referred:** Constitution of India, 1950 Article 116, 145, 226

**Citation:** (1998) 2 GLT 393

**Hon'ble Judges:** D. Biswas, J

**Bench:** Single Bench

**Advocate:** N. Dhar and P.B. Mazumdar, for the Appellant; L.P. Sharma and R. Bhattacharjee, for the Respondent

### Judgement

D. Biswas, J.

In this writ petition, Md. Jakir Hussain, who is working in the Assam Seeds Corporation Limited, hereinafter referred to as

the Corporation, as Junior Assistant (Accounts) with effect from 28.12.87 has prayed for all or any of the following reliefs:

(i) To quash the advertisement dated 23.4.93 (Annexure-5) for recruitment and appointment to the post of Accounts Officer in Assam Seeds

Corporation.

(ii) direction for consideration of the case of the Petitioner as departmental candidate for promotion and appointment to the post of Accounts

Officer either in the present vacancy or in the future vacancy; and

(iii) direction for formulation of Rules regulating appointment, promotion and other conditions of service.

2. With reference to the reliefs prayed for, let us now address to the case of the Petitioner.

3. The Petitioner has controverted the advertisement dated 23.4.93 (Annexure-5) for recruitment and appointment to the post of Accounts Officer

in the Corporation on the ground that appointment to various posts in the Corporation has been made from time to time on convention as there is

no service Rule regulating the subject and that the Managing Director contrary to the prevalent convention notified the impugned advertisement

prescribing higher qualifications for the post of Accounts Officer in excess of the powers delegated to him by the Board of Directors vide

resolution adopted against Item No. 16 in its meeting dated 3.2.93. According to the Petitioner, the qualification prescribed by the Managing

Director in excess of powers delegated to him is arbitrary and capricious and this has operated as a clog on his candidature for the aforesaid post.

4. Both the learned Counsel for the Petitioner and the Respondents advanced their submissions for and against the above contention. In order to

appreciate their respective stand, let us first refer to the resolution dated 3.2.93. It would appear from the resolution (Annexure-4) that the Board

of Directors authorised the Managing Director to search for a qualified accounts personnel for the post of Accounts Officer. It is evident from the

resolution of the Board that no qualification was prescribed for the post of Accounts Officer. In pursuance of the resolution, the Managing Director

issued the impugned advertisement (Annexure-5) wherein the following qualifications have been prescribed:

Chartered Accountant/Cost Accountant preferably having 2 or 3 years experience in a Govt. or private sector undertaking.

5. To justify the requirement of higher qualification prescribed by the Managing Director, the learned Counsel for the Respondents has drawn

attention of this Court to the averments made in para 19 of their counter wherein it is stated that the Corporation is a company registered under the

Indian Companies Act and its affairs are governed by its own Memorandum and Articles of Association and Clause 116 of Articles of Association

prescribes the powers of appointment. Clause (21) of Article 116 empowers the Directors to appoint at their discretion and remove such

Secretaries, Officers, Clerks, Agents and Servants as they may from time to time think fit. Therefore, it would appear that the Directors have been

vested with the powers of appointment and to regulate the service conditions of the officers and other employees of the Corporation. The authority

given by the Board of Directors to the Managing Director is, therefore, based on the powers vested on them under the Memorandum of

Association.

6. Article 145 of the Memorandum of Association provides that notwithstanding anything contained in any of these Articles the Governor may,

from time to time, issue such directives or instructions as may be considered necessary in regards to finances, conduct of business and affairs of the

company. This provision makes it obligatory on the part of the Corporation to carry Out the instructions issued by the Governor from time to time.

The learned Counsel for the Respondents referred to a letter dated 14th December, 1992 issued by the Joint Secretary to the Government of

Assam whereby the recommendation of the Estimate Committee of the State Assembly has been forwarded. From the recommendation at Sl. No.

9, it would appear that the Estimate Committee recommended immediate steps to create an audit and accounts cell by recruiting qualified Cost

Accountant. Acting on this recommendation of the Estimate Committee and, in pursuance of the resolution of the Board, the Managing Director

prescribed the minimum qualification required for the post of Accounts Officer. Since the Corporation is bound to follow the instructions of the

Government of Assam, the action of the Managing Director in prescribing the aforesaid qualification for the post of Accounts Officer cannot be

said to be arbitrary or capricious. This having been done in the interest of the Corporation, no oblique motive can be attached to it. The

Corporation or its executive had no option but to act upon the recommendation of the Estimate Committee in the interest of the Corporation

(Para-19 in the affidavit in-opposition). This being a matter of public policy and endorsed by the State Government, it will override all conventions,

norms and practices. The steps taken by the Corporation cannot be said to have varied from existing service conditions of the Petitioner.

Therefore, the principle laid down in T.R. Kapur and Others Vs. State of Haryana and Others, cannot be invoked. Similarly the decision in

Mohinder Singh v. State of Haryana and Ors. (1989) 3 see 93 at para-11 cannot be imported and applied to salvage the cause of the Petitioner

since he did not have the requisite qualification at the time when selection was being made and even as on today. Therefore, in the opinion of this

Court, the advertisement dated 23.4.93 cannot be said to be bad in law and does not warrant any interference under Article 226 of the

Constitution. This disposes of the prayer of the Petitioner for issue of a writ to quash the advertisement dated 23.4.93.

7. Now, it is proposed to deal with the prayer of the Petitioner that a direction be issued to the Respondents to consider his case as departmental

candidate for promotion to the aforesaid post. It may be mentioned here at the very outset that the post has already been filled up in pursuance of

the aforesaid advertisement. However, the relief sought for by the Petitioner relates to the vacancy that may arise in future as well. The claim of the

Petitioner that he is a graduate in Commerce and in course of service obtained Master degree in the stream ought to have been taken into

consideration for his promotion/appointment to the post of Accounts Officer. The learned advocate representing him pleaded that the Petitioner

can legitimately expect consideration of his candidature as a departmental candidate for promotion to the aforesaid post, but for the higher

qualification prescribed by the Managing Director, his expectation has been wiped out. To appreciate this argument, let us have a picture of the

hierarchy of the Corporation in the Accounts Branch which is reproduced below:

(1) Junior Accountant (45 posts)

(2) Senior Accountant (2 posts)

(3) Superintendent (Accounts)

(4) Assistant Accounts Officer (1 post)

(5) Accounts Officer

(6) General Manager (Finance).

8. The Petitioner joined the service of the Corporation in 1988 as Junior Assistant (Accounts), now re-designated as Junior Accountant. It is

submitted on behalf of the Respondents that the posts are generally filled up by promotion but the Petitioner who is a junior employee in the

Corporation belonging to the cadre of Junior Assistant (Accounts) cannot have any legitimate expectation for consideration for

promotion/appointment to the post of Accounts Officer stealing a march over a good number of senior Officers working above him in different

higher grades. The argument of the learned Counsel appears to be reasonable. The seniority position of the Petitioner is such that under no

circumstances, his case can be considered for promotion to the post of Accounts Officer in supersession of a number of officers working above

him. The Petitioner did not apply for the post when the advertisement was issued as he did not possess the minimum necessary qualification

prescribed in this behalf. Neither from seniority point of view nor on consideration of his qualification, he appears to have had any edge over his

seniors or the direct candidates. Therefore, his expectation that he would be considered for promotion to the aforesaid post cannot be said to be

legitimate. The principles laid down in Navjyoti Co-operative Housing Society etc. Vs. Union of India and Others, on the principle of legitimate

expectancy can under no circumstances be applied in this case as no benefit due to him was being adversely affected. An officer can legitimately

expect promotion/appointment on the basis of merit-cum-seniority provided the post is proposed to be filled up in the next higher grade and is

required to be filled up by promotion only. The decision taken by the Managing Director to prescribe higher qualification is based on overriding

reason of public policy formulated by the Estimate Committee and is not in derogation of any right vested in the Petitioner. Examined and viewed

from all angles, the Petitioner cannot be favoured with a direction for consideration of his case for promotion/appointment both in the present

vacancy, if any, or in the future vacancy that may arise.

9. The last point argued by the learned Counsel for the Petitioner relying on the decision in Shri Yendrembam Babusaheb v. State of Manipur Ors.

1995 (2) GLT 363 that there being no Rules regulating appointment, promotion and other terms and conditions of service of the officers and

employees of the Corporation, a direction to frame Service Rules within a given time frame be issued to the Corporation. The learned Counsel for

the Respondent-Corporation referring to para 21 of the counter submitted that there is a registered trade union recognised by the Management

and, therefore, the Petitioner in his individual capacity cannot ventilate any grievance relating to the service condition. However, the learned

Counsel states that the formulation of service rules is in process in compliance with the provisions of the Industrial Employment (Standing Orders)

Act, 1946 and the draft is pending with the Respondent No. 1 for clearance from his end.

10. It would, therefore, appear from the submission made above that the formulation of the Service Rules is in progress and it is expected to be

notified soon. Since this is not a contentious issue between the parties,, the matter can be disposed of with a direction that the Service Rules should

be framed by the Corporation within a period of six months from the date of this judgment.

11. For reasons above, the Civil Rule is proposed to be disposed of with a direction that the Corporation shall endeavour to formulate the Service

Rules within a period of six months from to-day. Other reliefs claimed are rejected.

12. The Civil Rule is thus disposed of with the direction as above.