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(2001) 05 GAU CK 0016

Gauhati High Court

Case No: Civil Rule No. 426 of 1995

Robindra Nath Sarma and Others	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision: May 19, 2001

Acts Referred:

- Constitution of India, 1950 - Article 309

Citation: (2001) 2 GLT 184

Hon'ble Judges: B. Biswas, J

Bench: Single Bench

Advocate: A. Dasgupta and B. Sarmah, for the Appellant; B. Choudhury and B. Saikia, for the Respondent

Judgement

D. Biswas, J.
This petition has been filed seeking the following reliefs:

"(i) to publish the select list for the post of Forester Grade-I;

(ii) to fill up the posts of Foresters Grade-I from the select list in accordance with merit;

(iii) to quash the appointments of the persons appointed as Forester Grade-I without publishing the select list;

(iv) to appoint the petitioners in terms of order of merit of the select list and/or pass any such further or other order or orders as your Lordships may deem fit and proper."

2. The petitioners in pursuance of an advertisement issued on 26.2.1991 applied for the post of Forester Grade-I. Physical Test was carried out on 15.2.1992 and all of

them were declared qualified. Thereafter, they were summoned for written test on 8.3.1992. They appeared and, according to them, fared well. But the result has not been published till date. Besides, the respondent No. 2 appointed the private respondents without following the selection process. Hence, this petition.

3. The Commissioner and Secretary to the Government of Assam, Forest Departments in his affidavit stated as follows:-

"3. That with regard to the statements made in paragraphs 1, 2, 3, 4, 5 and 6 of the petition, the deponent begs to state that on 26.2.1991 the Subordinate Services Selection Board published for certain posts including Forester Grade-I and Forest Guards. The Subordinate Services Selection Board had been constituted in pursuance to a set of Rules namely Assam Subordinate Services Selection Board Rules; 1991 framed under the proviso to Article 309 of the Constitution of India, under notification No. AB-P.- 131/90 dated 10.1.1991. Subsequently the Govt. of Assam vide notification No.ABP-131/90/Pt-I/91 dt. 29.8.1991 repealed the aforesaid Rules and consequently the said Selection Board stood abolished. Therefore, the petitioners could not have been called for test and interview by that Selection Board on the basis of applications made by them in response to the said advertisement. Thereafter the Government vide memo No. ABP-66/92/66 dated 15.6.1992 laid down a recruitment policy for appointment of non-gazetted staff through a Central Recruitment Committee for each district. On circulation of the aforesaid recruitment policy, the then Principal Chief Conservator of Forests. Shri K.K. Barua, vide Memo. No. FEI/30(Pt) dated 15.7.1992 informed the Commissioner and Secretary that he had made advertisement for filling up of Grade-Ill posts in pursuance to about 2,60,000 applications were received in addition to the 1,90,000 applications received from the dissolved Selection Board. It was also mentioned that for Selection of candidates from these applicants, he had constituted district wise Recruitment Committees which thereafter took tests and interviews and completed the process of selection. The PCCF therefore, sought permission to go ahead with the appointment outside the purview of the new recruitment policy. The State Government, upon consideration of the matter, agreed to the said proposal but with the condition that the Panel of candidates would be valid upto 31.12.1992."

4. The Chief Conservator of Forest, respondent No. 3, in his affidavit-in-opposition stated as follows:-

"4. That with regard to the statements made in paragraphs 7, 8, 9, 10 and 11 of the petition, the Deponent begs to state that no record with regard to the said selection process is available in the office of the Principal Chief Conservator of Forests and as such it could not be ascertained as to whether the result of the selection was declared or any select list prepared. It cannot also be said definitely as to whether the private respondents had actually applied for the posts. But it appears that no select list was published and the appointments were made without publication of any select list. The appointments were made by the then Principal Chief Conservator

of Forests, Shri K.K. Barua."

5. It would appear from the above that the Subordinate Services Selection Board was abolished by a notification dated 10.1.1991 for which the selection process in pursuant to the advertisement dated 26.2.1991 could not be completed. The settled position of law is that even the selected candidates have no right to appointment. Where there is a duly prepared select list and the State acts upon it, in that case the appointments will have to be made strictly in accordance with the merit subject to the reservation policy. Arbitrary appointment from a select list is not permissible. In the instant case, no select list was published and the recruitment process initiated in pursuance of the above advertisement stood cancelled. Therefore, the writ petitioners cannot get any direction for appointment.

6. The fact emerges from the affidavits submitted by the Commissioner, Forest and the Chief Conservator of Forest (Social Forestry) is that the private respondents were appointed without following any selection procedure. No record is available in the office to show that the private respondents were selected by the District Recruitment Committee. The appointment of the private respondents appears to have been made dehors the Rules and without selection. No person appointed without selection in normal course is entitled to continue in service. It will amount to misplaced sympathy if they are allowed to continue. Length of service cannot salvage the appointment made or procured illegally.

7. In the result, the writ petition is disposed of. The petitioners are not entitled to any direction for appointment. The respondents No. 1, 2 and 3 are to make an enquiry to find out as to how the private respondents were appointed. After such enquiry, if it is found that they were appointed in total violation of the Rules and the established procedure, appropriate orders including order of termination may be passed in accordance with the provisions of law after giving due opportunity of showing cause.

8. No costs.