

(2004) 03 GAU CK 0040

Gauhati High Court

Case No: WP (C) No. 2465, 2666, 2975 and 3996 of 2001

Gopal Bharali

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision: March 17, 2004

Citation: (2005) GLT 723 Supp

Hon'ble Judges: B.K. Sharma, J

Bench: Single Bench

Advocate: S.S. Day and M. Nath, for the Appellant; K.C. Mahanta and N. Dhar, for the Respondent

Final Decision: Allowed

Judgement

B.K. Sharma, J.

These writ petitions are directed against individual orders dated 16.10.2000 terminating the services of the petitioners as Extension Officer under the Directorate of Industries and Commerce. The petitioners were appointed as Extension Officer under the then Director of Industries by individual appointment orders dated 3.5.1995, 25.7.1995 and 30.12.1994. Various writ petitions were filed challenging the legality and validity of the selection process in which the petitioners along with others numbering about 150 were purportedly selected. By a common judgment and order dated 1.9.1997 passed in those writ petitions, the selection and appointments were held to be illegal. However, it was provided that before cancelling the orders of appointments, the appointees should be given an opportunity of being heard. The said judgment was carried on appeal by way of filing Writ Appeals No. 544/1997 and 549/1997 which were disposed of by learned Judicial Magistrate and order dated 18.11.1999. The Division Bench while upholding the judgment and order of the learned Single Judge made a modification of the same providing that in case the appointees submit their reply to the show cause notices, the concerned authority shall consider the same without being prejudiced by the observations made by the learned Single Judge affecting their cases.

2. Pursuant to the said judgment and order of the Division Bench, individual and identically worded show cause notices all dated 3.1.2000 were issued to the petitioners. No specific ground was indicated in the show cause notice except making a vague statement that the petitioners were appointed through some irregular procedure, without specifying anything as to what were those irregular procedure and also as to how the petitioners were involved in such irregularities. The show cause notices were identically worded by which the petitioners were directed to submit their reply. They were also directed to submit their testimonials such as academic certificates, call letters for interview and appointment orders.

3. The petitioners responded to the said show cause notices by filing their individual reply and submitted their documents as was directed to be produced by the aforesaid show cause notices. This was followed by the impugned orders all dated 16.10.2000 terminating the services of the petitioners. In respect of the petitioner in WP(C) No. 3996/2001, ground of termination of the service was stated to be his failure to qualify in the written test. In case of the seven writ petitioners involved in WP(c) No. 2465/2001, ground of termination of the service of the 1st three petitioners and the 7th petitioner was stated to be their failure to qualify in the written test, while the ground of termination of services of the remaining three petitioners was stated to be non-inclusion of their name in the select list. Such orders of termination, terminating the services of the petitioners was followed by a communication dated 21.10.2000 issued by the Government of Assam, in the Department of Industries and Commerce addressed to the Director, requesting not to take any action in respect of the services of the petitioners which was further followed by the order of the Director dated 23.10.2000 keeping in abeyance the termination of services of the petitioners. As per the averments made in the writ petitions the respondents were trying to accommodate 11 other persons in place of the petitioners illegally. It was under these circumstances, the writ petitions were filed and this court was inclined to pass interim orders protecting the services of the petitioners.

4. An affidavit-in-opposition has been filed on behalf of the respondents in WP(C) No. 2465/2001 and the said affidavit has been made use of in all the four writ petitions. In the affidavit the same very grounds as indicated in the impugned orders of termination have been reiterated. A further statement has been made that the services of the petitioners have been terminated on the basis of the judgment and order dated 18.11.1999 passed by the Division Bench in the aforesaid writ appeals. Such statements have been made in paragraphs 6 and 10 of the affidavit which have been verified by the deponent i.e. the Director of Industries, Assam to be true to his knowledge, although same are essentially matters pertaining to records.

5. During the course of hearing on 25.2.2004 this court felt the necessity for production of the following records by the respondents for a proper adjudication of the matter and to arrive at a just conclusion. Accordingly, the learned Sr.

Government Advocate was directed to obtain instruction and the records :

(i) The answer scripts of the writ petitioners in the written test containing marks allotted thereon.

(ii) Result sheet of the written test showing the marks obtained by the candidates including by the writ petitioners.

(iii) The viva voce marksheets.

(iv) The result sheet of the viva voce test.

(v) The final select list prepared on the basis of the written and viva voce test.

6. In addition to the above, the learned Sr. Govt. Advocate was also directed to obtain instruction as to whether the services of any other Extension Officers other than the writ petitioners were terminated. The matter was again taken up on 8.3.2004 on which date the learned Sr. Govt. Advocate produced photocopies of two select lists containing the names of 150 and 152 candidates. As per the letter dated 5.3.2004 addressed to him by the Deputy Director (Admn.) of the Directorate of Industries and Commerce, the answer scripts and marksheets are not available and that the list containing 150 candidates has been treated to be the final select list. Since the informations sought for and as recorded in the order dated 25.2.2004 were not furnished, the personal appearance of the said Deputy Director on 10.3.2004 was directed by order dated 8.3.2004 when the matter was again taken up for hearing. The Deputy Director Shri Hemo Deuri, appeared in person before this court on 10.3.2004. On specific query made to him as to whether the original select is available or not, he submitted that no such original select list is available. He also submitted that the answer scripts and marksheets are also not available since 1995. About the validity of the purported select list (photocopy) containing the names of 150 candidates, he submitted that the same has been treated to be the final list since the same was referred to by the Division Bench of this Court in its judgment and order dated 18.11.1999 in the aforesaid writ appeals. He also submitted that the services of none, other than the petitioners has been terminated. He finally submitted that a fresh selection is going to be held after the ensuring election in which the case of the petitioners will also be considered and in all likelihood their services will be regularised.

7. I have heard Mr. S.S. Dey, learned counsel appearing for the petitioners assisted by Mr. M. Nath, learned Advocate. The respondents were represented by Mr. K.C. Mahanta learned Sr. Govt. Advocate. Mr. Dey submitted that the individual and identical show cause notices issued to the petitioners contained vague statement like some irregular procedure and there was no specific indication as to what were those irregularity and also as to how the petitioners were involved in such irregularity. He submitted that the show cause notices ought to have specified and indicated the purported irregularities enabling the petitioners to meet the

allegations effectively. He submitted that issuance of show cause notices which was pursuant to the aforesaid judgment and order of the Division Bench was only an empty formality and the respondents adopted a mechanical approach to the issue involved. He strenuously argued that the petitioners who alone were picked up out of the 150 appointees, by way of issuance of the show cause notices ought to have been provided with the relevant materials in the show cause notice itself enabling them to meet the allegations. He further submitted that the grounds indicated in the impugned orders of termination were also non est as would be evident even from the photocopy of the select list produced on behalf of the respondents containing the names of 150 candidates in which also out of the 11 petitioners, names of 7 petitioners appear. Thus he submitted that the entire action on the part of the respondents is not based on any bonafide exercise of power but is founded on malafide and colourable exercise of power. Referring to the specific averments made in the writ petitions that 11 Extension Officers have been appointed without any selection towards replacement of the petitioners who are in fact selected candidates, Mr. Dey, submitted that those statements made in paragraphs 19 and 20 of the writ petition having not been denied by the respondents in their affidavit same go unrefuted and the same is the real cause of termination of services of the petitioners. Thus, he submitted that the impugned orders are not sustainable on the face of it and liable to be interfered with. He placed reliance on a decision of the Apex Court as reported in [Roshni Devi and Others Vs. State of Haryana and Others](#), to bring home his argument that even if there was some irregularity towards appointment of the petitioners, they having rendered almost 10 years of service by now, equity jurisdiction of this court is required to be invoked towards protection of the services of the petitioners.

8. Mr. K.C. Mahanta, learned Sr. Govt. Advocate, on the other hand submitted that the services of the petitioners were terminated on valid and good grounds. However, with the production of records (all photocopies) along with the letter dated 5.3.2004, he fairly submitted that on the basis of those records it would be doubtful as to whether the grounds on which the services of the petitioners were sought to be terminated would sustain or not.

9. Mr. N. Dhar, learned counsel appearing on behalf of the newly impleaded respondents in the writ petitions supported the action of the respondents towards terminating the services of the petitioners. He made reference to the judgments of the learned Single Judge and the Division Bench and submitted that the impugned action having been initiated pursuant to the said judgments, this court would-be reluctant to interfere with the same. On being pointed out that other appointees have not been disturbed and they have been continuing in their services and it is the petitioners who alone have been picked up and the newly impleaded respondents have not made any grievance against those appointees, Mr. Dhar submitted that in fact the said respondents are also aggrieved in respect of continuation of the services of other appointees. However, he fairly conceded that the private

respondents have not initiated any independent proceeding against continuation of services of those appointees and it is only in respect of the 11 writ petitioners, the said respondents have supported the action of the official respondents.

10. I have considered the submissions advanced by the learned counsel and have also perused the materials on record. The impugned orders were issued on 16.10.2000 terminating the services of the petitioners on certain grounds necessarily to be contained in the records of selection. The respondents could produce no original records although the same were called for except production of two photocopies of select lists containing the names of 150 and 152 candidates respectively. Although the list containing 150 names has been stated to be the valid list, no basis for the same has been indicated either in the affidavit or upon production of records with the personal appearance of the Deputy Director (Admn.). As per his own statement made in the court on 10.3.2004 the answer scripts and marksheets are not available since 1995. If that be so I fail to understand as to on what basis the impugned orders were issued assigning the reasons like failure to qualify in the written examination and non appearance of names in the final select list. Referring to the Division Bench judgment dated 18.11.1999 passed in the above writ appeals in which there is a mention of a list containing 150 names, the said officer submitted that it was only on that basis the photocopy of the list containing 150 names produced before the court should be treated to be the final list without, however, production of the original of the same. Even in this list, out of the 11 petitioners the names of 7 petitioners find place. If that be so, it is not understood as to how and why the services of atleast those 7 petitioners were terminated.

11. There is no dispute that the petitioners were appointed with the issuance of individual appointment orders way back in 1994-95 and they have been continuing in their services till date and by now have completed almost 10 years of service. The learned counsel for the petitioners brought on record that the names of the petitioner have also been included in the gradation list. The Deputy Director (Admn.) also made a statement that the services of the 11 petitioners are likely to be regularised in the selection to be conducted after the ensuing election. Thus, it will be seen that the respondents are also not opposed to continuation of the services of the petitioners. It is the petitioners alone who were issued with the impugned orders of termination after asking them to show cause to the vague allegations of "some irregular procedure" without, however, attributing anything to the petitioners. It is not the case of the respondents that the entire selection have been cancelled, rather all the appointees pursuant to the same very selection have been continuing in their services and it is only the 11 petitioners who were issued with the show cause notices containing the aforesaid vague statement. The petitioners duly replied the same alongwith their supporting documents. Thereafter, the impugned orders were issued containing the reasons, which naturally could only be only on the basis of records. However, as per their own admission, the respondents are not in possession of any records including the answer scripts, result sheets and the

original select list since 1995. If that be so it is not understood as to on what basis the impugned orders of termination all dated 16.10.2000 could be issued terminating the services of the petitioners. It will be dangerous and unwise to rely upon the photocopy of the purported select list on which the respondents have placed reliance so as to hold that the petitioners were not select candidates. Even this list contains the names of 7 petitioners as noticed above.

12. There is another aspect of the matter. The respondents sought to give an impression towards issuance of the show cause notices and the impugned orders of termination and even in their affidavit-in-opposition that the services of the petitioners were terminated on the basis of the aforesaid judgment and of this court. The Division Bench of this court in its judgment clearly indicated that before terminating the services of the incumbents, they should be given an opportunity to have their say in the matter. It was also indicated that the authority would not be guided by any of the observations made by the learned Single Judge regarding validity of the select list. This necessarily required the respondents to carry out a meaningful exercise towards giving an opportunity of being heard to the petitioners and for that matter to those appointees; if at all their appointments were in doubt. However, as noticed above the petitioners were issued with a vague show cause notice followed by the impugned orders of termination.

13. The above position coupled with the emphatic assertion made by the writ petitioners that their services were terminated only with a view to accommodate 11 others who were not selected which statement have not been denied by the respondents in their affidavit nor has been clarified by the said officer who appeared in person before this court, lead to the irresistible conclusion that the impugned action on the part of the respondents was not founded on bonafide exercise of power. Law is well settled that when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter affidavit. In the instant case the emphatic statement made on behalf of the petitioners even by giving names of the persons that it was only with the view to accommodate those persons, the services of the petitioners were sought to be terminated have not been denied by the respondents. The test of bias is whether a reasonable man, fully apprised of all circumstances would feel a serious apprehension of bias. The test is not whether in fact, a bias has affected the decision. It is this sense that it is often said that justice must not only be done, but must also appear to be done. The respondents ought to have been fair, impartial and objective in their decision making process. Unfortunately it is not discernible in the instant case. Even otherwise also the petitioners by now having rendered almost 10 years of service coupled with the fact that even the respondents are not opposed to the regularisation of their services through another process of selection, applying the principles involving equity more particularly in the given facts and circumstances of the instant case, the services of the petitioners are required to

be protected.

14. In view of the above I am of the considered opinion that the very foundation of the proceeding against the petitioners by way of issuance of the show cause notices was ill founded and not based on records. Once the basis of a proceeding is gone, any action taken following the same would fall on the ground. This flows from the general principle applicable to consequential orders. Consequently, the impugned orders are not sustainable and accordingly the same are set aside and quashed. Consequently the petitioners shall be entitled to all service benefits as may be admissible to them under the relevant service Rules including continuity of their services from their respective dates of appointments.

15. Writ petitions stand allowed. No order as to costs.