(2000) 08 GAU CK 0012

Gauhati High Court

Case No: Writ Appeal No. 181 of 2000 and Writ Petition (C) No"s. 2120, 2520, 2521, 2913, 3054 3385, 3386, 3388, 3389, 3525, 3640, 3641 and 3930 of 2000

Dilip Kumar Jha and Others		APPELLANT
	Vs	
State of Arunachal Pradesh and Another		RESPONDENT

Date of Decision: Aug. 2, 2000

Citation: (2000) 3 GLT 268

Hon'ble Judges: Brijesh Kumar, C.J; P.G. Agarwal, J

Bench: Division Bench

Advocate: R.L. Yadav, K. Yadav and S.K. Ghose, for the Appellant; N.N. Saikia and G. Deka, for the Respondent

Final Decision: Dismissed

Judgement

Brijesh Kumar, C.J.
In the writ appeal the judgment and order dated 31.1.2000 passed by the learned Single Judge in W.P. (C) No. 1463/2000 has been challenged.

2. We have heard Shri R.L. Yadav at some length as well as Shri J.P. Sarma, who appears in some of the above noted writ petitions. Since the points involved in the aforesaid appeal and the writ petitions indicated above is same, in persuance of the order passed on the last date, these matters have been heard together and are being disposed of by a common order. Shri N.N. Saikia, learned Advocate General, State of Arunachal Pradesh appears for the Respondents.

3. The dispute relates to non-appointment of the Appellant and the Petitioners in persuance of the selection held in May-June, 1998 in respect thereof an advertisement was made on November, 1997 for selection and appointment of Junior Hindi Teachers in the State of Arunachal Pradesh. According to the Petitioners a select list was prepared out of which some appointments were made whereafter it was frozen and fresh

advertisement has been made on 7.7.2000 for selection and appointment as against 200 vacancies on the post of Junior Hindi Teachers. The case of the Appellant in the writ appeal is that his name appeared at serial No. 45 of the select list, hence he could well have been appointed considering number of vacancies advertised. Learned Single Judge dismissed the writ petition refusing to interfere in the matter observing that merely being there in the select list does not confer any right upon a person to be appointed. He has further observed that the Appellants case being the same, hence the petition was dismissed.

4. So far relevant facts are concerned, it may be indicated that advertisement was made on 3.11.97 and the selection process took place in May-June, 1998 in persuance whereof the select list was prepared some time in June, 1998. A fresh advertisement has however been made on 7.7.2000 for filling up 200 posts of Junior Hindi Teachers.

5.Learned Counsel appearing on behalf of the Respondents submits that it is not correct that earlier advertisement was for recruitment on 200 posts as submitted on behalf of the Appellant. On the other hand, only 20 vacancies were available which have been filled up in pursuance of the earlier selection held in 1998. Thereafter, there was no occasion to make further appointments from the select list as declared in June 1998 against advertisement dated 3.11.1997. It is also submitted that by this time the earlier list was also lapsed on expiry of one year. Funds were sanctioned later for the purpose of 200 posts under a different scheme by the Central Government in the month of December, 1997, it is in pursuance whereof that the fresh advertisement has been made for filling up of those vacancies. An affidavit has also been filed on behalf of the State Government. A copy of the select list in persuance of the selection held in May-June, 1998 has also been annexed. At page 2 of the select list under the heading "B" it is indicated "Junior Teacher in Hindi; vacant posts-20" select list contains 16 names of APST candidates and four names under the heading of "Non-APST" candidates. After this total number of 16 names as APST candidates and 4 names under the heading Non-APST candidates, i.e. after these total number of 20 names, there is a heading "waiting list" of candidates APST showing no other candidate got the qualifying marks" and thereafter names of 146 candidates under the heading Non-APST have been mentioned. It transpires that there is a waiting list of 146 non-APST candidates. It is submitted that since 20 posts were available 16 APST selected candidates were given appointment along with 4 non-APST candidates. Thus, there could be no appointment from the waiting list at all. It is further submitted that the advertisement which has now been made on 7.7.2000 for 200 vacancies in respect of which sanction had come in December. 2000, has nothing to do with the earlier advertisement or selection or the waiting list.

6. Learned Counsel for the Appellant has vehemently urged that the earlier advertisement was also for 200 posts and the same post have again been advertised and it would be permissible to make appointment from the waiting list as available, and to re-advertise the posts is illegal. A copy of the earlier advertisement dated 3.11.1997 has been filed. In that advertisement it is nowhere indicated that it was for 200 posts. The select list which was

declared clearly indicated that there are 20 vacancies of Junior Hindi Teachers. In the writ petition it has nowhere been sated that earlier advertisement was for 200 posts. Therefore the argument that earlier advertisement was for 200 posts is not substantiated. This is also quite obvious that the earlier advertisement made on 3.11.1997 whereas the sanction for 200 posts came in December. 2000. From the averments made in the writ petition as well, only the position as a indicated above is made out.

7. So far legal position is concerned, as to the right of a person on a select list to be appointed, undisputedly the position seems to be quite clear that, it by itself vests no right in a person on a select list to be appointed. However, some reasonable ground has to be made out to indicate as to why appointment could not be made from amongst selected candidates. One of such grounds is that the period of validity of the list may expire and it would become necessary to provide a chance to other candidates also who may become eligible in the meantime to seek a public employment.

8. Learned Counsel for the Appellant has however, placed reliance on three decisions, which however do not take any different view. One of such case is reported in 2000 (1) GLT 183, Ibrahim Ali (MD) v. Juber Rahman (MD), which is a division bench decision of this Hon''ble Court where appointment was not given to a candidate on the select list on the ground that there was a ban imposed on the selection and appointment and it was during that period that the list lapsed and yet Anr. ground that the testimonials submitted by candidates were scrutinised by some officers other than those who were making selection. On facts it was found that the ban was not in respect of the posts falling in category III and IV. The selection was relating to such posts and hence the appointment was withhold for non-existent reason while reiterating the principle that merely name finding place in the select list though does not vest any right upon candidate to be appointed, but there should be spme good reason for not providing appointment and non-existent reason could iot be good and valid ground to deprive appointment, nor an arbitrary ground that testimonials were checked by some other officers. The other case on which reliance has been placed is reported in 2000 (2) GLT (SC) Munna Roy v. Union of India and Ors. So far the principle of law is concerned, we find the same is reiterated in this decision also. The candidate was however refused appointment on the ground of qualification i.e. even though the minimum qualification required was matriculate, but the candidate was a graduate. It was held to be arbitrary and irrational. Yet Anr. decision as reported in Purushottam Vs. Chairman, M.S.E.B. and Another, In this case also the same principle of law is found to be laid, but on facts it was found that the person on the select list was denied appointment on the ground that he did not belong to the community for which the post was reserved. That fact was found to be incorrect. Thus, withholding of the appointment of the candidate who was duly selected on wrong ground was held to be not justified nor the reason that in the meantime some one else was appointed and the period of one year had elapsed in between. On examining the above noted three decisions we to not find that any different principle of law has been indicated, but the facts are definitely different. Hence this is also not applicable in the present case. Since the advertisement is

in respect of different posts and nothing has been averred in the petition that the posts advertised now are the same 200 posts advertised earlier. The other facts and circumstances as made out from the averments made in the petition itself, as indicted by the learned Counsel for the Respondent, are different. It is also surprising that the waiting list of 146 candidates would be prepared where the number of posts available would be much less. Considering the facts and circumstances of the case we find no good reason to interfere in the order passed by the learned Single Judge nor we find any good grounds made out in the other petitions involving the same question. Earlier selection and the list prepared on its basis ceased to be available.

9. While parting with the matter we would like to clarify that other Petitions in which advertisement dated 7.7.2000 may be involved on a different ground namely on the allegations that there is some discrimination in prescribing qualifications for different sets of candidates, such Petitions are not covered by this judgment, they are to be considered and decided on their own merit.

10. In the result the appeal as well as the above noted writ petitions are dismissed. There would however, be no order as to cost.