

(2006) 09 GAU CK 0053

Gauhati High Court

Case No: None

Government Body of Dispur Law
College

APPELLANT

Vs

Nalini Gopal Goswami and
Others

RESPONDENT

Date of Decision: Sept. 27, 2006

Citation: (2007) 2 GLR 24

Hon'ble Judges: B. Sudershan Reddy, C.J; Brojendra Prasad Katakey, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

B.P. Katakey, J.

The petitioner filed the writ petition praying for a direction to the respondent Nos. 1 and 2, namely, i.e., Governing Body of Dispur Law College, to publish the select list for the post of Principal of the college, as per selection held on 2.1.2005 and to appoint him, if he has been selected. The petitioner has also challenged the advertisement, dated 17.8.2005 issued by the President of the Governing Body of the said college calling for applications to fill up the said post of full time Principal of the aforesaid Law College.

2. A Single Bench of this court passed an interim order on 7.10.2005 directing that the authority may proceed with the selection process, in terms of the advertisement dated 17.8.2005, but shall not pass any final order on such selection, without the leave of the court. The College Authority on 23.1.2006 filed an application for vacation/modification/alteration of the said interim order dated 7.10.2005, which has been registered as Misc. Case No. 240 of 2006, but the learned Single Judge vide order dated 4.8.2000 refused to modify/vacate/cancel the interim order. The College Management thereafter filed Appeal No. 348 of 2006 challenging both the orders dated 4.8.2006 passed in the said miscellaneous case as well as the interim order dated 7.10.2005 passed in the writ petition. Since PIL No. 23 of 2006 relating to the

Management of the said. Law College has been pending, as agreed to by the learned Counsel appearing on behalf of the parties, the writ petition has been ordered to be taken up by the Division Bench along with the said PIL for disposal.

3. We have heard Mr. S.P. Roy, learned Counsel appearing on behalf of the writ petitioner as well as Mr. A.K. Bhattachariya, learned senior counsel appearing on behalf of the respondent Nos. 1 and 2, i.e., the College Management, the learned standing counsel Education Department appearing on behalf of the respondent Nos. 3 and 4, Mr. L.P. Sharma, learned Counsel for the respondent No. 5 and Mr. B.D. Konwar, learned Counsel for the respondent Nos. 6 and 7.

4. Mr. Roy, learned Counsel for the petitioner has submitted that the College authority having issued the advertisement dated 2.7.2004, pursuant to which the petitioner has applied and appeared for selection before the selection board on 2.1.2005, the College Authority is bound to declare the result and appoint the person, selected for the post of Principal of the College, but in the instant case the College Management instead of finalizing the selection process issued another advertisement dated 17.8.2005 for filling up the said post of full time Principal of the College. Mr. Roy has further submitted that the petitioner came to know that he was selected for appointment as full time Principal of the College, pursuant to the selection made on 2.1.2005, but the authority with a view not to appoint the petitioner and to appoint some blue-eyed person of the Management issued the fresh advertisement dated 17.8.2005. The learned Counsel, therefore, submits that the subsequent advertisement having been issued with a mala fide intention to accommodate some persons of their choice, such advertisement is liable to be set aside and the College Management may be directed to declare the result of the selection held pursuant to the advertisement dated 2.7.2004.

5. The learned Counsel appearing on behalf of the College Management has submitted that though pursuant to the advertisement dated 2.7.2004, a selection was held on 2.1.2005, the Governing Body in its meeting dated 30.7.2005 by a resolution decided not to accept the recommendation of the selection committee, as no suitable candidate was found and accordingly the decision was taken to re-advertised the post in the newspaper. Consequently, the fresh advertisement dated 17.8.2005 was published in the local English daily "the Assam Tribune" with the last date for receipt of application as 5.9.2005. It has further been contended that in fact the selection committee, which conducted the selection on 2.1.2005 having found the writ petitioner not suitable did not select him for the post of Principal. The learned Counsel has further submitted that the writ petitioner on earlier occasion also, i.e., on 18.8.2000 appeared before the selection committee for selection for the post of principal but he was not found suitable and, therefore, not selected. It has further been submitted by the learned Counsel that except by making a vague allegation that the subsequent advertisement has been issued to appoint some blue-eyed person of the Management, the writ petitioner did not

furnished any foundational fact to constitute mala fide. The learned Counsel, therefore, submits that the writ petition requires to be dismissed. The learned Counsel for the other respondents have also made their submissions on the same line.

6. The main contention of the writ petitioner in the writ petition is that pursuant to the advertisement dated 2.7.2004, the petitioner submitted his application and appeared for selection before the selection board on 2.1.2005 and also came to know that he was selected by the selection board, but the authority with a view to deprive him from getting the appointment, as full time Principal of the College, did not declare the result and instead issued the fresh advertisement dated 17.8.2005, with a view to appoint some person of their choice. The College Management in the affidavit has taken the specific plea that though selection was held on 2.1.2005 pursuant to the advertisement dated 2.7.2004, the petitioner was not found suitable and, hence, not selected by the selection board. Moreover, it has further been stated in the affidavit that the Governing Body of the College in its meeting dated 30.7.2005 decided not to accept the recommendation of the selection committee as no fit candidate was found and also to re-advertised the said post. The petitioner neither file any re-joinder affidavit controverting the statement made by the College Management in the affidavit-in-opposition nor challenge the decision of the governing body not to accept the recommendation of the selection committee meeting held on 2.1.2005.

7. The Governing Body having decided not to accept the recommendation of such selection committee and to re-advertised the post, the claim of the petitioner for declaration of the result pursuant to the advertisement dated 2.7.2004 cannot be granted, more so when the petitioner did not challenge such decision taken by the College Management. In any case the petitioner having not selected by the selection board and the result of such selection having not been declared, he has no right to claim that the appointment should be made pursuant to such selection held on 2.1.2005.

8. The petitioner has challenged the advertisement dated 17.8.2005 on the ground that the same has been issued just to accommodate some blue-eyed person of the Management and not to appoint him in the post of Principal of the College, though he was selected pursuant to the earlier advertisement dated 2.7.2004. The contention regarding the selection of the petitioner and to declare the result of such selection, has already been rejected, as discussed above. The other ground of challenge to the said advertisement, i.e., mala fide exercise of power, also cannot be accepted, as, the petitioner except making such self-serving statement has not given any foundational fact to substantiate such allegation of mala fide against the Management. The petitioner has also not made the person, against whom mala fide is alleged a party respondent in the writ petition. Such plea, therefore, cannot be accepted. It is also evident from the statement made in the writ petition that though

the subsequent advertisement dated 17.8.2005 was issued by the College Management for the post of Principal of the College fixing 5.9.2005 as the last date for submission of the application, the petitioner did not submit any application pursuant to such advertisement.

9. In view of the aforesaid discussions, we are of the view that the petitioner is not entitled to any relief as claimed and, hence, the writ petition is dismissed being devoid of any merit.

10. In view of dismissal of the writ petition on merit, the writ appeal filed by the Management, against interim order, has become infructuous and, hence, dismissed.

11. No costs.