

GAHC010006402017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/9/2018

1. THE STAFF SELECTION COMMISSION, THROUGH THE SECRETARY,
STAFF SELECTION COMMISSION, BLOCK No. 12, CGO COMPLEX, LODHI
ROAD, NEW DELHI.

2: THE REGIONAL DIRECTOR (NER), STAFF SELECTION COMMISSION,
RUKMINI NAGAR, P.O. ASSAM SACHIVALAYA, GHUWAHATI.

- **Appellants**

-VERSUS -

MD GAJIJUR RAHMAN,
ROLL NO.5105500891,
SON OF SYED MAKIB ALI,
VILL BALIZAR, P.O. KHARSITHA, P.S. BELSOR,
DISTRICT- NALBARI, ASSAM.

- **Respondent**

For the Appellant(s) : Mr. S.C. Keyal, Special Counsel, SSC.

For the respondent : Mr. R. Mazumdar, Advocate.

- BEFORE -
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of Hearing : 17.08.2023

Date of Judgment : 13.09.2023

JUDGMENT & ORDER

(Sandeep Mehta, CJ)

1. Heard Mr. S. C. Keyal, learned Special Counsel, Staff Selection Commission, representing the appellants, and Mr. R. Mazumdar, learned counsel

representing the respondent.

We have also gone through the impugned judgment and the material placed on record.

2. The instant intra-court writ appeal is directed against the judgment and final order dated 25.06.2015 passed by the learned Single Judge, whereby WP(C) No. 816/2014 preferred by the respondent herein was accepted and the appellants herein, being the appointing authority, were directed to recommend the writ petitioner/respondent herein for appointment as Constable (GD) either in the CRPF or in the ITBP against the post which had been directed to be kept vacant vide interim order dated 19.02.2014.

3. The short controversy involved in this intra-court writ appeal may be outlined as below:

The Staff Selection Commission issued a Recruitment Notice for appointment to the posts of Constable (GD) and Rifleman in CRPS, ITBP, Assam Rifle etc. which was published in The Employment News/Rozgar Samachar dated 03.12.2011. The respondent herein, being an un-reserved category candidate belonging to a non-border district of Assam, participated in the selection process. He was initially declared unfit in the detailed medical examination. Being aggrieved, he filed an appeal and was declared medically fit in the review medical examination. He obtained 44 marks in the written examination. However, since he had not exercised option of "preference" for any particular force in the application form, the Selection Commission did not include him in the initial select list and his name was kept for allocation in the Reserve List (II) on the basis of merit and subject to availability of vacancies in the respective category. The respondent herein was not selected in the Reserved

List (II) as well and, hence, he approached this Court by filing the captioned writ petition No. WP(C) 816/2014, which was allowed by the judgment dated 25.06.2018 as indicated above. The said judgment is the subject-matter of challenge in this intra-court writ appeal.

The only ground which is projected by the appellants for denying selection to the respondent is that he had not exercised the option of "preference" for any of the forces to which the selections were advertised and, hence, he was not included in the first select list. Furthermore, as the respondent had obtained only 44 marks in the written examination, he was not selected in the Reserve List (II) as well.

4. Mr. S.C. Keyal, learned Special Counsel, SSC, representing the appellants urged that the controversy projected in the case is squarely covered by the ratio of the judgment rendered by Hon'ble the Supreme Court in the case of ***Union of India vs. Probir Ghosh and Others***, reported in **(2022) 12 SCC 250**. He urged that the judgment rendered by the Division Bench of this Court in relation to the very same selection process was assailed by the Union of India by filing the aforesaid Special Leave to Appeal which has been allowed and, hence, the judgment rendered by the learned Single Judge is unsustainable in the eyes of law.

He further urged that in Annexure-II to the Recruitment Notification containing instructions for filling up Column No. 16 of the Application form, it was clearly provided as follows:

"Candidates should carefully indicate preference for post under different forces. Option once exercised will be final and no change will be allowed under any circumstances."

Mr. Keyal urged that as the respondent did not select a preference in

the column indicating preference of forces, his name was rightly not included in the select list. On these grounds, Mr. Keyal implored the Court to accept the writ appeal and set aside the impugned judgment and order.

5. Per contra, Mr. Rajesh Mazumdar, learned counsel representing the respondent urged that the ratio of the judgment in ***Probir Ghosh*** (supra) does not act to the detriment of the respondent's claim for being selected as a Constable based on the marks obtained by him in the written examination. He urged that the case of the respondent is governed by the observations made at paragraph 41 of the judgment in the case of ***Probir Ghosh*** (supra) wherein, by referring to the judgment rendered by the Allahabad High Court in the case of ***Bindyachal Kumar Singh v. Union of India***, Hon'ble the Supreme Court has distinguished the cases of the candidates who had not filled any preference in the form. Mr. Mazumdar urged that the respondent herein also did not fill any preference for the particular force in the application form. He secured 44 marks in the written examination whereas the last candidates selected in the CRPF and ITBP had secured 43 marks each and, thus, the respondent is entitled to be selected and appointed as Constable in the subject recruitment process with all consequential benefits of salary, pay fixation, seniority and increment. However, he candidly conceded that the respondent would not be entitled to actual arrears of salary till the date of his actual appointment, if so directed.

6. We have given our thoughtful consideration to the submissions advanced at the Bar and have gone through the material placed on record.

7. The emphatic contention of Mr. Keyal for assailing the impugned judgment was based on the ratio of the judgment in the case of ***Probir Ghosh*** (supra). In the said judgment, the candidates who were granted relief by the

High Court were of the category who had indicated preference only to one service. They did not secure more than, or equal to the cut off marks for that service in the category to which they belonged. As a consequence, the candidates, who had secured lesser marks than those litigants had been selected in other services, but it was because of the expression of their openness for appointment to any service even at the time of submitting the applications. In concluding the controversy, Hon'ble the Supreme Court held in paragraph 44 of the above judgment as below:

“44. Therefore, the High Court was clearly wrong in granting relief to the respondents (i) by diluting the significance of preferences given by candidates; and (ii) in nullifying the effect of the instructions contained in Column No. 16 of paragraph 4 of Annexure-II to the Recruitment Notification.”

However, in this very judgment, at paragraph 41, Hon'ble the Supreme Court referred to the controversy involved in the case of **Bindyachal Kumar Singh** (supra), dealt by the Allahabad High Court, wherein the case was of a candidate who had left the Column relating to “Preference” blank. Hon'ble the Supreme Court held that the said case was not at par with the controversy presented in the case of **Probir Ghosh** (supra).

8. Apparently, thus, the case of the respondent herein, who too did not fill in any preference, has to be considered in light of the ratio of Allahabad High Court judgment in the case of **Bindyachal Kumar Singh** (supra) pertaining to the same selection. It was admitted by the learned counsel Mr. Keyal that the Single Bench judgment rendered by the Allahabad High Court in the case of **Bindyachal Kumar Singh** (supra) has attained finality. The learned Single Judge of Allahabad High Court dealt with the controversy and held as below:

“22. Despite repeated query, respondents could not tell as to why the candidates like petitioners, who did not fill in column No. 17 of the application form, with respect to preference, ought not have been considered for the main select list by treating all those applications to have given preference in order of the codes, i.e., A, B, C, D or 1, 2, 3, 4, as the case may be, which they have applied admittedly, by considering these candidates, while preparing reserve list, for the reason that this fault on the part of candidates like petitioner has not been treated fatal, so as to result in rejection of candidature or the application form, but treating this fault to be a mere irregularity, a default deemed option clause has been applied by respondents, but confined only for reserve list and not the select list. The approach of the respondents, therefore, is patently arbitrary and violative of Articles 14 and 16(1) of the Constitution of India.

23. The view, I am taking above, would obviously vitiate the process of preparation of final result by the respondents in its entirety, but since recruitment in question pertains to thousand of candidates and against 49 thousand and odd vacancies, 44 thousand and odd have been declared successful as long back as in 2011, leaving sufficient number of vacancies unfilled, therefore, I am confining relief in this case to the present petitioner only and direct respondents to treat petitioner's preference/option in respect to CPOs in order of A, B, C, D for the purpose of select list and thereby consider whether amongst the general category candidates, and the post(s) for which petitioner has applied, he is entitled to be declared successful. If a person securing lesser marks to him has been declared successful and included in select list, petitioner shall also be declared successful and further steps for his appointment/sending for training, as the case may be, shall be taken without any further delay. This exercise, in any case, shall be completed within two months from the date of production of a certified copy of this judgment.”

This Court is apprised that the said litigant, i.e. Bindyachal Kumar Singh was appointed in the post of Constable pursuant to the judgment of the Allahabad High Court.

That being the situation, the case of the respondent herein is squarely covered by the ratio of the above judgment. Admittedly, candidates lower in merit to the respondent were selected and appointed in the very same selection process.

9. In view of the above discussion, we are of the firm opinion that the judgment dated 25.06.2015 rendered by the learned Single Judge in WP(C) No. 816/2014 does not suffer from any infirmity and hence, the same does not warrant interference in this intra-court writ appeal.

10. Resultantly, we hereby direct that the respondent shall be considered for appointment as a Constable in the appropriate category as per the marks obtained by him, subject to his clearing the physical fitness/efficiency test. The appointment of the respondent, subject to clearing the physical fitness test, shall be made effective from the date on which the candidates lower in merit to him were appointed in service. However, the respondent shall be entitled to notional monetary benefits from the date on which such candidates were appointed. Actual financial benefits shall accrue to the respondent from the date he joins the post.

11. The writ appeal is dismissed with the above observations and directions.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant