

GAHC010106772011



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

Case No. : WP(C)/2077/2011

RAJU DEKA and 3 ORS
S/O BIREN DEKA, R/O VILL. GASARGURI, P.O. UDARI, P.S.MORIGOAN,
DIST MORIGAON, ASSAM

2: BIJUMONI DEKA

S/O SRI RADHA MOHAN DEKA
R/O VILL. GASARGURI
P.O.UDARI
P.S.MORIGOAN
DIST MORIGOAN
ASSAM

3: PRANJAL NATH

S/O SRI DIPESWAR NATH
R/O VILL. MATHARBORI
P.O.RAMJANGATI
P.S.RAHA
DIST NAGAON
ASSAM

4: PARANJYOTI NATH

S/O PURNA RAM NATH
R/O MIKIRBHETA
P.S. MORIGOAN
DIST MORIGAON
ASSA

VERSUS

THE STATE OF ASSAM AND ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT OF ASSAM, HOME
DEPTT, DISPUR, GHY-6

2:THE DIRECTOR GENERAL OF POLICE

POLICE HEAD QUARTERS
ULUBARI
GHY-7

3:THE ADDL. DIRECTOR GENERAL OF POLICE TAP
ASSAM POLICE HEAD QUARTERS
ULUBARI
GHY-

Advocate for the Petitioners : Mr. Y. S. Mannan, Advocate
: Mr. N. Dekaraja, Advocate

Advocate for the Respondents : Mr. S. Baruah, Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Date : 25-07-2023

1. The instant writ petition has been filed challenging the select list dated 21.12.2010 which was published in the Assam Tribune newspaper.
2. The facts of the instant case as discerned from a perusal of the writ petition are that on 08.02.2010, an advertisement was issued by the Additional Director General of Police (TAP), Assam Ulubari, Guwahati for filling up of

3,843 nos. of vacant posts of AB constable including 637 nos. backlog vacancies of AB constables. In the said advertisement, 10% of the vacancies were reserved for women, and other reservations are 27% for OBC/MOBC category candidates, 7% for SC category candidates, 5% for ST(H) category candidates and 10% for ST(P) category candidates. The Petitioners herein are all belonged to the OBC category candidates and applied in respect to Morigaon District. It is further relevant to mention that for Morigaon District, the total vacancies were 74. As many as 1600 nos. of candidates had participated in the said selection process insofar as the Morigaon District is concerned. The Petitioners claimed that they had performed the physical efficiency test to the best of their ability and thereupon had also performed well in the interview. The Petitioners were expecting that they would be selected in the said selection process. However, when the select list was published in the Assam Tribune on 21.12.2010, the Petitioners were shocked and surprised that they were not selected. The Petitioners thereupon being aggrieved have filed the instant writ petition by challenging the said select list.

3. It is relevant to take note of that although there has been certain allegations have been made of bias or for that matter that some of the candidates were not qualified but selected but none of the selected candidates were made parties to the instant proceedings. It reveals from the records that on 08.04.2011, this Court had issued Rule and directed that the instant writ petition be listed along with WP(C) No.1086/2011.

4. The records further show that an affidavit-in-opposition was filed by the Respondents through the Deputy Superintendent of Police (HQ), Morigaon. In the said affidavit-in-opposition, it was mentioned that in the month of

February, 2010, an advertisement was published in various news papers for conducting Recruitment Rally for selection of candidates for appointment as AB Constables in Assam Police against 3843 posts. It was stated that the number of posts allotted for Morigaon District was 74 only. The Recruitment Rally was conducted as per the laid down procedures and the final selection list of the candidates was prepared purely based on total marks secured in the physical efficiency test and in the interview. It was further stated that as per the reservation policy and total marks secured, the final selection list of the candidates was prepared by the District Level Selection Committee (DLSC) and sent to the State Level Police Recruitment Board (SLPRB) for approval and publication of the result. After scrutiny and approval by the State Level Police Recruitment Board (SLPRB), the final selection list of Morigaon District was published by the State Level Police Recruitment Board (SLPRB). In the said affidavit-in-opposition, it was further mentioned that the cut off marks for the General category candidates was 65.5; for SC category candidates was 64; for ST(P) category candidates was 65; for ST(H) category candidates was 59; for OBC category candidates was 65; for female candidates was 68. In the said affidavit-in-opposition, the marks so obtained by the Petitioners who all belonged to the OBC category was enclosed as Annexure-II. It reveals from the said document that the Petitioner Nos. 1, 2, 3 and 4 were awarded 53.5, 56, 53.5 and 62.5 marks respectively and as such their marks were below the last selected candidates in the OBC category who obtained 65 marks. It further reveals that the select list of all the selected candidates of Morigaon District were also enclosed as Annexure-III to the said affidavit-in-opposition.

5. This Court further finds it relevant to observe at this stage that the said affidavit-in-opposition was filed on 02.08.2013 but thereafter also, the

Petitioners did not take any steps to implead the selected candidates insofar as the Morigaon District is concerned.

6. In the backdrop of the above materials on record and upon hearing the learned counsels for the parties, the issues which arise for consideration are:

(I) Whether the Petitioners herein after having participated in the selection process and finding that the result was not palatable to them can approach this Court under Article 226 of the Constitution?

(II) Whether the instant writ petition is maintainable without the selected candidates being made parties to the instant writ proceedings taking into account that the entire select list has been put to challenge?

7. Let this Court first take up for consideration the first issue so framed. The law in this regard is well settled by various judgments of the Supreme Court starting from the case of ***DR. G. Sarana Vs. University of Lucknow and Others*** reported in (1976) 3 SCC 585; ***Madan Lal and Others Vs. State of J&K and Others*** reported in (1995) 3 SCC 486; ***Manish Kumar Shahi Vs. State of Bihar and Others*** reported in (2010) 12 SCC 576; ***Ramesh Chandra Shah and Others Vs. Anil Joshi and Others*** reported in (2013) 11 SCC 309; ***Madras Institute of Development Studies and Another Vs. K. Sivasubramaniyan and Others*** reported in (2016) 1 SCC 454; ***D. Sarojakumari Vs. R. Helen Thilakom and Others*** reported in (2017) 9 SCC 478 and ***Mohd. Mustafa Vs. Union of India and Others*** reported in (2022) 1 SCC 294.

8. Let this Court take into consideration some of the aforesaid judgments. In the case of ***Madan Lal (supra)***, the Supreme Court had observed that the petitioners therein having taken a chance to get themselves selected at the

said oral interview and only because the petitioners therein did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed the petition. It was observed by the Supreme Court that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview was not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of ***Manish Kumar Shahi (supra)***, the Supreme Court further observed that if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner therein invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name did not figure in the merit list prepared by the Commission. It was observed by the Supreme Court in the said judgment that the conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Subsequently, in the case of ***Ramesh Chandra Shah (supra)***, the Supreme Court observed that having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection.

9. This Court also finds it relevant to refer to a recent judgment of the Supreme Court in the case of ***Tajvir Singh Sodhi and Others Vs. State of Jammu and Kashmir and Others*** reported in ***(2023) SCC Online SC 344*** and more particularly to paragraph Nos. 69 and 70 which being relevant are quoted herein below:

“69. It is therefore trite that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. In other words, simply because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process. Therefore, we find that the writ petitioners in these cases, could not have questioned before a Court of law, the rationale behind recasting the selection criteria, as they willingly took part in the selection process even after the criteria had been so recast. Their candidature was not withdrawn in light of the amended criteria. A challenge was thrown against the same only after they had been declared unsuccessful in the selection process, at which stage, the challenge ought not to have been entertained in light of the principle of waiver and acquiescence.

70. This Court in Sadananda Halo has noted that the only exception to the rule of waiver is the existence of mala fides on the part of the Selection Board. In the present case, we are unable to find any mala fide or arbitrariness in the selection process and therefore the said exception cannot be invoked.”

10. In the backdrop of the above law as settled by the Supreme Court in the above mentioned judgments and applying the same to the facts of the instant case, it would be seen that the Petitioners herein have taken part in the selection process without any demur or protest. The pleadings of the Petitioners further shows that they were expecting that they would be selected and the present writ petition has been filed challenging the selection process as the results of the said selection process was not palatable to the Petitioners. This Court is of the opinion that the Petitioners in the instant case could not have questioned the selection process before this Court after having participated in the said selection process without any demur or protest. Further to that, the counsel appearing for the Petitioners could not show any materials

that the non-selection of the Petitioners or for that matter the marks obtained by the Petitioners were perverse.

11. This Court further finds it relevant to take note of that there are certain allegations being made in the writ petition as regards bias or that certain candidates were not qualified but were selected. However, such allegation so made are without any material particulars and as such in the opinion of this Court, the same cannot be gone into the present proceedings.

12. This very aspect of the matter touches on the second question so framed as to whether the instant writ petition would be maintainable without arraying the selected candidates as parties to the instant proceedings taking into account that the entire select list has been put to challenge. It is relevant to take note of as submitted by Mr. S. Baruah, the learned counsel appearing on behalf of the Respondents that the selected candidates upon being selected were appointed and have been discharging their duties. Therefore, a valuable right has accrued upon those selected candidates. It is the opinion of this Court that without affording any opportunity, their right which has accrued on the basis of selection so conducted cannot be nullified. Accordingly, the non-impleadment of the selected candidates is fatal for which the writ petition is not maintainable. This Court further finds it relevant to observe that in the affidavit filed by the Respondents, the names of the selected candidates were duly mentioned. Then also the Petitioners did not take steps for impleading them.

13. In that view of the matter, this Court having decided both the issues against the Petitioners, the instant writ petition fails for which the instant writ petition stands dismissed.

14. No costs.

JUDGE

Comparing Assistant