

GAHC010144492023



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

Case No. : WA/256/2023

JADU RAM SHARKAR AND ANR.
S/O LT. LAKHI KANTA SARKAR, VILL-SHALBARI, P.O.-BOITAMARI, P.S.-
ABHAYAPURI, DIST-BONGAIGAON, ASSAM, PIN-783389

2: AKKAS ALI AHMED
S/O MD. SIRAJ ALI
VILL- CHAPRAKATA PART II
P.O.-CHAPRAKATA
P.S. AND DIST- BONGAIGAON
ASSAM
PIN-78338

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, REVENUE DEPARTMENT, DISPUR, ASSAM,
GHY-6

2:THE DIRECTOR OF LAND RECORDS AND SURVEYS ETC.
ASSAM
RUPNAGAR
GHY-32

3:THE DEPUTY COMMISSIONER
BONGAIGAON
DIST-BONGAIGAON
ASSAM

4:THE CIRCLE OFFICER
BONGAIGAON REVENUE CIRCLE
P.S.
P.O. AND DIST-BONGAIGAON
ASSAM

5:THE CIRCLE OFFICER
SRIJANGRAM REVENUE CIRCLE
P.O. AND P.S.-ABHAYAPURI
DIST-BONGAIGAON
ASSAM

6:THE CIRCLE OFFICER
MANIKPUR REVENUE CIRCLE
P.S. AND P.O.-MANIKPUR
DIST-BONGAIGAON
ASSAM

7:THE CIRCLE OFFICER
BOITAMARI REVENUE VIDE
BOITAMARI
P.O.-BOITAMARI
P.S.-ABHAYAPURI
DIST-BONGAIGAON
ASSA

Advocate for the Petitioner : MR. M U MAHMUD

Advocate for the Respondent : SC, REVENUE

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

JUDGMENT

Date : 17-07-2023

(Arun Dev Choudhury, J)

1. Heard Mr. M. U. Mahmud, learned counsel appearing for the appellant.
Also heard Mr. J Handique, learned counsel for the respondent.
2. The present intra court appeal is directed against the order dated 01.06.2023 passed in WP(C) 5495/2021 by the learned Single Judge dismissing the writ petition.
3. The writ petition structured as a representative Writ petition filed by

the two writ appellants on behalf of 92 other similarly situated persons.

4. It is the pleaded case of the writ petitioners that by a communication dated 10.01.2000, the respondent No.1 instructed all the Deputy Commissioners of Assam, excluding Hill districts and sixth schedule areas, to appoint one Honorary Gaonburah in each revenue villages. The petitioners' further case is that, they along with other 92 persons were selected as Gaonburahs of their respective villages by the villagers in General Meetings during the year 2009 to 2012.
5. According to the petitioners, they are still continuing and performing as Honorary Gaonburahs. The grievance of the appellants are that though they are continuing as Gaonburahs, however they have not been appointed by the government in terms of the communication dated 10.01.2000 (supra) and therefore, a writ is required to be issued to the respondent State to appoint the appellants as Gaonburahs.
6. Such prayer was rejected by the learned Single Judge, primarily on the ground that a specific selection procedure has been mandated in clause 162(1) of the Executive Instruction issued in exercise of power under Assam Land and revenue Regulation 1886 and in absence of challenge to such notification, no writ can be issued. Accordingly, the writ petition was dismissed.
7. Mr. Mahmud, learned counsel for the appellants argues that the clause 162(1) was incorporated subsequent to appointment of the petitioners and therefore, the same cannot be made applicable to the petitioners as the said administrative instruction is prospective in nature. It is his contention that the Executive Instruction mandating the selection

procedure itself provides that the same shall come into effect from the date of publication in the official gazette and such notification was gazetted in the year 2018. Accordingly, Mr. Mahmud contends that the learned Single Judge has committed error in law and fact.

8. The further contention of Mr. Mahmud, learned counsel is that the petitioners are having legitimate expectation to get formally appointed to the post of Gaonburahs inasmuch as they were appointed on the basis of an instruction issued by the State of Assam in Revenue and Disaster Management Department.
9. We have given our thoughtful considerations to the arguments advanced by the learned counsels for the parties.
10. Executive Instructions 160 to 164 of the Assam Land and Revenue Regulation, 1886 deal with appointment, nomination and dismissal of Gaonburhas. At the relevant point of time, when the petitioners were allegedly appointed as Gaonburahs, the Executive Instruction 162 and 162A were holding the field. In terms of the aforesaid Executive Instruction, the Gaonburahs were to be appointed by the jurisdictional Deputy Commissioners.
11. The Hon'ble Apex Court in the case of ***Kandarpa Sarma vs. Rajeshwar Das and Ors*** reported in ***(2011) 14 SCC 752***, while dealing with the interpretation of "family" used under Executive Instruction 162, observed that as the Gaonburahs hold a civil post, there need to be some service conditions governing their services. The Hon'ble Apex Court further observed that since such determination is within the domain of State Government, the court expects and left it to

the state Government to frame such service condition as expeditiously as possible.

12. Be that as it may, by a notification dated 16.01.2016 the Executive Instruction 162 and 162A were deleted and new clause 161(A) was inserted. Such amended clause 161(1) mandated for minimum qualification.
13. Subsequently, yet another notification was issued, whereby notification dated 06.01.2016 was cancelled and the Executive Instruction 160 to 164 were substituted. The said notification dated 10.04.2018 introduced a procedure for selection in the shape of Executive Instruction 162(2).
14. The Executive Instruction in question clearly shows that it is prospective in nature. Mr. Mahmud is correct in submitting that even in case of a retrospective legislature or Executive Instruction, vested and concluded right cannot be taken away. Therefore, this court is to look into whether the petitioners are having a vested and concluded right to continue to serve as Honorary Gaonburahs and get appointed.
15. As discussed herein above, it is undisputed that the post of Gaonburah is a civil post. It is also not in dispute that at the time of appointment of the petitioners by the villagers, the competent authority to appoint, dismiss and suspend Gaonburah was the jurisdictional Deputy Commissioner.
16. The communication of the respondent No.1 dated 10.01.2000, upon which the petitioners are placing heavy reliance, also discloses that instruction was given to the Deputy Commissioner to appoint

Gaonburahs. However, the petitioners were appointed by the villagers and were approved by the association of Gaonburahs. Such course of action was not permissible under the Executive Instruction holding the field at that point of time. Thus, the appointment of the petitioners itself had no sanctity under law. Therefore, the question whether their terms of service shall be governed by the pre amended Executive Instruction or subsequent amended Executive Instruction, is not at all relevant for determination of the prayer made in the writ petition.

17. The hon'ble Apex court in the case of ***Monet Ispat and Energy Limited Vs. Union of India & Ors*** reported in ***(2012) 11 SCC 1*** at paragraph 183 held that there are parallels between the doctrines of promissory estoppels and legitimate expectation as both these doctrines are founded on the concept of fairness and arises out of natural justice. It was further held that in no case, such principles can be pressed to compel the government or public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the government. It was further held that there cannot be any legitimate expectation which is statutorily prohibited or is against public policy.
18. In the case in hand, the petitioners cannot have any legitimate expectation to get appointed as Gaonburahs for the reason that their appointment as Honorary Gaonburahs by villagers was not permissible under Executive Instruction 162 holding the field at the relevant point of time. Therefore, the petitioners cannot have any legitimate expectation to get appointed as Gaonburah in derogation of the Executive Instruction.

19. With the aforesaid observations and reasons, the impugned order passed by the learned Single Judge is upheld and resultantly, the writ appeal stands dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant