

GAHC010160162021



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

Case No. : WA/257/2021

SAMSUL ISLAM CHOUDHURY
S/O ABDUL QUDDUS CHOUDHURY, R/O VILL. BAHADURPUR PART-II, P.O.
BROJOPUR, DIST. HAILAKANDI (ASSAM), PIN-788155

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
SOCIAL WELFARE DEPTT. DISPUR, GHY-6

2:THE STATE PROJECT DIRECTOR
POSHAN ABHIYAAN
ASSAM DOCTOR JAKIR HUSSAIN ROAD PUB SARUMOTORIA
SARUMOTORIA
SBI COLONY
HENGRABARI
GUWAHATI
ASSAM
PIN-781036

3:THE DEPUTY COMMISSIONER
HAILAKANDI
CHAIRPERSON
POSHAN ABHIYAAN
DIST. HAILAKANDI
ASSAM
PIN-788151

4:THE ADDITIONAL DEPUTY COMMISSIONER
HAILAKANDI
CHAIRMAN
DISTRICT LEVEL SELECTION COMMITTEE

POSHAN ABHIYAAN
HAILAKANDI
DIST. HAILAKANDI
ASSAM
PIN-788151

5:THE I/C
DISTRICT SOCIAL WELFARE OFFICER
HAILAKANDI
MEMBER SECRETARY
SELECTION COMMITTEE
POSHAN ABHIYAAN
HAILAKANDI
DIST. HAILAKANDI
ASSAM
PIN-788155

6:JUI DEB
D/O SHYAMAL DEB
R/O VILL. BORJALENGA GRANT
P.O.BORJALENGA
P.S. SILCHAR (SADAR)
DIST. CACHAR (ASSAM)788117 PIN

Advocate for the Petitioner : MR. S BANIK

Advocate for the Respondent : GA, ASSAM

B E F O R E

**HON'BLE THE CHIEF JUSTICE (ACTING) MR. N. KOTISWAR SINGH
HON'BLE MR. JUSTICE SOUMITRA SAIKIA**

JUDGMENT AND ORDER (ORAL)

[N.Kotiswar Singh, CJ (Acting)]

17.01.2023

Heard Mr. S. Banik, learned counsel for the appellant. Also heard Mr. N. Das, learned Government Advocate, Assam. None appears for the private respondents in spite of service of notice.

2. In this appeal, the appellant has challenged the order of the learned Single Judge dated 10.09.2021 passed in WP(C) No.5238/2019 in which the appellant had questioned the selection process in respect of Project Assistant for the district of Hailakandi on the ground that the same was done in violation of the advertisement dated 07.03.2019, which clearly mentions that the candidature will be eligible in his/her own district only and no applicant will be entitled for the post outside his own district, and also contrary to the guidelines issued by the Ministry of Women and Child Development, which provides that mandatorily local candidates should be engaged. The authorities, however, proceeded to appoint the respondent No.6 who does not belong to Hailakandi district but belongs to Cachar district, which, according to the appellant, is illegal being contrary to the terms of the advertisement and guidelines issued by the Government of India.

According to the learned counsel for the appellant, the learned Single Judge, unfortunately, did not appreciate the aforesaid factual position and proceeded to dismiss the writ petition primarily on the ground that two advertisements were issued on 07.03.2019 and 10.06.2019 in respect of the same post and though there is a provision for insisting on local candidates of the district in the first advertisement dated 07.03.2019, the same was not mentioned in the subsequent advertisement dated 10.06.2019 and the guidelines issued by the State Project Director, POSHAN on 31.05.2019 empowers the District Level Selection Committee to take any decision regarding selection of candidates without prejudice to transparency, equal opportunity to all candidates and standard of quality. The said instruction enables the Selection Committee to make departure from the advertisements provided the selection process was transparent and equal opportunity was given to all the candidates. It

was held by the learned Single Judge that since the Selection Committee had maintained transparency and equal opportunity to all the candidates, non-insisting on local candidates for the purpose of appointment to the post of Project Assistant in Hailakandi district cannot be faulted.

3. Learned counsel for the appellant in challenging the aforesaid finding submits that the subsequent advertisement dated 10.06.2019 was not a different advertisement. It was in continuation with the earlier advertisement dated 07.03.2019 in respect of the same recruitment process and, as such, the Selection Committee by taking advantage of the Government notification dated 31.05.2019 could not have deviated from the terms and conditions of the initial advertisement issued on 07.03.2019 and provide appointment to a person who does not belong to Hailakandi district in violation of the advertisement and guidelines issued by the Central Government.

4. Learned State counsel, on the other hand, submits that the appellant has not challenged the subsequent advertisement dated 10.06.2019. Further, the appellant had duly taken part in the selection process and did not object to the participation of respondent No.6. The appellant challenged the appointment of respondent No.6 only when the appellant was unsuccessful and, as such, he is estopped from challenging the selection of respondent No.6.

5. Having heard learned counsel for the parties as well as on perusal of the record, we are of the view that law is very clear that whenever appointment is sought to be made by issuing necessary advertisement, normally, the selection process should adhere to the terms and conditions mentioned in the advertisement, unless there is any specific provision in the advertisement, which empowers the Selection Committee to deviate from the terms and

conditions. Thus, ordinarily the terms and conditions should be strictly adhered to. Otherwise, it may amount to changing the goal post after recruitment process has been initiated, violating equal opportunities as mandated under Article 14 of the Constitution.

6. Keeping the aforesaid in mind, we will, now, examine whether the subsequent advertisement dated 10.06.2019 is a separate advertisement or not, and whether the Selection Committee could have deviated from the terms and conditions stipulated in the advertisement issued on 07.03.2019 in terms of the Government instructions dated 31.05.2019.

7. The advertisement dated 07.03.2019 clearly mentions that the candidature will be eligible in his/her own district only and no applicant will be entitled for the post outside his own district. The said advertisement was issued in respect of the post of Project Assistant at district level in respect of Hailakandi district along with other posts for the said district under the office of the Project Director, POSHAN. The said advertisement also mentions that as proof of residence, the applicant will have to submit photo-copy of Voter ID/PRC/Employment Exchange Registration No./Resident Certificate from the concerned Circle Officer.

Thus, from the above terms and conditions in the advertisement, it is quite clear that the post of Project Assistant was advertised in respect of Hailakandi district and only candidates hailing from Hailakandi district would be eligible for which they have to submit relevant documents of proof of residence as mentioned in the advertisement.

8. What the subsequent advertisement dated 10.06.2019 mentions is that walk-in-interview will be held on 14.06.2019 at 10.00 am to 12 pm followed by skill test under POSHAN Abhiyan in the office chamber of Sub-Divisional Officer (S), and in-Charge, District

Social Welfare Officer, Deputy Commissioner's office, Hailakandi.

From the above, it is clear that the subsequent advertisement dated 10.06.2019 was continuation of the earlier advertisement dated 07.03.2019 notifying the date of walk-in-interview. It was not a separate or independent advertisement containing new terms and conditions. The relevant portion of the subsequent advertisement dated 10.06.2019 is reproduced here-in-below:-

“As per Govt. Order No. SPMU (POSHAN) Dist. Rect/17/2019/ date 31st May, 2019 in connection with the advertisement No.SPMU (POSHAN)/Misc/04/2019/36 dated Guwahati the 7th March, 2019 under POSHAN Abhiyan for temporary and contractual post, a Walk-in-interview will be held on 14.06.2019 (Thursday) at 10.00 AM to 12 PM followed by skill test under POSHAN Abhiyan in the office chamber of Sub-Divisional Officer (S), and in-Charge, District Social Welfare Officer, Deputy Commissioner's office, Hailakandi.”

In the said advertisement, a reference is also made to the Notification dated 31.05.2019 which enables the Selection Committee to take any decision regarding selection of candidates.

9. We have gone through the Notification dated 31.05.2019 issued by the Secretary to the Government of Assam, Social Welfare Department-cum-State Project Director, POSHAN Abhiyan, Assam relevant portions of which are extracted below:-

“Sub: Regarding Engagement of District and Block Level Officials under POSHAN Abhiyaan, Assam.

Ref: SPMU(POSHAN) Dist.Rect/17/2019 dated 27.05.2019.

Sir/Madam,

In continuation of our earlier communications referred above, I am to inform you that after getting feedback from many districts regarding availability of candidates after being shortlisted, the following principles may be followed for selection of candidates for all the post

as mentioned earlier.

1. District Level Selection Committee is empowered to take any decision regarding selection of candidates without prejudice to transparency, equal opportunity to all candidates and standard of quality.

2. The DLSCs will hold Skill Test as well as Personality Test of the shortlisted candidates by engaging their own resources. However, DSLCs will maintain strict confidentiality in case of such Test.

3. In case of non-availability of suitable candidate, the DSLCs may hold walk-in interview for the remaining Post/ Posts within 12 th June, 2019.

4. The guiding principle of the Selection Process is to select suitable candidates only so that the Mission is not affected. It is reiterated that there will be 15 marks for Personality Test and 65 marks for Skill Test. A candidate will be selected on the basis of total marks secured in all levels, namely Shortlisting, Skill Test and Personality Test.

5) In case of Sixth Scheduled Areas, the Principal Secretary will depute his representative not below the rank of Deputy Secretary. On the basis of the above guiding principles, DLSCs will take appropriate action following the general procedures related with recruitment and engagement of personnel which are in force.”

10. While the said Notification dated 31.05.2019 appears to give certain latitude to the Selection Committee to take any decision regarding selection of candidates without prejudice to transparency, equal opportunity to all candidates and standard of quality, it does not mention that Selection Committee can change the terms of the advertisement issued on 07.03.2019. What the Notification dated 31.05.2019 enables is merely to work out the modalities of the process of selection but not the basic qualifications and requirements for appointment to the said post. In any event, if there be any change into the terms and conditions of the advertisement, the same has to be advertised and brought to the notice of all the eligible and intending candidates.

11. In our view, the subsequent advertisement dated 10.06.2019 is not a separate advertisement issued in respect of the said post of Project Assistant, but a continuation of the initial advertisement dated 07.03.2019. Though the subsequent advertisement also mentions the educational qualifications and experience and does not mention that the candidature will be eligible in his/her own district only, it is merely a reiteration of the earlier educational qualification and experience, it does not mean that the conditions mentioned in the initial advertisement dated 07.03.2019 stand superseded. The other conditions mentioned in the advertisement dated 07.03.2019 will continue to be applicable. The subsequent advertisement dated 10.06.2019 is merely a continuation of the earlier advertisement dated 07.03.2019 without changing any of the eligibility criteria, i.e., qualification, experience and residential requirements of the candidates.

12. From the advertisement dated 10.06.2019, it will be also seen that copies of the advertisement were circulated to the Secretary to the Government of Assam, Social Welfare Department, the office of the Additional Chief Secretary, Social Welfare Department, District Social Welfare Officer, office of the DIPRO, Hailakandi and all the CDPOs, Hailakandi. Copies were not circulated to any other department of Assam.

Therefore, it is evident that this advertisement was meant for Hailakandi district only. Otherwise, the subsequent advertisement could have been circulated in other districts also, apart from Hailakandi. It may be also noted that the subsequent advertisement dated 10.06.2019 does not mention the last date of submission of any application.

Does the subsequent advertisement mean that a candidate who had applied as per the

earlier advertisement dated 07.03.2019 could still apply under the subsequent advertisement dated 10.06.2019? Certainly not. It is for the simple reason that the subsequent advertisement dated 10.06.2019 is merely the continuation of the earlier advertisement dated 07.03.2019 and the terms and conditions mentioned in the earlier advertisement dated 07.03.2019 will continue to govern the recruitment process.

13. Further, if the contention of the State Government is to be accepted, it would lead to violation of Article 14 of the Constitution, for the reason that many candidates who do not belong to Hailakandi and who did not apply because of the stipulation in the advertisement dated 07.03.2019 would be deprived of taking part in the recruitment process. How any person would know that because of the Notification dated 31.05.2019, he would be also eligible, when the said notification was not part of public domain? The said Notification dated 31.05.2019 also does not mention that the eligibility criteria can be changed.

14. Since the said advertisement was continuation of the earlier advertisement dated 07.03.2019, after initiation of the selection process in terms of the earlier terms and conditions mentioned in the advertisement insisting that candidates have to be from a particular district, the eligibility criteria cannot be changed by the Selection Committee on the strength of the Notification dated 31.05.2019.

15. We have also considered the submission of the learned State counsel that the appellant remained silent and did not raise any objection during the selection process and that he filed the writ petition only after he was unsuccessful.

16. We do not find any merit in the said submission inasmuch as the appellant cannot be expected to know the residential status of the candidates and the appellant would be under

the impression that all the candidates are residents of Hailakandi district and if any candidate who does not hail from Hailakandi had made an application, only the authorities would be in a position to know the same and not the appellant, and, as such, we do not consider that the said ground will come in the way of the appellant's right to approach this Court in challenging the appointment of respondent No.6.

17. We have also noted that the Government of India had issued guidelines, which mentions that mandatorily local candidates should be engaged to the post of District Project Assistant. In the absence of any subsequent guidelines issued by the authorities to make a departure from the said guidelines, we are of the view that the said guidelines should be also complied with.

In fact, in the present case, the advertisement has mentioned the said requirement and there is no subsequent Notification issued by the Government to depart from such a requirement. As such, the authorities cannot appoint any other candidate who does not reside in the district of Hailakandi.

18. For the reasons discussed above, we are of the view that appointment of respondent No.6 cannot be sustained as the same was not done in terms of advertisement dated 07.03.2019. Accordingly, the appointment of the respondent No.6 is set aside. Consequently, the impugned judgment of the learned Single Judge dated 10.09.2021 passed in WP(C) No.5238/2019 is also set aside.

19. Once the appointment of the respondent No.6 is set aside, under normal circumstances, the most meritorious candidates below the respondent No.6 would be entitled to appointment.

Mr. Banik, learned counsel for the appellant, has submitted that the present appellant has been placed at Serial No.3 in terms of the merit list which was notified on 14.06.2019 and since the appointment of the candidate at Serial No.1, Jui Deb, has been cancelled, it will go to the next most meritorious candidate, Robin Nath. However, the said Robin Nath had surrendered his appointment and has availed another appointment. Thus, in absence of Robin Nath, the present appellant will be the most meritorious candidate who will be entitled to be selected in terms of the merit list dated 14.06.2019.

20. The learned State counsel will verify the same, and if the said Robin Nath had really surrendered his appointment, the present appellant shall be appointed as Project Assistant of Hailakandi district under POSHAN Abhiyan, Hailakandi in terms of the merit list dated 14.06.2019.

The aforesaid exercise shall be completed within a period of one month from the date receipt of a certified copy of this order.

21. The appeal is, accordingly, allowed.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant