

GAHC010123972024



2024:GAU-AS:11097-DB

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

Case No. : WA/211/2024

BHUBANESWAR SARMA
S/O LATE ADYANATH SARMA,
RESIDENT OF VILLAGE BUDRUKUCHI,
PO AND PS NALBARI,
DIST NALBARI, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECRETARY .
GOVT. OF ASSAM, DISPUR,
GENERAL ADMINISTRATION DEPARTMENT,
JANATA BHAWAN, DISPUR GUWAHATI 06

2:THE COMMISSIONER LOWER ASSAM DIVISION ASSAM
GUWAHATI 01 PANBAZAR DIST KAMRUP M ASSAM

3:THE DEPUTY COMMISSIONER NALBARI ASSAM 781335

4:UMESH CHANDRA DAS REVENUE SHARISTADAR. O/O DEPUTY
COMMISSIONER NALBARI ASSAM 78133

Advocate for the Petitioner : MR. S K GOSWAMI, MR. R SHARMA,MR. B K GOSWAMI

Advocate for the Respondent : GA, ASSAM, MR. A PAUL (R-4),MR. A PHUKAN, SC, GAD R-1

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of hearing : 13.11.2024

Date of Judgment & Order: 13.11.2024

JUDGMENT & ORDER(ORAL)

(N. Unni Krishnan Nair, J.)

Heard Mr. S. K. Goswami, learned CGC, appearing on behalf of the appellant. Also heard Mr. A. Phukan, learned standing counsel, General Administration Department, Assam; Mr. D. K. Sarmah, learned Addl. Senior Government Advocate; and Mr. A. Paul, learned counsel; appearing on behalf of their respective respondents.

2. The present intra-Court appeal has been preferred by the appellant, herein, assailing the judgment & order, dated 22.05.2022, passed by the learned Single Judge in WP(c)3029/2022.

3. The appellant, herein, being aggrieved by the selection and appointment effected in the case of private respondent No. 4, herein, as Revenue Sheristadar in the establishment of District Commissioner, Nalbari, had approached the writ Court by way of filing WP(c)3029/2022.

4. The appellant, herein, had assailed the selection and appointment of the respondent No. 4, herein, as Revenue Sheristadar, on the ground that the selection committee had not carried-out the selection involved, by assessing the merit of the candidates participating in the selection process and had carried-out the said selection, clearly in violation of the Rules

holding the field and the executive instructions issued in this connection.

5. The appellant, herein, had contended that he having secured higher gradings than that of the respondent No. 4, herein, in his Annual Confidential Reports(ACRs) under consideration for the purpose of the said selection; his such merit was ignored by the selection committee and the said selection committee by solely basing on the seniority of the respondent No. 4, had proceeded to recommend the said respondent No. 4 for appointment against the post of Revenue Sheristadar in the establishment of the District Commissioner, Nalbari.

6. The appellant, herein, had also assailed the selection of the respondent No. 4 on the ground that the selection committee as constituted, was not so constituted in terms of the prescription as made in this connection in the provisions of Rule 7 of the Assam Ministerial District Establishment Service Rules, 1967.

7. Mr. Goswami, learned counsel for the appellant, has reiterated the grounds as raised before the learned Single Judge and noticed hereinabove, during the hearing of the present writ appeal.

8. Mr. Goswami, learned counsel, has submitted that the manner and method for recruitment to the post of Revenue Sheristadar having been prescribed, it was not open for the respondent authorities, more particularly, the selection committee, to proceed with the selection, in question, in violation of the laid down procedures, in this connection.

9. Mr. Goswami, learned counsel, has further submitted that the contentions raised in the matter by the respondent authorities and also reflected in the impugned judgment & order, dated 22.05.2022, passed by the learned Single Judge in WP(c)3029/2022; would go to reveal that the selection, in question, was one which was so conducted by solely relying on the seniority of the respondent No. 4, herein, and not by making an assessment of the *inter se* merit of the candidates appearing in the selection process by reckoning the gradings received by them in the Annual Confidential Reports(ACRs) under consideration.

10. Mr. Goswami, learned counsel for the appellant, has submitted that in the event, the selection committee has proceeded with the selection, in question, solely, by applying the criteria of merit, given the gradings awarded to the appellant, herein, in the Annual Confidential Reports(ACRs) under consideration; he would have been recommended for appointment against the post of Revenue Sheristadar in the establishment of the District Commissioner, Nalbari, and the respondent No. 4, herein, would not have been so recommended given the inferior gradings in comparison to the appellant, herein.

11. Per contra; Mr. Phukan, learned standing counsel, General Administration Department, has submitted that the selection, in question, is required to be so carried-out by the selection committee on appreciation of the Annual Confidential Reports(ACRs) under consideration along with the service particulars of the candidates in the fray.

12. Mr. Phukan, learned standing counsel, General Administration Department, has further submitted that the selection committee had duly appreciated the Annual Confidential Reports(ACRs) of the candidates in the fray including the appellant and the respondent No. 4, herein, and also had considered their respective service particulars and on such consideration; had proceeded to recommend the name of the respondent No. 4, herein, for promotion to the post of Revenue Sheristadar.

13. Mr. Phukan, learned standing counsel, General Administration Department, by relying on the provisions of Rule 8(iii) of the Assam Ministerial District Establishment Service Rules, 1967, has submitted that the selection committee is not required to base the selection solely on the Annual Confidential Reports(ACRs) of the candidates in the fray but is to make its recommendations on consideration of the Annual Confidential Reports(ACRs) along with the relevant service particulars of the candidates before it.

14. Mr. Phukan, learned standing counsel, General Administration Department, has not levelled any allegation of *mala fide* against the selection committee members and accordingly, the recommendations so made in respect of the respondent No. 4, herein, would not call for any interference.

15. Mr. Paul, learned counsel for the respondent No. 4; has adopted the arguments of Mr. Phukan, learned standing counsel, General Administration Department.

16. We have heard the learned counsels appearing for the parties and also perused the materials available on record.

17. The grounds of challenge before the learned Single Judge as well as before us in the present writ appeal, has been noticed hereinabove.

18. The provisions of Rule 8(iii) of the Assam Ministerial District Establishment Service Rules, 1967, highlighted to govern the selection, in question, mandates that the selection board shall determine the merits of the candidates appearing before it upon examination of their Annual Confidential Reports(ACRs) as well as their service particulars.

19. The aforesaid Rules of 1967 do not mandate that the merit of the candidates is to be so determined only by reckoning the gradings awarded to the candidates, in the selection process, in their respective Annual Confidential Reports(ACRs) for the relevant years, under consideration.

20. The selection committee is empowered to make its own assessment of the merit of the candidates appearing before it for selection to the post, in question, and thereafter, recommend the candidate found to be meritorious by it upon an overall assessment of the Annual Confidential Reports(ACRs) of such candidates along with their service particulars.

21. The learned Single Judge, upon perusal of the materials coming on record before him; had recorded the following conclusions vide the judgment & order, dated 22.05.2022, passed in WP(c)3029/2022:

“19. The question which confronts the Court now is whether comparison of inter se merits by ACRs and other service particulars can be held to be sufficient basis for determining the merit of the selected candidate. Admittedly, no markings have been issued during the selection process. It is also not in dispute that the Rules do not prescribe award of marks during the process of selection. The circular of the Personnel Department stated to be available has also not been placed before the Court by the learned counsel for the petitioner. Existence of such a circular is also not admitted by the respondent department. There is no malafide alleged against all or any of the officer/Members of the selection committee or the Appointing Authority, save and except that during the process of the selection, an S.O. authorized by the Secretary, Department of GAD was a member of the Selection committee representing the Secretary, Department of GAD, Government of Assam.

20. The challenge in the present writ petition is made primarily that there was no assessment of inter se merits and that proper marks were not awarded while comparing the inter se merit of the candidates. The Rules are very categorical where it provides that the selection shall be on the basis of the gradings in the ACR and other relevant materials. The selection committee while considering the materials besides the ACRs had also taken into account, the number of years of experience during their service period in the Revenue Branch. This assessment made by the selection committee cannot be faulted with in view of the fact that under Rule 8 of the Rule of 1967, all revenue matters are required to be looked after by the Revenue Sheristadar. Therefore, it is a requirement under the Rule that the candidates must be exposed to revenue work during their service period which they have rendered under the Deputy Commissioner's Establishment.

21. Upon careful examination of the records and the materials available therein, it is seen that the respondent No. 4 had rendered 21 years in Revenue Branch as compared to the writ petitioner. Whether this is a valid criteria or an essential criteria is not for a writ Court to decide. It is for the employer to decide the criteria for deciding a suitable candidate.

22. From the Rules, it is evident that the criteria prescribed under the Rules for selection is that the Selection Board/Committee will examine the ACRs and the service particulars taking into consideration respective merit of the candidates. It is also evident from Rule 8(2)(i) that all revenue matters are required to be looked after by the Revenue Sheristadar. Under such circumstances, the criteria adopted by the Selection Committee to look into the numbers of years of service rendered by each of the candidates in the Revenue Branch of a Deputy Commissioner Establishment, is a criteria adopted by the Selection Committee which is not specifically provided for under the Rules. However, considering the mandate of Rule 8(2)(i), adoption of such a criteria cannot be faulted with if the department considers it to be a necessary requirement.

23. A writ Court while exercising its powers under Article 226 of the Constitution is not required to sit an appeal over the decision of the Selection Committee. The power of the Writ Court under Article 226 is only to ensure that the authorities concerned act lawfully and as per the provisions of law as prescribed. The writ Court in exercise of its powers under Article 226 is required to examine as to whether any arbitrariness had crept in into the decision making process or that the decision arrived at is contrary to the provisions of the law and/or the Rules or that any requirement of natural justice has been violated. A writ Court is not concerned with the decision arrived at by any authority but with the manner as to how the decision has been arrived at. Therefore, it is not open for a writ Court while exercising its jurisdiction under Article 226 to embark on any enquiry regarding inter se merits of the candidates. The criteria adopted of examining the

number of years of experience under the Revenue Branch is a criteria adopted by the Selection Committee which appears to be a necessity to satisfy the requirement prescribed under the Rule 8(2)(i).

24. No malice has been alleged against any of the Members of the Selection Committee. There is no contention that the Rules of natural justice required to be followed have not been followed. The contention of the petitioner that the Secretary of the General Administration Department who was the Chairman of the Committee was represented by a Section Officer and therefore, the Constitution of the Selection Committee was not as per the prescription of the Rules and consequently the selection process undertaken by the said Selection Committee is vitiated needs to be examined in the facts and circumstances of the case also does not have any merits. The Selection Committee is prescribed under Rule 8(2) comprising of Commissioner and Secretary to the Government of Assam of the General Administration(B)Department and in his absence, the Secretary of the said Department as the Chairman, Commissioner of the concerned division and Deputy Commissioner of the concerned district respectively are members and the Joint Secretary or in his absence the Deputy Secretary to the Government of Assam, General Administration (B) Department is the Member Secretary. The Rules however, do not prescribe any quorum for the meeting. In the absence of such a quorum being prescribed or in the absence of any prescription under the Rules that absence of the Chairman will vitiate the proceedings that no proceedings can be held without the members being present, the contention of the writ petitioner cannot be accepted. In Ishwar Chandra Vs. Satyanarayan Sinha, reported in (1972) 3 SCC 383, in the context of a recommendation made for appointment of the Vice Chancellor of the University, the Apex Court held that where there is no provision for quorum and out of two members of the Committee one was absent, the meeting would be considered to be valid and on that count the proceedings cannot be held to be invalid. The Apex Court held that where there is no Rule or Regulation for fixing the quorum, the presence of the majority of the Members would constitute it as a valid meeting. That apart, the petitioner also has not been able to show that the representation of the Chairman of the said committee by the Section Officer in the meeting has caused prejudiced to the petitioner.

25. As discussed above, no malice has been alleged against any of the members of the Selection committee. The Court is concerned with the process of decision making arrived at by the Selection Committee which upon careful examination of the records have been found to be undertaken keeping the Rules and the Procedure in view. Although the procedure adopted by the Selection Committee is not reflected in the Minutes or in the counter affidavit filed on behalf of the Department, however, the same is discernable upon examination of the records and also the Court has accepted the submissions made by the learned Standing Counsel on the basis of instructions received. The employer concerned is the best judge of the criteria required for selecting the best man for the job. The criteria adopted by the selection committee of examining the number of years of service rendered in the Revenue Branch over and above the individual gradings in the ACRs can be accepted to be valid criteria for the selection undertaken.”

22. With regard to the contentions of the appellants that the selection committee was not constituted strictly in accordance with the provisions of the Rules holding the field; the learned Single Judge had drawn the

following conclusions vide the judgment & order, dated 22.05.2022, passed in WP(c)3029/2022:

“10. It is seen from the Rules that the selection committee of the Selection Board is to be constituted of the following members, namely: (a) Commissioner and Secretary to the Government of Assam, General Administration Department and in his absence Secretary to the Government of Assam, General Administration (B) Department- Chairman(b) Commissioner of the concerned Division- Member (c) Deputy Commissioner of the concerned District- Member and (d) Joint Secretary or in his absence Deputy Secretary to the Government of Assam, General Administration Department- Member Secretary

11. From the above, it is clear that the Deputy Commissioner and the Commissioner, Lower Assam Division are the members of the said selection committee. From the Rules, no provision is noticed for filing any appeal against the orders passed by the selection committee. The impugned appointment order passed by the Secretary to the Government of Assam, GAD is an order passed pursuant to the selection process undertaken. The challenge in the writ petition is primarily to the selection process and the Selection Committee Minutes which was conducted for selection of Revenue Sheristadar. Under the Rules, there is no specific provision for filing an appeal against the Selection Committee Members. The Selection Committee Minutes are not orders passed either by the Deputy Commissioner or by the Secretary/Commissioner of the Department. This order/Minutes is of the Selection Committee signed by all the members.”

23. We have perused the conclusions drawn by the learned Single Judge(extracted hereinabove) with regard to the challenge as presented by the appellant, herein, to the selection and appointment of the respondent No. 4, herein. On a perusal of the same; we find that the conclusions so drawn by the learned Single Judge vide the judgment & order, dated 22.05.2022, passed in WP(c)3029/2022, are germane to the issue arising in the matter and the same is not erroneous in any manner.

25. It is seen that no *mala fide* having been alleged against the selection committee members, the allegations now levelled by the appellant, herein, being in relation to the manner in which the selection committee had carried-out the selection, in question, we are of the considered view, as already concluded by the learned Single Judge vide the judgment & order,

dated 22.05.2022, passed in WP(c)3029/2022; that the recommendations made by the selection committee, would not call for any interference.

26. Accordingly, in view of the above discussions and the conclusions reached by us hereinabove; this writ appeal is held to be devoid of any merit and consequently, the same stands dismissed. However, there shall be no order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant