

GAHC010125472015



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

Case No. : WP(C)/7767/2015

MISS MITALEE KASHYAP
D/O LT. PADMADHAR SARMA R/O VILL- LAUBHAGA HABUNGIA
BRAHMIN GAO, NEAR DURGA MANDIR P.O. DHODONG VIA BARUA
BAMUN GAON, P.S. DERGAON, DIST. GOLAGHAT, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, INDUSTRIES AND
COMMERCE DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE COMMISSIONER
INDUSTRIES and COMMERCE DEPARTMENT
GOVT. OF ASSAM
BAMUNI MAIDAN
GUWAHATI-21.

3:DISTRICT INDUSTRIES and COMMERCE CENTRE

GOLAGHAT
REP. BY THE GENERAL MANAGER
JONAKI NAGAR
GOLAGHAT
ASSAM.

4:SRI BALLAV JYOTI BORI
S/O SRI RAJ KUMAR BORI R/O KOLAKHOWA SEUJIPAR
P.O. BOKAKHAT
DIST. GOLAGHAT
ASSAM.

5:SRI AJIT BORAH

S/O LT. DANDA DHAR BORAH
R/O DA-BORAH GAON P.O. SALIKIHAT
DIST. GOLAGHAT
ASSA

Advocate for the Petitioner : MR.S N ADHYAPAK

Advocate for the Respondent : MR.N BARUAHR-4

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

For the petitioner	: Mr. S.J. Sharma, Advocate.
For respondent Nos.1 to 3	: Mr. A. Kalita, Standing Counsel.
For respondent No.4	: Mr. M. Sarma, Advocate.
For respondent No.5	: Mr. R. Borpujari, Advocate.
Date of hearing	: 08.05.2024.
Date of judgment	: 13.05.2024.

JUDGMENT AND ORDER

(CAV)

Heard Mr. S.J. Sharma, learned counsel for the petitioner. Also heard Mr. A. Kalita, learned standing counsel for the State respondent nos. 1, 2 and 3, Mr. M. Sarma, learned counsel for respondent no.4, and Mr. R. Borpujari, learned counsel for the respondent no.5.

2) By advertisement dated 03.02.2015, published by the District Industries and Commerce Centre, Golaghat (respondent no.3), applications were invited for filling up 2 (two) vacant posts of Junior Assistant in their office. The petitioner along with others had participated in the selection process. The selection was a three stage process, requiring the applicants to successfully clear the written test, then clear the computer typing test and to also

successfully clear the viva-voce test. The petitioner has projected that he and 8 (eight) other candidates (total nine candidates) had cleared the written test that was held on 30.03.2015. Thereafter, they had also appeared in the computer typing test held on 11.05.2015. Thereafter, the petitioner and eight others had appeared in the viva-voce test held on 25.06.2015. Thereafter, vide notice dated 29.06.2015 and 30.06.2015, the respondent nos. 4 and 5 were declared selected and were appointed in the said post.

3) In this writ petition, it is alleged that from RTI reply received by the petitioner, he came to know that the selection process was biased and was favoured towards respondent no.4 and the selection process was defective and the proceedings were carried out in an illegal manner. In this regard, amongst others, three following major allegations has been made.

- a. The question paper prepared by the question setter was handed over to Sri Rajkumar Bori, father of respondent no.4, namely, Ballav Jyoti Bori. The respondent no. 4 is found to have scored highest marks in the written examination, but his performance was not that brilliant in computer typing test and viva voce.
- b. The written test was held on 30.03.2015. Marks were allotted on 30.03.2015, but the evaluation-sheet was prepared on 07.04.2015.
- c. Though by a Memorandum dated 01.06.2015, a five member viva voce committee was constituted, but only two members of the Committee had signed the final minutes of evaluation. Thus, three members had abstained from signing the final evaluation sheet.
- d. Sri S. Gam, who was the fourth member of the Selection Committee, in his RTI reply dated 19.08.2015, had stated that he was not a

member of the Selection Committee.

- e. Viva voce test was held on 25.06.2015 and the minutes was prepared on 25.06.2015. However, on the same date, the Selection Committee had also held their meeting and the result was declared.

4) In support of his submissions, the learned counsel for the petitioner has cited the following cases, viz., (i) *Dr. (Major) Meeta Sahai v. State of Bihar & Ors.*, (2010) 20 SCC 17; (ii) *State of Karnataka & Ors. v. G.V. Chandrashekar*, and (iii) *Dr. (Mrs.) Kirti Deshmankar v. Union of India & Ors.*, (1991) 1 SCC 104.

5) Per contra, the learned standing counsel for the Industries Department had vehemently opposed the writ petition reference was extensively made to the stand taken in the affidavit-in-opposition filed by the respondent no.3. It was submitted that everything was done in a transparent manner and there was no illegality as alleged.

6) The learned counsel for the respondent no. 4 had also vehemently opposed the writ petition and it was submitted that although it has been alleged that the father of the respondent no. 4 had collected the answer script, but he has not been arrayed as a respondent in this writ petition for which this writ petition is not maintainable. It was submitted that the various committees were constituted in a transparent manner and even if there was some irregularities, the same would not vitiate the selection process. It was submitted that if the petitioner was aware of the anomalies, he should have raised his objection immediately at the time of appearing in all three tests, i.e. written test, computer typing test and viva voce. However, after being unsuccessful the petitioner cannot be permitted to challenge the selection

process. It was submitted that the appointment of the petitioner made in the year 2015 ought not to be disturbed after about 9 years. In support of his submissions, reliance was placed on the case of (1) *Sadananda Halo & Ors. v. Momtaz Ali Sheikh & Ors.*, (2008) 4 SCC 619; (ii) *K.H. Siraj v. High Court of Kerala & Ors.*, (2006) 6 SCC 305; (iii) *Chandra Prakash Tiwari & Ors. v. Shakuntala Shukla & Ors.*, (2002) 6 SCC 127; and (iv) *Madan Lal & Ors. v. State of J&K and Ors.*, (1995) 3 SCC 486.

7) Per contra, it was submitted by the learned counsel for the respondent no.5 that in this writ petition, all the allegations are made against the respondent no. 4 but not against the respondent no. 5, and therefore, no case has been set-up by the petitioner to set aside the appointment of the respondent no. 5. It was also submitted that the appointment of the petitioner made in the year 2015 ought not to be disturbed after about 9 years. In support of his submissions, reliance has been placed on the following cases, viz., (i) *Tajvir Singh Sodhi & Ors. v. The State of Jammu & Kashmir & Ors.*, AIR 2023 SC 2014; and (ii) *Madan Lal & Ors. v. State of J&K and Ors.*, (1995) 3 SCC 486.

8) The learned standing counsel for the State respondents has produced the selection records. However, on a pointed query of the Court, he has consulted the records and has stated that though it appears to him that the answer scripts were evaluated on 30.03.2015, but the evaluation sheet was inadvertently signed on 07.04.2015. On a further query of the Court, he has again consulted with the records and it was submitted that though all the 5 members of the selection committee had given their individual assessment of the appearing candidates, but the final compiled evaluation sheet was signed only by two members. However, he has submitted that these are mere minor aberrations and/or irregularity and those irregularities should not be construed

as if there was a major anomaly in the manner in which the selection was conducted.

9) On a perusal of the affidavit-in-opposition filed by the respondent no.3, no document is annexed which can negate the allegations made by the petitioner.

10) However, on the examination of the materials available in the record in the writ petition and affidavit-in-reply filed by the petitioner on 10.10.2023, specifically the RTI replies, it is seen as follows:-

- a. As per RTI reply dated 07.09.2015, the question setter had disclosed the information that he was asked to prepare the question paper by the Managing Director, District Industries and Commerce Centre, which was handed over to Sri Rajkumar Bori, who was introduced by the Managing Director and that as because he was introduced as an employee of the said office, he did not take any receipt of delivery at the time of delivering the question paper. It is submitted that a subsequent RTI reply had disclosed that Sri Rajkumar Bori is the father of respondent no.4, namely, Ballav Jyoti Bori. Thus, it was submitted that as a result, the respondent no. 4 scored the highest marks in the written examination. However, his performance was not that brilliant in computer typing test and viva voce.
- b. The written test was held on 30.03.2015. Scrutiny/ checking of the answer script was done on 30.03.2015. However, as per RTI reply received by the petitioner, by a Memorandum dated 01.04.2015, 2 (two) member Committee of (i) District Employment Officer, Employment Exchange, Golaghat, and (ii) Functional Manager, District

Industries and Commerce Centre, Guwahati was constituted to scrutinize/ check the answer script of written test, and the date of scrutiny/ checking of answer scripts was scheduled on 07.04.2015 at 11.00 am. Thus, before the due date on 07.04.2015, someone had already conducted the checking of the written examination scripts on 30.03.2015.

- c. The General Manager, District Industries and Commerce Centre, Golaghat, by a Memorandum dated 01.06.2015, had constituted a 5 (five) member viva voce committee consisting of (i) General Manager, DI&CC, Golaghat – Chairman; (ii) District Employment Exchange Officer, Golaghat- Member; (iii) Lead District Manager, Golaghat- Member; (iv) Executive Magistrate, as representative of the Deputy Commissioner, Golaghat- Member; and (v) Functional Manager, DI&CC, Golaghat- Member- Convener. However, only two members of the Committee, viz., (1) General Manager, DI&CC, Golaghat – Chairman; and (2) Functional Manager, DI&CC, Golaghat- Member- Convener had signed the final minutes of evaluation. Thus, three members did not sign the final evaluation sheet.
- d. As per the RTI reply dated 16.07.2015, the Selection Committee consisting of four members, namely, (i) Sri L. Borah, General Manager, DI&CC, Golaghat; (ii) Sri A. Acharyya, District Employment Exchange Officer, Golaghat; (iii) Smt. K. Das, Functional Manager, DI&CC, Golaghat; and (iv) Sri S. Gam, Head Assistant/ Senior Accountant, had held a meeting on 25.06.2015, to fill up two vacant posts of Junior Assistant in the Office of the General Manager, District Industries and Commerce Centre, Golaghat and awarded the score of 123.8, 114.5

and 113.0 respectively to the respondent no.5, respondent no. 4 and petitioner. Accordingly, the first offer for appointment was made to the respondent nos. 5 and 4 respectively, failing which it was provided that the persons at serial no. 3 and 4 would be preferred. However, Sri S. Gam, who was the fourth member of the Selection Committee, in his response to the petitioner's RTI application dated 13.07.2015, by his RTI reply dated 19.08.2015, had stated that he was not a member of the Selection Committee.

- e. Viva voce test was held on 25.06.2015 and the minutes was prepared on 25.06.2015. However, on the same date, the Selection Committee had also held their meeting and the result was declared.

11) Therefore, at each stage of the selection, i.e. written test, computer typing test and viva-vice test, there are anomalies, which cannot be said to be a minor aberration or minor irregularity. If the date notified for checking answer script is notified as 07.04.2015, the answer scripts of written examination could not have been allowed to be checked on 30.03.2015. Moreover, even if checking was preponed from 07.04.2015, but then the committee could not have signed the evaluation sheet on 07.04.2015. The reason for not compiling the marks is withheld by the respondent nos. 1 to 3.

12) The selection committee is notified with four members, out of which one member as denied being a part of the selection committee. After one Selection Committee Member in his RTI reply dated 19.08.2015, had stated that he was not a member of the Selection Committee, there is no way that the selection can be saved.

13) It is seen that by a Memorandum dated 01.06.2015, issued by the

General Manager, District Industries and Commerce Centre, Golaghat, a 5 (five) member viva voce committee was constituted of (i) General Manager, DI&CC, Golaghat – Chairman; (ii) District Employment Exchange Officer, Golaghat- Member; (iii) Lead District Manager, Golaghat- Member; (iv) Executive Magistrate, as representative of the Deputy Commissioner, Golaghat- Member; and (v) Functional Manager, DI&CC, Golaghat- Member- Convener. However, only two members of the Committee, viz., (1) General Manager, DI&CC, Golaghat – Chairman; and (2) Functional Manager, DI&CC, Golaghat- Member- Convener had signed the final minutes of evaluation. Thus, three members had abstained from signing the final evaluation sheet, which cannot be brushed aside by treating the anomaly as a minor aberration or minor irregularity.

14) In their RTI reply, the District Industries and Commerce Centre, Golaghat has furnished a copy of office order dated 20.03.2015 by which two of their staff including Sri Ram Kumar Bori, holding the post of SI&C, Dhansiri were deputed to collect the question paper relating to written test being held on 30.03.2015. It is also admitted in one of the RTI reply by the District Industries and Commerce Centre, Golaghat that the said Ram Kumar Bori is the father of the respondent no. 4. Under such circumstances, a doubt is definitely created in the mind of the petitioner that perhaps that was a reason why the respondent no. 4 got better marks in written test, but did not fare so well in computer typing test and viva-voce test.

15) All these anomalies referred herein before, in the considered opinion of the Court, cannot be brushed aside as minor irregularity. The anomalies, as referred herein before, are found and held to be fatal to the conduct of the selection process in a fair and transparent manner.

16) The case of *Sadananda Halo (supra)*, *Chandra Prakash Tiwari*

(*supra*), *K.H. Siraj (supra)*, *Chandra Prakash Tiwari (supra)*, and *Madan Lal & Ors. (supra)* were cited on the principle of estoppel and it was contended that since the petitioner had participated in the selection process without any demur or protest, cannot be permitted to turn around and assail the selection process itself or to question the selection board. We have no quarrel with the said well settled principle of law. But in this present case in hand, the facts are found to be distinguishable. The respondents have not been able to show that either before or during the process of written test, computer typing test and viva-voce test, the petitioner had any knowledge that (i) all the members of the answer script evaluators would conduct the checking of answer-script on 30.03.2015, through the notified date was 07.04.2015; or that (ii) after checking the papers on 30.03.2015, the invigilators would sign the evaluation sheet on 07.04.2015; or that (iii) though a five member committee was set-up only two would sign and three would abstain; or that (iv) that one member of the Selection Committee will not be aware of his appointment in the Selection Committee so as to disown his position as member in his RTI reply; or that (v) the respondent authorities would depute the father of the respondent no.4 (selected candidate) to collect question paper from the question setter.

17) The RTI replies, which are part of the pleadings by the petitioner shows that pursuance to the Govt. Letter no. CL.169/2012/271 dated 26.10.2014, the General Manager, District Industries and Commerce Centre, Golaghat had issued a notification no. DICC/GOL/E/474/2014 dated 20.03.2015, constituting the selection Committee as follows, viz., (1) General Manager, DI&CC, Golaghat; (2) District Employment Officer, Golaghat; (3) Functional Manager, DI&CC, Golaghat; and (4) Head Assistant/ Senior Assistant, DI&CC, Golaghat. Be it mentioned that in the writ petition and affidavit-in- reply filed by

the petitioner against the affidavit-in-opposition of respondent no.3, it is projected that a copy of the aforesaid document was not furnished to the petitioner, for which the petitioner had filed RTI appeal and that pursuant to order dated 03.03.2017, passed by the Assam State Information Commission, in Case No. SIC/GLT/67-69-70-71-72-73-76/2016, a copy of notification dated 20.03.2015 was furnished to him. However, vide another Memorandum under Memo no. DICC/GOL/E/474/ 2014/1607-1609 dated 01.06.2015, another Selection Committee of 5 (five) members was constituted for selection of 2 vacant posts of Junior Assistant. The designation of members of the five member Committee has been referred in one of the previous paragraphs. The said notification does not indicate if Govt. Approval was taken or that the previous notification dated 20.03.2015 was withdrawn. Yet, in the Minutes of the meeting of the Selection Committee held 25.06.2015 [Annexure-13(a)], out of 5 (five) member Committee, only 2 (two) members have put their signatures. Under such circumstances, it cannot be said that the unsuccessful candidate cannot turn around and challenge the selection process. Therefore, the principle of estoppel, as laid down in the case of (i) *Sadananda Halo (supra)*, (ii) *Chandra Prakash Tiwari (supra)*, (iii) *K.H. Siraj (supra)*, *Chandra Prakash Tiwari (supra)*, and (iv) *Madan Lal & Ors. (supra)*, cannot be applied to the distinguishable facts of this case, otherwise, it would amount to the Court giving its seal of approval to the gross illegality that was committed in conducting the selection process.

18) It is well settled that when a candidate by agreeing to participate in the selection process, only agrees and/or accepts the prescribed procedure and not the illegality in it. Therefore, when at each stage, illegality in procedure is noticed, the petitioner would not be precluded from assailing the illegality in the selection process. This position is settled in the case of *Dr. (Major) Meeta*

Sahai (supra). The said well settled principle is found to apply under the facts and circumstances of the case.

19) The learned counsel for the respondent no. 5 had urged that there are no adverse allegations against the respondent no. 5 in the writ petition and therefore, he was a bona fide candidate and should not suffer after rendering about 9 years of service. However, in this case, he was also selected in a process which is found to be vitiated owing to gross anomalies and illegality and thus, the appointment of respondent nos. 4 and 5 cannot be sustained. The fact that the respondent nos. 4 and 5 have rendered about 9 (nine) years of service shall not come in the way for setting aside their appointment because this writ petition was filed on 16.12.2015. We also find that during the period from the appointment of the respondent nos. 4 and 5, the petitioner had been obtaining information through several RTI applications and had to even approach the State Information Commission against denial of information and thereafter got the information. Thus, in this case, we do not find that there was any inordinate delay on part of the petitioner to make the challenge. This writ petition had come up for consideration on 08.05.2024, for which no fault can be attributed to the petitioner. Thus, when the selection process is found and held to be vitiated by gross anomalies and illegality, the appointment to the respondent nos. 4 and 5 has to be interfered with.

20) Therefore, the Court has no hesitation to set aside (i) the minutes of the Meeting of the Selection Committee dated 25.06.2015 of the District Industries and Commerce Centre, Golaghat; (ii) the notification no. DICC/GOL/E/474/ 2014/2871-2879 dated 29.06.2015, issued by the General Manager, District Industries and Commerce Centre, Golaghat; and (iii) order under memo no. DICC/GOL/E/ 474/2014 dated 30.06.2015, issued under memo

no. DICC/ GOL/E/ 474/2014/2885-2893 dated 29.06.2015.

21) Taking note of the fact that the petitioner has been agitating this matter since the 2015 and the respondent nos. 4 and 5 have rendered service for about 9 years, it is provided that it would be open to the respondent authorities to conduct a fresh recruitment process for filling up the 2 (two) vacant posts of Junior Assistant in the office of the District Industries and Commerce Centre, Golaghat, and provide for giving extra weightage to the petitioner and respondent nos. 4 and 5, and to condone their age for applying for and for entry into service, if selected.

JUDGE

Comparing Assistant