

GAHC010190512024



2024:GAU-AS:10117-DB

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

Case No. : WA/331/2024

ANUP KUMAR DAS
S/O- LATE RAJEN DAS, R/O- VILL. and P.O.- KULHATI, DIST.- KAMRUP R,
ASSAM, PIN- 781104.

VERSUS

DIPAN KANTI SUKLABAIDYA AND 4 ORS
S/O- LT. KRIPAMAY SUKLABAIDYA, R/O VILL.- NAYAGRAM, P.O.-
GIRISHGANJ BAZAR, DIST.- KARIMGANJ, ASSAM.

2:THE STATE OF ASSAM
THROUGH THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
DEPTT. OF EDUCATION SECONDARY
ASSAM
DISPUR
GHY- 6.

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY- 19.

4:THE ASSAM PUBLIC SERVICE COMMISSION
THROUGH ITS CHAIRPERSON
ASSAM PUBLIC SERVICE COMMISSION
KHANAPARA
GUWAHATI.

5:MS. SEMINA YASMINA ARA RAHMAN
W/O ATIQR RAHMAN BARBHUIYA
PRESENTLY SERVING AS INSPECTOR OF SCHOOLS
NILOMONI ROAD
KARIMGANJ
ASSAM
RESIDENT OF HOUSE NO. 5

LANE NO. 3
LNB PATH
NEAR HATIGAON HIGH SCHOOL
GUWAHATI 38
DIST KAMRUP ASSA

Advocate for the Petitioner : MR. K N CHOUDHURY, MS S PATOWARY,MR R SINGHA

Advocate for the Respondent : SC, SEC. EDU., SC, APSC

Linked Case : WA/332/2024

ANUP KUMAR DAS
S/O- RAJEN DAS
R/O VILL. and P.O.- KULHATI
DIST.- KAMRUP R
ASSAM
PIN- 781104.

VERSUS

HIRANYA KUMAR NATH AND 21 ORS
S/O GAMBHIR CH. NATH
R/O MEDICAL COMPLEX
BHANGAGARH
GHY-32.

2:SRI ANUP HAZARIKA
S/O BHADRA HAZARIKA

RESIDENT OF NILACHAL HOUSING SOCIETY
NANDAN PATH
BHETAPARA
GUWAHATI 781028

3:SRI DIP DAKSHINA KAKATI
S/O LATE UMAKANTA KAKATI
RESIDENT OF P.BORO PATH
RUPNAGAR
GUWAHATI 781003

4:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM

DEPARTMENT OF SECONDARY EDUCATION
ASSAM DISPUR GUWAHATI 06

5:THE ASSAM PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS CHAIRMAN
JAWAHAR NAGAR
KHANAPARA
GUWAHATI 22

6:THE DIRECTOR OF SECRETARY EDUCATION
ASSAM KAHILIPARA
GUWAHATI 19

7:SRI ANJAN KUMAR DEKA
S/O SRI NAGENDRA NATH DEKA

8:SRI JYOTSHNA RANI BARMAN
D/O ATUL BARMAN

9:SRI PRASANNA BORAH
S/O LATE JONARAM BORAH

10:SRI AMIR HUSSAIN
S/O MIZANUR RAHMAN

11:MISS CHINMOYEE TALUKDAR
D/O SUREN TALUKDAR

12:DR. SUBHALAKSHMI RAJKUMARI
D/O KRISHNA KANTA RAJKUMAR

13:RUMI CHOUDHURY
D/O DWIJENDRA NATH DEV CHOUDHURY

14:SRI JAYANTA THAKURIA
S/O LATE RAMESH CH. THAKURIA

15:MS. SEMINA YASMINA ARA RAHMAN
D/O LATE KUTUBUR RAHMAN

16:MRS. BULI GOGOI BHUYAN
D/O LATE MUKTA NATH GOGOI

17:SRI SAJU KUMAR YADAV
S/O DULAL CH. GHOSH

18:SRI JAGADISH PRASAD BRAHMA
S/O LATE MAHENDRA NATH BRAHMA

19:SRI MRIDUL KUMAR NATH
S/O LATE RAGHU RAM NATH

20:SRI JAYPAL SING BRAHMA
S/O GOURI KANDTA BRAHMA

21:MRS. GAYATRI NAIDING
D/O LATE GOPAL CH. NAIDING
RES. 7 TO 21 ARE SELECTED CANDIDATES AND C/O SECRETARY
APSC
JAWAHAR NAGAR
KHANAPARA
GUWAHATI 22

22:SRI AJOY BIPLAV NATH
S/O LATE BIJOY NATH

RESIDENT OF VILLAGE ANAIGHARI
PO ANGARKHOWA
DIST LAKHIMPUR
ASSAM

Advocate for : MR. K N CHOUDHURY
Advocate for : SC
APSC appearing for HIRANYA KUMAR NATH AND 21 ORS

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

HON'BLE MRS. JUSTICE MITALI THAKURIA

Advocate for the Appellant : Shri KN Choudhury, Senior Counsel
Shri R. Singha

Advocate for the respondents : Shri BD Das, Senior Counsel
Ms. R. Dekka
Shri R. Mazumdar, SC-Edu. Deptt.
Shri PP Dutta, SC-APSC

Date of hearing : **01.10.2024**

Date of Judgment : **04.10.2024**

JUDGMENT & ORDER

(S.K. Medhi, J.)

Both these writ appeals being preferred against a common judgment and order dated 27.08.2024 passed by the learned Single Judge in WP(C)/4325/2012 and WP(C)/7378/2013, the same are taken up for an analogous hearing and are disposed of by this common order.

2. At the outset it is made clear that at the admission stage itself extensive hearing was done and all the learned counsel had advanced their arguments and accordingly the matters were taken up for final disposal at this stage itself.

3. Before going to the issue which has been raised in these appeals, it would be convenient if the basic facts of the case are put in a nutshell.

4. In the year 2011, an advertisement was published by the APSC for appointment of various posts of Deputy Director, Inspector of Schools, District Elementary Education Officers which are all of equivalent ranks. In the selection, the present appellant was amongst the selected candidates and was accordingly appointed along with 15 others. The selection was however the subject matter of challenge in the aforesaid two writ petitions. It has been contended that though various allegations were made against few other successful candidates, there was no allegation at all against the present appellant. Though the writ petitions were instituted in the years 2012 and 2013, the matters went on and the appellant continued to serve. During the pendency of the writ petitions, additional affidavits were filed and the last was filed by the petitioners in January, 2024. In the said additional affidavit, certain new facts have been

brought on record which is of significant importance. It has been revealed that on the aspect of the experience certificate relied upon by the present appellant, RTI application was made to the concerned School and from the same, it has been revealed that such experience certificate was not issued and was accordingly cancelled. Based on the said information, an FIR appears to have been lodged by one Rajesh Chakraborty giving rise to CID PS Case No. 72/2013. In the said police case, investigation was done resulting in submission of the charge sheet No. 18/21 dated 31.12.2021. Based on the aforesaid development, the writ petitioners have gathered further support to the allegations and the reliefs prayed for.

5. The writ petitions were contested by the present appellant, who was a respondent. It however transpires that against the additional affidavit filed in January, 2024, there was no rebuttal affidavit on behalf of the appellant. Be that as it may, the learned Single Judge, vide the impugned judgment and order dated 27.08.2024 had allowed the writ petition by directing the Commissioner, Department of Education, Government of Assam to make an enquiry into the matter and pass consequential orders in accordance with law within a period of two months. It was also provided that the appointment of the petitioners could be considered in view of the fact that the petitioners had secured marks which would have placed them above the last selected candidate.

6. Being aggrieved by the aforesaid directions, the present appeals have been preferred.

7. We have heard Shri KN Choudhury, learned Senior Counsel assisted by Shri R. Singha, learned counsel for the appellant. We have also heard Shri BD Das, learned Senior Counsel assisted by Ms. R. Deka, learned counsel for the respondent nos. 1, 2 and 3 in WA/332/2024, who has entered appearance at

the admission stage itself; Shri R. Mazumdar, learned Standing Counsel, Secondary Education Department and Shri PP Dutta, learned Standing Counsel, APSC. Further, in view of the order proposed to be passed, issuance of notice in WA/331/2024 would not be necessary.

8. Shri Choudhury, the learned Senior Counsel for the appellant, has submitted that when the writ petitions were instituted in the years 2012 and 2013, there was not a single allegation against the appellant and the allegations have been made much later after filing of the charge sheet in the connected Police Case. It is submitted that in the writ petition, only the advertisement was challenged by unsuccessful candidates and therefore the *locus* of the writ petitioners has also been questioned. He has also submitted that a Writ Court cannot go for a roving enquiry which appears to be done by the instant judgment and order and therefore the same is required to be set aside.

9. As regards the Experience Certificate in question, it is submitted that the observations made that the Certificate was a fake one is not supported by the materials on record. He has submitted that the Certificate was found to be erroneously issued and therefore the same was cancelled. It is also submitted that the cancellation of the said Certificate would not make any difference to the selection of the appellant inasmuch as, only two marks were allotted on account of the said Certificate and even if the same is deducted, the appellant would still be selected.

10. The learned Senior Counsel for the appellant has also made submission on the aspect of proportionality of the directions issued vis-à-vis the aspect that there was no allegation against the appellant when the writ petition was instituted. He adds that while the appellant belongs to the SC category, the writ petitioners were of a different category and therefore, there was no clash of

interest. He reiterates that the charge sheet *per se* would not form a conclusive material to direct an enquiry. In this regard, specific reference were made to the averments made in paragraphs 8, 9, 10 and 11 of WP(C)/4325/2012 wherein names of other candidates have been given with specific allegation whereas there is no mention about any such allegation against the appellant.

11. As regards the allegation and facts which have been disclosed in the additional affidavit filed in January, 2024 by the writ petitioners, Shri Choudhury, learned Senior Counsel for the appellant has submitted that the FIR itself was not lodged by any of the writ petitioners but by one Rajesh Chakraborty whose antecedents are not known. He otherwise submits that filing of a charge sheet after investigation cannot be held to be conclusive and at best, the same would only be an evidence which is required to be proved in a Court of Law in accordance with the manner prescribed. By relying upon a judgment of the Hon'ble Supreme Court in the case of ***Khatris Vs. State of Bihar*** reported in ***(1981) 2 SCC 493***, it is submitted that without the contents of a charge sheet being proved in accordance with the Evidence Act, such materials cannot be used even by the Hon'ble Supreme Court in exercise of powers under Article 32 or by a High Court under Article 226 of the Constitution of India. Further, he submits that such charge sheet cannot form a material basis to order an enquiry before the same is proved in a Court of Law and therefore the direction to cause an enquiry is liable to be set aside.

12. The learned Senior Counsel has also submitted that the appellant has been serving continuously and without any blemish and the direction for an enquiry would have the potential to have adverse effect in his career and therefore there is a requirement for interference by this Court. The learned Senior Counsel is also critical of the aspect of consideration of the appointment

of the petitioners, as part of the direction. He submits that the selection was for the year 2011.

13. Shri BD Das, learned Senior Counsel for the respondents – writ petitioners in WA/332/2024 has, at the outset raised a preliminary objection on the maintainability of the writ appeal on the grounds of *mis joinder* of parties. He has submitted that many of the private respondents were struck off, vide an order dated 11.03.2024 passed in the writ proceeding and yet, those respondents have been made parties in the appeal. He submits that the appeal is defective and on this count alone, the same is liable to be dismissed.

14. On the facts of the case, it is submitted that it is not a question of the marks allotted to the Experience Certificate but the requirement of such Experience as a part of the Advertisement as well as the Assam Education Services Rules, 1982 (hereinafter Rules of 1982). By drawing the attention of this Court to the Advertisement as well as the Rules of 1982, it is submitted that for the post in question, there is a requirement of 10 years Experience. In the instance case, it is submitted that the appellant had taken recourse to fraud by using an Experience Certificate which was never issued in accordance with law. He has also drawn the attention of this Court to the communications issued by the respective authorities in this regard. The Experience Certificate was cancelled by the Head Teacher of the Tiwanagar High School on 09.12.2011 and this communication was issued to the petitioner. The said communication was issued pursuant to a direction made by the Assistant Inspector of Schools, Kamrup District Circle dated 08.12.2011 whereby the Head Master was informed regarding withdrawal of the counter signature and was further directed to ensure that the Experience Certificate should not be allowed to be used by the appellant / respondent under any circumstances. The fact of cancellation of the

Certificate was also informed by the Head Master to the Assistant Inspector of Schools on 02.12.2011 itself by stating that it was wrongly issued. The learned Senior Counsel has submitted that the appellant had taken recourse to forgery of documents to make wrongful gain.

15. The learned Senior Counsel for the private respondents - writ petitioners has also highlighted the aspect that though at the time of filing of the writ petition certain details were not available, during the pendency of the writ petition, many relevant and important facts came to light which were accordingly placed on record by an additional affidavit filed in January, 2024. He has reiterated that none of the averments made in the said additional affidavit have been disputed by the appellant by filing any counter affidavit.

16. As regards the allegations against few other candidates, Shri Das, the learned Senior Counsel has submitted that those allegations were mainly on the aspect of age condonation and not applying through proper channel. Accordingly, the challenge against those candidates were withdrawn and their names were struck off by this Court vide order dated 11.03.2024. However, the challenge *qua* the appellant was maintained.

17. In support of his submission, Shri Das, the learned Senior Counsel has relied upon the case of ***Union of India Vs. Dattaray*** reported in **(2008) 4 SCC 612** wherein it has been laid down that a false Certificate deprives a genuine candidate from an opportunity of employment. Reliance has also been placed upon a judgment of the Punjab & Haryana High Court dated 15.01.2015 passed in CWP/16882/2009 [***Mahender Singh Vs. State of Haryana***]. In the said case, relying upon the aforesaid case of ***Dattaray*** (supra) it has been held that when the selection of an employee was conceived in deceit, the same cannot be saved by equitable consideration. He has also relied on the case of

Krishna Hare Gaur Vs. Vinod Kumar Tyagi reported in ***(2015) 11 SCC 355*** on the aspect of forged testimonials in a recruitment and the strict consequences which are to be followed.

18. Shri Das, the learned Senior Counsel has also supported the direction for consideration of the case of the petitioners for appointment by contending that the writ petition was filed within the year of the publication of the selection list. In this regard, he has relied upon a case of the Hon'ble Supreme Court reported in ***(2000) 3 SCC 699 [State of U.P. Vs. Ram Swarup Saroj]***.

19. Shri R. Mazumdar, learned Standing Counsel of the Education Department has opposed the appeal and has supported the impugned judgment so far as directing an enquiry. By referring to the observations made in paragraphs 48 and 55 of the impugned judgment, he has submitted that no impediment otherwise should be imposed upon the Department to hold an enquiry. He has also highlighted that the requirement of "Experience" for a candidate is a statutory requirement under the Rules of 1982 which was also reflected in the advertisement. He has contended that the submission made on behalf of the appellant that only 2(two) marks were allotted to him on the said Head will be inconsequential inasmuch as, "Experience" *per se* is an essential requirement and the marks given would not have any impact in this case.

20. The learned Standing Counsel of the Education Department has however submitted that the direction to consider the case of the petitioners for appointment at this stage, may not be in sync with the prescription of law.

21. Shri PP Dutta, learned Standing Counsel, APSC has submitted that all actions taken by the Commission were on the basis of the documents submitted by the respective candidates. He has however highlighted that in the

advertisement itself there is a clause that in case of any detection of any false declaration, the candidates will be penalized.

22. The rival submissions have been duly considered and the materials placed before this Court have also been carefully perused.

23. The principal submission made on behalf of the appellant is that a charge sheet filed in a criminal case cannot be construed as a proof of complicity in an offence. It has been additionally urged that when the writ petitions were presented, though the appellant was made party respondent, there was no specific allegation against him. In this regard, specific reference were made to the averments made in paragraphs 8, 9, 10 and 11 of WP(C)/4325/2012 wherein names of other candidates have been given with specific allegation wherein there is no mention about any such allegation against the appellant. We have however noticed that the challenge against those candidates were withdrawn and their names were stuck off by the Court vide order dated 11.03.2024 while the challenge against the appellant was maintained.

24. The learned Single Judge after elaborate discussion has observed that the guilt or otherwise of the appellant in the Police Case would be a matter of trial but such serious allegation warrants an enquiry from the Department.

25. We are of the considered opinion that the aforesaid view of the learned Single Judge cannot be held to be unreasonable at all when the allegations are of serious nature going into the root of the selection of the appellant. No doubt, a charge sheet in a criminal case is in the realm of investigation and the said evidence has to be duly proved in the trial and therefore, the same would not be conclusive. However, at the same time when allegations of such serious nature has come into surface which is supported by documentary evidence, an

enquiry is required to be done which has been correctly directing by the learned Single Judge. We have also noticed that the said allegations which have been placed on record by way of an additional affidavit have not been rebutted by the appellant. It is trite law that statements made in rejoinder affidavit / additional affidavit in a writ proceedings are to be treated as part of the pleadings. In this regard, one may gainfully refer to the case of Hon'ble Supreme Court in ***Sri-la-Sri Subramana Desika Gnanasambanda Pandarasannadhi Vs. State of Madras*** reported in ***AIR 1965 SC 1578***.

26. On the aspect that the information through the RTI Act was not obtained by the writ petitioners but by a 3rd party, namely, one Shri Rajesh Chakraborty who is also the informant in the Police Case, we are of the view that the same would not have much of a significance as ultimately the allegations have surfaced and brought on record before the Writ Court.

27. We are also of the view that the present appeal being an intra Court one, unless the view expressed by the learned Single Judge is wholly unreasonable or perverse, merely on the ground that another view is plausible, the appellate Court would be loath to substitute the view taken by the learned Single Judge. In the instant case, as discussed above, the learned Single Judge has not only painstakingly compiled all the facts but has also assigned cogent and justifiable grounds to come to the conclusion. In this connection, it would be gainful to refer to a decision of the Hon'ble Supreme Court in the case of ***Management of Narendra & Company Private Ltd. Vs. Workmen of Narendra and Company*** reported in ***(2016) 3 SCC 340***, wherein it has been held as follows:

“4.....Be that as it may, in an intra-court appeal, on a finding of fact, unless the appellate Bench reaches a conclusion that the finding of the

Single Bench is perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order passed by the Single Judge, unless both sides agree for a fairer approach on relief."

28. We are also of the view that vide the impugned judgment, only an enquiry has been directed to be conducted by the Department in the matter as certain materials which *prima facie* would go to root of the selection process have been brought on record. Such direction, *per se* cannot be held to cause prejudice to the appellant or for that matter any affected party as ultimately, it has to be ensured that a selection to a public post has been done by following the due process of law wherein the testimonials of the candidates and their credentials are duly scrutinized and found to be without any discrepancy. Ultimately, transparency and fairness are the hallmark of a public recruitment process wherein a fair opportunity has to be given to all eligible candidates in which there is no room for any fraud or reliance on forged documents.

29. We have also noted that though the writ petitioners had heavily relied upon the aspect of submission of charge sheet in the Police Case wherein the name of the appellant appears as an accused, the learned Single Judge has rightly observed that such accusation is still at the realm of investigation and unless such accusation is duly proved in the Court of Law, the party involved cannot be held to be guilty. At the same time, the undisputed facts, as would reveal from the additional affidavit filed by the writ petitioners in January, 2024 would certainly call for a departmental action enquiring into the same recruitment process. We have also found forced in the submission made on behalf of the Department that irrespective of such direction, it would always be opened to the Department to make such enquiry if a gross illegality is revealed

even at a later stage after the recruitment and precluding the Department from making such an enquiry would not be in the interest of public.

30. In the case of ***Central Bank of India Vs. Madhulika Guruprasad Dahir*** reported in ***(2008) 13 SCC 170*** the Hon'ble Supreme Court has observed as follows:

“18. Having considered the matter in the light of the aforesaid legal position, in our judgment, the decision of the High Court is untenable. As noted supra, the employee having accepted the finding of the Scrutiny Committee, holding that the caste certificate furnished by the employee was false, the very foundation of her appointment vanished and her appointment was rendered illegal. Her conduct renders her unfit to be continued in service and must necessarily entail termination of her service. Under these circumstances, there is absolutely no justification for her claim in respect of the post merely on the ground that she had worked on the post for over twenty years. The post was meant for a reserved candidate but she usurped the same by misrepresentation and deception. In our opinion, the fact that caste certificate was referred to the Scrutiny Committee for verification after ten years of her joining the service and a long time was taken by the Scrutiny Committee to verify the same is of no consequence inasmuch as delay on both the counts does not validate the caste certificate and the consequent illegal appointment.

19. We are also unable to persuade ourselves to agree with learned counsel for the employee that in the absence of any finding of fraud having been played by the employee, the order of the High Court is

equitable and should not be interfered with. As noted above, the selection of the employee was conceived in deceit and, therefore, could not be saved by equitable considerations.”

31. However, there is one issue which would require our interference and that issue is with regard to the direction for considering the case of the writ petitioners for appointment. Admittedly, the recruitment process was of the year 2011 which was followed by appointments. Apart from the said recruitment process being initiated after an enactment of the Assam Fiscal Responsibility and Budget Management Act, 2005 which forbids appointment in any resultant or future vacancy after the recruitment is over and even in a leave or transfer vacancy, it is more than a decade that the select list was published. It is a settled law that the validity of a select list is normally one year or as per the Rules governing the field. Mere filing of a case within the aforesaid period of one year without there being any interim protection would not propel us to endorse the order of reconsideration. The judgment of ***Ram Swarup Saroj*** (supra) is clearly distinguishable on the facts of the case and as observed above, there is a statute for the State of Assam on the aforesaid field prohibiting such a consideration.

32. In view of the aforesaid discussion, we are of the considered opinion that except for the observation requiring consideration of the case of the petitioners, the judgment and order dated 27.08.2024 of the learned Single Judge does not call for any interference. Both the writ appeals accordingly stand dismissed.

JUDGE

JUDGE