

Hari Mohan Das Vs. State of Assam

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SooperKanoon Citation : sooperkanoon.com/138439

Court : Guwahati

Decided On : Feb-08-2002

Judge : R.S. Mongia, C.J. and Amitava Roy, J.

Acts : Assam Secondary Education (Provincialised) Service Rules, 1982 - Rule 7

Appeal No. : Writ Appeal Nos. 277 of 1999 and 354 of 2000 in Cr Nos. 2956 of 1995 and 920 of 1997

Appellant : Hari Mohan Das

Respondent : State of Assam

Advocate for Def. : A. Hazarika, Adv.

Advocate for Pet/Ap. : K.P. Pathak, M. Singh and S.K. Sharma, Advs. in WA 354 of 2000 and B.K. Das and D. Mazumdar, Advs. in WA No. 277 of 1999

Judgement :

R.S. Mongia, C.J.

1. This judgment and order of ours will dispose of Writ Appeal No. 354 of 2000 and Writ Appeal No. 277 of 1999.

2. Briefly stated, the facts giving rise to the present appeals are, that pursuant to an advertisement dated 12.4.1995 issued by the Headmaster of Thomna Binapani High School, apart from others Smti. Rukmini Kalita, writ petitioner in Civil Rule

No. 2956/95, Shri Harimohan Das, writ petitioner in Civil Rule No. 920/97 and Smti. Prativa Sarania (Respondent No. 5 in Civil Rule No. 2956/95) had applied for the post of Hindi Teacher (Senior Grade). The Inspector of Schools, Nalbari District Circle, vide his letter dated 12.4.1995 had requested the, Headmaster of the aforesaid school to send the applications of the candidates, who had applied for the post along with the comparative statement. It is stated that the said comparative statement was sent in order of preference. It was the case of Smti. Rukmini Kalita in Civil Rule No. 2956/95 that in that comparative chart she had been placed at Sl. No. 1, whereas Smti. Prativa Sarania had been placed at Sl. No. 7, even then she (Smti. Prativa) had been appointed as Hindi Teacher whereas the petitioner had not been appointed. Civil Rule No. 2955/95 was filed to quash the appointment of Smti. Prativa Sarania and for giving appointment to the writ petitioner Smti. Rukmini Kalita.

3. In the other Civil Rule, i.e., C.R. No. 920/97, Shri Harimohan Das, inter alia, alleged that the comparative chart or the comparative statement prepared by the Headmaster was not the merit list, in which Smti. Rukmini Kalita had been placed at Sl. No. 1 and Shri Harimohan Das had been placed at Sl. No. 2, The prayer made was that out of the applicants, the appointment be made in accordance with the rules after due selection and preparation of the merit list. The further grievance was that without framing any merit list, after complying with the procedure under the Rules, one Smti Prativa Sarania had been appointed. However, unfortunately Smti. Prativa Sarania after joining the said post expired. After the expiry of Prativa Sarania, the petitioner Shri Harimohan Das was appointed on 23.2.1996. It may be observed here that Shri Harimohan Das was not a party in the Civil Rule No. 2956/95 filed by Smti. Rukmini Kalita.

Civil Rule No. 2956/95 was disposed of by the learned Single Judge on 22.4.1996. The conclusions and directions given in that judgment may be noticed :-

'A bare perusal of the comparative statement sent along with the letter dated 13.5.1995 of the Headmaster would show that the petitioner has been placed in the first position in order of preference and hence she ought to be considered for appointment as Hindi Teacher in Thomna Binapani High School, if the said post

has been fallen vacant. Now that the respondent No. 5 has expired, nothing stands on the way of the authority to consider the case of the petitioner for appointment as Hindi Teacher in Thomna Bina Pani High School.

In the result, I dispose of this writ petition with the direction that the Respondent No. 3, Inspector of Schools, Nalbari District Circle, shall consider the case of the petitioner for appointment as Hindi Teacher in Thomna Bina Pani High School within a period of 2 weeks from the date of receipt of the certified copy of this order and pass orders thereon. The certified copy of this order be filed before the Inspector of Schools, Malbari District Circle by the petitioner within a week.'

Civil Rule No. 920/97 came to be disposed of on 24.6.1999. In paragraphs 4 and 6 of the judgment and order, it is observed as under :-

'4. It is seen that there was no selection, interview for the post. It is submitted that the petitioner is better qualified than the Respondent No. 5. I am not deciding this. I am remitting back the whole matter to select the candidate in accordance with existing guide line. Rudes and procedure. The Respondent No. 5 is stated to be not qualified to, hold the post that also I am not deciding. I am disposing this writ application with a direction that within a period of 2 months the authority shall select the person and appoint the said person in accordance with existing guideline, rules and proocedure who is suitable to hold the post. For this period of 2 months the Respondent No. 5 shall be allowed to continue. But her appointment will be subject to the selection within a period of 2 months from the date of receipt of this order. Thereafter the appointment ofRespondent No. 5 shall stand cancelled.

5. I have heard Shri Kalita, learned Advocate for Respondent Nos. 4 and 5, Shri C. Choudhury, learned Advocate for Respondents No. 1, 2 and 3 and Shri K.P. Pathak, learned Advocate for the petitioner.

6. It is needless to say that at the time of selection the authority shall consider the comparative statement of the list. The petitioner may obtain the certified copy of this judgment and shall produce the same before the appropriate authority to do the needful in terms of this judgment.'

W.A. No. 354/2000 has been filed by Shri Harimohan Das, which has arisen out of Civil Rule No. 2956/95. As observed above, Shri Harimohan Das was not a party in the writ petition.

4. It is the contention of the appellant's counsel in WA 354/2000 that the observations and directions made and given by the learned Single Judge are against the interest of the appellant. The comparative chart could not be considered as the merit list and the procedure for filling up the post by direct recruitment as contained in the Assam Secondary Education (Provincialised) service Rules, 1982 was not followed. After following the procedure as laid down therein, whosoever was found as meritorious should be appointed. Consequently, it was prayed that the direction to appoint Smti. Rukmini Kalita against the vacancy which had occurred on the death of Prativa Sarania is liable to be quashed.

5. The other appeal, WA No. 277/99 had been filed by Smti. Rukmini Kalita and it has been argued on her behalf that due procedure had been followed and she (Smti, Rukmini Kalita) had been rightly placed at Sl. No. 1 in the merit list and therefore the directions given by the learned Single Judge in his judgment dated 24.6.1999 are not well founded.

6. It is not disputed before us that the post in question had to be filled up by direct recruitment. Rule 7 of the Assam Secondary Education (Provincialised) Service Rules, 1982, provides for procedure to be followed for direct recruitment, which also includes as to how the District Level Selection Board has to be constituted. It may be observed here that the post in question falls within the domain of District Level Selection Board. For ready reference, the Rule 7 is reproduced below :-

'7. Method of direct recruitment. -

(1) Direct recruitment shall be made on the basis of selection made by the District Level Selection Board in the case of High School Teachers and State Level selection Board in the case of Post-graduate teachers of Higher Secondary School as the case may be, with the procedure hereinafter provided :

(a) Before the end of each year the Member-Secretary of the District Level Selection Board in the case of Higher Secondary School, as the case may be, shall make an assessment regarding the number of vacancies Assam Legislative Assembly constituency wise to be filled up during the next year and shall invite applications in prescribed form with application fee, through advertisement in newspapers from desirous candidates registered with employment exchange prescribing minimum qualifications, number of post with category and reservation for SC/ST/OBC etc. for vacancies of High Schools teachers and post-graduate teachers of Higher Secondary Schools respectively. The amount of application fee for the Post of High School teacher shall be Rs. 35 and for the post Post-Graduate teacher of Higher Secondary School shall be Rs. 50. The State Government may revise the amount from time to time.

(b) On receipt of the applications, the Selection Board shall scrutinize and process the application forms, the mark-sheets and other necessary testimonials of the candidates for interview by the Interview Committee. The Selection Board on completion of the interviews by different interview Committee shall add the marks secured by different candidates in the interview, the marks secured due to qualifications and the marks secured due to experience as a teacher in the manner provided in Schedule-III and prepare a list constituency-wise for each Assam Legislative Assembly Constituency in descending order of the total marks secured by a candidate out of the total marks mentioned in Schedule-III.

(c) Thereafter having provided for reservation, the Selection Board shall finalise the lists constituency-wise for each Assam Legislative Assembly Constituency of only as many successful candidates as the advertised vacancies constituency-wise with roll number and name of candidates, in order of merit and submit the lists to the Director of Secondary Education, Assam for approval. If there is no vacant post of teacher in the schools falling in a particular Assam Legislative Assembly Constituency no select list shall be prepared for such constituency.

(d) The Director of Secondary Education, Assam shall authenticate and get the select list of constituencies published by affixing copies thereof in the office Notice Board of the Director of Secondary Education, Inspector of Schools and Deputy

Inspector of Schools and Deputy Inspector of Schools and in any other manner as the Government may deem fit as and when they are received from the District Level Selection Boards and the State Level Selection Board respectively. The select list containing the results shall be a public document and shall be made available to a benefit member of the public on application with such requisite fees as may be determined by the Government from time to time. The Inspector of School in case of High School and the Director of Secondary Education in case of Higher Secondary School shall appoint the selected candidates in order of merit only from the authenticated select list. Any appointment gives to persons outside the select list shall be ab-initio invalid except appointment given on compassionate ground by the Government in this regard :

Provided that the Director may require the Inspector of Schools of the District to authenticate and get the select list published in the manner as specified above.

(e) The validity of the list shall not exceed beyond one year from the date of publication.

(2) For the purpose of selection of teachers in High School there shall be a District Level Election Board consisting of the following members :-

(a)

An Educationist/Social Worker (to be nominated by the Government)

- Chairman

(b)

7 Social Workers of the District (to be nominated by the Government)

- Members

(c)

7 Expert Educationist (to be nominated by the Government)

- Members

(d)

The Inspector of Schools of the District.

- Member-Secretary :

Provided that the term of the nominated members shall be one year (from January to December) :

Provided further that the Chairman of the Selection Board may constitute as many Interview Committee as he may think necessary from amongst the Member of the Selection Board to expeditiously deal with the large volume of interview to be conducted and each Interview Committee may conduct interview at more than one place to expedite the interview :

Provided also that each Interview Committee shall have a minimum of three members of which at least one member shall be an expert Educationist, Member of the Selection Board who shall be the Chairperson of the Interview Committee. The Interview Committee shall have a minimum of one Social Worker Member of the Selection Board as its member.

(3) For the purpose of selection of teachers in Higher Secondary. Schools, there shall be a State Level Selection Board consisting of the following members :

(a)

Secretary to the Government of Assam, Education Department or his nominee not below the rank of Joint Secretary to the Government of Assam Education Department

- Chairman

(b)

Director of Secondary Education Assam

- Member Secretary

(c)

Two experts to be nominated by the Chairman for each category of subject teachers post

- Members.'

7. From the narration of facts as stated above, it is apparent that Rule 7 was not followed at all before making the appointment. The comparative chart, if any, prepared by the Headmaster cannot be said to be in compliance of Rule 7 of the aforesaid Rules. In the circumstances, we dispose of these Writ Appeals by giving the following directions :-

(1) The respondents official authorities, if they wish to fill In the post(s) in regular basis, will start the process under the relevant rules by issuing fresh advertisement immediately and conclude the process within 3 (three) months.

(2) After the completion of the process whosoever deserves appointment according to the rules, be given appointment.

(3) Till the aforesaid directions are carried out temporary ad hoc arrangement be made by allowing Smti. Rukmini Kalita, who is at the moment holding the post, to continue. The ad hoc arrangement in no case will-exceed 3 (three) months.

(4) The candidates, who might have applied in response to the earlier advertisement issued by the Headmaster, may not be required to apply again. Their applications may be considered as such and their qualification so far as age is concerned would be seen at the point of time which was the requirement at the time of the earlier advertisement.

Copy of this judgment and order, attested by Bench Assistant, be given to Mrs. A. Hazarika, learned G.A. Assam for onward transmission to the concerned quarters.

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