

GAHC010032412013



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

Case No. : WP(C)/5647/2013

BANKIM CHANDRA BHAGABATI
S/O LT. DINESH CH. BHAGABATI, R/O PANJABARI BATAHGHULI NEAR
GUWAHATI PUBLIC SCHOOL, BHUPEN DA PATH, GUWAHATI-37, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
INFORMATION AND PUBLIC RELATIONS DEPARTMENT, DISPUR,
GUWAHATI-6.

2:THE DIRECTOR OF INFORMATION AND PUBLIC RELATIONS
DEPARTMEN

DISPUR
GUWAHATI-6.

3:THE ASSAM PUBLIC SERVICE COMMISSION

JAWAHAR NAGAR
GUWAHATI-22
REP. BY ITS CHAIRMAN.

4:SRI JAYANTA BORA
VILL- RAIDANGIA GAON
P.O. K.B. ALI DIST. GOLAGHAT
PIN- 785625.

5:MS. NEENA BARUAH
DISTRICT INFORMATION and PUBLIC RELATIONS OFFICER
OFFICE OF DIPRO MISSION ROAD
GOLAGHAT-785621

Advocate for the Petitioner : MR.I CHOWDHURY
Advocate for the Respondent : MR.H GOGOIR-5

Linked Case : I.A.(Civil)/700/2023

BANKIM CHANDRA BHAGABATI
S/O LT. DINESH CH. BHAGABATI
R/O PANJABARI BATAHGHULI NEAR GUWAHATI PUBLIC SCHOOL
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Advocate for : MR. A K BARUAH

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 4 ORS

:::BEFORE:::

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 19.03.2024

Date of Judgment & order: 19.03.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. Indraneel Chowdhury, learned senior counsel, assisted by Mr. A. K. Baruah, learned counsel, appearing on behalf of the petitioner. Also heard Ms. Deepanjalee Das Barman, learned Addl. Senior Government Advocate, appearing on behalf of respondents No. 1 & 2; and Mr. T. J. Mahanta, learned standing counsel, assisted by Mr. P. P. Dutta, learned standing counsel, Assam Public Service Commission(APSC), appearing on behalf of respondent No. 3. However, none has appeared on behalf of respondents No. 4 & 5.

2. The petitioner by way of instituting the present proceedings, has presented a challenge to the appointment as made in respect of respondent No. 5, herein. The petitioner has also assailed the select list, dated 31.08.2012, published by the Assam Public Service Commission(APSC) in pursuance of a recruitment process held in terms of an Advertisement, dated 03.02.2012. The petitioner has also made a prayer for his appointment against the post of Senior Information and Public Relations Officer/District Information and Public Relations Officer/Liaison Officer against the post lying vacant on account of resignation of the respondent No. 4, herein.

3. The Assam Public Service Commission(APSC) issued an Advertisement, dated 23.03.2010, inviting applications, amongst others; for 5(five) posts of District Information and Public Relations Officer(DIPRO) under the Information

and Public Relations Department. Amongst 5(five) posts so advertised; 2(two) posts were open category posts whereas other posts were reserved for various reserved communities. The petitioner being eligible, submitted his application against the said Advertisement, along with an application before the competent authority for condoning his over-age for appearing in the said selection process. The appointing authority on consideration of the application of the petitioner, condoned his over-age and accordingly, the petitioner was facilitated to appear in the selection process held in pursuance of the Advertisement, dated 23.03.2010. On conclusion of the various stages of the selection process; the Assam Public Service Commission(APSC) proceeded on 31.08.2012, to publish the select list for the post, in question.

As mandated under the provisions of the Assam Financial Responsibility and Budget Management Act, 2005; the select list, dated 31.08.2012, was limited to the number of vacant posts so advertised. The respondent No. 4, herein, was placed at Serial No. 1; while the respondent No. 5 was placed at Serial No. 2 and both were recruited against open category vacancies. In terms of the select list as published by the Assam Public Service Commission(APSC) on 31.08.2012; the respondent authorities proceeded to appoint the selected candidates vide the Notification, dated 26.11.2012.

It is projected in the writ petition that the petitioner, thereafter, had approached the departmental authorities by way of filing an application under the Right to Information Act, 2005, seeking information and documents. The said application of the petitioner was replied to by the S.P.I.O., Assam Public

Service Commission(APSC), on 05.02.2013. Thereafter, basing on the revelations as made in the said RTI reply and the petitioner on finding that the recruitment as made in the matter was so made in violation of the provisions of the Assam Information and Public Relations Service Rules, 1986, proceeded to institute the present proceedings assailing the said select list, dated 31.08.2012, along with other reliefs as noticed hereinabove.

4. Mr. Chowdhury, learned senior counsel, by referring to the qualifications as spelt-out in the Advertisement, dated 23.03.2010; submits that the requirement as mandated therein of the candidate to have "Knowledge of Computer Application", is contrary to the prescription of qualification as made under the provisions of Rule 8 *read with* Schedule 2 of the Assam Information and Public Relations Service Rules, 1986.

5. Mr. Chowdhury, learned senior counsel, further submits that after prescribing "Knowledge of Computer Application" as one of the mandated qualifications in the said Advertisement, the recruiting agency proceeded to assign marks for such qualification and accessed the candidates against the same. The total marks as scored by the candidates also included marks awarded for the qualification "Knowledge of Computer Application". Such award of marks for a qualification not prescribed under the Rules has been contended to have vitiated the selection. Accordingly, it was submitted that the select list, dated 31.08.2012, being prepared basing on such vitiated selection cannot be sustained and requires interference by this Court.

6. Mr. Chowdhury, learned senior counsel, further submits that although in the said Advertisement, it was provided that the "Knowledge of Computer Application" would be one of the mandated qualifications, given the prescription in the said Assam Information and Public Relations Service Rules, 1986; the petitioner was under the impression that there would be no marking against the said component and accordingly, he had not assailed the said Advertisement at the initial stage and had participated in the said recruitment process under such impression. It was only on the disclosure made in the RTI reply that the petitioner could come to gather that the recruiting agency had assigned marks for the component "Knowledge of Computer Application".

7. Mr. Chowdhury, learned senior counsel, in the above premises, requires this Court to direct the recruiting agency to recalculate the marks of the candidates appearing in the said selection process by excluding the marks allocated for the component "Knowledge of Computer Application" and thereafter, prepare a fresh select list in the matter.

8. Mr. Chowdhury, learned senior counsel, in support of his said submission; has relied upon the decisions of the Hon'ble Supreme Court in the case of ***Ashish Kumar v. State of U.P. & ors.***, reported in **(2018) 3 SCC 55** as well as the decision of Hon'ble Supreme Court in the case of ***Kerala PSC v. K. N. Radamoni***, reported in **(2021) 15 SCC 501**.

9. Mr. Chowdhury, learned senior counsel, in the light of the decisions relied upon by him, submits that the qualifications as prescribed in the advertisement

being in variance to such prescription in the Rules holding the field; the qualification as prescribed in the said Rules of 1986, would take precedence in the matter and accordingly, the recruiting agency is at least required to recast the select list by recalculating the marks secured by the candidates participating in the selection process by excluding the marks allocated for the component "Knowledge of Computer Application".

10. Mr. Chowdhury, learned senior counsel, also submits that in pursuance to a recruitment process initiated in pursuance of the Advertisement, dated 03.02.2012, for the same posts, wherein, the petitioner had also participated; he was selected by the Assam Public Service Commission(APSC) for the said post vide the select list published on 09.10.2014, and consequently, he was appointed against the said post.

11. Mr. Chowdhury, learned senior counsel for the petitioner, also submits that in the subsequent recruitment process, the Assam Public Service Commission(APSC) had not assigned any marks for the component "Knowledge of Computer Application" and the said subsequent recruitment process was strictly held in terms of the provisions of the said Assam Information and Public Relations Service Rules, 1986. Accordingly, Mr. Chowdhury, submits that in the event, the recalculation as sought for by the petitioner is carried-out by the recruiting agency; the name of the petitioner would figure in the earlier select list within the mandated merit position facilitating his appointment against any of the 2(two) posts available for open category candidates and on such reframing of the select list, the respondents No. 4 and 5 not figuring within the

merit position mandated, the appointments as effected in their cases is required to be directed to be cancelled.

12. Mr. Chowdhury, learned senior counsel, makes an alternative submission to the effect that the respondent No. 4 whose name figured at Serial No. 1 in the select list, dated 31.08.2012, amongst the open category candidates, after having joined his services on 26.11.2012, had resigned from such services w.e.f. 20.08.2013, on being selected and appointed as Inspector of Taxes, Finance(Taxation) Department. Mr. Chowdhury, therefore, submits that the said post held by the respondent No. 4 is presently vacant and given the manner in which the said recruitment process was carried-out by the respondent authorities; this Court may by moulding the relief sought for by the petitioner, direct the respondent authorities to appoint the petitioner against the said vacant post of respondent No. 4 and in such an eventuality, there would arise no occasion for interfering with the appointment of respondent No. 5 herein.

13. Mr. Mahanta, learned standing counsel, Assam Public Service Commission(APSC), at the outset, submits that the qualification as prescribed for the post, more particularly, the qualification mandating "Knowledge of Computer Application" was not a qualification as mandated under the provisions of the said Assam Information and Public Relations Service Rules, 1986. The said qualification came to be incorporated in the Advertisement, dated 23.03.2010, on account of the fact that in the requisition made by the concerned Department; the departmental authorities had incorporated such a requirement and accordingly, the same was so incorporated in the said

Advertisement by the Assam Public Service Commission(APSC). Mr. Mahanta, further submits that the said qualification being so disclosed to be a mandated one in the said Advertisement and the candidates having noticed such a prescription made with regard to the qualification required to be possessed by the candidates applying against the said post and having participated in the said selection process noticing the qualifications prescribed; cannot be permitted, on their cases not being recommended, to assail the prescriptions made in the Advertisement, dated 23.03.2010.

14. Mr. Mahanta, learned standing counsel, Assam Public Service Commission(APSC), by referring to the Assam Information and Public Relations Service Rules, 1986, more specifically Rule 8 thereof; submits that the prescription of educational qualifications for the post, in question, would be as prescribed by the Government from time to time and the Schedule 2 thereof, lays down the qualifications as was existing at the commencement of the Rules.

15. Mr. Mahanta, learned standing counsel, by referring to Rule 27 of the Assam Information and Public Relations Service Rules, 1986, submits that in the event, there arises any question relating to the interpretation of the provisions of the Rules; the decision as taken in the matter by the Government in this connection, would be final. Accordingly, Mr. Mahanta, learned standing counsel, Assam Public Service Commission(APSC), submits that the incumbents in the post, in question, on being selected, being required to operate computers in their normal day-to-day discharge of duties; there exists no illegality and/or irregularity in incorporation of the educational qualification "Knowledge of

Computer Application" in the said Advertisement.

16. Mr. Mahanta, learned standing counsel, Assam Public Service Commission(APSC), in support of his above submissions; relies on a decision of the Hon'ble Supreme Court rendered in the case of ***Pradip Kumar Rai v. Dinesh Kumar Pandey***, reported in **(2015) 11 SCC 493**.

17. Mr. Mahanta, learned standing counsel, Assam Public Service Commission(APSC), with regard to the alternative submission as made by Mr. Chowdhury, learned senior counsel for the petitioner, requiring a direction from this Court to the respondent authorities to appoint the petitioner against the vacancy available on resignation of the respondent No. 4 from his services; submits that the post held by the said respondent No. 4 having become vacant on his resignation therefrom after having joined his services; the said post cannot be filled-up from the selection process as undertaken in pursuance to the Advertisement, dated 23.03.2010, and the same has to be filled up through a fresh process of selection.

18. Mr. Mahanta, learned standing counsel, further submits that the petitioner had secured 179 marks in the selection process whereas the respondents No. 4 and 5 had secured 211 and 197 marks respectively. Mr. Mahanta, further submits that above the petitioner, there were 3(three) more candidates securing marks either equal to or more than that of the petitioner.

19. Mr. Chowdhury, learned senior counsel for the petitioner; rejoining his submission, submits that the alternative prayer as made by him, is not made solely on the basis of the post becoming vacant on resignation of the respondent No. 4 but is so based on a further requirement of the authorities to re-determine the *inter-se* merit position of the candidates participating in the selection process after removal of the marks as allocated for the component "Knowledge of Computer Application" on account of the fact that such assignment of marks for the component "Knowledge of Computer Application" was not in accordance with the stipulations as contained in the relevant provisions of the said Assam Information and Public Relations Service Rules, 1986.

20. Mr. Chowdhury, learned senior counsel, further submits that that there were 3(three) more candidates figuring above the name of the petitioner on merit in pursuance to the said selection process, cannot be a ground to deny to the petitioner his due appointment in the manner as indicated hereinabove in-as-much as the said candidates are not before this Court and had not pursued their right for such appointment. The petitioner having approached this Court raising a grievance against the matter; this Court is called-upon to consider his such grievances and extend to him such reliefs as sought for by the petitioner in the present proceedings.

21. I have heard the learned counsels appearing for the parties and perused the materials brought on record including the written arguments submitted by the respective contesting parties.

22. The petitioner has assailed the said recruitment process more particularly, the publication of the said select list, dated 31.08.2012, and the placement of the candidates therein, on merit, on the ground that the prescription of educational qualifications in the Advertisement, dated 23.03.2010, was contrary to the one as mandated in the said Assam Information and Public Relations Service Rules, 1986. It is seen from the said Advertisement, dated 23.03.2010, that for the post of District Information and Public Relations Officer(DIPRO) under the Information and Public Relations Department, the Assam Public Service Commission(APSC), it was mandated, amongst others, "Knowledge of Computer Application" as one of the mandatory educational qualifications. The petitioner contends that the said qualification as mandated being in violation of the said Assam Information and Public Relations Service Rules, 1986; it was not open to the recruiting agency to allocate marks for the said qualification and thereby; the selection process having been so conducted in violation of the provisions of the said Assam Information and Public Relations Service Rules, 1986; cannot be sustained and the said selection process at least with regard to re-allocation of the merit position by deducting the marks allocated for the component "Knowledge of Computer Application", is to be redone.

23. It is seen that on receipt of the draft Advertisement from the Department concerned; the Assam Public Service Commission(APSC) had requested the said Department vide its communication, dated 09.07.2009, for a clarification as to why the "Knowledge of Computer Application" was so incorporated in the draft Advertisement for the post, in question. In response thereto, the Department concerned had vide the communication, dated 08.02.2010, informed the Assam Public Service Commission(APSC) that the said requirement was so incorporated

on account of the fact that the Senior Information and Public Relations Officers of the Department had been provided with the computers at the District and Sub-division level and accordingly, there was a requirement for assessment of such knowledge in the recruitment process. The Assam Public Service Commission(APSC) on appreciation of the said clarification, as provided by the departmental authorities; proceeded to incorporate the said qualification i.e. "Knowledge of Computer Application" in the Advertisement, dated 23.03.2010.

24. In this connection, the decision of the Hon'ble Supreme Court as referred to by Mr. Mahanta, learned standing counsel, Assam Public Service Commission(APSC), in the case of ***Pradip Kumar Rai***(supra), is being referred to and the relevant paragraph is quoted hereinbelow for ready reference:

"17. Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. Thus, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted. ([Vijendra Kumar Verma v. Public Service Commission, (2011) 1 SCC 150 : (2011) 1 SCC (L&S) 21] and K.H. Siraj v. High Court of Kerala [K.H. Siraj v. High Court of Kerala, (2006) 6 SCC 395: 2006 SCC (L&S) 1345])"

25. It is seen that the educational qualifications as mandated in the said Assam Information and Public Relations Service Rules, 1986, was also incorporated in the Advertisement, dated 23.03.2010, but, for the addition of the educational qualification i.e. "Knowledge of Computer Application".

26. The provisions of Rule 8 of the said Assam Information and Public

Relations Service Rules, 1986, mandate that the academic qualification requisite for the post, in question, would be as prescribed by the Government from time to time. The educational qualification as set-out in Schedule 2 thereof, is the qualification and experience as prescribed at the date of commencement of the said Assam Information and Public Relations Service Rules, 1986. Rule 8 of the Assam Information and Public Relations Service Rules, 1986, being relevant, is extracted hereinbelow:

“8. Academic Qualification: The academic qualification of a candidate for direct recruitment shall be as prescribed by the Government from time to time. The qualification and experience prescribed as on the date of commencement of these rules are given in Schedule-II.”

27. A perusal of the said Assam Information and Public Relations Service Rules, 1986, reveals that the prescription of qualification, more particularly, the academic qualification is one that is to be prescribed by the Government from time to time, in other words, the said Rules do not prescribe a fixed nature of qualification for the post and has left it to the Government who is now called-upon to prescribe such qualification as may be mandated from time to time. The Government has been defined under the provisions of Rule 2(e) to be the State Government of Assam.

28. The draft Advertisement in the matter having been so issued by the Government of Assam and therein, it having prescribed under the Heading “educational qualification”, amongst others, the “Knowledge of Computer Application”; it has to be deemed that such prescription of the qualification was made in terms of the powers as assigned to the State Government, under the provisions of Rule 8 of the said Assam Information and Public Relations Service Rules, 1986.

29. The power to assign such qualification "Knowledge of Computer Application" having been found to be vested in the State Government in terms of Rule 8 of the said Assam Information and Public Relations Service Rules, 1986; this Court in the facts and circumstances as existing in the matter, is of the considered view that such prescription of qualification cannot be held to be without jurisdiction. Accordingly, the said power being traceable to the provisions of Rule 8 of Assam Information and Public Relations Service Rules, 1986; this Court upholds such prescription of qualification, holding that the said qualification was so done by the State Government in accordance with the powers vested on it under the provisions of Rule 8 of the said Assam Information and Public Relations Service Rules, 1986, to prescribe educational qualifications as may be mandated from time to time.

30. Further, the petitioner having participated in the said selection process, without raising any objection with regard to the prescription of qualifications as prescribed in the Advertisement, dated 23.03.2010 and having only assailed such prescription after it was found that he had not been included within the merit position mandated for appointment against the posts so advertised; this Court is constrained to hold that the petitioner having taken a calculated chance by participating in the said selection process and having instituted the present proceedings before this Court after his failure to qualify therein; the contentions so made, does not merit acceptance from this Court.

31. It is to be further noted that the petitioner had not alleged any motives on the part of the respondent authorities on account of the prescription of the said

qualification. It has not been alleged by the petitioner that the said qualification was so assigned solely to prefer a particular set of candidates. The only contention of the petitioner is that the said qualification could not have been prescribed in absence of a similar provision finding place in the provisions of the said Assam Information and Public Relations Service Rules, 1986, which in view of the conclusions reached hereinabove, is not acceptable.

32. The conclusions as arrived herein with regard to the contentions made by the petitioner with regard to the prescription of qualification issued in the said Advertisement, dated 23.03.2010; bring this Court to consider the alternative submission as made by the petitioner requiring this Court to direct the respondent authorities to appoint the petitioner against the vacant post becoming available on account of the resignation of the respondent No. 4, herein, from the said post on 20.08.2013.

33. It is seen that in pursuance to the select list, dated 31.08.2012, the respondent No. 4 along with 4(four) others were appointed on 26.11.2012, and the respondent No. 4, on acceptance of such appointment, had joined his services and was discharging his duties against the concerned post. Thereafter, the respondent No. 4, on having secured a better avenue of employment, had submitted his resignation and accordingly, he was released from the services of District Information and Public Relations Officer(DIPRO) on 19.08.2013. The vacancy so occasioning on the resignation of the respondent No. 4 having so occasioned after the petitioner had availed the appointment effected in his case, is to be deemed to be a fresh vacancy. It is a settled position of law that a

select list as prepared for a particular number of posts, loses its validity when the posts involved, are all filled-up.

34. In the case on hand, the select list, dated 31.08.2012, had lost its validity on the candidates whose names figured therein were appointed on 26.11.2012. As such, w.e.f. 26.11.2012; the said select list, dated 26.11.2012, had no existence and had lost its validity.

35. In view of the said position; the select list, dated 31.08.2012, no longer being in existence after the same was acted upon and the persons named therein, appointed on 26.11.2012; the alternative prayer of the petitioner for a direction to the respondent authorities to appoint him against the post becoming vacant upon the resignation of the respondent No. 4, cannot be accepted. After coming into force, the Assam Financial Responsibility and Budget Management Act, 2005, it is mandated that the select list shall contain the names of candidates equal to the number of posts that are put up for Advertisement. In the event, the prayer of the petitioner is to be considered and a direction is issued for filling-up the post becoming vacant on account of the resignation of the respondent No. 4; this Court would be called upon to direct the recruiting agency to recast the select list, dated 31.08.2012, by incorporating therein, the names of the persons, on merit, who had participated in the said selection process. It has already been brought on record that there exists 3(three) candidates who had scored either equal or more marks than the petitioner and accordingly, in the event, the select list, dated 31.08.2012, is so required to be recast, it would be the person placed next in terms of marks

scored than the person incorporated in the said select list on merit position, whose name would now be incorporated in the select list, dated 31.08.2012, and in such eventuality also; the name of the petitioner would not be incorporated in the said select list given the merit position obtained by him in the said selection process.

36. It is a trite law that this Court cannot permit continuous recasting of the select list. However, the said position would not arise in the present case inasmuch as it is already concluded by this Court that the said select list, dated 31.08.2012, lost its validity on appointments being effected therefrom on 26.11.2012. In view thereof, the alternative prayer as made by the petitioner, does not merit acceptance.

37. In view of the conclusions as arrived by this Court hereinabove with regard to the issues arising in the matter more particularly the conclusions as reached with regard to the intent and purport of the provisions of Rule 8 of the said Rules of 1986; the decisions as relied upon by the petitioner are held to have no application to the facts involved in the present matter and accordingly, are not being dealt with by this Court.

38. For the reasons and discussions as made hereinabove, this writ petition is held to be devoid of merit and the same accordingly stands dismissed. Interim order passed, if any, stands vacated. However, there shall be no order as to costs.

JUDGE

Comparing Assistant